

18.05.05

52b (משנה 27) → 53b (לא קנסו שוגג אטו מזיד)

- I Fine for ritually disqualifying someone else's foodstuffs
- a If someone was **מטמא**, mixes his food with **תרומה** to generate **דימוע** or **מנסך** to **ע"ז** (meaning debated in **גמ'** – see below)
- i *If*: it was intentional – he must pay (even though it is **היזק שאינו ניכר**)
- ii *However, if*: it was unintentional, he is exempt
- b Meaning of **מנסך**:
- i **מנסך ממש** (ע"ז – libated to **רב**)
- 1 rejects **מערב** – same as **מדמע**
- (a) *Response*: we can't infer one **קנס** from another
- ii **יין נסך** – mixed with **שמואל**
- 1 rejects **ממש** because of **דרבה מיניה** – the libator would be **חייב מיתה** and exempt from payment
- (a) *Response*: follows **ר' ירמיה** that splits the moment of **חייב מיתה** (libating) from **גזילה** (when he picks it up)
- c *Justification*:
- i *Once we state*: **מטמא**, we don't know to apply to **מדמע**:
- 1 *If*: the **טומאה** is caused to **תרומה** – **סד"א** – he's fined because he made it totally unusable
- 2 *If*: the **טומאה** is caused to **חולין** – **סד"א** because it is forbidden to generate **טומאה** to **חולין** in **א"י**
- (a) *However*: I wouldn't know to apply it to **דימוע**
- ii *And if*: it only stated **דימוע**, we would think because that's common – can't apply to **מטמא**
- iii *And if*: it stated both, we wouldn't apply it to **מנסך**, due to the consideration of **קמ"ל** – **קלב"מ** as per **ר' ירמיה**:
- d *Alternate justification (following order of מטמא & מנסך and then מדמע)*:
- i *Once we state*: **מטמא**, we can't apply to **מנסך** due to **קלב"מ**
- ii *And if*: we state **מנסך** – **סד"א** because it is utterly unusable, unlike **טומאה**
- iii *And if*: we state both of these – **סד"א** since they generate a great financial loss, unlike **דימוע** – **קמ"ל**
- e The "essential" law and the **עולם** תיקון here:
- i **היזק שאינו ניכר שניה היזק**: essentially, both **שוגג** and **מזיד** are liable, since **היזק שניה ניכר שניה היזק**
- 1 *however*: they exempted **שוגג** so he'd tell the **ניזק** (and he would know that his wine, e.g. is **אסור**)
- 2 *challenge*: if so, they should exempt **מזיד**
- (a) *answer*: if he intends to do harm, he probably wants the **ניזק** to know
- ii **היזק שאינו ניכר לאו שמה היזק**: essentially, neither **שוגג** nor **מזיד** are liable – since **היזק שמה היזק**
- 1 *however*: they held **מזיד** liable to prevent such behavior
- iii *Analysis*: end of **הד**: – **כהנים** that performed **פיגול** on a **קרבן** – if done **במזיד**, are liable **העולם**
- 1 *Implication*: they're not essentially liable → **ל"ש היזק**
- 2 *Defense*: implication is that **בשוגג** they are exempt – and *that* is the application of **העולם** תיקון
- iv *Challenge*: if someone does **מלאכה** with **מי חטאת** or **פרה אדומה** – their liability is not actionable
- 1 *Explanation*: if **היזק שמה היזק**, it should be actionable
- 2 *Defense*: the **מלאכה** was purely of intent (e.g. he brought the **פרה** into a corral to nurse or thresh or he weighed something, using the **מי חטאת** as a counterweight)
- (a) *Challenge*: **ר' רבא** said that **מי חטאת** aren't invalidated if used as counter-weights
- (i) *Resolution*: if they are used as *counter-weights*, valid; if used as *displacement* weights, invalid (our case)
- (ii) *So...challenge*: if we say **השאל"נ שמה היזק**, if he used **מי חטאת** as displacement – should be **חייב**
- (b) *Rather*: both cases are *counter-weights* –
- (i) *Valid*: if he kept his mind on the **מי חטאת** (no **היסח הדעת**)
- (ii) *Invalid*: if he had **היסח הדעת**
- v *Challenge*: if a coin was stolen and was taken out of circulation; **תרומה** which became **טמא**, **חמץ** and **פסח** lapsed –
- 1 *The thief*: may give it back as is, with no further liability – challenge to position of **היזק שמה היזק** – should be a regular **גולן** – **rejected**
- vi *Suggestion*: perhaps **השאל"נ** is subject to a dispute among the **תנאים**:
- 1 *If someone was מטמא, מדמע or מנסך*:
- (a) Intentionally – **ר' יהודה** and **ר"מ** – **ר' יוחנן** agree that he is liable
- (b) Unintentionally – **ר"מ** finds him liable (**היזק שמה היזק**?) and **ר' יהודה** exempts him (**היזק** (לא שמה היזק))
- 2 *Rejection*: all agree that **השאל"נ לאו שמה היזק** – the dispute is whether we extend the **גזרה** to **שוגג** as a precaution against intentionally damage.