

31.4.2

28a → 29b (מא אריג תיכי) → (משנה ג)

1. ראה לפדתי אתכם חקים ומשפטים כאשר צוני ה' אלהי לעשות כן בקרב הארץ אשר אתם באים שמה לרשתה: דברים ד, ה.
2. אמת קנה ואל תמנר חכמה ומוסר ובינה: משלי כג, כג

I שחיטה pre-confirmation: משנה ג

- a If: he slaughtered the בכור and then got the מום confirmed by a מומחה
- i ד' יהודה may be eaten
- ii ד"מ may not be eaten, since it was not confirmed by a מומחה beforehand
- Clarification of dispute (רבנ"ח): only disagree about a withered spot in the eye (דוקין שבעין)
 - Reason: that is likely to change at death, i.e. seeing it after death doesn't prove it was a בע"מ before
 - Dispute ד"מ/ר"י: whether we prohibit all מומים as a precaution against שבעין דוקין
 - Support: בריתא ר"י – בריתא ר"מ agrees that in case of שבעין דוקין, meat may not be eaten – because they change
 - ד"מ: all are prohibited on account of those that change (i.e. שבעין דוקין)
 - דנב"י: careful read of our משנה gives same conclusion – ר"מ prohibits "...הואיל ולא נשחט" → it is a קנס
 - Question: is the assertion that they change inevitable or occasional?
 - Practical difference: if witnesses testify that the eyes looked like this while alive
 - If: they always change, the witnesses are lying (→ meat is אסור)
 - But if: they sometimes change, we can rely on witnesses and (לר"י) permit the meat
 - Solution: ר' אושעיא reported that רב"ח told him that he could show him a case of changing eyes
 - Implication: they only change on occasion → we may rely on witnesses that they didn't change

II משנה ד: if someone is not a מומחה (but pretends to be) and permits a בכור and it is slaughtered on his say-so

- a Then: it must be buried, and the faux-מומחה must pay for the loss out of his own pocket
- i Inference: seems to support ר"מ (who forbids all cases of מומים "after the fact")
- ii Rejection: might be a case of שבעין דוקין, where all agree it is prohibited
- b גסה: when the faux-מומחה pays, he must pay ¼ the value of a דקה and ½ the value of the גסה
- i Reason (ל"פ): it takes more work (by כהן) to care for גסה
- Challenge: if so – he should be paid per expense
 - Rather (ל' הונא בר מנח): the lesser payment for דקה is part of the decree against raising דקה (discourages it)

III משנה ז: general consequences of a judge erring (בשיקול הדעת) – whether finding liable or acquitting, declaring טהור or טמא

- a Consequence: ruling remains and he must pay for the loss from his own pocket
- b But if: he was a מומחה – exempt from payment
- i Note: this seems to support ר"מ who rules in favor of damages caused w/o direct action (דינא דגרמי)
- ii Rejection: perhaps in these cases, the judge handed over the funds (to the wrong party)
- Challenge: how would this work if he exempted a liable party from payment?
 - Answer: could have had a collateral on the loan which the judge handed back to borrower
 - Challenge: how do טמא and טהור take on demonstrative acts?
 - Answer: if "טהור" – he touches it to שרץ (to prove point); if "טהור", he mixes into טהרות of owner

IV משנה ד: story – ר"ט declared a cow w/o uterus to be טריפה; he was overturned, on evidence from Alexandrian practice

- a ד"ט he must pay
- b ד"ע no need to pay, as he is מומחה לב"ד (per 2d above)
- i Note: ר"ע also exempted him as this was such an egregious error (טעה בדבר משנה) that the ruling wouldn't stand

V משנה ה: validity of paid מום-checker

- a Someone: the rulings of a "paid מום-checker" are invalid
- i Unless: he has an arrangement like אילא, who got 4 איסר for דקה and 6 for גסה, regardless of the outcome
- ii Reason for disparity: it takes more effort to check a גסה
- Challenge to system: understood why he must be paid same for תם and בע"מ – so we don't suspect him that he saw a תם and declared it to be בע"מ to get paid
 - However: why aren't we concerned that he will declare a בע"מ to be תם to get a "2nd bit at the apple"?
 - Answer: we don't allow him to be paid twice for the same animal

VI משנה ו: accepting payment for various other discretionary acts

- a *If*: someone is paid to judge, testify, make חטאת or sprinkle them – act is invalid (פסולים and אפר are מים)
- i *Source*: v. 1 (also ברייתא uses v. 1) – just as משה taught for no fee, so too בני"י must teach (etc.) for no fee
- 1 *However*: if he can't find a teacher at no cost, must hire one – per v. 2
 - 2 *Nonetheless*: he must still teach for free, as per next phrase in v. 2 – ואל תמכור
- ii *Challenge (to ruling of מי חטאת)*: giving חטאת or אפר חטאת as קידושין is valid, even if donor is ישראל
- 1 *In other words*: one may be paid for processing
 - 2 *Resolution*: payment for delivery is acceptable; payment for the act of קידוש מ"ח or הזאה – prohibited
 - (a) *Note*: careful read of sources bears this out;
 - (i) *In our משנה*: מלקדש ולהזות
 - (ii) *In קידושין*: במי חטאת. המקדש etc.
- b *But*: if כהן becomes טמא as a result of his going to judge, testify etc.
- i *Then*: plaintiff must feed him etc. during טומאה ימי
- 1 *Question*: how did כהן go there in the first place?
 - (a) *Answer1*: could have gone through בית הפרס, which one may go through if he blows ahead of him
 - (b) *Answer2*: could have had some other טומאה there (e.g. גבלה) which כהנים are not banned from
 - ii *And if*: he is an elder, the plaintiff must provide him with transportation
 - iii *In any case*: the judge, witness etc. may be paid as a פועל בטל (lost wages)
 - 1 *Means (אב"י)*: like someone who has lost wages from the work he normally does

VII משנה ז: purchasing meat-related items from someone suspected of violating בכורה

- a *If*: someone is suspected of selling בכור meat as חולין
- i *Prohibited*: to buy deer meat from him (too similar to calf-meat)
- ii *And*: may not buy untanned hides
- 1 *Reason*: he wouldn't go to trouble of tanning hides that, if he were caught (בכור) he would lose
- iii א"ל. may purchase hides of females (can see from hide that it was female → בכור no)
- 1 חכמים. he may cut out the genital area and claim rats ate it
 - 2 א"ל. one can see if rats have eaten it
- iv *And*: may not purchase white or dirty wool
- 1 *Challenge*: if we may not buy white wool, certainly may not buy dirty wool (טירחא no)
 - 2 *Answer*: text should read "wool that has been cleansed from its dirt"
- v *But*: may purchase spun wool and garments (same reasoning as above re: hides)
- 1 *Challenge*: if we may buy spun wool, certainly we may buy garments
 - 2 *Answer*: garments may be of unspun wool

VIII משנה ח: purchasing agricultural goods from someone suspected of violating שביעית

- a *If*: someone is suspected of violating שביעית, we may not buy flax – even if combed out
- i *But*: we may buy spun flax or garments
- 1 *Challenge*: if we may buy spun flax, certainly we may buy garments
 - 2 *Answer*: garments may be of unspun flax