

20.7.8

71a (גנב וטבח ביוה"כ) → 72b (כי קא מחייב - כגון ששחט מקצת סימנין בחוץ וגמרן בפני) →

1. כי יגנב איש שור או שׁה וטבחׁהו או מקרו חמשה בקר ישלם תחת השור וארבע צאן תחת השׁה: שמות כא, לו
 2. ושמרתם את השבת כי קדש הוא לכם מחלליה מות יומת כי כל העשה בה מלאכה ונכרתה הנפש ההוא מקרב עמיה: שמות לא, יד

I Analysis of 4th example in ' משנה ב' – slaughtering on יוה"כ still carries liability of וחמשה

- a Challenge: even though there is no חיוב מיתה (for מלאכת יוה"כ), there is חיוב מלקות ומשלם → should be טור
- i Answer: follows ר"מ : לוקה ומשלם
- ii Challenge: if so, why not apply to שבת (where there is חיוב מיתה)?
- 1 Proposed answer: ר"מ accepts לוקה ומשלם but not מת ומשלם
 - 2 Rejection: ר"מ (contra רבנן) explicitly holds liability for טביחה on שבת (as well as טביחת שור הנסקל and לע"ז טובח לע"ז)
 - (a) Block: that case was explained as being one where the גנב appointed another to slaughter for him
 - (b) Challenge: why should one person sin (the slaughterer) and another (גנב) be liable?
 - (i) Answer1 (רבא): juxtaposition (v. 1) מכירה: טביחה → just as מכירה is via אחר (buyer), so too טביחה may be
 - (ii) Answer2 (תנא דבי ר"י): או extends and includes שליח as generating liability
 - (iii) Answer3 (בי חזקיה): תחת extends and includes שליח as generating liability
 - (c) Challenge: how can there be a case where doing something yourself carries no liability but doing it via an agent does generate liability
 - (i) Answer: the exemption if done by the גנב is procedural – קלב"מ and doesn't reflect a real exemption
 - (d) Challenge: if that case was where an agent was slaughtering, why do רבנן exempt (all 3 cases)?
 - (i) Answer1: ר"ש – "רבנן" are שח"ט – inappropriate שח"ט isn't considered שח"ט
 1. block: his opinion only holds vis-à-vis שור הנסקל and לע"ז טובח, but not for שבת:
 - a. שח"ט: even though he is חייב (מיתה/כרת) שוחט בשבת ויה"כ
 - b. Answer: holds like ר"י הסנדלר מעשה שבת: "קדש" (אסורין) as per v. 2: If someone cooks on שבת
 - i. בשוגג, he may eat (right away), if במזיד, he may not eat
 - ii. בשוגג, he may eat after שבת, if במזיד, he may never eat
 - iii. בשוגג, others may eat after שבת, if במזיד – no one may ever eat of it
 - iv. Note: it isn't אסור בהנאה, as per "לכם"
 - v. Note: only applies to מזיד, as per "מחלליה"
- b Tangential discussion: status of מעשה שבת from איסור אכילה (according to ר"י הסנדלר) (dispute between אחא ר' רבינא/אחא ר' רבינא)
- i One says: דאורייתא, as per v. 2
- ii Other says: קודש היא – דרבנן – קודש שבת, not its products
- 1 Challenge: if שח"ט is מה"ת, מותר באכילה מה"ת, why do רבנן exempt אחר שח"ט?
 - 2 Answer: their exemption is only re: first two on list (שור הנסקל and לע"ז טובח לע"ז)
 - (a) Question: why does ר"מ hold liability for לע"ז טובח לע"ז?
 - (i) Explanation: the minute he begins slaughtering, it's אסור בהנאה; rest isn't owner's?
 - (ii) Answer: case where he declares that he is only worshipping at conclusion of שח"ט
 - (b) Question: why does ר"מ hold liability for שור הנסקל?
 - (i) Explanation: since it's אסור בהנאה, it doesn't belong to owner?
 - (ii) Answer: case - owner gave animal to שומר, in whose care he killed, was judged and sentenced to die
 1. and: ר"מ holds like ר"י (above) – in such a case, if the שומר returns it, that is חזרה (exempt)
 2. and: ר"מ holds like ר"ש that causing a loss of money (e.g. stealing קרשים for which the owner took אחריות and will have to replenish if gone) carries liability
- c question: how can משנה be presented as ר"מ (contra ר"ש) where ר"ש dissents at the end → he agrees with earlier rulings
- i answer: he agrees with immediately prior ruling (slaughtering to feed animals or for medicinal purposes)

- II analysis of 5th example – if he stole father's and then slaughtered and then father died – liable
- a *question* (ר' נחמן → רבא): if he stole and slaughtered an animal owned by partners and admitted (פטור מקנס) to 1 of them:
- i *do we say*: v. 1 finds liability for 5 times – not 5/2 times (5 halves) or do we allow for such half-liability?
- 1 *Answer1*: only pay when full liability
- (a) *Challenge*: our משנה – since father died, there is only partial liability (he is also an heir)
- (b) *Answer*: case is where father was alive at the גמר דין
- (c) *Block*: if so, why not mention that in 'ד משנה, where he is exempt since father died before טביחה ומכירה
- (i) *Answer*: also true; written that way for parallel construction with our משנה
- 2 *Answer2* (the next day): liability also for 5 halves
- (a) *note*: difference from 'ד משנה, where he is exempt: in our case, the slaughter was done fully באיסור
- III analysis of 9th example – if he stole and slaughtered בעזרה חולין – still liable for 4/5
- a ר' חביבי (ר' אשי to): infer from here that שחיטה only “occurs” at end
- i *argument*: otherwise (if שחיטה is judged as a sequential process), when he begins, it's already prohibited (as חולין בעזרה) and then it isn't the owner's animal that he's slaughtering (→ no 4/5)
- ii *block 1*: only liable for that first bit
- 1 *rejection* (ר' אשי): implies liability for full animal, rather:
- iii *defense*: case where he slaughtered some of it outside and finished inside
- b *note*: some read this discussion as taking place around יוחנן's opinion that שחיטה is a sequential process
- i *observation*: according to ר' יוחנן, the prohibition of בעזרה חולין must not be מה"ת, else he couldn't agree with liability for 4/5 in our case
- ii *block 1*: only liable for that first bit
- 1 *rejection* (ר' אשי): implies liability for full animal, rather:
- iii *defense*: case where he slaughtered some of it outside and finished inside