

25.6.5

(הואיל ויכול לגוררה ולהעמידה על חמש ליטרין) 43a → (משנה ה') 42b

1. ... אם לא שלח ידו במלאכת רעהו: על כל דבר פשע	על שור על חמור על שיה על שלמה	על כל אבדה אשר יאמר כי הוא זה... שמות כב:ח
2. כי יתן איש אל רעהו	קסף או כלים	וגנב מבית האיש אם ימצא הגנב ושלם שנינים: שמות כב:ו
3. כי יתן איש אל רעהו	חמור או שור או שיה וכל בהמה	ומת או נשבר או נשבה אין ראיה: שמות כב:ט

I 'משנה ה': excluded categories from שבועות

a Excluded: slaves, land, documents, הקדש

b Applications:

i No: תשלומי כפל: per - כלל ופרט וכלל in v. 1 (source for כפל) which excludes:

1 מטלטלין must be קרקע

2 (והתנחלתם אותם...) compared to קרקע עבדים

3 שטרות: no inherent value

4 "רעהו" not הקדש

ii Nor: 4/5, (since it can never happen without כפל, as the תורה didn't obligate 3 / 4

iii Nor does: רעהו and כלל ופרט וכלל) v. 2 - per exclusion of ש"ח

iv Nor does: רעהו and כלל ופרט וכלל) v. 3 - per exclusions of ש"ש pay for אונסין

1 נדר - included; else, excluded (e.g. אחריות קדשים ל"ש

II 'משנה ו': nature of object of oath

a dispute ר"מ/חכמים about the status of laden vines vis-à-vis שבועה

i ר"מ: some things are like קרקע but not treated as such; if one claims that he gave (as a פקדון) 10 laden vines and the other admits to only 5, he must swear

1 Reason: ר"מ considers grapes about to be harvested as already cut off → מטלטלין

ii חכמים: no oath (they don't consider them מטלטלים until cut off)

b Requirement of claim and admission being measurable

i We do not take an oath about an imprecise claim – must be measured, weighed or counted

1 Example: if claimant states that he gave a full shed (of grain) or full pouch (of money) and defendant says that he doesn't know, just what is currently there is what he received – פטור

2 However: if one says that the grain reached until the beam and the other – until the window – חייב

ii Analysis:

1 אבני: this is only limited if he said "a house", but if he identified and said "this house" – valid claim

(a) Challenge (דבא): end of משנה – why present "window" vs. "beam"; if he said "this house", should be enough

2 דבא: both claim and admission must be measured, weighed or counted

(a) Supporting ברייתא: claim is כור תבואה and response is total denial;

(b) Or: claim of a large lamp or belt and response is admission to a small lamp or belt – פטור

(i) But: if claim is כור תבואה and response is admission of לתך תבואה - liable

1. Or: claim is a lamp weighing 10 ליטרא and admission is to a lamp weighing 5 – liable

(ii) Rule: only liable if the claim is something that is measured, weighed or counted

1. And: the admission is of something that is measured, weighed or counted

2. Note: added "rule" must be there to exclude בית זה מלא

(c) Tagential observation about ברייתא: "large" vs. "small" lamp should be no different than 10 vs. 5

(i) Answer: refers to lamp made up of segments; admits to fewer segments

(ii) Block: if so, same should apply to belt (fewer links)

1. Rather: we're not discussing a linked belt or a segmented lamp

(iii) Answer: a lamp can be scraped off to hold fewer ליטרא