

35.3.4

13b (משנה ח) → 14b (סיום הפרק)

- I משנה חו: various rules about הקדש and הנאה from trees
- a Nest: in a tree of הקדש is subject to ולא מועלין ולא נהנין
- i However: if it is an אשירה-tree, he uses a stick to knock it out
- 1 Related discussion: regarding ע"ז that breaks apart on its own
- (a) ג"י still prohibited – wasn't nullified by non-Jew
- (b) דשב"ל permitted – practitioner assumes that if it can't save itself, it can't help him (assumed ביטול)
- (i) Challenge (ר"ל לר"י): our משנה – assumed that the nest was made from wood of the אשירה, and the nest is מותר
- (ii) Defense (ר"י): the nest was made from "outside" wood
1. Block: if so, why is the parallel הקדש-case deemed לא נהנין?
- (iii) Rather: it must refer to wood that grew/broke off after the הקדש
1. And: he holds that there is no מעילה in גידולין (contra ר' יוסי)
2. Support: if it were wood brought from another tree, why use the stick to knock the nest out - just take it
- a. Answer (for יוחנן ר'): perhaps the stick is used to hook the chicks out of the nest
- 2 Note (ר' ירמיה) (ר' יעקב לר' ירמיה): chicks, in both cases, are permitted; eggs, in both cases are prohibited
- (a) ר' אשי: if the chicks are dependent on the mother-bird, they are also prohibited
- b Copse: if he is מקדיש a copse, מעילה applies
- II משנה חז: גזברים of wood bought by מעילה
- a Applies: to wood itself, not to sawdust nor to leaves
- b שמואל: when they would build for מקדש, they wouldn't sanctify it until after building
- i Reason1: the moneys are donated as קודש; if they build as is (קודש), can't pay workers
- 1 Challenge: ד:ה: שקלים – surplus קטורת is מחולל on moneys for laborers, they are given קטורת (now חול) and it is bought back from them with new fund (after ניסן ר"ח)
- (a) But: according to שמואל, why not just מחלל on whatever building is going on
- (b) Answer: if there is no building going on
- (i) Block: the entire issue is about paying laborers
- (ii) Answer: there isn't enough בנין to substitute for wages
1. Challenge: שמואל ruled that הקדש, no matter how great its worth, that is מחולל on a ש"פ – is מחולל
2. Answer: שמואל's ruling is only בדיעבד; not as a solution לכתחילה
- ii Reason2 (ר"פ): in case workers want to sit/lie on wood, to avoid מעילה – we keep it חול until it is built
- 1 Underlying principle: לא ניתנה התורה למלאכי השרת
- 2 Challenge: why is there מעילה on wood (in our משנה)? Should be still חול until they build, to avoid workers lying etc.
- (a) Answer (ר"פ): that holds true for wood bought well in advance, but if bought for immediate use – bought as קדוש