

30.10.4

133a (והמשתתף עמהן) → 134a (מתנות כהונה אין נגזלות)

- I Analysis of 2nd half of משנה ג: if partnering with כהן or עכ"ם, must mark animals
- a Challenge: ברייתא – only if w/כהן must mark, not עכ"ם (or פסוה"מ) – as it is well-known
 - b Defense: in that case, the non-Jew is sitting in the store (obvious to all that he is a partner)
 - i Challenge: in the parallel case, if the כהן is sitting in the store, why the need for the mark?
 - c Rather: he is sitting at the cash register and people think he is only selling the meat, not a co-owner
 - i Challenge: in the parallel case, if the כהן is handling the money, should not have to mark
 - ii Answer: people will think that the כהן, a non-partner, is trusted to handle the owner's money
 - 1 But: no one would make that assumption about the non-Jew
 - d Alternatively: if the עכ"ם is present, he will be micro-managing (all see that he is a partner); but a כהן would sit quietly
- II Re-assessing status of פסוה"מ (mentioned in ברייתא above) do not need mark
- a implication: פסוה"מ are recognized as such
 - b challenge: הא – בכורות – פסוה"מ may be sold and slaughtered in the marketplace and weighed normally, i.e. treated as חולין
 - i answer: our ruling is only re: those that are not sold in marketplace – בכור ומעשר – and are only sold in the house
- III Dispute הונא ר' and רב ר' regarding partial and complete exemptions
- a if: he is a partner (w/non-Jew or כהן) in head, arm or stomach
 - i ד"ה he is exempt from that מתנה only (e.g. if co-owner of head, exempt only from לחיים)
 - ii חייא בר רב he is exempt from all מתנות from this animal
 - 1 challenge: ruling that if he has a partnership in all – or even a fraction – of the head, foreleg or innards
 - (a) ruling: he is exempt
 - (b) assumption: he is exempt from that מתנה only
 - (i) answer: he is exempt from all מתנות of this animal
 1. challenge: then it should read "exempt from all"
 2. furthermore: ברייתא – a partner in the head (or even fraction) – exempt from לחיים and liable for rest
 - a rejection: of חייא בר רב and he is only exempt from that מתנה
 - 2 explanation of חייא בר רב's "error" (ר' חסדא) listing 24 מתני"כ, all of which were given ופרט and בכלל ברית מלח and בטאת העוף, אשם, אשם תלוי, שלמי צבור, לוג שמן, ב' הלחם, לחם הפנים, שירי מנחות, מנחת העומר: מקדש
 - (a) 10 in מקדש
 - (b) 4 in ירושלים
 - (c) 10 in מדינה
 - (i) he thought: since מתנות are counted as one, they are treated as a unit
 - (ii) but really: they are counted as one since they are all alike (like התודה ומן האיל ומן התודה)
 - b question posed: if the כהן sold the ישראל the head only, is there a חיוב מתנות?
 - i Clarification of the question: does it follow the חיוב (head) → חיוב; or the main body → פטור?
 - ii Resolution: if כהן or non-Jew gave their sheep to ישראל to shear, or a ישראל buys shearings from כהן → פטור
 - 1 And: this is a stringency of מתנות over הגז ראשית
 - 2 Implication: we determine חיוב based on moment of חיוב → in our case, head belongs to ישראל → חיוב

IV Analysis of next clause in משנה ג: if כהן sold animal "חוץ למתנות" – he is exempt

 - a Challenge: ברייתא – if כהן sells animal on condition ("על מנת") that the מתנות are his – he may give to any כהן
 - b Answer: no challenge from "חוץ" (which is a שיור [provides for an exclusion]) to "על מנת"
 - i Challenge: ברייתא – if he says על מנת that the מתנות go to him – he has the right to keep them
 - ii Answer: there is a disagreement between these ברייתות if על מנת is a שיור or not

V Analysis of final clause – if he buys meat by weight and it includes מתנות, he gives them and claims difference from טבח

 - a דב: that is if he weighed them himself; if the טבח weighed them, the כהן makes his claim to the כהן, not the owner
 - b ד' אסי in any case, the claim is against the owner
 - i Suggestion: they disagree whether to accept חסדא ר' dictum: if someone stole and there was no יאוש and the thief sold the stolen items to a third party, the victim may claim for either the גנב or the 3rd party
 - ii Alignment: רב accepts ר"ח → may claim from טבח (3rd party); ר' אסי rejects ר"ח → may only claim from owner
 - iii Rejection: all accept ר"ח
 - 1 And: dispute is whether מתנות can rightfully be called stolen
 - 2 Alignment: רב – they may be stolen and the victim (כהן) may claim from the 3rd party; ר' אסי – aren't נגזלות
 - 3 Note: some read this as an independent statement: רב says that מתני"כ can be stolen, ר' אסי – they cannot