

20.8.3

85b (שבת) → 86b (דמיכלמו ליה ומיכלם)

1. וכי יהיה איש שגנא לרעהו וארב לו וקם עליו והכהו נפש ומת ונס אל אחת הערים האל: דברים פרק יט פסוק יא
 2. כי ינצו אנשים יחדו איש ואחיו וקרבה אשת האחד להציל את אישה מיד מכהו ושלחה גדה והחזיקה במבשיו: דברים פרק כה פסוק יא

I Analysis of 4th category of payment – שבת

- a Rule of משנה – we imagine him to be a watchman (of a cucumber field) – since he's already been paid נזק
- b **ברייתא**: repeats rule of משנה, arguing (as משנה) that since he's already been paid נזק, there is no inequity in the reparation
- i רבא: שומר קישואין is per lost hand; estimate lost wages based on new, limited ability (in addition to נזק):
- 1 If his hand was cut off: שומר קישואין
 - 2 If his leg was broken: a guard (who remains in one place)
 - 3 If he was blinded: a miller (who can work without sight)
 - 4 If he was rendered a deaf-mute: pays for his entire worth (דמי כולו)
- ii רבא: if one of 1-3 happened, he wasn't yet assessed and then the מזיק caused him to become חרש – what is ruling?
- 1 Do we pay separate צער ובושת for each incident, or just one payment for final צער ובושת (when made him חרש)
 - 2 **תיקו** - If we claim that separate צער ובושת are paid; what if he was assessed (but not paid)?
- iii רבא: if he caused a temporary disability, must he pay נזק (as well as שבת)?
- 1 *For instance*: if he hurt the fellow's arm, it is temporarily unusable but will be restored to full strength
 - 2 *Proposed proof*: if someone hurts parents without חבורה or causes חבורה on יוה"כ – is liable for all 5 (no "קלב"מ)
 - (a) Isn't this a case of temporary disability? (and ruling – pays all, including נזק)
 - (b) *Rejection*: case is where he caused the ניזק to become a deaf-mute
 - (i) *Block*: a wound causing deafness in parents generates חיוב מיתה – impossible without a wound
 - (c) *Rather*: refers to case where the מזיק shaved the ניזק (temporary, without חבורה)
 - (i) *Block*: that is exactly our question
 - (d) *Rather*: he used a depilatory – causing him:
 - (i) **צעד**: caused pocks on his head
 - (ii) **שבת**: he worked as a "clown" and couldn't do so until he healed
 - (iii) **דמי**: needed to have this healed
 - (iv) **גשת**: nothing could be more embarrassing - 3 *note*: this question of רבא was clear to אבבי and רבא – with opposite results:
 - (a) *case*: if someone hurt another, temporarily rendering his hand unusable
 - (i) **אבבי**: give שבת גדולה (נזק) and שבת קטנה (שבת)
 - (ii) **רבא**: only give שבת for each day he can't work
 - (b) *related case*: if someone cut off the hand of another's עבד עברי
 - (i) **אבבי**: נזק goes to slave; שבת goes to master
 - (ii) **רבא**: all goes to slave; he buys land over which the master has פירות
 1. *note*: this dispute is only in re: case where both master and slave were affected
 2. *however*: if only slave was affected (e.g. tip of ear or nose removed) – all goes to slave

II Analysis of 5th category of payment – בשת

- a Rule of משנה – all subjective, based on victim and perpetrator
- i *Authority*: not ר"מ, nor יהודה ר' – must be ר"ש
- 1 *Explanatory ברייתא*:
 - (a) **ר"מ**: view everyone as formerly rich people, children of יצחק ויעקב
 - (b) **ר' יהודה**: as per their station
 - (i) *note*: he can't be author of our משנה, as משנה א rules that shaming a סומא → חייב & – ר"י dissents
 - (ii) *proposal*: perhaps ר"י only dissents in re: liability for a סומא (rejected based on rule of ישן in 2א:ח)
 - (c) **ר"ש**: the rich are viewed as "formerly rich" and the עניים as the lowest (least shame)
 - ii *question*: who is author of ruling – if he intended to shame a קטן and shamed a גדול gives גדול value of בושת of קטן
 - 1 *and*: if he intended to shame an עבד and shamed a freeman, pays freeman value of בשת of slave
 - (a) *can't be*: ר"מ (all equal for בושת); ר' יהודה (holds that עבדים have no בושת);
 - (b) *nor*: ר"ש - holds that בושת requires intent as per comparison with 1st degree murder (vv. 1-2)
 - (i) *answer*: could be יהודה ר' – ר' יהודה cannot receive payment for בושת, but standard can be used to assess
 - (ii) *answer*: could even be ר"מ – ר"מ aren't financial states, but adult/minor
 1. *note*: בושת could have קטן – when he is reminded of it as an adult