

31.2.5

17a (משנה ו) → 18b (שהמוציא מחבירו עליו הראיה)

1. והעברת כל פטר רחם לה' וכל פטר שגור בהמה אשר יהיה לה הזכרים לה': שמות יג, יב
2. הפל בכתב מידה' עלי השקיל כל מלאכות התבנית: דה"א כח, יט

I בכורות simultaneous: משנה ו

- a *If*: a ewe had her first birth and two males came out simultaneously
- i זכרים (כהן, per v. 1) *דיה"ג*
- ii חכמים: only one goes to כהן, as both could not have been born at exactly the same moment (א"א לצמצם)
- 1 ז"ט: the כהן picks the better one
(a) Reason: he assumes the healthier one came out first (גמרא)
- 2 מום and the other grazes until it gets a משמנין ביניהם ז"ע
(a) ר' יוחנן משמנין: meaning, the כהן gets weaker one
(i) Challenge: משמנין ביניהם states משנה (ר' חייא בר אבא) (we assume – they assess value and divide it)
(ii) Answer: see from סיפא (below) – ר"ע says המע"ה כהן – כהן must prove which is בכור
1. Therefore: here, the "שומן" (fat – difference between bigger and smaller) is "between them"
- 3 Then: when slaughtered, מתנות must be given to כהן
(a) Dissent: ר' יוסי – exempt from מתנות
(i) Analysis: ר"מ holds חייב כהן, since כהן can argue "ממה נפשך" – if בכור, he gets all; if not – gets מתנות
(ii) ד' יוסי (רבא) – we consider it as if כהן got it and sold it (for בכור he received) – no מתנות
(b) ז"א: "all agree" (meaning ר' יוסי) that if ספק בכור, without "חליפין" in כהן's hand, is חייב במתנות
(i) Challenge: this is obvious; only reason ר' יוסי exempted here is due to חליפין ביד כהן
(ii) Defense: we might have thought to exempt, so as to prevent anyone from shearing/working – קמ"ל
1. Challenge: ר' יוסי explicitly exempted (contra ר"מ) due to חליפין ביד כהן
2. Defense: that may have been his response to ר"מ, but he was concerned about ועבודה קמ"ל – גיזה ועבודה
(c) tangent (ז"פ): "all" agree that ספק מעשר is exempt from מתנות
(i) "all": must mean ר"מ
1. challenge: this is obvious, as ר"מ obligates in ספק בכור because either way the כהן has a claim
a. which: doesn't apply to ספק מעשר
b. defense: perhaps ר"מ would obligate here nonetheless, מתנות תורת כהן, שלא תשתכח תורת כהן – פטור, חליפין ביד כהן (ברייתא) ר' יוסי ruled that if כהן has חליפין ביד כהן, and that is where ר"מ dissents and obligates → his חיוב is due to כהן, not תשתכח, and we learn about ספק בכור to show extent of ר"מ's position: even when כהן has "either way" claim, he exempts – קמ"ל
- iii *If*: one of them died
- 1 ז"ט: they divide the (value of) the other
(a) Challenge: why divide (according to ר"ט); if fat one died, that was כהן's (gets nothing); if other died, he gets 100% of fat one
(b) Answer: ר"ט changed his mind and agreed with ר"ע (in רישא)
- 2 ז"ע: we employ the rule of המע"ה → the כהן gets nothing
(a) Analysis: ר' חייא compared ר"ט's ruling to 2 people who entrusted their sheep (1 each) with a shepherd and one died – the הלכה is that the shepherd leaves the live one and they fight over it
(i) And: ר"ע's ruling is like one who entrusted his lamb to בעה"ב; it got mixed up with his own lamb and one died – המוציא מחבירו עליו הראיה (ב) בעה"ב gets to keep the live lamb
(b) Question: what's their disagreement? Each of ר"ט and ר"ע surely agrees to the הלכה in each of these cases
(i) Answer (ז"פ or זבא): case where חצר belongs to בעה"ב and his shepherd is כהן (gets all his בכורות)
1. ז"ט: the בעה"ב is מקנה some of his חצר כהן (for him to be קונה) to enable מצוה (בכורות קונה) to enable מצוה
a. Therefore: it is similar to two people entrusting their sheep to רועה (equal claims) – יחלוקו
2. ז"ע: בעה"ב does not מקנה anything to רועה (has loss) → similar to entrusting to בעה"ב – המע"ה
- b *If*: the ewe had a male and female simultaneously – the כהן gets nothing

II ריה"ג/חכמים Analysis of

- a (אפשר לצמצם בידי שמים) we see that ריה"ג maintains that natural occurrences can be simultaneous
- i And: certainly if intended (אדם) (אפשר לצמצם בידי אדם)
 - ii We see: that חכמים reject simultaneity as a natural occurrence
 - iii Question: what is position of חכמים on deliberate simultaneity (? אדם) (אפשר לצמצם בידי אדם)
 - 1 Proposed proof: the חוט הסיקרא circumscribed מזבח to distinguish between לעליונים לעליונים דמים תחתונים
 - (a) Rejection: perhaps they thickened it to ensure that "up" was above halfway mark etc.
 - 2 Proposed proof: size of כלים and מזבח
 - (a) Rejection: ה' commanded they be built – as exactly as possible, per v. 2
 - 3 Proposed proof (רב כהנא): ברייתא - if תנור חרס טמא is broken exactly in half – both א"א, as לצמצם
 - (a) Rejection (רב כהנא): כלי חרס has jagged edges and pits, making exactitude nearly impossible
 - 4 Proposed proof: ר"א rules that if a murder victim is found to be exactly between 2 cities – both bring עגלה
 - (a) Assumption: ר"א holds that אדם אפשר לצמצם בידי אדם and "קרובה" means even "קרובות"
 - (b) Rejection: he favors ריה"ג's opinion – even בידי שמים we say אפשר לצמצם
 - 5 Suggestion: the issue of אפשר לצמצם בידי אדם is subject to מחלוקת תנאים
 - (a) If: a מת is found exactly between two towns, חכמים – don't bring at all; ר"א – each brings עגלה
 - (i) Assumption: חכמים – אפשר לצמצם; ר"א – אפשר לצמצם
 - (ii) Rejection: if חכמים hold אפשר לצמצם, א"א, let both towns bring one עגלה together and make a תנאי
 - (b) Rather: both of these positions accept אפשר לצמצם and disagree if "קרובה" could mean "קרובות"
 - 6 Resolution: חכמים (in above case) say the 2 towns bring one עגלה together and make a תנאי
 - (a) Reason: they hold אדם אפשר לצמצם אפי' בידי אדם (if they held קרובה but not קרובות – bring none)