

13.16.2

120a (משנה ג) → 121b (ונורא על כל סביביו)

הפּרַת פְּנִיָּהֶם עֲנָתָה בָּם וְחִטָּאתָם כִּסְדָם הִגִּידוּ לֹא כַחֲדוֹ אוֹי לְנַפְשָׁם כִּי-גָמְלוּ לָהֶם רָעָה: יִשְׁעִיה ג:ט	.1
לֹא-יֵאָנֶה לְצַדִּיק פֶּלֶא-אֲנֹן וְרָשָׁעִים מִלֵּאוֹ רָע: מִשְׁלֵי יב:כא	.2
בְּאֵין תַּחֲבֻלוֹת יִפְלֵעִם וְהַשׁוֹעֵה בְּרֹב יוֹעֵץ: מִשְׁלֵי יא:ד	.3
לֶךְ כְּנוֹס אֶת-כָּל-הַיְּהוּדִים הַנִּמְצָאִים בְּשׁוֹשָׁן וְצוּמוֹ עָלַי וְאֶל-תֹּאכְלוּ וְאֶל-תִּשְׁתּוּ שְׁלֹשֶׁת יָמִים לְלֵלָה וְיוֹם-גַּם-אֲנִי וְנִגְרַתִּי אֲצוּם כֵּן וּבְכֵן אָבּוֹא אֶל-הַמֶּלֶךְ אֲשֶׁר לֹא-כֹדֶת וְכֹאֲשֶׁר אֲבָדְתִי אֲבָדְתִי אֶסְתֵּר ד:טז	.4
יָבֹא אֱלֹהֵינוּ וְאֶל-יַחֲרֹשׁ אֶשׁ-לִפְנֵינוּ תֹאכַל וְסִבִּיבֵינוּ נִשְׁעֵרָה מֵאֵד: תְּהִלִּים ג:ג	.5
אֵל נִעְרָץ בְּסוּד-קֹדְשִׁים רַבָּה וְנֹרָא עַל-כָּל-סִבִּיבֵינוּ: תְּהִלִּים פט:ח	.6

- I עדות אשה: minimal requirements for identifying body for purposes of
- a must have seen face (including forehead) and nose – as per v. 1
    - i failing that, no testimony, even if there are identifying marks on his body or clothes
      - 1 observation: seems to indicate that סימנין are not מה"ת (cannot create identity)
        - (a) challenge: if a גט is found – even after a long time – tied to a pouch or wallet – כשר (סימנן דאורייתא →) (→)
        - (b) answer1 (אביי): dispute btwn. רבנן/ר"א בן מהבאי. re accepting identification of a body based on a wart
        - (c) Response (רבא v1): all agree דאורייתא;
          - (i) Nuance 1: their dispute is re: similar person having a similar wart OR
          - (ii) Nuance 2: their dispute is re: do warts change after death
          - (iii) Challenge: our משנה advocates ignoring סימנים
          - (iv) Answer: "body" – refers to height (common); "clothes" – could be borrowed
            - 1. challenge: if we are concerned with borrowing – why return a donkey based on its saddle?
              - a. Answer: people don't lend out saddle (same reason for pouch, ring etc. with גט above)
          - (d) Response (רבא v2): all agree דרבנן; their dispute is re: is a wart מובהק
  - b must have seen him expire – even if he was dissected (מגוייד) or crucified (צלוב), or animals were devouring him
    - i authorship: follows רשב"א who disallows testimony on a מגוייד (he may heal)
      - 1 Challenge: משנה ד (see below) implies that a מגוייד cannot live
      - 2 Answer: in that case, he was in water, which may heal
    - ii Alternative identification: our משנה follows all – he used a heated knife, which may suture as it cuts
    - iii Caveat: if animals were devouring an essential part of him (e.g. brains – רמב"ם) – may testify
    - iv Tangent: if the killer cut all or majority of סימנים (carotid and jugular) – and he fled, we may testify
      - 1 Challenge: in that case, if he nods to direct people to write a גט, they may write (→ he is alive)
      - 2 Answer: he is presently alive but will certainly die soon (may testify)
      - 3 Challenge: if so, someone who (inadvertently) cuts the סימנים should be exiled – which he isn't
      - 4 Answer: perhaps the wind or he sped up his own death
        - (a) Split the difference: if he was killed in a house but was convulsing – (according to "wind", exile)
        - (b) Split the difference: if he was killed outside but didn't convulse – (according to "convulsion" – exile)
  - c may only testify within 3 days of death
    - i ר' יהודה בן בבא – this parameter is subjective
      - 1 Question: is he lenient (allowing more than 3 days) or (only) stringent (i.e. allowing 3 or less days)
      - 2 Possible proof: stories of drowned men brought out after 3 days and their identification was accepted
      - 3 Rejection: water slows decomposition (earlier comment that water sutures – only if there's a wound)
      - 4 Caveat: only if he was viewed immediately after coming out of water; otherwise, body swells up

- II משה ד' testifying about drowned man (מים שיש להם סוף): all ends can be viewed from one point)
- a אסורה ר"מ: falling into any type of water – wife is still אסורה
- i support: story about someone who fell into a cistern and emerged after 3 days
- 1 response (ברייתא): we don't invoke miracles
    - (a) cannot mean: that he didn't eat or drink for 3 days – per v. 4)
    - (b) rather: must refer to not sleeping for 3 days, per ruling of ר' יוחנן in re: שבועת שוא
  - 2 ר"מ per כהנא ר', there were rocks in the pit and he slept on them
    - (a) דבנן: they were marble (couldn't hold on)- ר"מ – must have slept some
  - 3 Tangent: story of נחוניא the trench-digger, his daughter (who was saved)
    - (a) And: his son, who died, per v. 5 or v. 6
- b ר' יוסי (disagrees and maintains that no one can survive in water → סוף → מים שיש להם is valid testimony)
- i support: story about blind man whose aide followed him into a submerged cavern; they waited the amount of time for them to expire and permitted their wives to marry
- ii support: story about someone who drowned in עסיא, they pulled out a leg – testimony was valid
- 1 caveat – the leg had to extend beyond the knee
- c associated anecdotes:
- i ר' שילא permitted a woman based on testimony that her husband had drowned in marsh
- 1 רב wanted to to excommunicate him;
  - 2 שמואל advised that first they communicate with him
  - 3 he admitted his error –
    - (a) שמואל applied v. 2 to רב – that he didn't wrongly excommunicate
    - (b) רב applied v. 3 to שמואל – his advice was sound
  - 4 רבי related story about fisherman who went into an underground cavern, they declared him dead and the next day he found his way out – "see how wise חכמים were re: מים שאין להם סוף" (such caverns aren't found in מים שיש להם סוף)
- d possible caveat (ר' אשי): if the husband is a ת"ח, people will know if he came out alive
- i rejection: applies equally to all – only accepted בדיעבד
- e anecdote: ר"ג thought ר"ע drowned as he saw his boat capsized, but ר"ע survived holding onto flotsam
- i note: lesson about encountering רשעים
- ii lesson: מים שאין להם סוף is always אסורה
- iii Note: ר"ע had similar story with ר"מ – was saved by waves that ultimately beached him
- f תוספתא: if he fell into a lion's den, no עדות; into a nest of snake and scorpion pit – there is עדות
- i Dissent (ריב"ב): even in a snake pit – he may be a charmer (Heber)
- ii Counter: even a Heber cannot be saved if he falls on them (→ agitates them into biting)
- g תוספתא: if he fell into a crucible, there is עדות; into a pot full of boiling wine or oil – there is עדות
- i ג' אהא oil – we can testify (it burns) but not wine – it extinguishes
- ii Response: it first extinguishes and then burns (and kills him)