

14.3.10

40a (משנה ז') → 41b (סיום הפרק)

.1 ונתן האיש השכב עמה לאבי הנער חמשים כסף ולו תהיה לאשה תחת אשר ענה לא יוכל לשלחה כל ימיו: דברים כב: ט

2 אלה החקים אשר צוה ה' את משה בין איש לאשתו בין אב לבתו בנערה בית אביה: במדבר פרק ל פסוק יז

3 וכי ימכר איש את בתו לאמה לא תצא פצאת העבדים: שמות פרק כא פסוק ז

4 ועגשו אתו מאה כסף ונתנו לאבי הנערה פי הוציא שם רע על בתולת ישראל ולו תהיה לאשה לא יוכל לשלחה כל ימיו: דברים פרק כב פסוק יט

5 ואם אמת תהי הדבר הזה לא נמצאו בתולים לנער: והוציאו את הנער אל פתח בית אביה וסקלה: ... דברים פרק כב פסוק כ-כא

6 כי תבנה בית חדש ועשית מעקה לנגד ולא תשים דמים בביתך כי יפל הנפל ממוני: דברים פרק כב פסוק ח

- I קנס and בושת, פגם value of משנה ז'
- a מתביישת and מבייש based on status of בושת –
 - b פגם – as if she were a slave-girl being sold; how much her value has diminished
 - c קנס – standard;
 - i rule: any flat payment is objective (i.e. not standard to fluctuation based on subjects involved)
 - d question: why not maintain that the קנס covers all
 - i attempted responses: can't consider that the damages could be equal in all cases, regardless of status
 - ii rejected: if so, apply that to all קנסות (e.g. 30 שקל for killing an עבד, regardless of his health and/or talents)
 - iii responses:
 - 1 50 alone is covered by תחת אשר עינה – v. 1 אביי
 - 2 50 alone is covered by תחת אשר עינה – v. 1 דבא
 - e question: perhaps the other moneys should be given to her
 - i answer1: v. 2 (→all benefits of her נערות go to her father)
 - ii rejection: v. 2 should be used to support that a נערה's earnings go to her father, instead of v. 3
 - 1 answer: can't be inferred from v. 2, which is specifically in re: הפרת נדרים
 - 2 challenge: why not infer it from קנס
 - 3 answer: ממונא מקנסא cannot be derived
 - iii Answer: reasonable that it should go to father, since he could marry her off to whomever he chooses
- II משנה ח' ages of girls who are subject to מכר and get קנס (בוגרת has neither)
- a מכר and קנס can never apply to same girl: (ר"מ)
 - i From day 1 → נערות – only מכר
 - 1 Reason: v. 1 ולא תהיה לאשה – she must be able to marry herself (only at נערות)
 - ii From נערות → בגרות – only קנס
 - b חכמים: from age 3 → נערות, both apply
 - i counter to ד"מ (ריש לקיש) - נערה includes even a קטנה
 - ii alternatively: (ר"ל) (ר"ל's comment was about another discussion)
 - 1 נערה (with a ה"ה) is exempt, since it says מוציא שם רע קטנה on a
 - (a) Challenge: v. 5 provides for סקילה – cannot be a קטנה
 - 2 rather: wherever it is written נער, it includes a קטנה

- III מושנה ט' (admission to an act carrying a קנס exempts from payment)
- a קנס בושת ופגם – מפתה – pays but not קנס
- i *question*: why choose מפתה, not אונס
- ii *answer*: מושנה selected less obvious case; פגם causes greater פגם, perhaps we shouldn't believe him – קמ"ל
- iii *Dissent*: רשב"י – no payment of בושת ופגם upon admission; he doesn't have the right to hurt her reputation
- 1 *Addendum*: even if she finds it worthwhile to get the payment and lose the reputation – at least some members of her family would be negatively impacted and he doesn't have the right to do so
- b גנבה – קן (capital) but not כפל (2x) nor 4/5
- i *tangential discussion*: dispute between יהושע דר' הונא בריה דר' יהושע if 1/2 damages of תם are קנס or ממון.
- 1 *Argument for ממון*: assumption that an ox is not שימור, בחזקת שימור, should have to pay entire amount
- 2 *Argument for קנס*: assumption that an ox is שימור, בחזקת שימור, should be totally exempt
- 3 *Challenges to position of קנס*.
- (a) *Challenge1*: How does ניזק share damages (as per א"ג: א)?
- (i) *Answer*: refers to loss of value of נבלה from time of damage until collection
- (ii) *Challenge*: already taught as per inference from "תשלומי נזק"
- (iii) *Answer*: taught once for מועד, once for תם (justification for teaching both – תם pays full; תם wasn't yet attested to)
- (b) *Challenge2*: מודה פטור not listed as difference between תם/מועד
- (i) *Answer*: list incomplete
- (ii) *Challenge*: what else is omitted
- (iii) *Answer*: 1/2 כופר (not paid by תם if it kills a person)
- (iv) *Block*: perhaps it follows ריה"ג who requires 1/2 כופר
- (c) *Challenge3*: our מושנה – should've been mentioned in (c) below as distinction – if it's a תם, ע"פ עצמו doesn't pay
- (i) *Answer*: מושנה refers only to מועד
- (d) *Challenge4*: from end of our מושנה: rule that if payment is **more** than damages → קנס
- (i) *Implication*: if payment is **less**, not קנס
- (ii) *Retort*: meaning is "anything other than same as damages is קנס"
- (iii) *Block*: why not state that?
- (iv) *Answer*: since there is חצי נזק צרורות, which, following הלמ"מ is ממון, didn't want to state it inaccurately
- (e) *Final ruling*: חצי נזק is a קנס
- (f) *Implications*: if an animal does damage in an unusual way, outside of א"י (where we cannot impose fines), the owner is exempt
- (i) *However*: if the plaintiff demands a session of ב"ד in א"י, we set it up; if the defendant doesn't show, he is sanctioned
- (ii) *In any case*: he is sanctioned, since (as per נתן ר') it is forbidden to raise a violent animal as per v. 6
- c נזקי שור (admission that his ox killed a person or an animal) – pays, but
- i death of an עבד – doesn't pay (קנס = שקל 30)