

33.5.1; 24b (משנה א) → 25b (והאי עיינוי הוא דקמעיון קמ"ל)

1. אך בכור אשר יבכר לה' בקהמה לא יקדיש איש אתו אם שור אם שׂה לה' הוא: ויקרא כו, כז
2. אם אדניו יתן לו אשה וילדה לו בנים או בנות האשה וילדיה תהיה לאדניה והוא יצא בגפו: שמות כא, ד

- I א משנה: Designating an animal for הקדש *in utero*
- a Method of "subverting" בכורה: if he has a מבכרת and declares "if she births a male it is an עולה" – it is עולה (not בכור)
 i דב יהודה: permissible to make a מום in a בכור before it is born
 ii Challenge: from our משנה – only allowed to make it עולה (more intense קדושה) → not שלמים (→ certainly not בע"מ)
 1 Answer (ההודה): that is בזמן המקדש; this ruling is בזמן הזה
 2 Justification: we would have thought to prohibit as precaution against making מום after רוב is born
 (a) Defense: reason we don't is that we prefer this risk over having a בכור that is עבודה and עבודה is around
- b Method of "subverting" בהמת קדשים: if his הקדש is pregnant, and he says "if she births a female it is שלמים" – it is שלמים
 i and: if he declares "if male, עולה; if female, שלמים" – and it births male and female – male is עולה, female is שלמים
- II ב משנה: (continuation of א) – where his animal was pregnant and he declared "אם נקבה – שלמים and עולה-אם זכר"
 a if: if she has 2 males, 1 is עולה, other is sold to עולה and the funds are חולין
 i question: why doesn't second male take on קדושה of mother? (a: this case is חולין)
 b and if: she has two females, 1 is שלמים, other is sold to עולה and the funds are חולין
 c but if: she births a טומטום or אנדרוגינוס, no הקדש at all (per רשב"ג)
 i reason: he holds that וולדות קדשים become sanctified at birth (else, קדושה would apply beforehand)
 ii Opponent: reads v. 1 as possibly excluding a בכור אדם from making הקדש → states "בבהמה", but he can only do this with בכור, not other קדשים → they are קדוש *in utero*
- III Related discussion (ר' עמרם לר' ששת): if he declared that the בכור should be "עולה" when majority comes out – which "trumps"?
 a Lemma1: עולה – as each part that comes out is designated for 'עולה לך OR
 b Lemma2: בכור – as each part that comes out maintains its earlier identity of בכור
 i (alternative formulation: does קדושה come onto it or is it maintained?)
 c Answer (ר' ששת): same as אילפא's question – if he declares that לקט should become הפקר as it falls; is it לקט or הפקר?
 i Lemma1: לקט – as it has משמים OR
 ii Lemma2: הפקר – as both poor and rich can take it (broader scope of access)
 iii And: answered the question with דברי רב/דברי תלמיד → must leave as לקט; similarly, must leave as בכור
- IV ג משנה: dispute יוסי ר"מ/ר' about mixed declarations (I); the case of the pregnant animal
 a If: he declares that the embryo is an עולה and the mother a שלמים – both are valid
 b If: he declares that the mother is a שלמים and the וולד is an עולה (i.e. reversed order)
 i ר"מ: the וולד is considered שלמים
 ii ד' יוסי: if this is what he originally intended, his declaration works
 1 Reason: since he cannot say two things simultaneously, we allow for sequenced הקדש
 2 But if: he changed his mind after saying שלמים, then the embryo is a וולד שלמים (even כדי דיבור)
- V ר' יוחנן's ruling in light of our משנה: if he is מפריש a pregnant חטאת and she gave birth, he may use either one as חטאת
 a Reason: the וולד is independent and it is possible to designate one without the other
 b Challenge (ר' אלעזר): in our משנה (ר"מ) – וולד is called שלמים – but, לר' יוחנן, should be שלמים itself
 i Answer: indeed, רב corrected our משנה to read שלמים
 c Challenge: if a man tells his שפחה that she is his שפחה but her וולד is free – she is able to receive גט שחרור for him
 d Must mean: that עובר ירך אמו and it is as if he freed a ½ slave (goes free) – else, she can't receive גט from her אדון for another slave → יוחנן's approach has been refuted
 e Suggestion: ר' יוחנן's ruling is subject to מח' תנאים: if a man tells his שפחה that she is שפחה, but וולד free
 i דיה"ג: baby is still slave, per v. 2 (ילדים go with her status)
 ii חכמים: his declaration is valid → baby is free
 1 Assumption: disagreement is whether וולד has independent status
 2 Rejection: ר' יוחנן could answer that all agree to independence of וולד; here, v. 2 is a new consideration
 iii Rather: follows 2 ברייתות about status of viable וולד found inside at שחיטה (whether treated as חטאת or חולין)
 1 Rejection: all may hold וולד to be independent; disagreement may be about when וולד become קודש
 (a) Or: may be no disagreement; 1 ברייתא is when he was מקדיש a pregnant חטאת, other – נתעברה
 iv Challenge (רבא): perhaps ר' יוחנן's reason isn't שיור, rather, that one may use שבח הקדש for כפרה
 1 Rejection: ר"א, his student, wouldn't have challenged him as he did if that were the reason

33.5.2