

33.5.3; 26b (משנה ה) → 27b (סיום הפרק)

1. ואם תחתייה תעמד בההרת לא פשתה צרבת השחין הוא וטהרו הפה: ויקרא יג, כג
 2. תחת הנחשת אביא זהב ותחת הברזל אביא כסף ותחת העצים נחשת ותחת האבנים ברזל ושמתי פקדתך שלום ונגשיך צדקה: ישעיהו ס, יז

- I תמורה: proper phrasing of תמורה משנה ה
- a *if*: he says "זו תחת/תמורת/חליפת זו" – any of these are valid as attachment (תמורה)
- b *however*: if he says "זו מחוללת על זו" – not תמורה
- i *and if*: the animal is a בע"מ, then it becomes חולין and must be assessed (so that he'll give the difference in גדבה)
- II Analysis of use and meaning of תחת
- a *challenge* (to our משנה): in re: בדק הבית, it is understood to mean redemption (חילול)
- i *answer* (אב"י): תחת is an equivocate – could mean תמורה (per v. 1) or could mean חילול (per v. 2)
- 1 *therefore*: in re: קדשי מזבח, where תמורה holds, it means תמורה; in re: בדה"ב, where there is no תמורה, means חילול
- 2 *דבא*: even in case of קדשי מזבח, could mean חילול – if the index animal were a בעל מום
- (a) *אשי*: even in case of בע"מ, could go either way
- (i) *if*: he has his hand on the בע"מ, he intends to redeem
- (ii) *but if*: he has his hand on the חולין, he intends to attach
- III אב"י's sequence of questions
- a *If*: he had 2 pairs of animals, 2 הקדש both בע"מ and 2 חולין – both תמימות and he declared אלו תחת אלו
- i *Lemma1*: did he intend to make תמורה – and gets מכות OR
- ii *Lemma2*: do we assume that a person never deliberately means an איסור when he may have meant היתר
- iii *If*: we accept the argument that לא שביק היתרא, what if he had 2 pairs, one each בע"מ and one each תמימה
- 1 *Lemma1*: he intended תמימה to take place of בע"מ an vice-versa – and only one set of מכות OR
- 2 *Lemma2*: he intended to generate a double-תמורה and gets two sets of מכות
- 3 *If*: we accept the argument that לא שביק היתרא even here and he only gets 1 set of מכות,
- 4 *Then*: if he had 3 sets of animals, 1 of the הקדש a בע"מ and all of the חולין were w/o מום
- (a) *Lemma1*: since he clearly intends at least 2 תמורות, do we assume that he intends all 3 as תמורות OR
- (b) *Lemma2*: do we still give him benefit of the doubt and assume ...לא שביק for the last set – החלפה
- (c) *If*: we accept the argument that לא שביק היתרא, what if he had 4 pairs, 1 הקדש בע"מ and all the rest תמימות
- (i) *Lemma1*: since he has already established a pattern – אתחזק באיסורא – with 3 violations – 4th is also תמורה
- (ii) *Lemma2*: we still maintain that לא שביק and he only gets 3 מכות תיקון
- IV Reexamining the end of the משנה – assessing the בע"מ for its value and paying the difference
- a *מד"ס*: the value added is *ד' יוחנן*
- b *מד"ל*: value added is *ד'ל*
- c *question*: they can't be disagreeing about a case of אונאה (where difference is 1/6)
- i *reason*: *ד'ט* establishes that הקדש is exempt from אונאה
- ii *perhaps*: the case is one of בטול מקח (where difference is more than 1/6)
- 1 *reason*: *ר' ירמיה* reported about הקדש and *ר' ינאי* reported about הקדש – both in *ר'ר'* name, that בטול מקח applies
- iii *Answer*: switch positions – *ר'י* maintains that the differential-payment is *מד"ת* and *ר"ל*
- 1 *Challenge*: according to *ר' ירמיה* the הקדש is still untouched by בטול מקח, cannot switch (*ר' – don't switch*)
- 2 *proposal*: *ר' ירמיה/ר' יונה* dispute whether to accept שמואל's ruling
- (a) *שמואל*: if you redeem שווה מנה for only פרוטה – it is מחולל *ר' יונה* accepts, *ר' ירמיה* rejects
- (b) *Rejection*: all accept שמואל; *ר' יונה* believes that it is only בדיעבד, *ר' ירמיה* – even לכתחילה
- iv *Alternate answer* (per *ר"ח*): *ר' יוחנן* holds הקדש "not having אונאה" means it isn't limited to 1/6; any difference is owed
- d *עולא*: only have to reassess if the original was done by 2 (or 1), but if done by 3 – that is final
- i *Challenge*: *ר' שימי* ruled that 2 is "like 100" for עדות, but vis-à-vis דעות, the more, the better
- ii *Additional challenge*: when we have 3 vs. 3, we always follow the latter (larger amount) – benefit to הקדש
- 1 *Answer*: *עולא* holds that *מד"ס* is דמים – and in such a case, they were lenient (let it stay with שומא of 3)
- V משנה ו: continued presentation of phrasing of תמורה; if he said תחת עולה (e.g.) – means nothing; if he said תחת עולה זו (e.g.) and had one in his house – valid; else, meaningless;
- a *And if*: he declared that a בהמה טמאה or בע"מ was an עולה (e.g.) – meaningless; but if "לעולה" – then sold and funds → עולה
- i *דב*: our משנה is *contra* *ר"מ*, who holds מוציא דבריו לבטלה
- ii *Note*: we don't require מום if he designated טמאה or בע"מ, as they are unfit; but נקבה לאשם requires מום
- 1 *Note*: this implies that our משנה is *contra* *ר"ש*, who holds that מפריש נקבה לאשם is sold without a מום