

20.7.10

73b (בבא הרוג בגליו) → 74b (אמר רבא: עדים שהוכחו ולבסוף הוזמו)

7. וכי יכה איש את עינו עבדו או את עין אמתו ושחטה לחפשי ישלחנו תחת עינו: ואם שן עבדו או שן אמתו יפיל לחפשי ישלחנו תחת שנו: שמות כא, כו-כו

- I Dispute זוממים whether רבא/אביי the *hachsha*, followed by *hazma*, carries liability for עדים
- a רבא: there is liability – the *hachsha* is simply the beginning of the *hazma* process
- i *proof*: ברייתא – if set #1 testified that master blinded slave **then** knocked out his tooth – which master prefers (?) – and they prove to be זוממין – they pay the slave the value of his eye
- 1 *Questions* (if we read the ברייתא straight, as having only 2 sets of witnesses):
 - (a) Once the slave has been freed, why pay him the value of his eye?
 - (b) They should be paying the entire value of the slave to the master
 - (c) What is the meaning of “הרב אומר כן” (i.e. the master prefers it this way)?
 - 2 *Interpretation #1* (רבא): there were 3 sets:
 - (a) 1st set: first he knocked out his tooth, then blinded him (greater payment to newly-freed slave)
 - (b) 2nd set: challenge (w/o *hazma*) 1st set and reverse order – to master’s benefit (minimal payment for tooth)
 - (c) 3rd set: are מזים 2nd set, who tried to deprive slave of greater payment (for eye)
 - (d) *implication*: ה*hachsha* (of 2nd set on words of 1st set) is the beginning of process of *hazma*
 - 3 *interpretation #2* (אביי): there were only 2 sets
 - (a) 1st set: master first blinded, then knocked out tooth
 - (b) 2nd set: are מזים 1st (עמנו הייתם), but testify that on a different day, both happened – in reverse order
- b אביי: no liability – once they’re challenged, they’re invalidated and off the “track of *hazma*”
- i *proof*: סיפא of that ברייתא employs “reversal and *hazma*”:
- 1 1st set testifies that master first knocked out tooth **then** blinded (preference of עבד) and they are מזום
 - 2 *ruling*: pay value of eye to master
 - 3 *question*: (if 2nd set - מזימים – don’t testify to any harm) – should pay value of entire slave to master
 - 4 *interpretation #1* (אביי): must be 2 sets; both of whom admit to harm (dispute is sequence)
 - (a) *and*: they reversed order while being מזים first set
 - (b) *note*: 2nd set must testify to an earlier date for damage; else they should pay entire value to master
 - (c) *and*: there must have already been העמדה בדין (then he fled and these עדים came into the picture)
 - 5 *interpretation #2* (רבא)
 - (a) *note*: this must be his source, since רישא isn’t analogous, since 1st set was מוכחש and 2nd set מזום
 - (b) *since*: רישא is understood as involving 3 sets, so must סיפא be understood:
 - (c) 1st set: testified to tooth **then** eye – and they ruled based on this testimony (גמר דין)
 - (d) 2nd set: reverse order (no payment for overage of eye over tooth)
 - (e) 3rd set: are מזים 1st set – who then pay value of eye to master
 - (f) → ה*hachsha* is the beginning of *hazma* (and we don’t exclude מוכחשים from the process of *hazma*)
 - 6 *retort* (אביי): even if רישא must be interpreted as 3 groups (due to הרב אומר כן), no need to interpret סיפא that way (עבד אומר כן – he’s happy just to go free)
- c *Challenge* (ר' זביד): entire ברייתא is difficult – there should be no payment to slave, regardless of sequence – just go free
- i *Retort* (אביי): v. 1 stipulates that he goes free for either שן or עין – not for both (2nd one is normal tort)
- d *Proposed support for רבא*: our משנה – מוכחה/מכירה – מוזמים, עדי גניבה וטביחה/מכירה – מוזמים, pay entire 4/5
- i *and*: since they were מזום on גניבה (presumably first), they were already מוכחש, why pay for טביחה
 - ii *rather*: must be that ה*hachsha* doesn’t remove them from process of *hazma* or liability thereof
 - iii *rejection*: case could be where they were מזום for טביחה first – no ה*hachsha* on גניבה
- e *note*: dispute in בבבא (רבא/אביי) parallels earlier dispute in ר"א/ר"י א"י
- i *we assume*: ר"א is the one who maintains that ה*hachsha* cannot turn into *hazma*
 - ii *proof*: ר"א rules that עדים who are disproven regarding a murder get מכות (for לא תענה no)
 - iii *And*: if they could have been liable for *hazma*, it would be ב"ד לאו הניתן לאזהרת מיתת ב"ד (ה*hazma*) – why believe 2nd set?
 - 1 *Question*: why give them מכות – since it’s 2 vs. 2 (*sans hazma*) – why believe 2nd set?
 - 2 *Answer*: case where supposed murder victim walked into court