

20.4.08

43a (ארשב"ל) → 44a (כי קאמרי הכא כרבי)

1. אם עבד יגח השור או אמה קסוף שלשים שקלים יתן לאדניו והשור יסקל: שמות כא, לב
 2. ואם שור נגח הוא מתמל שלשם והועד בבגליו ולא ישמרנו והמית איש או אשה השור יסקל וגם בעליו יומת: שמות כא, כט
 3. אם פקר יושת עליו ונתן פדיון נפשו ככל אשר יושת עליו: שמות כא, ג
 4. או בן יגח או בת יגח כמשפט הזה יעשה לו: שמות כא, לא

I Parameters of liability for שור killing a slave

- a ר"ל: if he kills unintentionally – exempt from payment of 30 as per sequencing of v. 1 – only if השור יסקל is there שלשים
- b (corollary) רבה: if an ox kills a freeman unintentionally – no כופר as per sequencing of v. 1 – only if השור יסקל is there כופר
- i Challenge (אב"י): ruling that if someone admits that his ox killed (person or animal) – liable
- 1 Meaning: payment of כופר (i.e. even when ox isn't killed)
 - 2 Answer: means דמים
 - (a) Challenge: end of ruling – if he admits that his ox killed an עבד, exempt – but if it's דמים, why the exemption?
 - (i) Answer: (could've answered סיפא קנס, רישא דמים, but that's a stretch, so...); both are דמים
 1. In re: בן חורין, that if he were to admit, he would pay כופר (if there was testimony to the killing but no clarity if תם/מועד and he admitted that it was מועד, he'd pay כופר), he pays עצמו דמים
 2. In re: עבד, that if he were to admit it, he would **not** pay כופר (קנס) – he doesn't pay עצמו דמים
 - (ii) Challenge (ר' שמואל בר יצחק): ruling that בן חורין: עבד (ר' שמואל בר יצחק) means: כופר (דמים) and מיתה (דמים)
 1. Answer (either himself or רבה): means: כופר::קנס (with intent); דמים::דמים (without intent) (all – with עדים)
 2. Challenge (רבא): if so, unintentional אש should also be liable for דמים
 - a. Note: רבא knows that there is no liability:
 - b. Possible source: ruling that if someone lights a גדיש and an עבד is tied to – exempt –
 - i. Rejection: that's due to קלב"מ, as he lit the body of the slave
 - c. Rather: from ברייתא that contrasts אש/בור, אש, that אש pays only for לו ראו, omitting בכוונה, omitting
 - i. Rejection: perhaps the תנא didn't list all distinctions (תנא ושייך)
 - d. Rather: רבא posed the question himself
 - i. Argument con: since שור pays כופר (if intentional), liability for דמים (unintentional) – not אש
 - ii. Argument pro: since שור pays דמים (unintentional), same for אש – תיקו
- c (v. 3) extends to unintentional death (contra רבה) אם כופר: ר' יוחנן
- i Challenge (אב"י): if so, v. 1 should also extend to unintentional killing of slave (contra ר"ל)
- 1 Answer: indeed, ר' יוחנן interprets עבד that way;
 - 2 However: ר"ל distinguishes – key phrase in v. 1 isn't written in re: תשלומין, key phrase in v. 3 is

II Analysis of next clause in משנה – liable for כופר when killing children as well as adults (v. 4)

- a Challenges:
- i Just as there is no distinction when a person hurts an adult or a child, similarly when an animal attacks
 - ii ק"ו – in re: interpersonal violence, we distinguish between קטנים/גדולים as actors, but not as victims
 - 1 Then: certainly in re: attacks by שור, where we don't distinguish between קטנים/גדולים as actors, no diff. as victims
 - iii Answer: interpersonal attacks carry 5 types of payment, unlike שור באדם → text needs to explicitly equate גדולים::קטנים
 - 1 Note: this only teaches parity in re: מועדין; how do we know that the same applies to תמים?
 - (a) Answer: since we don't distinguish between אשה::איש in re: סקילה, same parity applies to ונתן
 - (b) Additionally: ק"ו; if adults, who are liable for נזקין, all generate liability if killed; certainly קטנים (who are always exempt) generate liability upon their death.
 - (c) Challenge: we don't use ק"ו to be stringent on the קל (תם)
 - (d) Additional challenge: the ק"ו can be challenged, since adults are בני מצוות
 - (i) Ergo: text states יגח או בת יגח – equating them for תם ומועד, for injury and death.