

20.5.04

48b (משנה ד') → 49b (דליתיה בחצירו דלא קנה)

1. ויאמר אברהם אל נעריו שבו לכם פה עם החמור ואני והנער ילכה עד פה ונשתחוה ונשובה אליכם: בראשית פרק כב פסוק ה
 2. וכי יצו אנשים ונגפו אשה הרה ויצאו ילדיה ולא יהיה אסון ענוש יענש כאשר ישית עליו בעל האשה ונתן בפללים: שמות פרק כא פסוק כב

- I דמי וולדות in re: משנה ד'
- a If: a שור intends to hurt another and instead strikes a woman, causing a הפלה, exempt from וולדות
 - i Note: even if he intended to the woman, he is exempt, as per v. 2 (שוורים, אנשים); mentioned her for parallel constr.
 - ii Note (ר"פ): if a שור hit a שפחה, causing a הפלה, he is liable – as per v. 2, they are considered (for this) as donkeys
 - b However, if: a man intends to hurt his fellow and strikes a woman, causing a הפלה, he is liable for וולדות
 - i Method of calculation: ("דמי וולדות" in משנה means וולדות דמי as well as וולדות (שבח וולדות))
 - ii ת"ק differential between her value before giving birth and afterwards
 - 1 challenge (רשב"ג): her value goes up afterwards!
 - iii דשב"ג estimate the value of the potential וולדות (ברייתא supporting each explanation)
 - 1 explanation of their dispute: ת"ק's position is that we estimate her loss of value as a non-pregnant woman
 - 2 דשב"ג
 - (a) דבה she gains in value; rather, we estimate the value of the וולדות and give to בעל
 - (b) דבא she also has a stake in her weight-gain; rather, we give דמי וולדות but שבח וולדות is split
 - (i) note: the ברייתות are at odds- according to 1st, she gains after birth; according to 2nd, she loses
 - (ii) answer: if 1st birth, she gains after (we don't know if she would live), later births, she loses value
 - (iii) note: ת"ק's position (שבח וולדות בעל ת"ק) inferred from extra word הרה (v. 2) → שבח הריון לבעל
 - 1. דשב"ג הרה teaches that there is no liability unless she is struck in that area (not, e.g. on a hand or foot)
 - c recipient:
 - i if father is alive: to father (of וולדות)
 - ii if no father alive: to his heirs (not to her)
 - iii if: she was a שפחה who was subsequently freed or a גיורת – no liability
 - 1 דבה only exempt if the damage happened during the גר's life and then he died
 - (a) but: if he was already dead, she gets the וולדות דמי
 - 2 דחסדא exemption holds even if he was already dead – the תורה never granted the woman וולדות דמי
 - (a) challenge (to דבה): ruling re: וולדות – if she was a גיורת – "זכה"
 - (i) answer1: same as משנה – only applies if the גר was alive at time of damage and then died
 - (ii) answer2: read "זכתה"
 - 3 suggestion: this issue is a מחלוקת תנאים – if a ישראל married a גר and she was hurt after his death: (liable/exempt)
 - (a) suggestion: according to רבה, it must be מחלוקת תנאים (and he supports liability)
 - (b) however: ר' חסדא needn't accept it as מח' תנאים – rather, רבנן 1, רשב"ג (in re: וולדות (שבח וולדות))
 - (i) question: according to רשב"ג, she even has ½ (of שבח וולדות) while he is alive
 - (ii) answer: indeed – however, after his death, she collects all of it
 - (c) alternate answer for ד"ח both are רשב"ג; 1 ברייתא is in re: דמי וולדות (exempt); the other in re: שבח וולדות (liable)
 - (i) suggestion: perhaps רשב"ג would give her all of דמי וולדות after his death (as he does with שבח וולדות) and רבנן would agree to give her full collection after his death (they only disagree when גר is alive)
 - 1. rejection: only רשב"ג allows - and only שבח וולדות, which she has a stake in even while he's alive

II Related question: seizing שטרות of a גר (who died)

 - a Argument: since his intent isn't the שטר but the land associated with it – and he also hasn't seized the land → קנין no
 - b Or: perhaps he intends the שטר as well (and he has taken possession of it, at least the material of the שטר)
 - i Answer (ר' נחמן): he certainly isn't interested in the שטר qua שטר (→ קנין no)
 - ii Response (ר' ייבא סבא – the petitioner): perhaps he does want the material (as a cover, e.g.)

III Related question: seizing a משכון held by – or owned by – a גר

 - a If: it's held by a גר and another ישראל (not the לויה) seizes at upon his death – no seizure; the שעבוד is lifted at his death
 - b If: it's owned by a גר, the seizure is only valid above and beyond value of loan (kept by מלווה)
 - i Question: why isn't rest acquired to מלווה via חצר קנין חצר? (שלא מדעתו)
 - ii Answer: (שלא מדעתו) חצר קנין חצר only works if owner is present, such that he could've been קונה (actively) - הלכה