

18.04.10; 42a (אמר רבה: מחלוקת) → 43b (מנהג הפקר נהגו בה)

1. אם עבד יגח השור או אמה קסוף שלשים שקלים יתן לאדניו והשור יסקל: שמות כא, לב
2. וכהן כי יקנה נפש קנין כסף הוא יאכל בו ויליד ביתו הם יאכלו בלחמו: ויקרא כב, יא
3. כי יתפש איש באחיו בית אביו שמלה לכה קצין תהיה לנו והמקשלה הזאת תחת ידך: ישעיהו ג, ו
4. ואיש כי ישכב את אשה שכבת זרע והוא שפחה נחרפת לאיש והפדה לא נפדתה או חפשה לא נתן לה בקרת תהיה לא יומתו כי לא חפשה: ויקרא יט, כ
5. ויברך אתם אלהים לאמר פרו ורבו ומלאו את המים בימים והעוף ירב בארץ: בראשית א, כב

- I Continued analysis of the dispute רבי/חכמים about the validity of liberating ½ an עבד
- a רבה: dispute only if he freed ½ and kept ½; if he freed ½ and sold/gave the other ½ – all agree that it works
    - i challenge: רבי vs. רבנן – contradiction in rulings (below) should be solved as רבי vs. רבנן
      - 1 contradiction: giving estate to his 2 slaves, free each other vs. giving estate to his slaves, even they acquire 0
      - 2 response1: both are רבנן; in 1<sup>st</sup> case, he said כולו, in 2<sup>nd</sup>, he gave it half at a time
        - (a) challenge: the סיפא reads "if he said ½, ½, - it doesn't work" – implying that the רישא was "all at once"
        - (b) defense: the סיפא is explaining the case of the רישא (½ - ½)
          - (i) reductio: if כולו doesn't work, why the need to note that ½- ½ doesn't work?
          - (ii) Block: that may be necessary, so that we won't infer that כולו does work
      - 3 Response2: both are רבנן; in 1<sup>st</sup> case, it was in 2 שטרות, in the 2<sup>nd</sup> case – in 1 שטר
        - (a) Challenge: in 1 שטר, it shouldn't work even if it was כולו
        - (b) Answer: indeed – it only works in 2 שטרות, and if he said "½ - ½", even in 2, it doesn't work
      - 4 Response3: if both שטרות are given simultaneously, valid; if not – invalid
        - (a) Question: if given asynchronously, why doesn't the 1<sup>st</sup> slave acquire the 2<sup>nd</sup>? Rejected in favor of responses ½
        - 5 Response4 (ר' אשי): perhaps the 2<sup>nd</sup> case is invalid because he called them עבדי (implying no freedom)
          - (a) Block: several משניות (e.g. פאה ג: ח) allow for "עבדי" to mean "who was, until now, my slave (but no longer)"
- II Possible implications of רב"ה's solution to the ½ עבד / ½ חורין בן חורין solution (alternating days)
- a If he is gored on his master's day – the payment goes to the master; on his day – to him
  - b Challenge: if so, let him marry a שפחה for those days etc.
    - i Defense: that is "personal status" (which is indivisible), this cast is financial
  - c Challenge: if an ox gores a ½ עבד ½ חורין ½ קנס goes to the master (and we ignore the "days")
    - i Answer: in that case, he is dead (the principal is consumed)
    - ii However: if he was attacked and his hand withered – that would be a case to determine ½ / ½ or not
      - 1 Challenge: that only works according to רבנן, who claims that payments for lost wages are overall and daily
      - 2 However: according to רבא (only daily lost wages are paid) – that is a damage unique to אדם – פטור is שור – פטור
        - (a) Answer1: such a case could be constructed where he was attacked by a person
        - (b) Answer2: רבא doesn't accept this statement (it's a מימרא, without authoritative status vis-à-vis רבא)
- III Status of slave awaiting his גט שחרור (as per רב"ה's admonition)
- a Apparently he doesn't get full קנס payment (v. 1) as per above
    - i Rejection: perhaps that follows רב"ה's earlier reading – that he isn't set to be freed
  - b If he knocks out his slave's tooth and eye – he goes free for the 1<sup>st</sup> and is paid for the 2<sup>nd</sup> → he is fully free w/o גט
    - i Rejection: perhaps this follows תנאים who say that a slave going free for שון ועין doesn't need שחרור גט
      - 1 Note: final ruling for שון ועין (explicit in text), גט שחרור not needed; for other limbs, גט שחרור needed
  - c Question: does he continue to eat תרומה? (is he still considered קנין כסף – v. 2?)
    - i Attempted resolution: from ruling that a כהנת whose child got mixed up with the child of her שפחה – both children eat תרומה, even though they'll free each other when they reach adulthood (to cover the doubt) → he eats תרומה
      - 1 Rejection: even if we knew which was the עבד, that would still be קנין כסף until he's freed, unlike here
  - d Question: is the sale of a slave as speculation against receiving קנס (v. 1) a valid sale?
    - i Note: could be asked according to both ר"מ (אין אדם מקנה דשלב"ע) – since there's no guarantee that he'll be gored – or even if gored, that the owner of the ox will be obligated to pay (מודה בקנס); and to רבנן – since the ox and slave exist
      - ii Attempted answer: v. 2 – even if קנין כסף has no value, still eats תרומה → can't be sold for קנס (else, all have value)
        - 1 Rejection: could be dying slave, who isn't even able to serve his master as he is sickly

- e Question: our  $\frac{1}{2}$  עבד /  $\frac{1}{2}$  בן חורין who gives קידושין to a freewoman – is she מקודשת
- i argument: if a man is מקדש a woman to  $\frac{1}{2}$  of himself – קידושין are valid; in this case, she isn't fit for all of him
  - ii argument: a man who is מקדש  $\frac{1}{2}$  a woman – the קידושין are invalid; in this case, he left nothing out of קידושין
  - iii attempted answer: from ruling of קנס –  $\frac{1}{2}$  given to his heirs → he has legitimate heirs
    - 1 rejection: it should be given to them, but he has none
- f related question: if someone is מקדש a  $\frac{1}{2}$  שפחה /  $\frac{1}{2}$  בת-חורין – are the קידושין valid?
- i Originally: רבה בר רב הונא thought to invalidate, similar to being מקדש  $\frac{1}{2}$  a woman
    - 1 Then: he invoked v. 3 – that one doesn't fully grasp דברי תורה until one makes a mistake
    - 2 Then: he ruled that it is valid, since in this case, the man left nothing in the קנין
      - (a) Meaning: he was מקדש all of the woman that was available for קידושין
  - ii Dissent: ר' ששת equated the two and invalidated קידושין
    - 1 Preemptive response: if someone interprets v. 4 as being about a  $\frac{1}{2}$  שפחה /  $\frac{1}{2}$  בת חורין – he tells him to refer to עבד עברי ר' ישמעאל's interpretation that she is a שפחה כנענית affianced to an עבד עברי
      - (a) Challenge: can a שפחה כנענית have אירוסין?
      - (b) Rather – “affianced” means “designated”
- g Related case: if a  $\frac{1}{2}$  שפחה /  $\frac{1}{2}$  בת חורין becomes affianced to ראובן, is freed and is מתקדשת to שמעון, then both die
- i Then: she falls to לוי and this isn't considered אשת שני מתים
    - 1 Reason: if her קידושין to ראובן were valid, her קידושין to שמעון were nothing and vice-versa
  - ii Dissent: ר' יוסף בר חמא (quoting ר"נ): קידושין's ראובן are uprooted when she is freed and שמעון's are valid
    - 1 Alternate: ר' זירא (quoting ר"נ): קידושין's ראובן are completed when she is freed
      - (a) Support: v. 4 – implying that if she were freed, an adulterer would be killed
      - (b) Challenge: according to ר' ישמעאל (the פרשה refers to a full שפחה כנענית) – there are no earlier קידושין to become “complete” at this point –
        - (i) Rather: if she is freed, then accepts קידושין, those are valid. (rejection of זירא's support)
- h Related story: case of  $\frac{1}{2}$  שפחה,  $\frac{1}{2}$  בת חורין who was freed (her master was coerced)
- i Reason1: they accepted ברוקה בן יוחנן בן ברוקה (v. 5) – woman are also commanded
  - ii Reason2: ר' רנב"י – they had been mistreating and taking advantage of her