

20.8.4

86b (משנה א) → 87a (דכי מפקידנא אית לי אגרא טפי)

1. ולא תחוס עינך נפש בנפש עין בעין שון בשון יד ביד רגל ברגל: דברים פרק יט פסוק כא
 2. וקצתה את כפה לא תחוס עינך: דברים פרק כה פסוק יב
 3. או בכל אבן אשר ימות בה בלא ראות ויפל עליו וימת והוא לא אויב לו ולא מבקש רעתו: במדבר פרק לה פסוק כג
 4. ואשר יבא את רעהו ביער לחטב עצים ונדחה ידו בגרזן לקרת העץ ונשל הגרזן מן העץ ומצא את רעהו ומת הוא יגוס אל אחת הערים האלה וחי: דברים יט:ה
 5. ושפטו העדה בין המכה ובין גאל הדם על המשפטים האלה: במדבר פרק לה פסוק כד
 6. וזאת המצוה החקים והמשפטים אשר צוה ה' אלהיכם ללמד אתכם לעשות בארץ אשר אתם עברים שמה לרשתה: דברים ו:א

I בושת – or exemption from – cases of liability for משנה א

a Included circumstances: naked

i Note: ברייתא adds shaming in a bathhouse, noting that shaming a naked person or in the bathhouse isn't the same as shaming a clothed person in public

1 Question: what sort of shame does a naked person have?

(a) Answer: if his clothes were swept up by the wind and the perpetrator lifted them further

2 Question: what sort of shame can there be in the bathhouse?

(a) Answer: he shamed him on the riverbank (before bathing)

ii Question asked: what if A shamed B while B was asleep – and then died?

1 Lemma1: is בושת reparation for embarrassment (which B never experienced) or

2 Lemma2: if בושת payment for degradation (which happened to B nonetheless)

(a) Proposed proof: שוטה rule that a חרש וקטן have בושת, not a שוטה

(i) Implication: must be degradation, as a קטן has no shame per se

1. Challenge: if so, שוטה should also be included

2. Defense: he's already got the strongest בושת available (being a שוטה)

(ii) Block: could be shame – a קטן is shamed when later (as an adult) he is reminded of the event

iii Alternate version of question (as per ר"פ): is the issue personal shame or family shame

1 Proposed proof: as above – indicates that it is family shame (q/a re: שוטה as above)

2 Rejection: קטן could have personal shame when he is reminded of the event later in life

3 Supportive ברייתא רבי states that in some circumstances a קטן has בושת – interpreted as “when he is reminded”

b Included circumstances: blind (liability both as object and subject of shaming)

i Authorship: משנה doesn't accord with יהודה ר', who exempts the blind from shame; similarly from מב"ד מכות, מכות, גלות, מכות, מב"ד

1 Shame: by comparing vv. 1-2 (v. 2 is the key source for בושת)

2 גלות: as per dispute ר"י/ר"מ whether a blind man goes to גלות:

(a) ד' יהודה v. 3 indicates anyone who comes in to the forest – including a blind man – so בלא ראות exempts him (someone who normally sees but didn't see the victim this time)

(b) ד' ר"מ v. 4 indicates anyone who has full knowledge – excluding the blind – so בלא ראות must be including the blind (someone who never sees)

(i) ד' ר"י v. 4 is there to exclude someone who intends harm

3 עיר מקלט to רוצח: רוצח (word used both for convicted murderer and exile to חייב מב"ד)

4 חייבי מלקיות used in both רשע: רשע used in both חייבי מב"ד (already exempt) and חייבי מלקיות

ii Support: ברייתות in which ר"י exempts the blind from shaming, and:

1 From all דינים as per v. 5; compares רוצח with all משפטים (he's not liable for גלות → not liable for all משפטים)

2 From all מצוות as per v. 6 which compares מצוות: משפטים (he's not included in משפטים → not liable for מצוות)

(a) Note: ר' יוסף, who was blinded, originally was happy if anyone would tell him כר"י הלכה כר"י – he was exempt and nonetheless fulfilled מצוות; once he was told חנינא ר' חנינא's adage that someone who is obligated gains a greater reward for קיום המצוות, he was happy if someone told him כר"י הלכה כר"י → he was obligated and stood to gain a greater reward

c Included circumstances: sleeping

d Excluded categories: lack of intent

i Therefore: a sleeping person who shames is exempt

ii And: if someone falls off a roof and damages and shames – liable for damage, exempt from בושת