

31.5.5; 36a (משנה הו) → 37a (סיום הפרק)

1. לא יבקר בין טוב לרע ולא ימירו ואם המר ימירו והיה הוא ותמורתו יהיה קדש לא יגאל: ויקרא כז, לג

- I הו משנה הו is believed when he says that the מום was already shown to – and confirmed by – a מומחה
- a *רב* (quoted by *רב יהודה* version): כהן is believed when he says that a ישראל gave him this בכור with its מום
- Reason: people don't lie about matters that could be confirmed
 - Support (*רב אשי*): our משנה – is this not the reasoning?
 - Rejection: in that case, it is because he won't eat בחוץ קדשים → we believe him that he already showed it
 - But: in ר'ב's case, he is still suspect of making the מום and claiming that it came from ישראל that way
 - Challenge (*ר' שיזבי*): if someone asks a non-credible (re: מעשר) person to buy from מעשר or נאמן – not believed
 - Point: even though it could be discovered, he may lie
 - Rejection: in that case, he could get out of it by claiming that he thought the fellow was נאמן
 - furthermore: סיפא supports רב – if the dispatcher send agent to a specified person – נאמן
 - Rejection: in that case, the dispatcher will sue him for the money – so he's extra careful
- b *רב* (per *ר' ירמיה* version): ישראל is believed to tell us that he gave the בכור to the כהן with its מום
- justification: even if it was given when the animal was young and now it was older – still believed
- c Story: רפרם, in פומבדיתא, gave בכור to כהן w/o מום; מום deliberately made a מום, waited for day when רפרם's eyes were weak and brought it to him; רפרם recognized it and prohibited use – yet he didn't invalidate other כהנים
- d Case: שרוי (one big eye) brought to ר' אשי with its ישראלי owner; declared it מום (as we would believe כהן or ישראל)
- Challenge (*רבינא*): רב יהודה ruled that we may not investigate מום w/o presence of כהן
 - Defense: that is because we suspect the ישראל of גזילה; here, he has כבוד for חכמים (מום גלוי) – not חשוד
- II הו משנה הו: all are believed about מומי מעשר
- a Reason: he could have made a מום before counting
- Challenge: how could he know which will be #10?
 - Proposal: he could place this one at that position
 - Rejection: לא יבקר (v. 1) tells us that he can't distinguish between them
 - Rather: he could have made a מום on the entire flock before counting
- III הו משנה הו: permitting שבגלוי
- a If: a בכור is blinded, has an arm removed or a broken leg – may be permitted by 3 non-experts
- Dissent: ר' יוסי – even with a ב"ד of 23 – still require a מומחה
- b *מימרא* (from *רבי'ל* or *יהודה נשיאה*): התרת בכור in ח"ל may be done by 3 regular citizens
- Challenge: already taught in our משנה
 - Defense: from משנה, we would have thought it applies even to ambiguous מומין; reason the משנה picked overt קמ"ל – was to demonstrate the strength of ר' יוסי's position
- c *מימרא* (from either *רב* or *שמואל*): 3 may effect התרת בכור where there is no מומחה available (רבא: only מובהקין (רבא) around)
- justification: from משנה, we would have thought even if מומחה was available – קמ"ל only if no מומחה around
- d *מימרא* (*ר' יוסי* contra): 3 are מתיר בכור where there is no מומחה
- And: 3 are מתיר נדר where there is no חכם (contra יהודה, who always requires חכם)
 - Note: ר"נ is an example of חכם for התרת נדרים
 - Note: according to יהודה, ר' 1 must be חכם; other 2 must also understand the system (not just “warm bodies”)
- e *רב*: we rule against ר' יוסי – even though עמו, נמוקו עמו, it is יחיד vs. רבים → הלכה כרבים
- Note: perhaps that means that 1st מימרא (above) is from שמואל; else why would רב say same thing twice?
 - Answer: one is the result of the other (אין הלכה כר' יוסי) → any 3 may be מתיר בכור...
- IV הו משנה הו: reparations for sale and consumption of unfit foods
- a if: someone sells בכור-meat and then is discovered, he must pay them the entire amount; rest is buried
- b similarly: if someone sold meat and it proved to be טריפה; what ever they didn't eat is returned to owner
- and: if they sold it to non-Jews or fed to dogs, he pays them the difference (value of טריפה from כשר)
- c *ברייתא*: if someone sells meat that proves to be בכור; fruit that proves to be טבלים or wine that is י"נ
- ה"ק: he must make full reparation
 - דשב"א: only if it is disgusting (e.g. שקצים); if not (e.g. י"נ) – return difference
 - challenge: in case of בכור, buyer cost seller nothing
 - answer: could be case where he bought (and ate) spot where מום was → deprived him of chance to show it
 - and: for פירות, he could have taken תר"מ; in י"נ, could have mixed with proper wine and sold it per רשב"ג