

15.3.6

27a (משנה ג') → 28a (יש שאלה בשבועה)

7. ולנער לא תעשה דבר אין לנער חטא מות כי כפאשר יקום איש על רעהו ורצחו נפש כן הדבר הזה: דברים פרק כב פסוק כו

I נדרי אונסין: משנה ג'

- a If he made a נדר dependent on coming over to eat and was unable to come due to unforeseen אונס – מותר
- i Case: man left document with his rights at ב"ד, stipulating that if he doesn't return within 30 days, he loses them, due to אונס, he didn't make it; רב הונא thought to deprive him of the document, but רבא responded:
- 1 Ruling: אונס is exempt, as per v. 1
 - (a) Possible challenge: perhaps that only applies to a death sentence
 - (b) Response: our משנה exempts אונס even where lesser consequences are involved
 - 2 Challenge: why is a גט, given on condition that he doesn't appear within 12 months, valid even if he died (אונס) during the 12 months?
 - (a) Answer: had he known he was going to die, he would have made the גט valid immediately
 - 3 Challenge: why is this different from the case of the man who gave a גט, contingent on his not returning within 30 days, and on day 30 he was seen on the other side of the river trying to cross (the bridge was out)
 - (a) Answer: the bridge being out is a foreseeable אונס and he should have reckoned that in
 - 4 Challenge to רב הונא: why isn't this a case of אסמכתא (and we rule that לא קניא) (אסמכתא לא קניא)
 - (a) Answer: because he handed over a שטר (representing his rights)
 - (b) Challenge: even with a שטר, it should still be considered an אסמכתא as per case:
 - (i) Case: man paid part of his debt and handed the שטר to a middleman, agreeing that if he doesn't pay up by a certain date, the middleman should give the שטר to the creditor
 - (ii) Ruling: ר' יהודה רב – ר' יהודה rules like ר' יוסי based on אסמכתא (contra ר' יהודה)
 - (iii) Answer: our case is different, because he agreed to forgo his rights (if he doesn't appear on time)
 - (iv) Final rulings:
 1. אסמכתא: valid קנין (as long as there is no אונס)
 2. stipulation: as long as the קנין was made in a "significant" ב"ד

II מוכסין: using a נדר to avoid discriminatory and illicit extortion (of מוכסין)

- a it is permitted to take a נדר in response to murderers, looters or "customs officials"
- i challenge: שמואל's dictum that דינא דמלכותא דינא (making taxation and customs fees Halakhically valid)
- 1 answer1: if it is an official who has no limit (as to what he takes)
 - 2 answer2: a "self-appointed" official
- ii may claim that certain food is תרומה or belongs to the royal treasury
- 1 mechanism: he may state: "all fruits (e.g.) are prohibited to me (intending "today") if this doesn't belong to the royal treasury (e.g.)"
 - (a) detail: once he states "prohibited", they are אסור, but we allow his mental stipulation to define the נדר in this case of אונסין
- iii disputes between ב"ש/ב"ה about extent of leniency here:
- 1 even using a שבועה (ב"ש: no, ב"ה – yes)
 - 2 initiating the נדר (ב"ש: no, ב"ה – yes)
 - (a) contradiction: ב"ש is reported as saying that he may not initiate a שבועה (ב"ה permit)
 - (i) implication: but he may initiate a נדר
 - (ii) implication: but he may respond with a שבועה
 - (iii) answer1: our משנה teaches how far ב"ש will go, the ברייתא how far ב"ה will go
 - (iv) answer2: read ב"ה disagree "שבועה ב"ה, שאלה ב"ש maintain there is no שאלה for a שבועה"
 - 3 expanding the scope of the נדר beyond what the official stated (ב"ש: no, ב"ה – yes)
 - (a) example: if he said: "vow abstinence from your wife (if your claim is false)",
 - (i) he may respond: "my wife and my children"
 - (ii) result: ב"ה – all are permitted; ב"ש – only wife is permitted