

20.8.8

90a (עלייה דמרה הוא) → 91a (משנה ר')

7. וכי יריבן אנשים והכה איש את רעהו באבן או באגרוף ולא ימות ונפל למשכב: שמות פרק כא פסוק יח

- I בושת general procedures and fine amounts for משנה ר'
- a If: he boxed a fellow's ear (or blew a horn into it?) – 1לע
- i Dissent: מנה 1 – ריה"ג citing ר' יהודה
- 1 Question: is this מנה צורי (4 סלע) or מנה מדינה (1/2 סלע)?
- (a) Answer: story of fellow who was brought before ר' יהודה נשיאה for boxing a fellow's ear; ר"י נשיאה told him to pay מנה צורי, declaring "here I am and so is ריה"ג"
- (b) Meaning1: "I am the witness and ריה"ג ruled"
- (i) Challenge: can the עד become a דיין?
- (ii) Backup: dispute re: ר"ט/ר"ע who witness a murder – even ר"ט only allows for some to testify while others judge; but all agree that אין עד נעשה דיין
- (iii) Block: perhaps that dispute was in a case where they saw the murder at night, and now are coming to rule based on שמועה – but ר"ט generally holds that אין עד נעשה דיין (and ר"י נשיאה follows him)
- (iv) Challenge: ר"ש seems to accept notion that אין עד נעשה דיין, as evidenced by his retort to ר"ש:
1. VI: ר"ש – evidence of murder must be available to witnesses and court (עדים ועדה)
- a. ר"ע: series of challenges (e.g. ב"ד cannot see the force he used) – implication that if it was done in presence of ב"ד they could testify (דיין → עד)
- b. Rather: evidence and circumstances of murder must be seen by witnesses (only)
- c. Answer: he was responding as per ר"ש's approach, but he rejects דיין נעשה דיין
2. Associated צרייתא: a שור תם that killed and damaged is only judged for נפשות, not ממונות, מועד is both
- a. But: if they judged נפשות first, they cannot then judge ממונות (damage)
- b. Reason: רב דבי רב – follows ר"ש התימני, requiring evidence to be available to court (השור נסקל)
- i. → we require ב"ד's assessment of נזק (size and strength of ox etc.)
- c. Reason: רבה (responding to them) – could follow ר"ע – if the owner fled – אין חבין לו אלא בפניו –
- i. Challenge: if he fled, how can we even judge ממונות?
- ii. Answer: if we had already accepted the עדים
- iii. However: from what assets will the ממונות be collected?
- iv. Answer: we use the ox for work and use that to pay
- v. Implication: work of the ox is considered מיטב (and not שור של שור) → cannot be used to pay for נזקי תם (only מגופו)
- (c) Meaning2: "I agree with ריה"ג" (and there are other witnesses)
- b If: he slapped him – 200 זוז
- c If: he slapped him with the back of his hand – 400 זוז
- d If: he tugged on his ear, pulled his hair, spit at him (and the spittle reached him) or uncovered a woman's hair in the market place – 400 זוז
- e Rule of thumb: all is dependent on the position of the victim
- i Dissent: ר"ע – even poorest should be seen as formerly wealthy people, since they are children of יעקב ויעקב אברהם, יצחק ויעקב
- ii Story: fellow uncovered a woman's hair in the שוק, ר"ע fined him 400 זוז; fellow proved that she wasn't careful about keeping her hair covered, but ר"ע pointed out that a person, though he may not do so, if he hurts himself is exempt, but others who hurt him are liable
- 1 Note: if a person chops down his own trees – which he may not do – he is still exempt, 'tho others are liable