

20.8.7; 89a (אמר אביי טובת הנאה) → 90a (הכא נמי עבדו המיוחד לו)

1. אף אם יום או יומים יעמד לא יקם כי כספו הוא: שמות פרק כא פסוק כא

- I Tangential discussion (אביי) on topic of טובת הנאה
- a אביי: the טובת הנאה of the כתובה belongs to the woman
- i *Proof*: from earlier ruling in re: עדים זוממים – they could pay her nothing, claiming that she stood to lose nothing
  - ii *Counter*: she could claim that the טובת הנאה, which she would keep (until כתובה is settled) would be surplus income
  - iii *הלכה*: as per אביי, and the husband has no claim to the פירות of same, since חכמים only gave him פירות, not פרי פירות
- II Discussion re: תקנת אושא in light of our משנה
- a ר"פ ור"ה בריה דר"י: our משנה supports תקנת אוש
- i *Argument*: if we rejected תקנת אושא, she could sell her מלוג to pay for נזקין
  - ii *Counter*: even with תקנת אושא, she could sell her מלוג for טובת הנאה and pay him
    - 1 *Rather*: must be a case where she has no assets
  - iii *Challenge*: let her sell her כתובה for טובת הנאה to pay for the נזקין
    - 1 *Answer*: follows ר"מ who forbids living together without a כתובה
      - (a) *Block*: ר"מ's reason is to ensure that the husband won't be quick to divorce her (no financial loss)
      - (b) *However*: in this case, he won't divorce her, as the buyer of the כתובה will come to claim it
    - 2 *Rather*: טובת הנאה is considered "מילי" (insignificant) and isn't משתעבד for the debt of נזקים
      - (a) *Challenge*: since it can be sold and has a value, why can't it be used to pay for נזקין?
    - 3 *Rather*: due to שמואל's ruling that if someone sells a שט"ח (e.g. כתובה) and forgives the debt – it is forgiven
      - (a) *Objection*: let her sell it and if she forgives it, it is forgiven
      - (b) *Answer*: she will certainly forgive it and we don't want to set up a situation where the ניזק will certainly lose
      - (c) *Challenge*: why not have her sell it to the ניזק directly for טובת הנאה?
        - (i) *Explanation*: Even if she forgives it, he loses nothing, as she gave him nothing now in any case
        - (ii) *Answer*: we don't trouble the ב"ד to attend to a "non-payment"
        - (iii) *Challenge*: ruling that if she wounds her husband, she doesn't lose her כתובה – shouldn't she give it to him for (at least the price of) טובת הנאה כתובה? - if she forgives it, there is still no loss
          1. *Answer*: this ruling follows ר"מ (as above) – here, he'll certainly divorce and collect
          2. *If so*: that we don't have her pay him for נזק, all the more so that he'll divorce and collect from her
          3. *Answer*: in this case, the כתובה is far greater than the נזק (stands to lose more) (otherwise, she'd pay)
            - a. *If so*: make her sell everything above 200 זוז (כתובה מה"ת) to pay (avoids ר"מ's objection)
            - b. *Answer*: damage is little; he won't divorce to collect, e.g. 4 זוזים to lose 25 סלעים (200 דינר)
      4. *Challenge*: statement that just as she can't sell כתובה while married to him, she can't lose it
        - a. *But*: what if she has a large כתובה, as above – she'd lose anything over 200 זוז
        - b. *Answer*: that statement is in re: כתובת בנין דכרין – just as selling כתובה to others doesn't touch בנין כב"ד (since she was forced to sell due to financial stress); so, if she sells to בעל, no loss of כב"ד
- b *Suggestion*: תקנת אושא is subject to following dispute:
- i *If*: עבדי מלוג lose an eye/tooth (etc.)
    - 1 *Opinion #1*: only if struck by wife do they go free
    - 2 *Opinion #2*: in neither case do they go free
      - (a) *Assumption*: all agree that קנין פירות לאו כקה"ג (husband has קנין פירות)
      - (b) *Interpretation #1*: dispute is whether we accept תקנת אושא
        - (i) *Rejection*: all agree that we accept תקנת אושא – 1<sup>st</sup> opinion reflects law before אושא
        - (ii) *Or*: 1<sup>st</sup> opinion follows רבא ושמרור – חמק ושחרור (of the husband)
          1. *And*: 2<sup>nd</sup> opinion maintains that רבנן made husband's שעבוד "superstrong" and invulnerable
        - (iii) *Or*: all reject תקנת אושא and their dispute is in re: קנין פירות (1<sup>st</sup> opinion → לאו כקה"ג – wife is owner):
          1. If someone sells his ע"כ to another, on condition that he works for former owner for 30 days:
            - a. ק"פ לאו כקה"ג – ר' יהודה; ק"פ כקה"ג – (v. 1) יום או יומים – ר"מ
            - b. ספק נפשיות להקל and ק"פ – ר' יוסי – both have rule of יום או יומים – he is in doubt about ק"פ
            - c. ר"א – neither has benefit of rule – not fully owned (v. 1)
              - i. בעל או אשה identified as authority who grants no rights of selling עבדי מלוג to either
              - ii. ע"כ identified as authority who rules that an ע"כ owned by partners (or if he is a ½ ע"כ) doesn't leave due to ראשי אברים – as per v. 1 – must be totally owned by one