

18.04.09

40b (27 משנה ד) → 42a (הכל) (משנה ד)

1. כי כה אמר ה' בורא השמים הוא האלהים יצר הארץ ועשה הוא כוננה לא תהו בראה לשבת יצרה אני ה' ואין עוד: ישעיהו מה, יח  
 2. ואיש כי ישכב את אשה שכבת זרע והוא שפחה נחרפת לאיש והקדה לא נקדחה או חפשה לא נתן לה בקרת תהיה לא יומתו כי לא חפשה: ויקרא יט, כ  
 3. כי יקח איש אשה ובעלה והיה אם לא תמצא חן בעיניו כי מצא בה ערות דבר וכתב לה ספר קריתת ונתן בגדה ושלחה מביתו: דברים כד, א

I 27 משנה: the עבד marked for collection

- a if an עבד was made an אפותיקי (υποθηκωσι: assigned collateral for collection) and was freed
  - i properly: the slave owes nothing
  - ii however: מפני תיקון העולם, they force the master to write a שטר שחרור and \*he\* writes a שטר for the slave's value
    - 1 Dissent: רשב"ג - \*he\* writes nothing, the "liberator" writes the שטר (and owes the money)
  - iii The players:
    - 1 דב (doesn't consider the 2<sup>nd</sup> "master" to be a "משחרר", therefore the 1<sup>st</sup> master must be the one to write the שט"ח)
      - (a) שחרר: the 1<sup>st</sup> owner (i.e. the borrower) freed him
      - (b) properly: the slave owes nothing, since הקדש ושחרור, שעבוד חמק, trump
      - (c) however: so מלוה won't seize עבד, we force מלוה to write שחרור and עבד writes שט"ח for his value (lost to מלוה)
        - (i) dissent: the slave doesn't write it, rather the משחרר (borrower) writes it
        - (d) crux of dispute: if someone damages another's שעבוד, is he חייב (רשב"ג) - yes; (חכמים) - no
    - 2 עולא (doesn't consider the 2<sup>nd</sup> "master" to be "רבו")
      - (a) שחרר: the 2<sup>nd</sup> master (the lender)
      - (b) properly: the עבד isn't obligated in מצוות (since the lender never owned him to liberate him)
      - (c) however: since he's already known as a freeman, we force the 1<sup>st</sup> owner to free him and the עבד writes a שט"ח for the surplus (beyond the debt)
        - (i) dissent: the liberator (2<sup>nd</sup> master) writes a שט"ח for the surplus value of the slave (above the debt)
        - (d) crux of dispute: whether intangible damage is נזק (היזק שאינו ניכר) - רשב"ג - it is; ת"ק - it isn't
- b more on the אפותיקי: if someone assigns a field for collection and it's flooded
  - i if: he merely assigned it, the lender may collect from other property (but not for כתובה, according to רשב"ג)
  - ii however: if he said "you may only collect from here", the rights to collection are lost

II בן חורין ½, עבד ½: משנה ה'

- a ב"ה - he works for himself every other day, for his master every other day
- b ב"ש - that leaves him unable to marry (contra v. 1) - rather, we force the ½ master to free him מפני תיקון העולם (agreed ב"ה)

III Efficacy of freeing ½ a slave:

- a רבי - valid (½ is freed)
- b חכמים - invalid (nothing is freed)
  - i frame of dispute:
    - 1 דבה: only if freed by שטר (but if freed בכסף, all agree that it is valid)
      - (a) דבי v. 2 equates שטר::כסף; just as כסף works halfway, so does שטר
      - (b) חכמים use לה::לה to equate עבד::אשה; just as an אשה cannot be ½ divorced, so too an עבד (freed via שטר)
      - (c) suggestion: dispute revolves around preference for היקש or גז"ש (לה::לה)
        - (i) rejection: all prefer גז"ש
        - (ii) rather: this גז"ש could be challenged - an אשה can never be divorced via כסף, unlike an עבד
    - 2 ד' יוסף: only if freed by כסף (בשטר) - all agree that it is invalid
      - (a) challenge: explicit dispute about freeing ½ a slave בשטר
        - (i) possible 2<sup>nd</sup> challenge: implication that they agree about כסף
        - (ii) ד' יוסף perhaps they disagree about both and dispute about שטר was taught to demonstrate the extent of רבי's position (which is preferable to show as עדיף)
      - 3 challenge(s): v. 2 indicates that may be somewhat freed - via לה::לה (vv. 2-3)
        - (a) extended: to ½ free via שטר through היקש (הפדה) חופשה
        - (b) analysis: this works with ר' יוסף (after his adjustment) - ברייתא authored solely by רבי (who allows ½ freedom via both mechanisms);
          - (i) however: according to רבה, the רישא is consensus and the סיפא (שטר) is רבי
          - (ii) response: indeed - the רישא is הכל and דברי הכל is only רבי
          - (iii) perhaps: ר' יוסף will have to assign our משנה exclusively to רבי

1. defense: case could be 2 owners, where even רבנן will agree that freeing ½ is valid