

31.5.4

35a → 36a (עמוד ועמד) → (משנה ד) 27

1. ונגשו הטהנים בני לוי כי במ בחר ה' אלהיך לשרתו ולבדך בשם ה' ועל פיהם יהיה כל ריב וכל נגע: דברים כא, ה

- I 27: Who is believed regarding מומים that could be man-made (משנה is abstruse; requires clarification – see below)
- a דועי ישראל: are believed
- b דועי כהנים: are not believed
- c דשב"ג: he is believed about his fellow's (animal) but not about his own
- d ד"מ: regarding anything he is not believed about (for his own), he may not act as עד or דיין
- II Analysis: ר' יוחנן/ר' אלעזר (unknown which took which position in interpreting משנה)
- a One: רועי ישראל (believed) means כהנים shepherds of ישראל
- i Reason: we are not concerned that he'll deliberately make a מום, counting on getting some of the בכור to eat
- ii And: רועי כהנים (not believed) means כהנים shepherds working for ישראל owners; he assumes he'll get the בכור
- iii Then: דשב"ג adds that he may be believed even about another כהן's animal - no concern of collusion (גומלין)
- iv ד"מ: then opposes this position and states that since the כהן is not נאמן about his own – not נאמן about another's
- b Other: רועי ישראל (believed) means כהנים working for ישראל owners
- i Reason: they figure that the ישראל will give his בכור to a ת"ח, כהן, not to him
- ii And: רועי כהנים (not believed) means כהנים shepherds working for כהנים – concerned they'll have interest in לגימא
- iii דשב"ג ור"מ: as above
- c Analysis: support for "other" position; ר"מ (in opposition) says that כהנים are not believed
- i But: according to "one" – why is ר"מ agreeing with ת"ק?
- ii Answer: they disagree about the role of כהנים who have no direct interest in this בכור,
- 1 Per: dispute יוסי בן קפוסאי/רשב"ג/ר' יוסי
- (a) ד"ב"ק: 2 outsiders must testify about מום (but כהנים may testify – this is ת"ק's position contra ר"מ)
- (b) דשב"ג: even his own son or daughter may testify
- (c) ד' יוסי: none of his household members may testify
- 2 Note: ר"ח's position is adopted by ר"ח – if ישראל has a ספק בכור both into his flock, needs 2 outsiders as עדים
- (a) ד"נ: even the owner can testify; else, how would ר"מ ever solve a מום of מעשר (anyone could be owner)
- (i) Challenge: מעשר carries built-in נאמנות, as he could have made a מום in the whole flock beforehand
- (ii) Rather: ספק בכור could never be solved according to ר"מ (i.e. ר"מ must limit חשד to כהנים)
- (iii) And: we know ר"מ allows for a "fix" for ספק בכור, as per ב"ח (above)
1. Rather: ר"מ only has חשד for כהנים, not ישראלים
- 3 ר' יוסי follows רשב"ג הלכה ד"נ; רבא disagrees and rules like ר' יוסי
- (a) Challenge: רבא ruled that when owners are outside and the animal enters house שלם and comes out with מום – no חשד on family members
- (b) Answer: in that case, all family members had to be outside – no חשד that they acted deviously
- (c) Final ruling: follows רשב"ג – but only daughter/son – not wife, who is כגופו and considered בעלים
- d Question (ר"פ לאב"י): ר"מ disallows any חשוד to be עד for that thing; he also holds אחד לחשוד is חשוד לכה"ת – חשוד לכה"ת –
- i Then: how do כהנים ever act as דיינים? – (but they do, per v. 1)
- ii Answer: he only generates חשש, but doesn't invalidate them
- e Question: is עד מפי עד valid for בכור? – invalid; ר' אשי – invalid; ר' אשי (איתי?)
- i Challenge (לר' אשי): עדות אשה only valid for עד מפי עד
- ii Answer: means – valid for any עדות that a woman can give (e.g. בכור)
- 1 Note: ר' יימר allowed עד מפי עד for בכור, and the הלכה follows him
- III (פה שאסר פה שהתיר) – believed – מום – בכור: if a man comes forward with an unknown animal, tells us it's a בכור but it has a מום
- a Challenge: we already learned that principle in re: אשת איש הייתי וגרושה אני
- b Answer: from there, we believe her as she could have kept silent; here, he had to speak up to have מומחה see מום
- i Reason: we believe him – he could have made an obvious מום (no need for מומחה)
- c Challenge (מר בר"א): how is this different from the man who rented his donkey etc. – and we don't believe renter
- i Answer: in that case, we have "עדים" (our own knowledge) that there is always water there – here we have none
- IV דוק: he (כהן) fed his animal barley and it cut its lip – asked ר' יהושע whether חבר is different than ע"ה and is believed; ר' יהושע confirmed, ר"ג denied it and in public, ר' יהושע presented ר"ג's position; ר"ג ridiculed him and this became one of the reasons that the תלמידים eventually ousted ר"ג (see ברכות כח)