

31.5.4

36a → (משנה ד) 35a (עמוד ועמד)

1. ונגשו חֲכָמִים בְּנֵי לֵוִי כִּי בָם בָּחַר ה' אֱלֹהֶיךָ לְשִׁרְתּוֹ וּלְבָרֶךְ בְּשֵׁם ה' וְעַל פִּיהֶם יִהְיֶה קֹל רִיב וְכָל נֹגֵעַ: דְּבָרִים כֵּא, ה

- I 27: Who is believed regarding מומים that could be man-made (משנה is abstruse; requires clarification – see below)
- a דויעי ישראל are believed
 - b דויעי כהנים are not believed
 - c דשב"ג he is believed about his fellow's (animal) but not about his own
 - d ד"מ regarding anything he is not believed about (for his own), he may not act as עד or דיין
- II Analysis: ר' יוחנן/ר' אלעזר (unknown which took which position in interpreting משנה)
- a One: רועי ישראל (believed) means כהנים shepherds of ישראל
 - i Reason: we are not concerned that he'll deliberately make a מום, counting on getting some of the בכור to eat
 - ii And: רועי כהנים (not believed) means כהנים shepherds working for ישראל owners; he assumes he'll get the בכור
 - iii Then: דשב"ג adds that he may be believed even about another כהן's animal - no concern of collusion (גומלין)
 - iv ד"מ then opposes this position and states that since the כהן is not נאמן about his own – not נאמן about another's
 - b Other: רועי ישראל (believed) means כהנים working for ישראל owners
 - i Reason: they figure that the ישראל will give his בכור to a ת"ח, not to him
 - ii And: רועי כהנים (not believed) means כהנים shepherds working for כהנים – concerned they'll have interest in לגימא
 - iii דשב"ג ור"מ as above
 - c Analysis: support for "other" position; ר"מ (in opposition) says that כהנים are not believed
 - i But: according to "one" – why is ר"מ agreeing with ת"ק?
 - ii Answer: they disagree about the role of כהנים who have no direct interest in this בכור,
 - 1 Per: dispute בן קפוסאי/רשב"ג/ר' יוסי
 - (a) 2 outsiders must testify about מום (but כהנים may testify – this is ת"ק's position contra ר"מ)
 - (b) דשב"ג even his own son or daughter may testify
 - (c) ד' יוסי none of his household members may testify
 - 2 Note: ר"מ's position is adopted by ר"ח – if ישראל has a ספק בכור both into his flock, needs 2 outsiders as עדים
 - (a) ד"נ even the owner can testify; else, how would ר"מ ever solve a מום of מעשר (anyone could be owner)
 - (i) Challenge: מעשר carries built-in נאמנות, as he could have made a מום in the whole flock beforehand
 - (ii) Rather: ספק בכור could never be solved according to ר"מ (i.e. ר"מ must limit חשד to כהנים)
 - (iii) And: we know ר"מ allows for a "fix" for ספק בכור, as per ב"ח (above)
 - 1. Rather: ר"מ only has חשד for כהנים, not ישראלים
 - 3 ר' יוסי follows ד"נ הלכה ד"נ
 - (a) Challenge: רבא ruled that when owners are outside and the animal enters house שלם and comes out with מום – no חשד on family members
 - (b) Answer: in that case, all family members had to be outside – no חשד that they acted deviously
 - (c) Final ruling: follows דשב"ג – but only daughter/son – not wife, who is כגופו and considered בעלים
 - d Question (ר"פ לאב"י): ר"מ disallows any חשוד to be עד for that thing; he also holds אחד חשוד לדבר אחד – חשוד לכה"ת is חשוד לדבר אחד
 - i Then: how do כהנים ever act as עדינים? – (but they do, per v. 1)
 - ii Answer: he only generates חשש, but doesn't invalidate them
 - e Question: is עד מפי עד valid for עדות בכור – invalid; ר' אשי – valid
 - i Challenge (לר' אשי): עדות אשה only valid for עד מפי עד
 - ii Answer: means – valid for any עדות that a woman can give (e.g. בכור)
 - 1 Note: ר' ימר allowed עד מפי עד for בכור, and the הלכה follows him

III (פה שאסר פה שהתיר) – מום – believed (פה שאסר פה שהתיר)

 - a Challenge: we already learned that principle in re: אשת איש הייתי וגרושה אני
 - b Answer: from there, we believe her as she could have kept silent; here, he had to speak up to have מומחה see מום
 - i Reason: we believe him – he could have made an obvious מום (no need for מומחה)
 - c Challenge (מר בר"א): how is this different from the man who rented his donkey etc. – and we don't believe renter
 - i Answer: in that case, we have "עדים" (our own knowledge) that there is always water there – here we have none

IV ד"מ fed his animal barley and it cut its lip – asked יהושע ר' whether חבר is different than ע"ה and is believed; יהושע ר' confirmed, ר"ג denied it and in public, יהושע ר' presented ר"ג's position; ר"ג ridiculed him and this became one of the reasons that the תלמידים eventually ousted ר"ג (see ברכות כח)