

31.3.4

23b (משנה ב) → 24b (או דלמא דלאו מינה נמי מרחמא תיקו)

1. זָרְעוּ לָכֶם לְצִדְקָה קָצְרוּ חֶסֶד נִירוּ לָכֶם נִיר וְעַתָּה לְדְרוֹשׁ אֶת ה' עַד יָבֹא וִירָה צֶדֶק לָכֶם: הוֹשִׁיעַ י', י'

1. **Assumption** – a baby will nurse only from its mother
- a. **If:** someone buys a nursing mother from a non-Jew, no reason to suspect that it was nursing another's (→ **חייבת**)
- b. **And if:** he saw that **מבכירות** and non-**מבכירות** are all nursing in his flock, no reason to suspect that the kid nursing from the **אינה מבכירה** is the **בכור** of another one (or vice-versa), in which case they'd all be **ספקות**
- i. **רב's comment:** in our **פרק**, the **הלכה** always follows the opinion (even if attributed) in the **משנה**
1. **Exception:** if there is a dispute
 2. **Question (ר"ש):** what is the referent? In 1st **משנה**, **ר"ע/ר'** disagree; in 2nd – **ר' יוסי** is always accepted as **רב** – **ר' יוסי בן המשולם** (see below) disagrees; if **ר' יוסי** (next **משנה**) – **רב** already ruled in accord with his teaching; if **ר' יוסי בן מהלל** – **שער בעל מוס** and **עקביא בן מהלל** disagree
- (a) **Rather:** it must be our **משנה**; **רב** is teaching that the **ברייתא** is not at odds with **רשב"ג**
- (b) **Question:** why, then, did he have to explicitly rule like **ר' יוסי בן המשולם**?
- (i) **Answer:** we would have thought that **הילכתא בכולא פרקי** refers to **המשולם**, **ר' יוסי בן המשולם**, who taught two things – but the dispute with **רשב"ג** in the **ברייתא** is truly against him
 - (ii) **Therefore:** **ההלכה כרביה"מ** teaches that the other statement is about **רשב"ג**
- ii. **The ברייתא:** if someone buys a nursing animal from a **גוי**, its next baby is **בכור**
1. **Reason:** she has compassion on the young – even if not her (and even if she never gave birth)
 2. **דשב"ג:** all remains per **חזקה** – if it is nursing, already had young
- (a) **Similarly:** **רשב"ג** ruled that if someone enters his corral at night and sees some **מבכירות** and some non-**מבכירות** giving birth and the next day finds females “attached” to **מבכירות** and males to **מבכירות**
- (i) **Then:** he has no reason to be concerned and none are even **ספק בכור** (young stays with mother)
- (b) **question:** meaning of **רשב"ג's** comment “**דבר בחזקתו**”
- (i) **lemma1:** if she hasn't birthed yet, she won't nurse, but will nurse another once having given birth
 - (ii) **lemma2:** she will never have compassion on a kid that isn't hers
1. **split the difference:** **אותר ואת בנו** (if she already birthed and a kid is with her - if we hold that she will never have compassion on another's young, **מכות** are given for slaughtering both)
 2. **proposed solution:** **רשב"ג** rules that we aren't concerned that it is another's young
 - a. **block:** he doesn't state “it isn't” (**הוא**); rather, “it wasn't” (**היה**)
 - b. **meaning:** no reason to suspect it to be another's unless she already gave birth
 3. **proposed solution:** if he comes into corral and sees **מבכירות** and non-**מבכירות** nursing
 - a. **we do not:** suspect that one kid is another's (→ **רחמים** no, even after birthing)
 - b. **rejection:** when her own young is present, she won't ignore her for another's
 4. **proposed solution:** **רשב"ג's** ruling – **דבר בחזקתו** should be same as **רש"א**
 - a. **just as:** **סיפא** is certainly hers, so too **רש"א** is certainly hers
 - b. **rejection:** each is understood independently – “**וכן**” is re: exemption from **בכורה**
- (c) **אסור באכילה חזיר** if a piglet is attached to a lamb, the lamb is exempt from **בכורה** and the **חזיר** is **אסור באכילה**
- (i) **until:** a proper teacher comes to rule (v. 1)
 - (ii) **challenge:** exemption from **בכורה** – per **רשב"ג**; but **אסור באכילה** – follows **רבנן** (i.e. **חזיר** is not really **טלה**)
 1. **further:** if **אסור באכילה** follows **רבנן**, why v. 1; why not “until we clarify what happened”
 - (iii) **proposed answer:** **ר' יוחנן** is unsure whether **רשב"ג** (→ v. 1)
 1. **rejection:** **ר' יוחנן** himself ruled that we always follow **רשב"ג** in the **משנה** (except for **עצ"ר**)
 2. **answer:** **הלכה** follows **רשב"ג**; but unsure if **רשב"ג** extends ruling to mother who has already birthed
 - a. **challenge:** if so, instead of **חזיר**, use **טלה** as example and allow **מכות** for **בנו ואת בנו**
 - b. **answer:** we needed to teach **חזיר** **טלה** alone – **סד"א** she has compassion on **מינה** only
 - (iv) **per:** **ר' יוחנן** reported that **אחאי** asked – if we see a **חזיר** attached to a lamb – what is the **הלכה**?
 1. **what:** is he asking? if he's asking about **בכורה** – whether we rule like **רשב"ג** – let him ask about **טלה**
 - a. **answer:** he is asking about **בכורה** per **רבנן** and **אכילה** per **רשב"ג**
 - i. **האם פטורה** → this “**חזיר**” is her young (→ perhaps they only **מרחם** on their own → **דבנן**)
 - ii. **טלה** → this is permitted to be eaten – **מינה** only **רחמים** → **דשב"ג** does have **יולדת**