

פרק שני – הלוקח עובר פרתו Introduction to

as we will learn at the beginning of this פרק, we have now “dispensed” with the laws of פט"ח and are moving on the laws of טהורה, which will occupy most of the rest of the מסכת. The unusual ordering of the משניות – placing פט"ח first – is addressed in the first סוגיא

31.2.1

13a (משנה א) → 13b (דאינהו לא קיימי בדבוריהו לא)

1. כי לי כל בכור ביום הפתי כל בכור בארץ מצרים הקדשתי לי כל בכור בן ישראל מאדם עד בהמה לי יהיו אני ה': במדבר ג, יג
 2. והתנחלתם אתם לבניכם אחריכם לרשת ארצה לעלם בהם תעבדו ובאחיכם בני ישראל איש באחיו לא תרדה בו בפרך: ויקרא כה, טו
 3. וכי תמכרו ממכר לעמיתך או קנה מיד עמיתך אל תונו איש את אחיו: ויקרא כה, יד
 4. אם עוד רבות בשנים לפיהן ישיב גאלתו מקסף מקנתו: ויקרא כה, נא

- I א exclusivity of טהורה to בכור בהמה ישראלי ownership משנה א
- a if: any of the five “shared” relationships from א:א obtain with non-Jew – exempt
 - b however: unlike פט"ח and כהנים and לויים's animals are חייבים – they are only exempted from בכור אדם and חמור פטר
- II General query – why are the laws of פט"ח presented first?
- a justification: טהורה carries “essential” (קדושת הגוף); פט"ח only “value” (קדושת דמים)
 - b answer1 (from א"י): the rule “loves” תנא of פט"ח per חניני ר' above (re: why donkeys were singled out)
 - c answer2 (from א"י): the rules of פט"ח are few, יהודה הנשיא, ר' wanted to “take care of it quickly” and move on
- III מימרא of ר' אושיעא (quoted by ר"ל) regarding טהורה from/to non-Jew
- a if: a non-Jew gives ישראל money for one of his animals and it births (בכור) before he takes possession (משיכה)
 - b and if: a non-Jew gives ישראל money and the bought animal births (בכור) before he takes possession (משיכה) – פטור
 - i note: both clauses used the phrase “בדיניהם ישיב”
 - ii clarification: of the term בדיניהם
 - 1 cannot mean: inferred via ק"ו (“דין” used as “inference”); from their physical selves
 - (a) if: we can buy them with money (as עבד כנעני – v. 2)
 - (b) then: certainly we can buy their property with money
 - (i) block: if so, we should be able to buy their property with שטר וחזקה, as is the rule for ע"כ קנין
 - (ii) and: ישראל's ability to buy ישראל (ע"ע) with כסף, yet not his possessions (require משיכה) defeats it
 - 2 אבני means – the rules established for their commerce by the תורה (“דין” meaning “rules”)
 - (a) per: v. 2 – משיכה – “מיד” – given from hand to hand) only applies to עמיתך (fellows) – for non-Jews, כסף
 - (i) suggestion: perhaps משיכה is valid for עמיתך and no קנין is valid for non-Jews?
 - 1. rejection: ק"ו – if we can buy them, we can certainly buy from them
 - (ii) suggestion: perhaps משיכה alone is sufficient for ישראל; non-Jews require both משיכה and כסף
 - 1. rejection: ק"ו – if we can buy them with one קנין, we certainly don't need two to buy ממונם
 - (iii) suggestion: perhaps משיכה only for ישראל; non-Jews can use either משיכה or כסף
 - 1. rejection: just as עמיתך has one קנין, non-עמיתך has only one (כסף)
 - 3 note: parallel analysis to 2nd clause – but suggested ק"ו in first phase is based on גוי of ישראל (v. 4)
 - c tangent: squaring the above with אממר's approach – גוי has valid קנין (only) through משיכה
 - i if: he holds like ר' יוחנן מה"ת – ר' יוחנן כסף, מה"ת – ר' יוחנן משיכה, גוי has משיכה, ישראל has כסף עמיתך limits כסף, who's excluded?
 - ii but if: he holds like ר"ל, that משיכה is the essential קנין in the תורה – why does it state עמיתך? who's excluded?
 - 1 answer: it excludes גוי from אונאה (no need to return it to him)
 - 2 challenge: that is excluded from end of v. 3
 - 3 defense: we require two exclusionary phrases – one for גוי, other for הקדש
 - (a) justification: if we only had one, we would have assigned it to הקדש
 - 4 challenge: this is only valid if we hold גזילת גוי is forbidden – must teach that גוי אונאה is not
 - (a) but if: we hold גזילת גוי is permitted – then certainly no need to return אונאה (and no פסוק needed)
 - iii conclusion: משיכה – “קנין תורה” – only גוי from עמיתך → מעות קונות, מה"ת ר' יוחנן must agree with אממר

- d *revisiting* *מימרא* 'ד' *אושיעא* challenge – תוספתא ע"ז ג: – if one buys shards from גוי and finds ע"ז in them
- i *if*: he took them (משך) before paying – he may return (go back on deal)
- ii *but if*: he took them after paying – all ע"ז value in them goes to ים המלח (and is disposed of)
- 1 *however*: if מעות קונות (as per אושיעא 'ר), why does משיכה play a role here at all?
 - 2 *answer*: case where non-Jew stipulated that the transaction will follow דיני ישראל
 - 3 *challenge*: if so, why do the מעות play a role?
 - (a) *answer*: read – *even if* he gave the money, only if he took possession is it a done deal
 - (b) *challenge*: if so, first clause is difficult – why may he return them?
 - (i) *answer1* ('אבי): in first case, there was a מקח טעות → it reverts
 1. *challenge* ('בא): there was a מקח טעות in both cases
 - (ii) *answer2* ('בא): in both cases – מקח טעות;
 1. *however*: in first case, since he didn't hand over any money, it doesn't have the appearance of a transaction involving ע"ז;
 2. *whereas*: in 2nd case, since he handed over money, it looks as if he is transacting with ע"ז
 - a. (*note*: according to רבא, in neither case is there an essential problem; only מראית העין)
 3. *אבוי* could answer that in the 2nd case, there is no מקח טעות
 - a. *argument*: since he paid, he should have looked it over first
 - (iii) *answer3* ('ר' אשי): in both cases, משיכה is not essential to קנין
 1. *in first case*: there was no משיכה, all that matters is the מעות
 - a. *therefore*: for parallel construction, the תנא mentioned משיכה in 2nd clause
 - (iv) *answer4* ('רבינא): in 2nd clause, משיכה is a valid קנין (per אממר or because he agrees to ישראל)
 1. *therefore*: in the 1st clause, too, משיכה is קונה (but he hadn't yet taken possession)
 2. *question*: if so, what is the חזרה mentioned there? If there wasn't yet משיכה, from what is he חוזר?
 - a. *answer*: חזרה from his oral commitment
 - i. *note*: this is only valid if we hold חזרת דברים is מחוסר אמנה (i.e. one's oral commitment is meaningful and reneging on it carries ramifications)
 - ii. *yet*: this only applies to ישראל, who are trustworthy, not to עכו"ם