

31.3.4

23b (משנה ב) → 24b (או דלמא דלאו מינה נמי מרחמא תיקו)

1. זָרְעוּ לָכֶם לְצִדְקָה קִצְרוּ לְפִי חֶסֶד נִירוּ לָכֶם נִיר וְעַת לְדָרוֹשׁ אֶת ה' עַד יָבֹוא וְיָרָה צֶדֶק לָכֶם: הוֹשֵׁעַ י, יב

- I **ב** משנה ב: assumption – a baby will nurse only from its mother
- a *If*: someone buys a nursing mother from a non-Jew, no reason to suspect that it was nursing another's (→ חייבת)
- b *And if*: he saw that מבכירות and non-מבכירות are all nursing in his flock, no reason to suspect that the kid nursing from the מבכירה is the בכור of another one (or vice-versa), in which case they'd all be ספקות
- i *רב's comment*: in our פרק, the הלכה always follows the opinion (even if attributed) in the משנה
- 1 *Exception*: if there is a dispute
  - 2 *Question (ר' יוסי)*: what is the referent? In 1<sup>st</sup> משנה, ר' יוסי disagree; in 2<sup>nd</sup> – ר' יוסי is always accepted as רב – (משנה ר' יוסי בן המשולם); if ours, ר' יוסי – the ברייתא (see below) disagrees; if המשולם – רב already ruled in accord with his teaching; if שער בעל מום – רב and עקיבא בן מהלל disagree
    - (a) *Rather*: it must be our משנה רב; רב is teaching that the ברייתא is not at odds with רשב"ג
    - (b) *Question*: why, then, did he have to explicitly rule like המשולם ר' יוסי בן המשולם?
      - (i) *Answer*: we would have thought that הילכתא בכולא פרקין ר' יוסי בן המשולם refers to המשולם, who taught two things – but the dispute with רשב"ג in the ברייתא is truly against him
      - (ii) *Therefore*: משנה הלכה כרביה"מ teaches that the other statement is about רשב"ג
- ii *The ברייתא*: if someone buys a nursing animal from a גוי, its next baby is בכור ספק
- 1 *Reason*: she has compassion on the young – even if not her (and even if she never gave birth)
  - 2 *דשב"ג*: all remains per חזקה – if it is nursing, already had young
    - (a) *Similarly*: רשב"ג ruled that if someone enters his corral at night and sees some מבכירות and some non-מבכירות giving birth and the next day finds females “attached” to מבכירות and males to מבכירות
      - (i) *Then*: he has no reason to be concerned and none are even ספק בכור (young stays with mother)
      - (b) *question*: meaning of רשב"ג's comment “דבר בחזקתו”
        - (i) *lemma1*: if she hasn't birthed yet, she won't nurse, but will nurse another once having given birth
        - (ii) *lemma2*: she will never have compassion on a kid that isn't hers
          1. *split the difference*: אותו ואת בנו (if she already birthed and a kid is with her - if we hold that she will never have compassion on another's young, מכות are given for slaughtering both)
          2. *proposed solution*: רשב"ג rules that we aren't concerned that it is another's young
            - a. *block*: he doesn't state “it isn't” (הוא); rather, “it wasn't” (היה)
            - b. *meaning*: no reason to suspect it to be another's unless she already gave birth
          3. *proposed solution*: if he comes into corral and sees מבכירות and non-מבכירות nursing
            - a. *we do not*: suspect that one kid is another's (→ no רחמים, even after birthing)
            - b. *rejection*: when her own young is present, she won't ignore her for another's
          4. *proposed solution*: רשב"ג's ruling – דבר בחזקתו – רישא should be same as רישא
            - a. *just as*: רישא is certainly hers, so too רישא is certainly hers
            - b. *rejection*: each is understood independently – “וכן” is re: exemption from בכורה
- (c) *ד' יוחנן*: if a piglet is attached to a lamb, the lamb is exempt from בכורה and the חזיר is אסור באכילה
- (i) *until*: a proper teacher comes to rule (v. 1)
  - (ii) *challenge*: exemption from בכורה – per רשב"ג; but אסור אכילה – follows רבנן (i.e. חזיר is not really טלה)
    1. *further*: if אסור אכילה follows רבנן, why v. 1; why not “until we clarify what happened”
  - (iii) *proposed answer*: ר' יוחנן is unsure whether רשב"ג (→ v. 1)
    1. *rejection*: ר' יוחנן himself ruled that we always follow רשב"ג in the משנה (except for ר' עצי"ר)
    2. *answer*: הלכה follows רשב"ג; but unsure if רשב"ג extends ruling to mother who has already birthed
      - a. *challenge*: if so, instead of חזיר, use טלה as example and allow מכות for אותו ואת בנו
      - b. *answer*: we needed to teach חזיר טלה alone – א"א – she has compassion on מינה only
  - (iv) *per*: ר' יוחנן reported that אחאי asked – if we see a חזיר attached to a lamb – what is the הלכה?
    1. *what*: is he asking? if he's asking about בכורה – whether we rule like רשב"ג – let him ask about טלה
      - a. *answer*: he is asking about בכורה per רבנן and אכילה per רשב"ג
        - i. *האם פטורה*: perhaps they only מרחם on their own → this “חזיר” is her young (→ פטורה)
        - ii. *דשב"ג*: if יולדת does have רחמים, perhaps only מינה → this is permitted to be eaten – תיקו