

20.8.2; 84b (צער) → 85b (בושת – דרק ליה באמיה) → 85b

1. אם יקום והתהלך בחוץ על משענתו ונקה המכה רק שבתו יתן ורפא ורפא: שמות פרק כא פסוק יט  
 2. כויה תחת כויה פצע תחת פצע חבורה תחת חבורה: שמות פרק כא פסוק כה

- I צער (payment #2 in משנה);
- a includes even pain without damage (even burning his fingernail)
    - i Proposal: follows בני-עזאי *contra* רבי in interpreting v. 2
      - 1 כויה בני עזאי (a burn – implying damage not necessarily involved) is stated first
      - 2 רבי חבורה (a wound – implying damage) is (understood to have been) stated first
        - (a) Interpretation #1:
          - (i) חבורה בני עזאי implies a wound; כויה modifies it to include even mere pain
          - (ii) כויה דני implies no wound; חבורה modifies to limit to a case where there's a wound
        - (b) Challenge (ר' פפא): opposite should be understood from their words:
        - (c) Interpretation #2:
          - (i) כויה דני is stated first, implying a burn with a wound; חבורה implies that the כויה was w/o wound
          - (ii) חבורה דני is stated first, implying that כויה was w/o a wound; כויה clarifies that it is only with a wound
          - (iii) And: the statements recorded above reflect the conclusive status of each דרשה
        - (d) Or:
          - (i) All agree: כויה implies a burn, even without a wound; disagreement is in re: interrupted כולל ופרט (פצע)
          - (ii) דני: not read as כולל ופרט → כויה not limited to חבורה (→ רבי is author of our משנה)
          - (iii) דני: read as כולל ופרט → כויה limited to חבורה (→ דני isn't in sync with our משנה's ruling)
    - b Method for estimating payment for צער – we estimate how much someone would accept to be hurt this way
      - i Proposal #1: estimate how much someone would accept to have their hand removed (e.g.)
        - 1 Challenge: in such a case, they receive all 5 categories of payment (and we aren't dealing with fools...)
      - ii Proposal #2: estimate how much someone would accept to have their already-useless hand cut off
        - 1 Challenge: in such a case, there is also בשת (having their flesh fed to the dogs)
      - iii Proposal #3: estimate how much one whose hand is "sentenced" to be cut of would accept to have it done painfully
        - 1 Challenge: a person wouldn't take any amount in such a case
      - iv Final proposal: estimate how much someone would pay the government to use a painless method
- II רפוי (payment #3) - continues paying if further complications (result of wound); once fully healed – no more payments
- a ברייתא: if he developed ulcers as a result of the wound, the attacker must continue to pay medical bills
    - i Loss of wages
      - 1 ת"ק: must pay (anytime there's liability for רפוי, there's liability for שבת)
      - 2 ר' יהודה: needn't pay, even if caused by wound
      - 3 רבנן: if he isn't liable for שבת, he isn't liable for רפוי
    - ii Reason for dispute:
      - 1 רב's students: whether the victim has the right to wrap his wound (for warmth), leading to ulcers
        - (a) ר"י: only רפוי, which has doubled language (v. 1) is included; שבת חכמים equate רפוי via היקש
      - 2 רבה: if he isn't allowed to wrap it, all would agree that even רפוי isn't included
        - (a) Rather: dispute is whether he can wrap it excessively (as above)
          - (i) ר"י reads "רק" as breaking היקש
          - (ii) רבנן: "רק" is there to address ulcers that grew as a result of some other cause, besides wound (פטור)
          - (iii) ר' ישמעאל (רפא ורפא – to permit doctors to heal) דבנן בתראי (who exempt) reason for doubled wording
    - b ברייתא: ר' יוסי בר יהודה; ברייתא ת"ק: ת"ק in first ברייתא; ר' יוסי בר יהודה uses רק to exclude either שבת (like his father) or even רפוי (like רבנן)
      - i Note: רק excludes ulcers caused by something else via רק
        - 1 Challenge: no need for a פסוק if it was caused by something else
        - 2 Answer: exclusion needed for case where victim didn't follow doctor's instructions
    - c Assorted rulings in re: רפוי
      - i Victim: has right to demand another doctor (not attacker) nor one from afar or one who is "economic"
      - ii Attacker: has right to demand that victim use money for approved doctor
- III Source for notion that רפוי is paid in addition to נזק - vv. 1 or 2 (which are also used for other דרשות)
- a Implication: each of these payments could occur without נזק:
    - i צער (as above); רפוי – if מזיק brought him a medicine that further inflamed wound; שבת – if he held him captive (so that he couldn't work); בשת – if he spit in his face