

30.10.4

133a (והמשתתף עמהן) → 134a (מתנות כהונה אין נגזלות)

- I Analysis of 2nd half of משנה ג: if partnering with כהן or עכ"ם, must mark animals
- a Challenge: ברייתא – only if w/כהן must mark, not עכ"ם (or פסוה"מ) – as it is well-known
 - b Defense: in that case, the non-Jew is sitting in the store (obvious to all that he is a partner)
 - i Challenge: in the parallel case, if the כהן is sitting in the store, why the need for the mark?
 - c Rather: he is sitting at the cash register and people think he is only selling the meat, not a co-owner
 - i Challenge: in the parallel case, if the כהן is handling the money, should not have to mark
 - ii Answer: people will think that the כהן, a non-partner, is trusted to handle the owner's money
 - 1 But: no one would make that assumption about the non-Jew
 - d Alternatively: if the עכ"ם is present, he will be micro-managing (all see that he is a partner); but a כהן would sit quietly
- II Re-assessing status of פסוה"מ (mentioned in ברייתא above) do not need mark
- a implication: פסוה"מ are recognized as such
 - b challenge: בכורות ה:א – בכורות פסוה"מ may be sold and slaughtered in the marketplace and weighed normally, i.e. treated as חולין
 - i answer: our ruling is only re: those that are not sold in marketplace – בכור ומעשר – and are only sold in the house
- III Dispute הונא ר' and רב ר' regarding partial and complete exemptions
- a if: he is a partner (w/non-Jew or כהן) in head, arm or stomach
 - i ד"ה he is exempt from that מתנה only (e.g. if co-owner of head, exempt only from לחיים)
 - ii חייא בר רב he is exempt from all מתנות from this animal
 - 1 challenge: ruling that if he has a partnership in all – or even a fraction – of the head, foreleg or innards
 - (a) ruling: he is exempt
 - (b) assumption: he is exempt from that מתנה only
 - (i) answer: he is exempt from all מתנות of this animal
 1. challenge: then it should read "exempt from all"
 2. furthermore: ברייתא – a partner in the head (or even fraction) – exempt from לחיים and liable for rest
 - a. rejection: of חייא בר רב and he is only exempt from that מתנה
 - 2 explanation of חייא בר רב's "error" (ר' חסדא) listing 24 מתני"כ, all of which were given ופרט and בכלל מלח and ברית מלח
 - (a) 10 in מקדש: מנחת העומר, מנחת הפנים, שירי מנחות, לחם הפנים, שירי מנחות, מנחת העומר, מקדש
 - (b) 4 in בכו"מ: מורס מן התודה ומן איל נזיר, עורות קדשים, גזל מדינה
 - (c) 10 in תר"ג, תר"מ, חלה, ראשית הגז, מתנות, פדיון הבן, פדיון פט"ח, שדה אחוזה, שדה חרמים, גזל הגז, מדינה
 - (i) he thought: since מתנות are counted as one, they are treated as a unit
 - (ii) but really: they are counted as one since they are all alike (like התודה ומן האיל ומן התודה)
 - b question posed: if the כהן sold the ישראל the head only, is there a חיוב מתנות?
 - i Clarification of the question: does it follow the חיוב (head) → חיוב; or the main body → פטור?
 - ii Resolution: if כהן or non-Jew gave their sheep to ישראל to shear, or a ישראל buys shearings from כהן → פטור
 - 1 And: this is a stringency of מתנות over הגז ראשית
 - 2 Implication: we determine חיוב based on moment of חיוב → in our case, head belongs to ישראל → חיוב

IV Analysis of next clause in משנה ג: if כהן sold animal "חוץ למתנות" – he is exempt

 - a Challenge: ברייתא – if כהן sells animal on condition ("על מנת") that the מתנות are his – he may give to any כהן
 - b Answer: no challenge from "חוץ" (which is a שיור [provides for an exclusion]) to "על מנת"
 - i Challenge: ברייתא – if he says על מנת that the מתנות go to him – he has the right to keep them
 - ii Answer: there is a disagreement between these ברייתות if על מנת is a שיור or not

V Analysis of final clause – if he buys meat by weight and it includes מתנות, he gives them and claims difference from טבח

 - a דב: that is if he weighed them himself; if the טבח weighed them, the כהן makes his claim to the כהן, not the owner
 - b ד' אסי: in any case, the claim is against the owner
 - i Suggestion: they disagree whether to accept חסדא ר' dictum: if someone stole and there was no ייאוש and the thief sold the stolen items to a third party, the victim may claim for either the גנב or the 3rd party
 - ii Alignment: רב accepts ר"ח → may claim from טבח (3rd party); ר' אסי rejects ר"ח → may only claim from owner
 - iii Rejection: all accept ר"ח
 - 1 And: dispute is whether מתנות can rightfully be called stolen
 - 2 Alignment: רב – they may be stolen and the victim (כהן) may claim from the 3rd party; ר' אסי – aren't נגזלות
 - 3 Note: some read this as an independent statement: רב says that מתני"כ can be stolen, ר' אסי – they cannot