Introduction to פרק שני – הלוקח עובר פרתו

*as we will learn at the beginning of this **פרק**, we have now "dispensed" with the laws of **פט"ח** and are moving on the laws of **בכור בהמה טהורה**, which will occupy most of the rest of the **מסכת**. The unusual ordering of the **משניות** – placing **פט"ח** first – is addressed in the first **סוגיא***

31.2.1
*13a (**משנה א**) → 13b (**דאינהו לא קיימי בדבורייהו לא**)*

1. כִּי לִי כָּל בְּכוֹר בְּיוֹם הַכֹּתִי כָל בְּכוֹר בְּאֶרֶץ מִצְרַיִם הִקְדַּשְׁתִּי לִי כָל בְּכוֹר **בְּיִשְׂרָאֵל** מֵאָדָם עַד בְּהֵמָה לִי יִהְיוּ אֲנִי ה': *במדבר ג, יג*
2. וְהִתְנַחַלְתֶּם אֹתָם לִבְנֵיכֶם אַחֲרֵיכֶם **לָרֶשֶׁת אֲחֻזָּה** לְעֹלָם בָּהֶם תַּעֲבֹדוּ וּבְאַחֵיכֶם בְּנֵי יִשְׂרָאֵל אִישׁ בְּאָחִיו לֹא תִרְדֶּה בו בְּפָרֶךְ: *ויקרא כה, מו*
3. וְכִי תִמְכְּרוּ מִמְכַּר **לַעֲמִיתֶךָ** אוֹ קָנֹה **מִיַּד עֲמִיתֶךָ** **אַל תּוֹנוּ אִישׁ אֶת אָחִיו**: *ויקרא כה, יד*
4. אִם עוֹד רַבּוֹת בַּשָּׁנִים לְפִיהֶן יָשִׁיב גְּאֻלָּתוֹ **מִכֶּסֶף מִקְנָתוֹ**: *ויקרא כה, נא*

I משנה א: exclusivity of בכור בהמה טהורה to ישראלי ownership
  a *if*: any of the five "shared" relationships from א:א obtain with non-Jew – exempt
  b *however*: unlike פט"ח, כהנים and לויים's animals are חייבים – they are only exempted from פטר חמור and בכור אדם
II General query – why are the laws of פט"ח presented first?
  a *justification*: בכור בהמה טהורה carries "essential קדושה" (קדושת הגוף); פט"ח only "value קדושה" (קדושת דמים)
  b *answer1 (from **א"י**)*: the תנא "loves" the rule of פט"ח per ר' חנינא's homily above (re: why donkeys were singled out)
  c *answer2 (from **א"י**)*: the rules of פט"ח are few, ר' יהודה הנשיא wanted to "take care of it quickly" and move on
III מימרא of ר' אושעיא (quoted by ר"ל) regarding buying/selling בהמה טהורה from/to non-Jew
  a *if*: a ישראל gives a non-Jew money for one of his animals and it births (בכור) before he takes possession (משיכה) – חייב
  b *and if*: a non-Jew gives ישראל money and the bought animal births (בכור) before he takes possession (משיכה) – פטור
    i *note*: both clauses used the phrase "gave money בדיניהם"
    ii *clarification*: of the term בדיניהם
      1 *cannot mean*: inferred via ק"ו ("דין" used as "inference"); from their physical selves
        (a) *if*: we can buy them with money (as עבד כנעני – v. 2)
        (b) *then*: certainly we can buy their property with money
          (i) *block*: if so, we should be able to buy their property with שטר וחזקה, as is the rule for קנין ע"כ
          (ii) *and*: ישראל's ability to buy ישראל (ע"ע) with כסף, yet not his possessions (require משיכה) defeats it
      2 ***אבי"***: means – the rules established for their commerce by the תורה ("דין" meaning "rules")
        (a) *per*: v. 2 – משיכה ("מיד" – given from hand to hand) only applies to עמיתך (fellows) – for non-Jews, כסף
          (i) *suggestion*: perhaps משיכה is valid for עמיתך and no קנין is valid for non-Jews?
            1. *rejection*: ק"ו – if we can buy them, we can certainly buy *from* them
          (ii) *suggestion*: perhaps משיכה alone is sufficient for ישראל; non-Jews require both משיכה and כסף?
            1. *rejection*: ק"ו – if we can buy them with one קנין, we certainly don't need two to buy ממונם
          (iii) *suggestion*: perhaps משיכה only for ישראל; non-Jews can use either משיכה *or* כסף?
            1. *rejection*: just as עמיתך has one קנין, non-עמיתך has only one (כסף)
      3 *note*: parallel analysis to 2nd clause – but suggested ק"ו in first phase is based on קנין גוי of ישראל (v. 4)
  c *tangent*: squaring the above with אמימר's approach – גוי has valid קנין (only) through משיכה
    i *if*: he holds like ר' יוחנן – מה"ת, כסף is the valid קנין, then עמיתך limits כסף to ישראל, גוי has משיכה
    ii *but if*: he holds like ר"ל, that משיכה is the essential קנין in the תורה – why does it state עמיתך? who's excluded?
      1 *answer*: it excludes גוי from אונאה (no need to return it to him)
      2 *challenge*: that is excluded from end of v. 3
      3 *defense*: we require two exclusionary phrases – one for גוי, other for הקדש
        (a) *justification*: if we only had one, we would have assigned it to הקדש
      4 *challenge*: this is only valid if we hold גזילת גוי is forbidden – must teach that אונאת גוי is not
        (a) *but if*: we hold גזילת גוי is permitted – then certainly no need to return אונאה (and no פסוק needed)
    iii *conclusion*: אמימר must agree with ר' יוחנן that מה"ת, מעות קונות → לעמיתך excludes גוי from "קנין תורה" – only משיכה

d *revisiting* ***מימרא*** *s* ***ר' אושיעא***: challenge – תוספתא ע"ז ג:ה – if one buys shards from גוי and finds ע"ז in them
- i *if*: he took them (משך) before paying – he may return (go back on deal)
- ii *but if*: he took them after paying – all ע"ז value in them goes to ים המלח (and is disposed of)
  1. *however*: if מעות קונות (as per ר' אושעיא), why does משיכה play a role here at all?
  2. *answer*: case where non-Jew stipulated that the transaction will follow דיני ישראל
  3. *challenge*: if so, why do the מעות play a role?
     (a) *answer*: read – *even if* he gave the money, only if he took possession is it a done deal
     (b) *challenge*: if so, first clause is difficult – why may he return them?
        (i) *answer1 (**אביי**)*: in first case, there was a מקח טעות → it reverts
           1. *challenge (**רבא**)*: there was a מקח טעות in both cases
        (ii) *answer2 (**רבא**)*: in both cases – מקח טעות;
           1. *however*: in first case, since he didn't hand over any money, it doesn't have the appearance of a transaction involving ע"ז;
           2. *whereas*: in 2nd case, since he handed over money, it looks as if he is transacting with ע"ז
              a. *(note*: according to רבא, in neither case is there an essential problem; only מראית העין)
           3. ***אביי***: could answer that in the 2nd case, there is no מקח טעות
              a. *argument*: since he paid, he should have looked it over first
        (iii) *answer3 (**ר' אשי**)*: in both cases, משיכה is not essential to קנין
           1. *in first case*: there was no משיכה, all that matters is the מעות
              a. *therefore*: for parallel construction, the תנא mentioned משיכה in 2nd clause
        (iv) *answer4 (**רבינא**)*: in 2nd clause, משיכה is a valid קנין (per אמימר or because he agrees to דיני ישראל)
           1. *therefore*: in the 1st clause, too, משיכה is קונה (but he hadn't yet taken possession)
           2. *question*: if so, what is the חזרה mentioned there? If there wasn't yet משיכה, from what is he חוזר?
              a. *answer*: חזרה from his oral commitment
                 i. *note*: this is only valid if we hold חזרת דברים is מחוסר אמנה (i.e. one's oral commitment is meaningful and reneging on it carries ramifications)
                 ii. *yet*: this only applies to ישראל, who are trustworthy, not to עכו"ם