

14.4.2

42b (אייתיביה) → 43b (הלכתא כוותיה דרב)

Note: (end of previous discussion: רב's answer to אביי, confirming that ר"ש agrees that after שבועת כפירת קנס, the payment reverts to a status of ממון, except that there is no חיוב קרבן)

<p>1. ונתן האיש הש"כב עמה לאבי הנער חמשים כסף וְלוֹ תְהִיָּה לְאִשָּׁה תַּחַת אֲשֶׁר עָנָה לֹא יוּכַל שְׁלָחָה כָּל יָמֶיהָ: דברים פרק כב פסוק ט</p> <p>2. אִם עָבַד יָגַח הַשּׂוֹר אוֹ אִמָּה כֶּסֶף שְׁלֹשִׁים שֶׁקֶלִים יִתֵּן לְאֹדְוָיו וְהַשּׂוֹר יִסְקַל: שמות פרק טא פסוק לב</p> <p>3. וְהָיָה כִּי יֹאמֵר אִלְקֵי לֹא אֵצֵא מֵעַמִּי כִּי אֶהְבֵּד וְאֵת בֵּיתִי כִּי טוֹב לוֹ עִמּוֹ: דברים פרק טו פסוק טו</p> <p>4. וְהִתְנַחֲלֵתֶם אִתָּם לְבָנֵיכֶם אַחֲרֵיכֶם לְרֵשֶׁת אַחֲזָה לְעַלְמָם בְּהֵם תַּעֲבֹדוּ וּבְאֲחֵיכֶם בְּנֵי יִשְׂרָאֵל אִישׁ בְּאֲחֵיו לֹא תִרְדָּה בּוֹ בְּרַדְּ: ויקרא פרק כה פסוק מו</p>
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- I Continued analysis of ר"ש's opinion (see note above)
 - a Challenge: our משנה ר"ש – maintains that if the קנס wasn't yet collected, it goes to her (not the brothers)
 - i Clarification: if it is ממון after הועמדה בדין, it should already belong to the estate (→brothers)
 - ii Answer: (ראש ישיבה – רב יוסף) – from v. 1 – the תורה only granted the money to the father from the moment it was actually collected
 - iii Exception noted: רב's statement that it is ממון after הועמדה בדין refers to other קנסות
 - iv Challenge: v. 2 (קנס, also says "given to owner")
 - v Answer: distinguish between נתן (v. 2) and נתן (v. 1)
 - vi Challenge: if so, why does ר"ש use וכחש as his proof-text – should use ונתן
 - vii Answer: (רבא) וכחש addresses a case where she came of age (בגרה) and then died; where father inherits from her – so ר"ש's exclusionary wording means "וכחש excludes these which originate as קנס"
 - viii Challenge: (from our משנה ר"ש – ר"ש exempts קנס since it isn't paid ע"פ עצמו
 - 1 Clarification: but after גמ"ד, when payment is made after admission – should be חיוב
 - 2 Answer: ר"ש is speaking to רבנן on their terms (he exempts even after גמ"ד due to וכחש):
 - (a) רבנן, who obligate if after הועמדה בדין, should exempt beforehand since it's קנס
 - (b) response: (רבנן) – the main claim is on (ממון) – בושח ופגם
 - (c) kernel of dispute:
 - (i) ר"ש: the main focus of a complaint will be on the set value (קנס)
 - (ii) רבנן: the main focus will be on something that cannot be exempted via admission (ממון)
- II Question posed re: מעשה ידים of an orphan being supported by her brothers
 - a ר' אבינא asked ר' ששת – do the brothers get the מע"י (as would father if he were alive)
 - i lemma1: since they are supporting her, it goes to them (as with father)
 - ii lemma2: but since the money isn't their's (it belongs to the estate), perhaps she keeps it
 - iii answer: from יא:א – כתובות – אלמנה is fed by the brothers and her מע"י go to them
 - 1 block: the husband never would have wanted his widow to profit, unlike the daughter
 - (a) premise: concern for the welfare of his daughter is greater than for his widow
 - 2 challenge: (widow→daughter)::(daughter→brothers); just as, in case of limited assets, the daughters eats and the brothers beg; similarly, the widow eats and the daughter begs
 - 3 defense: vis-à-vis degradation, he'd prefer the widow not be degraded; in re profit, prefer the daughter
 - iv challenge: our משנה – if she earned money האב בחיי, it goes to brothers (→if afterward, goes to her)
 - 1 clarification: isn't this (even) a case where they are supporting her?
 - 2 Response: no, only a case where there's so little in the estate that they aren't supporting her
 - 3 Challenge: (רב יוסף) if they aren't feeding her, isn't it obvious that they can't claim the מע"י?
 - (a) Support: v. 3 – even an עבד עברי cannot be abandoned without food (unlike כנעני ק"ו) – ר"ש his daughter
 - 4 Defense: refers to moneys above and beyond her food expense (העדפה)
 - 5 Challenge to the defense: רב יוסף certainly knew about העדפה
 - 6 Rather: his challenge was within the משנה, which uses the term גבייה (collection) in re both wages and מציאה
 - (a) Clarification: what "collection" is there with a מציאה?
 - (b) Rather: מע"י: מציאה; just as מציאה → her if found after his death; so מע"י → her if earned after his death
 - 7 Support: רב rules that a girl being supported by her (orphaned) brothers keeps her מע"י –
 - (a) Textsupport: v. 4 – only עבדים כנענים can be inherited, not the rights of a father of his daughter
 - (b) Challenge (רבה): perhaps this refers to קנסות (including חבלות)
 - (c) Block: חבלות are payment for pain, which goes to her even when father is alive
 - (i) Possible defense: refers to harming her in her face, where the damage causes financial loss to family
 - 8 Final ruling: רב ששת – נהרדעי – follows רב (goes to brothers); רב אשי – follows רב (and שמואל – goes to her)