

31.3.1

19b (משנה א) → 20b (לא אמרינן מקצת היום ככולו)

- I או משנה: status of female animal bought from non-Jew and then gives birth in ישראל's domain – unknown if ביכרה וודאי בכור
- a ר' ישמעאל: if it is within a given period (nanny-goat – 1 yr.; ewe – 2 yrs; cow and jenny 3 yrs.) – young is בכור
- i If afterwards: understood to be ספק
- 1 Challenge: why should it be ספק? Most animals give birth during these times – רוב should determine
 - 2 Proposal: ר"י agrees with ר"מ's concern for מיעוט
 - (a) Correction: he could agree with רבנן, but they only follow רוב when it is before us (e.g. ב"ד)
 - (b) Block: רבנן follow רוב in case of קטן וקטנה (re: ייבום – allowing in spite of faint possibility of אילונית וסריס)
 - (i) Contra: ר"מ who disallows both חליצה וייבום; חליצה as it requires "איש" (they agree); ייבום, per above
 - 3 Rather (ר"ב): ר' ישמעאל clearly accepts ר"מ's universal concern for מיעוט
 - 4 Rather (ר"ב): could still be רבנן; they only follow רוב when there is no action involved; here, mating could happen in any case → they would be חושש למיעוטא (that this animal didn't have relations before the 1/2/3 years)
- b ד' עקיבא: if the only way to exempt the mother was with a full-born בכור, that would be correct
- i But: חכמים said that בהמה דקה is exempted with certain ללכוך גסה – when placenta comes out (and that could certainly happen and she could become pregnant again within first 3 years) and human – embryo and placenta
- ii Rather: if we know that she didn't give birth – 1st offspring goes to כהן
- 1 And if: we know that she gave birth before – כהן gets nothing
 - 2 And if: we do not know – it should be eaten by owners after getting a מום
- II ב:יא-יב: תוספתא בכורות: paralleling the dispute in our משנה, with addition of ר' יהושע's opinion
- a ד' ישמעאל: presents same position, with additional dissent of ר' יוסי בר יהודה that donkey is 4 years
- b ד' יהושע: doesn't depend on birth; he cites חכמים who hold טינוף/placenta/embryo+placenta (as above)
- i But: he himself doesn't accept that;
- ii Rather: if a goat has טינוף during first six months still has a child during first year
- 1 And: if lamb has טינוף during first year, still has a child during first 2 years
 - (a) Analysis: why does ר' יהושע disagree with the tradition he received?
 - (i) Possibility#1: if it had טינוף right at the end of 6 months; disputing זעירי's statement:
 1. טינוף lasts at least 30 days (his tradition accepts it; his own סברא – rejects it)
 - (ii) Possibility#2: all accept זעירי; dispute if it has shortened gestation
 1. According to: tradition doesn't allow for it; סברא does
 - (iii) Possibility#3: no one thinks that shortened gestation happens;
 1. The difference: is whether we apply ככולו היום מקצת
 2. Tradition: rejects it → can only become pregnant the day after 6 months+1 month of טינוף
 - a. Therefore: there aren't 5 months left for birth before year is up
 3. His own approach: accepts ככולו היום מקצת → can become pregnant the day the טינוף ends
 - a. Therefore: there are 5 months for gestation before end of year
- c ד' (as in משנה) if we know it didn't have a child – לכהן; if we know it did – לבעלים; if ספק – eaten לבעלים במומו
- i proposal: ר' ישמעאל and ר' יהושע disagree whether טינוף (etc.) exempts
- 1 rejection: all agree that if we know it had טינוף, exempt; dispute only in case that we don't know
 - 2 dispute: ר' ישמעאל says that we aren't לטינוף חושש לטינוף; ר' יהושע – חושש לטינוף – we are חושש
 - (a) Challenge: above, we established that ר' ישמעאל holds like ר"מ (חושש למיעוטא) → חושש לטינוף
 - (b) Answer1: he is only לחומר, not for טינוף (e.g.) which is קולא
 - (c) Answer2: they disagree if an animal, after טינוף, would give birth during year; ר' ישמעאל holds that it wouldn't → this birth, during first year, must not have been preceded by טינוף