31.9.6

58b (משנה ז) ← 60a (דשני ליה שמעתא בריגלא כשמעתיה)

> 1. וְכָל מַעְשַׂר בָּקָר וָצֹאן **כֹּל אֲשֶׁר יַעֲבֹר תַּחַת הַשָּׁבֶט הָעֲשִׂירִי יִהְיֶה קֹדֶשׁ לַה'**: *ויקרא כז, לב*
> 2. **וְנֶחְשַׁב לָכֶם תְּרוּמַתְכֶם** כַּדָּגָן מִן הַגֹּרֶן וְכַמְלֵאָה מִן הַיָּקֶב: *במדבר יח, כז*
> 3. כִּי אֶת **מַעְשַׂר** בְּנֵי יִשְׂרָאֵל אֲשֶׁר יָרִימוּ לַה' **תְּרוּמָה** נָתַתִּי לַלְוִיִּם לְנַחֲלָה עַל כֵּן אָמַרְתִּי לָהֶם בְּתוֹךְ בְּנֵי יִשְׂרָאֵל לֹא יִנְחֲלוּ נַחֲלָה: *במדבר יח, כד*

I   משנה ז: Method of tithing

   a   *First*: the animals are all put in the corral and he makes one single, narrow exit, so that only one can exit at a time

     i   תוספתא בכורות ז: (adds) – we put the mothers outside of pen; their lowing draws the young out through exit

       1   *Note*: we don't push them out, as the text stipulates יעבר – must pass on its own

       2   *Note*: we don't entice it with food, as that may lead to using bought and orphaned young

   b   *Counting*: he counts (aloud) each number, 1-9, then the 10th is marked with red paint and he declares "הרי זה מעשר"

   c   בדיעבד: valid post-facto…

     i   *If*: he didn't mark it

     ii   *Or*: or if he didn't count them with the staff

     iii   *Or*: if he counted them while they were standing or crouched – valid

   d   *Taking 10%*: if he removed 10 of 100 (e.g.) – invalid

     i   *Dissent*: ר' יוסי בר יהודה considers this valid

     ii   ברייתא: תו"כ בחוקותי פ"ח presents rules of our משנה, adding the exclusion of טריפה (כל אשר יעבור...) and sources for…

       1   *Standing or crouched*: העשירי קודש

       2   *Without counting aloud*: יהיה קודש

       3   ת"ק's position on taking 10%: invalid, per עשירי

       4   ריב"י's dissent: unexplained

         (a)   *Explanation*: he follows ר' אלעזר בן גומל's read of v. 2 – תרומתכם associated תרו"מ with תרו"ג

           (i)   *Just as*: תרו"ג is taken by estimation, so too תרו"מ may be taken באומד ובמחשבה

           (ii)   *And*: מעשר is called תרומה (v. 3)

           (iii)   *And*: מעשר דגן is compared to מעשר בהמה (above – עשר תעשר and מעשרותיכם)

               1. *Therefore*: מע"ב may also be taken באומד ובמחשבה

   e   *If*: one of the "counted" (1-9) returns to the corral, all of them are exempt

   f   *But if*: one of the מעשר animals returns, none may be eaten until they get a מום and are treated as ספק מעשר

II   רבא's rulings

   a   עשירי מאליו הוא קדוש: the tenth is sanctified by itself, without declaration

     i   *Proposed source*: from ברייתא (above) – even if he doesn't say "עשירי"

       1   *Block*: perhaps, in that case, he *did* say "קדוש"

     ii   *Proposed source*: ברייתא- if he called #9 "ten" and then #10 went out (w/o declaration) - #10 is מעשר (#9 נאכל במומו)

       1   *Block*: in that case, #10 was "clarified" (it walked out); or – perhaps he pointed at it

     iii   *Proposed source*: ברייתא - if he called #9 "ten" and then #10 died in the corral, they are פטור (#9 נאכל במומו)

       1   *Block*: perhaps they became exempt due to מנין הראוי (רבא's next ruling – see below [b])

     iv   *Source*: ברייתא – if he called #9 "ten" and #10 remained in corral - #10 is מעשר (#9 נאכל במומו)

       1   *Challenge*: ברייתא rules that in same case, #9 is חולין

       2   *Answer* (תנא before ר' ששת): that is ר"ש בן יהודה in the name of ר"ש, who rules that #9 is also not קדוש unless #10 had its number נעקר (as is the rule in our משנה for #11)

         (a)   *Per*: if #11, which can generate תמורה, is only קדוש is #10 had its number נעקר

           (i)   *Then certainly*: #9, which cannot generate תמורה, is only קדוש if #10 had its number נעקר

           (ii)   *Counter*: #11, which is strong enough to generate תמורה, requires עקירת שם of #10

               1. *Alternatively*: #11 came after #10 – only works if #10 "lost its number"; not so for #9 (QED)

   b   מנין הראוי פוטר: any animal counted while there is a sufficient number for מע"ב is exempted

     i   *Proposed source*: our משנה – if one of the "counted" jumps back in, all are exempt

       1   *Block*: they were already completely tithed

     ii   *Source*: v. 1 – יעבר (future tense) – did not have to already pass through to exempt the others

       1   *Support*: ברייתא – if he had 10 in the corral, counted 5 and then 1 of them died

         (a)   *If*: one of those already counted died, he counts out more and completes the 10

         (b)   *But if*: one of those not yet counted died, the ones counted are exempt and the rest join a later גורן

c   *Case with 14 lambs and 2 exits*:

    i   *If:* 6 first went out gate "A" and then 4 went out gate "B" (and 4 remain)

      1   *If*: the 4 went out gate "A", he tithes one of them and the 4 that went out gate "B" join a later גורן

      2   *If*: the 4 went out gate "B" (or not at all), the 6 are exempt and the other 8 join a later גורן

    ii   *But if*: 4 first went out gate "A" and then 6 went out gate "B" (and 4 remain)

      1   *If*: the 4 went out gate "B", tithe one of them and all others are exempt

      2   *If*: the 4 went out gate "A" (or not at all), the first 4 and the 6 are exempt; the last four join a later גורן

    iii   *But if*: 4 went out gate "A" and 4 went out gate "B" and 6 remain

      1   *If*: the 6 go out through either gate, all are exempt

      2   *If*: the 6 don't go out at all, both sets of 4 are exempt and the 6 join a later גורן

    iv   *Challenge*: רבא already ruled that מנין הראוי פוטר

      1   *Defense*: we may have thought that only a certain מנין הראוי exempts; but here the מנין may work with gate "A" or gate "B" → it isn't קמ"ל – פוטר that even ספק מנין הראוי פוטר

d   *Choosing lambs*: if he has 15 lambs, he shouldn't select 15 to put into corral and leave 5 out (→exempting them)

    i   *Rather*: he puts all 15 in, tithes from 10 and the remaining 5 join a later גורן (supporting ברייתא)

    ii   *Challenge*: ברייתא rules that if he has 19 lambs, he shouldn't choose 10 and leave 9 out and exemp them

      1   *Rather*: he puts them all in the corral, tithes from 10 – and the remainder are exempt!

      2   *Answer (ר"ה בר סחורה before רבא at רגל)*: this must be a case of a corral with 2 exits (רנב"י praised him for this)

        (a)   *And*: 9 went out gate "A" and 9 went out gate "B", so that the remaining 1 could join either group

        (b)   *Challenge*: why didn't he explain it as a case where after 9 went through, he began counting again "1"?

          (i)   *Answer*: he holds that #10 is קדוש by itself, regardless of the count

        (c)   *Challenge*: why didn't he explain it as a case where he counted them by pairs (9x2 = 18)

          (i)   *Answer*: he holds (see p. 50) if counting pairs, it is still the number of animals that determines מע"ב