

רבי חייא כרבי מאיר סבירא ליה – רבי מאיר agrees with רבי חייא

OVERVIEW

The גמרא attempted to refute the initial ק"ו of עדים פיו, since פיו is more חמור than עדים concerning a קרבן (according to the חכמים). The גמרא replied that פיו חמור than עדים is more ר"מ that ר"ה agrees with the ruling of ר"ה concerning קרבן. The ruling of ר"מ is based on a ק"ו. Our תוספות will explain that notwithstanding that ר"ה agrees with ר"מ, nevertheless he cannot utilize the ק"ו of ר"מ to derive that עדים are מחייב a שבועה.

asks: תוספות

ואם תאמר אם כן נימא קל וחומר דרבי מאיר –

And if you will say; if this is indeed so (that ר"ה כר"מ סבירא ליה),¹ let ר"ה use the ק"ו of ר"מ to derive the שבועה by חיוב עדים, instead of using the ק"ו of קנס. - העדאת עדים by שבועה - The ק"ו of ר"מ would be learnt this way in regard to deriving a שבועה by

אם הביאוהו לידי מיתה לא יביאוהו לידי שבועה הקלה² –

If עדים can cause him to be put to death, can they not obligate him to swear, since swearing is more lenient than the death penalty?!

answers: תוספות

ויש לומר דאיכא למפרך דמה למיתה שכן על מה שהן מעידין הוא מת³ –

And one can say; that we can refute this ק"ו, why is that עדים can cause מיתה, because he is being put to death on account of what they are testifying -

תאמר גבי שבועה שעל מה שהוא כופר הוא נשבע⁴ כדאמרינן לקמן:⁵

Can you say so by a שבועה, where he is being sworn on what he is denying (and not on what they are testifying) as the גמרא later uses this פירכא to refute a ק"ו from ע"א.⁶

¹ See 'Thinking it over' # 1.

² The advantage of this ק"ו over the ק"ו of ר"ה is that we cannot refute it by saying מה לפיו שכן אינו בהכחשה (ר"ה ק"ו of ר"מ there is no פיו. We derive the ק"ו from the חזמה (as the גמרא later asks on the ק"ו of ר"ה), for in the ק"ו of ר"מ there is no פיו. We derive the ק"ו from עדים directly. If עדים are so strong that they can impose the severe punishment of מיתה, they are certainly sufficiently strong to impose the lesser obligation of שבועה.

³ They עדים are testifying that he committed a capital offence and for that he receives the death penalty.

⁴ The עדים testify that he owes part of the claim (which he has to pay); we want him to swear that he does not owe the rest which he denies and on which the עדים have no opinion. Why should he swear?!

⁵ See thinking it over # 3.

⁶ The גמרא attempted to derive שבועה by עדים from ע"א as follows: שבועה מחייבו ממון מחייבו שבועה. To which the גמרא answered that the ע"א is מחייב a שבועה on that עדים שמחייבים ממון אינו דין שיחייבו שבועה.

SUMMARY

העדאת עדים by חיוב שבועה of ר"מ cannot utilize the ק"ו of ר"ח to teach us the שבועה because from the ק"ו of ר"מ we can only derive laws where we are required to listen to the עדים; however we cannot derive the שבועה by העדאת עדים since they are not testifying concerning the remaining money which he denies and for which we wish him to swear.

THINKING IT OVER

1. ר"מ of ק"ו he should utilize the ר"ח agrees with ר"ח asks that since תוספות. 7. Seemingly, even if ר"ח would agree with the חכמים he should still utilize the ק"ו of ר"מ! The only reason the חכמים disagree with (the ק"ו of) ר"מ is because they maintain that (concerning a קרבן) a person is נאמן ע"ע יותר ממאה (or that we are דיבוריה). However by דיני ממונות as in the case of ר"ח these reservations do not apply and they will also agree to this ק"ו. Why does תוספות need to say that ר"ח should utilize this ק"ו because he agrees with ר"מ?⁸

2. Why does not תוספות ask that ר"ח should derive his דין from a ק"ו of פיו similar to the ק"ו of ר"מ? It would go as follows: If פיו which is weak for it cannot cause מיתה, nevertheless it can cause a שבועה (on something which he does not testify on), then עדים which are stronger for they can cause מיתה, then certainly they can cause a שבועה (just like פיו) on something which they do not testify on. תוספות answer would (seemingly) not apply to this ק"ו.⁹

3. תוספות states that ר"ח cannot utilize the ק"ו of ר"מ, since תאמר בשבועה שעל גמרא later attempt to derive a שבועה by עדות from גמרא knew this already, how can the גמרא later attempt to derive a שבועה ע"א from עדות שבועת ע"א, we will have the same difficulty there, as תוספות himself mentions?!¹¹

which he testifies and the defendant denies; however by עדים we want him to swear on what the עדים did not testify to.

⁷ See footnote # 1.

⁸ See אמ"ה # 190 and רש"ש.

⁹ See previous footnote # 8.

¹⁰ See footnote # 5.

¹¹ See מהודרא בתרא למהרש"א.