

20.4.05; 40a (ת"ר אפוטרופוס) → 41a (מפני שהוא כמעושה)

1. אם לפי יושב עליו ונתן פדיון נפשו ככל אשר יושב עליו: שמות כא, ה.
 2. וכי ינצו אנשים ונגפו אשה הרה ויצאו ללדיה ולא יהיה אסון ענוש יענש כאשר יושב עליו בעל האשה ונתן בפללים: שמות כא, כב.
 3. והתודו את חטאתם אשר עשו והשיב את אשמו בראשו וחמישתו יסף עליו ונתן לאשר אשם לו: במדבר ה, ז.
 4. וכי ינח שור את איש או את אשה ומת סקול יסקל השור ולא יאכל את בשרו ובעל השור נקי: שמות כא, כח.
 5. דבר אל בני ישראל ואמרת אליהם אדם כי יקריב מקם קרבן לה' מן הבמה מן הבקר ומן הצאן תקריבו את קרבנכם: ויקרא א, ב.

I Continued discussion re: role of אפוטרופוס in payment for זקין

a כופר (if שור kills a person) but do not pay מיטב from אפוטרופוס: ברייתא

- i *Analysis*: seems to follow opinion that כופר = כפרה (for owner of animal that killed)
- ii *Suggestion*: perhaps it is only ר' ישמעאל בנו של ריב"ב who holds that position, since he reads v. 1 as מזיק דמי
- iii *Rejection*: even רבנן agree that כופר = כפרה, but say, based on vv. 1-2, that we value based on זיק
 - 1 *Tangential story*: ר"נ to ר' אחא בר יעקב רבא praised רבא when he came to visit ר"נ, he asked him:
 - (a) How do partners (that co-own an ox that killed) pay כופר?
 - (i) *Cannot be*: כופר for each, as there is only one כופר to be paid
 - (ii) *Cannot be*: ½ כופר for each, as each person requires atonement
 - (b) While thinking about it, he asked him whether the ב"ד seizes moneys of כופר
 - (i) *Is it*: akin to אשמות (that are so severe, we assume he'll pay and don't seize)
 - (ii) *Or, is it*: significantly distinct insofar as he's paying a fellow (גבוה) and akin to ערכין (ממשכנין)
 - (iii) *Alternatively*: is it significantly distinct insofar as he did nothing; his property did ... ממכשנין?
 - (c) ר"נ didn't answer the latter, as he was still working on the former question

b ברייתא: role of שומר in paying ½ damages/full damages

- i *if*: A borrowed an ox under assumption of him being a תם and he proves to be מועד (and damages)
 - 1 *ruling*: owner pays ½ damages, שואל pays ½ damages
 - 2 *challenge*: שומר can claim that he didn't borrow a "lion" (with requirements to guard it etc.)
 - 3 *answer*: case is where he recognized that it was violent (just didn't know that it had done so 3 times)
 - (a) *challenge*: שומר can claim that he borrowed a תם (less restraints needed), not a מועד
 - (b) *answer*: owner can counter that, in any case, he would have to pay ½ damages (if, as תם, it attacked)
 - (i) *challenge*: שואל can claim that, if it were a תם, it'd be paid מגופו (no loss to שומר)
 - (ii) *answer*: owner can counter that, in any case, the שומר would have to return an ox (so he'd lose anyway)
 1. *challenge*: שומר can claim that, had it been תם, he could've admitted to it and been exempted (ח"נ קנס)
 - a. *note*: even the position of ח"נ ממון – שומר could've hid the animal and evaded payment
 2. *answer*: case where ב"ד had already seized the animal
 3. *challenge*: if so, why does owner pay ½? He can claim that שואל has given it to a non-litigant?
 - a. *Answer*: שומר counters that in any case, he'd have to pay העלייה
 - i. *Note*: this is only meaningful if the owner has other assets
 - ii. *Block*: even if he doesn't, the שומר would pay directly, as per שטבוודא דר"נ (v. 3)
- ii *if*: it became מועד while in possession of שואל and he returned it (and it attacked)
 - 1 *ruling*: owners pay ½ and שואל is exempt
 - 2 *note*: in this clause, we rule רשות משנה – but not in the first clause?
 - (a) *Answer1* (ר' יוחנן): it is split
 - (b) *Answer2* (רבה): 1st clause is רשות אינה משנה, so too 2nd clause – reason: borrower has no rights of העדאה
 - (c) *Answer3* (ר' פפא): 2nd clause is רשות משנה, so too, 1st clause – reason: wherever it goes, bears name of owner

II End of ד' משנה: a "toro" is exempt from being killed, as per v. 3 (only if he gores on his own, not if he's trained to do so)

a Question was asked: can such an ox be brought as a קרבן?

- i *דב*: permissible – since it is אנוס (supporting ברייתא)
- ii *שמואל*: forbidden – it was used for a sin
- iii *challenge*: ברייתא (from ת"כ) that reads v. 4 as invalidating categories of animals from מזבח:
 - 1 ש"ש explains need for mentioning both נוגח and רובע – because each has qualifications not shared by other
 - (a) *אנוס* is no exemption, ונגח (→ doesn't this support ר?; no, stated vis-à-vis execution)
 - (b) *נוגח*: כופר pays (but not רובע)
 - (i) *scenario 1* (אב"י): there was רביעה and she was killed in ב"ד on account of the animal
 - (ii) *scenario 2* (רבא): the animal killed via רביעה – כופר because there was no intent to harm (just הנאת עצמו)
 1. application of dispute: רגל that kills a baby – only according to אב"י is כופר paid