

25.8.1

49a (משנה א') → 49b (סיום המסכת)

1. או נפש כי תשבוע לבטא בשפתים להרע או להיטיב לכל אשר יבטא האדם בשבועה ונגעלם ממנו והוא ידע ואשם לאחת מאלה: ויקרא ה, ד.

- I ר"מ/ר"י flips רבה בר אבוח) ש"ש to שוכר who equates ר' יהודה (with three categories of payment) ; follows משנה א'
- a שומר חנם –swears and is exempt (except in case of neglect)
- b מתה מחמת מלאכה – שואל – pays (except in case of)
- c שוכר and ש"ש – swears in case of אונס, pays in case of theft or loss
- II שבוה"פ from ש"ח of a משנה ב'
- a If: the מפקיד requested his פקדון and the ש"ח lied about its whereabouts; and the lie would exempt him
i and: the reality would exempt him as well – פטור
- III שבוה"פ in re: ש"ח of a משנה ג'
- a If: he denied any knowledge of the פקדון (להד"ם) and the lie would exempt him
i and: the reality would exempt him as well – פטור
- b if: he claimed that it was lost (or אונס etc.)
i and: מ"ט testify that he took it himself – קרן
ii But if: he admitted it on his own – קרן וחומש ואשם (i.e. liable for הפקדון)
- c If: he swore that it was stolen and מ"ט testify that he took it himself – כפל (טוען טענת גנב)
i But if: he admitted it on his own – קרן וחומש ואשם (i.e. liable for הפקדון)
- IV שומר-claims/denials with a non-משנה ד'
- a If: he accused someone (not a שומר) of stealing his animal and he denied it
i If: מ"ט testify that he stole it – כפל
ii If: they testify that he slaughtered or sold it – pays 4/5
iii But if: he saw the מ"ט coming and admitted to the theft, but not ט"מ – pays only קרן
- V שבוה"פ from שואל of a משנה ה'
- a If: the מפקיד requested his פקדון and the שואל lied about its whereabouts; but the lie would obligate him
i and: the reality would obligate him as well – פטור
- VI שבוות השומרים further on משנה ו'
- a Further ruling on שואל: if he denied any knowledge - which would exempt him – and the reality renders him laible
i Then: he is חייב for violating שבוה"פ
- b Rulings regarding ש"ש and שוכר (per ר"י's approach)
i If: he claimed that one of the exempting factors happened (מת, נשבר, נשבה) and in reality a different exempting factor happened – פטור
ii Or if: he claimed an obligating loss happened (e.g. אבד) and the other obligating loss happened (e.g. נגנב) – פטור
iii But if: he claimed that an exempting loss happened and the reality was that one of the obligating losses happened – then he is חייב
iv However: if he claimed that an obligating loss happened and in reality an exempting loss happened – פטור
- c General rule: any oath from פטור לפטור or לחובה לחובה or לחובה לפטור – exempt
- d But: any oath from פטור לחובה is liable
i In other words: any oath that makes the consequence more lenient on him than reality should dictate – חייב
1 And: any oath that makes the reality harsher (or no difference) on himself – פטור
- VII Analysis – רב ושמואל regarding culpability for "false oaths" here that carry no liability for שבוה"פ
- a רב: in all these cases, even though he is exempt from שבוה"פ, he is liable for שבוט"ב
i Reason: it can be "flipped" from positive (e.g. "it was stolen") to opposite ("it wasn't stolen")
- b שמואל: in all these cases, when he is exempt from שבוה"פ, he is also exempt from שבוט"ב
i Reason: it cannot be "flipped" from past (e.g. "it was stolen") to future ("it will be stolen")
1 Challenge: they already had this dispute above (כה) re: זרק פלוני צרור לים
2 Answer: if we only had that dispute, סד"א that רב holds that position since he took his own oath,
(a) But: in our case, when the ב"ד administered the oath, he may agree with שמואל, as per ר' אמי:
(i) ד' אמי v. 1 (per ר"ל's rule about "כי") - excludes liability for שבוט"ב to any oath administered by ב"ד
(b) And: if we only had this case, סד"א that שמואל limits his exemption to a ב"ד-generated oath – קמ"ל
- c ד"א per רב – liable for שבוט"ב and exempt from השומרים except for those cases where we ruled חייב in our משנה
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