31.2.5

17a (משנה ו) ← 18b (שהמוציא מחבירו עליו הראיה)

> *1.* וְהַעֲבַרְתָּ כָל פֶּטֶר רֶחֶם לַה' וְכָל פֶּטֶר שֶׁגֶר בְּהֵמָה אֲשֶׁר יִהְיֶה לְךָ **הַזְּכָרִים** לַה': *שמות יג, יב*
> *2.* **הַכֹּל בִּכְתָב מִיַּד ה' עָלַי הִשְׂכִּיל** כֹּל מַלְאֲכוֹת הַתַּבְנִית: *דה"א כח, יט*

I   בכורות *משנה ו*: simultaneous
- a   *If*: a ewe had her first birth and two males came out simultaneously
  - i   *ריה"ג*: both go to כהן, per v. 1 (**זכרים**)
  - ii   *חכמים*: only one goes to כהן, as both could not have been born at exactly the same moment (א"א לצמצם)
    - 1   *ט"ר*: the כהן picks the better one
      - (a)   *Reason*: he assumes the healthier one came out first (גמרא)
    - 2   *ר"ע*: משמין ביניהם and the other grazes until it gets a מום
      - (a)   *משמין*: ר' יוחנן - meaning, the כהן gets weaker one
        - (i)   *Challenge (ר' חייא בר אבא)*: משנה states משמין ביניהם (we assume – they assess value and divide it)
        - (ii)   *Answer*: see from סיפא (below) – ר"ע says המע"ה כהן must prove which is בכור
          - 1. *Therefore*: here, the "שומן" (fat – difference between bigger and smaller) is "between them"
    - 3   *Then*: when slaughtered, מתנות must be given to כהן
      - (a)   *Dissent*: ר' יוסי – exempt from מתנות
        - (i)   *Analysis*: ר"מ holds חייב, since כהן can argue "ממה נפשך" – if בכור, he gets all; if not – gets מתנות
        - (ii)   *(רבא) ר' יוסי* – we consider it as if כהן got it and sold it (for בכור he received) – no מתנות
      - (b)   *ר"א*: "all agree" (meaning ר' יוסי) that if ספק בכור, without "חליפין" in כהן's hand, is חייב במתנות
        - (i)   *Challenge*: this is obvious; only reason ר' יוסי exempted here is due to חליפין ביד כהן
        - (ii)   *Defense*: we might have thought to exempt, so as to prevent anyone from shearing/working– קמ"ל
          - 1. *Challenge*: ר' יוסי explicitly exempted (*contra* ר"מ) due to חליפיו ביד כהן
          - 2. *Defense*: that may have been his response to ר"מ, but he was concerned about גיזה ועבודה – קמ"ל
      - (c)   *tangent (ר"פ)*: "all" agree that a ספק מעשר is exempt from מתנות
        - (i)   *"all"*: must mean ר"מ
          - 1. *challenge*: this is obvious, as ר"מ obligates in ספק בכור because either way the כהן has a claim
            - a. *which*: doesn't apply to ספק מעשר
            - b. *defense*: perhaps ר"מ would obligate here nonetheless, שלא תשתכח תורת מתנות – קמ"ל
              - i. *challenge*: how could we think this? ר' יוסי ruled (ברייתא) that if חליפיו ביד כהן – פטור, and that is where ר"מ dissents and obligates → his חיוב is due to יד כהן, not שלא תשתכח
              - ii. *answer*: perhaps ר"מ obligates even in ספק מעשר, and we learn about ספק בכור to show extent of ר' יוסי's position: even when כהן has "either way" claim, he exempts – קמ"ל
  - iii   *If*: one of them died
    - 1   *ט"ר*: they divide the (value of) the other
      - (a)   *Challenge*: why divide (according to ר"ט); if fat one died, that was כהן's (gets nothing); if other died, he gets 100% of fat one
      - (b)   *Answer*: ר"ט changed his mind and agreed with ר"ע (in רישא)
    - 2   *ר"ע*: we employ the rule of המע"ה → the כהן gets nothing
      - (a)   *Analysis*: ר' חייא compared ר"ט's ruling to 2 people who entrusted their sheep (1 each) with a shepherd and one died – the הלכה is that the shepherd leaves the live one and they fight over it
        - (i)   *And*: ר"ע's ruling is like one who entrusted his lamb to בעה"ב; it got mixed up with his own lamb and one died – בעה"ב (המוציא מחברו עליו הראיה) gets to keep the live lamb)
      - (b)   *Question*: what's their disagreement? Each of ר"ט and ר"ע surely agrees to the הלכה in each of these cases
        - (i)   *Answer (ר"פ or רבא)*: case where חצר belongs to בעה"ב and his shepherd is a כהן (gets all his בכורות)
          - 1. *ט"ר*: the בעה"ב is מקנה some of his חצר to רועה כהן (for him to be קונה the בכורות) to enable מצוה
            - a. *Therefore*: it is similar to two people entrusting their sheep to רועה (equal claims) – יחלוקו
          - 2. *המע"ה – בעה"ב ר"ע*: does not מקנה anything to רועה (has loss) → similar to entrusting to בעה"ב
- b   *If*: the ewe had a male and female simultaneously – the כהן gets nothing

II   Analysis of ריה"ג/חכמים

    a   *דבי ר' ינאי*: we see that ריה"ג maintains that natural occurences can be simultaneous (אפשר לצמצם בידי שמים)

        i   *And*: certainly if intended (אפשר לצמצם בידי אדם)

        ii   *We see*: that חכמים reject simultaneity as a natural occurrence

        iii   *Question*: what is position of חכמים on deliberate simultaeity (אפשר לצמצם בידי אדם?)

            1   *Proposed proof*: the חוט הסיקרא circumscribed מזבח to distinguish between דמים תחתונים לעליונים

                (a)   *Rejection*: perhaps they thickened it to ensure that "up" was above halfway mark etc.

            2   *Proposed proof*: size of כלים and מזבח

                (a)   *Rejection*: ה' commanded they be built – as exactly as possible, per v. 2

            3   *Proposed proof (רב כהנא)*: ברייתא - if תנור חרס טמא is broken exactly in half – both טמא, as א"א לצמצם

                (a)   *Rejection (רב כהנא)*: כלי חרס has jagged edges and pits, making exactitude nearly impossible

            4   *Proposed proof*: ר"א rules that if a murder victim is found to be exactly between 2 cities – both bring עגלה

                (a)   *Assumption*: ר"א holds that "קרובה" means even אפשר לצמצם בידי אדם and "קרובות"

                (b)   *Rejection*: he favors ריה"ג's opinion – even בידי שמים we say אפשר לצמצם

            5   *Suggestion*: the issue of אפשר לצמצם בידי אדם is subject to מחלוקת תנאים

                (a)   *If*: a מת is found exactly between two towns, חכמים – don't bring at all; ר"א – each brings עגלה

                    (i)   *Assumption*: חכמים – ר"א; א"א לצמצם – ר"א אפשר לצמצם

                    (ii)   *Rejection*: if חכמים hold א"א לצמצם, let both towns bring one עגלה together and make a תנאי

                (b)   *Rather*: both of these positions accept אפשר לצמצם and disagree if "קרובה" could mean "קרובות"

            6   *Resolution*: חכמים (in above case) say the 2 towns bring one עגלה together and make a תנאי

                (a)   *Reason*: they hold בידי אדם א"א לצמצם אפי' (if they held קרובה but not קרובות – bring none)