

23.8.3

71a (משנה ג') → 72a (רע להם ורע לעולם)

1. וְאֵת כָּל שְׁלָלָה תִּקְבֹּץ אֶל תּוֹךְ רִחְבֵּהּ וְשָׂרְפָתָהּ בְּאֵשׁ אֶת הָעִיר וְאֵת כָּל שְׁלָלָה כְּלִיל לֵה' אֱלֹהֶיךָ וְהֵיטָה תֵּל עוֹלָם לֹא תִבְנֶה עוֹד: דְּבָרִים יג, יז
2. לֹא תִעָשׂוּן כֵּן לֵה' אֱלֹהֵיכֶם: דְּבָרִים יב, ד
3. וְרָאָה אֶת הַנֶּגַע וְהֵנָּה הַנֶּגַע בְּקִירֹת הַבַּיִת שֶׁקְעָרוּת יִרְקַרְקַת אוֹ אֲדַמְדַּמַּת וּמְרָאִיהֶן שֶׁפֶל מִן הַקִּיר: וַיִּקְרָא יד, לו
4. וְתִפְשׂוּ בוֹ אָבִיו וְאִמּוֹ וְהוֹצִיאוּ אֹתוֹ אֶל זִקְנֵי עִירוֹ וְאֶל שַׁעַר מִקְדָּמוֹ: דְּבָרִים כא, יט
5. וְאָמְרוּ אֶל זִקְנֵי עִירוֹ בְּנֵנוּ זֶה סוֹרֵר וּמְרָה אֵינָנוּ שֹׁמְעֵי בְּקִלְנוּ זוֹלֵל וְסָבָא: דְּבָרִים כא, כ
6. וְלִקְחוּ זִקְנֵי הָעִיר הַהוּא אֶת הָאִישׁ וְיִסְרוּ אֹתוֹ: דְּבָרִים כב, יח
7. כִּי יִהְיֶה לְאִישׁ בֶּן סוֹרֵר וּמְרָה אֵינָנוּ שֹׁמְעֵי בְּקוֹל אָבִיו וּבְקוֹל אִמּוֹ וְיִסְרוּ אֹתוֹ וְלֹא יִשְׁמַע אֲלֵיהֶם: דְּבָרִים כא, יח
8. וְהָיָה אִם בֶּן הַכּוֹת הִרְשָׁע וְהִפִּילוּ הַשֹּׁפֵט וְהַכְּהוֹ לִפְנָיו כְּדֵי וְשָׁעֲתוּ בְּמִסְפָּר: דְּבָרִים כה, ב

- I בס"מ parameters of theft and consumption that generate liability for משנה ג'
- a Only if: he steals of his father's money and devours it in someone else's property
- i Reason: only his father's property is available for ongoing theft;
- 1 And: he's only "uninhibited" away from home
- b ד' יוסי ב"ר יהודה must steal from both father and mother
- i Question: how does mother own anything independently?
- 1 Answer1 (ר' יוסי ב"ר חנינא): if he steals from a feast prepared for both parents
- (a) Challenge; ruling (above) that he must buy both meat and wine at low price
- 2 Rather (answer1 modified): if he steals from moneys set aside for feast prepared for both parents
- 3 Answer2: if someone gave his mother money on condition that father has no access to it
- II ב"ד requirement of both parents' agreement to bring him to משנה ד'
- a ב"ר יחודה: if mother wasn't "fit" for father, son cannot be בס"מ
- i Meaning of אינה ראויה: cannot mean illegitimate relationship – they are still his father and mother
- ii Rather: aren't equal in height, voice and appearance (supporting ברייתא)
- 1 Source: v. 4 describes "our voice"
- (a) And: since the תורה requires the same voice, it must also require מראה וקומה
- b Observation: opinion that בס"מ is purely theoretical may be authored by ר' יהודה – who has impossible prerequisites
- i Or: ר"ש, who says so explicitly, amazed that we would kill someone for gluttony
- ii In any case: purpose is to study and receive reward
- 1 Dissent (ר' יונתן): testified to having sat on the grave of a בס"מ
- c Parallel observation: עיר הנדחת is purely theoretical - must follow ר"א:
- i ד"א: if there's even one מזוזה in town, cannot be עיר הנדחת as per vv. 1-2 –
- 1 Purpose: to study and gain reward
- 2 Dissent (ר' יונתן): testified to having sat on the ruins of an עיר הנדחת
- d Parallel observation: בית המנוגע (with צרעת) is purely theoretical – must follow ראב"ש
- i ראב"ש: must have splotch on two rocks, on two walls in the corner, 1 גריס (bean) long and 2 wide
- 1 Reason: קיר and קירות are used in v. 3 – when is a wall 2 walls? In the corner – etc.
- 2 Dissent: ראב"צ and ר"ש from עכו כפר reported on sites commemorated as places of מנוגעות etc.
- III בס"מ if one of the parents was an amputee, lame, mute, blind or deaf – son cannot be משנה ז'
- a Source: vv. 4-5, which imply grabbing him, bringing him out, speaking, pointing to him and hearing him
- i Note; this does not prove that texts are literally-read; but the entire passage is superfluous → דרשה
- b Procedure: they warn him in front of 3 and then flog him;
- i אבני should be "warn in front of 2, flog in front of 3"
- 1 Source for מלקות vv. 6-8, as per אבהו ר'
- ii If: he improves his behavior – fine
- iii If not: he is judged by 23 – but the original 3 must be there, as per בננו זה
- 1 Challenge: בננו זה was needed to exclude a blind parent
- (a) Answer: בננו זה also implies that the original 3 are there as part of the 23

- IV 37 **משנה ד**: if he fled from ב"ד and then reached זקן of פטור – הקפת זקן – פטור; if he fled after גמ"ד – liable
- a **Backdoor**: if ר' חנינא ב"נ cursed God and then converted – he is exempt
- i **Reason**: his procedure (עדה, עדים והתראה) and mode of execution (סייף → סקילה) have changed
- ii **Suggested support**: from our משנה
- 1 **Block**: in our case, if he acted this way now (after הקפת זקן) – he'd be fully exempt
- iii **Suggested counterproof**: from סיפא of our משנה
- 1 **Block**: in that case, he was already a "dead man" – after גמ"ד
- iv **Suggested counter proof**: if a ב"נ kills another ב"נ or commits adultery with a ב"נ's wife – and then converts – פטור
- 1 **But**: if he does so to a ישראל (or ערות ישראל) – still liable
- 2 **Explanation**: if we employ the reasoning of אישתני – הואיל ואשתני – he should be exempt
- 3 **Defense**: we require both procedure and mode of execution to change
- (a) **Challenge**: that defense is valid for murder – in both cases, the death is סייף
- (i) **But**: in case of נאוף, it goes from סייף to חנק
- (ii) **Defense**: נערה המאורסה here is נערה ישראל or ב"נ, he gets סקילה (as per יוחנן ר' יוחנן)
1. **Block**: the wording of the ברייתא is "if he did the same בישראל..." implying full איש
- (iii) **Rather**: a "lighter" execution is considered "included" – here he gets חנק (lighter)
1. **question**: this is only valid according to רבנן; what of ר"ש, for whom חנק is more serious?
2. **Answer**: ר"ש holds like דב"מ – תנא דב"מ – all מיתות ב"נ are חנק (as per דם האדם באדם...)
3. **Therefore**: חנק → סייף is the same (חנק) and murder is now "קלה בחמורה" (סייף → חנק)
- v **Suggested support**: rule that if a נערה מאורסה was unfaithful but became a בוגרת before coming to דין – she gets חנק
- 1 **Assumption**: the reason for no longer getting סקילה is אישתני
- (a) **And**: ק"ו in חנינא ר' חנינא's ruling, where he totally "changed" via גיור?
- (b) **Rejection**: in that ברייתא ר' יוחנן instructed תנא to modify the reading to "סקילה"
- (i) **Note**: this doesn't act as a counter to חנינא ר', as per the ק"ו above
- V **ה' משנה**: justification for execution of the בס"מ
- a **Anticipatory punishment**: better he should die innocent, rather than guilty
- i **Explanation** (**ברייתא - ריה"ג**): the תורה anticipates that he will devour his father's estate; when he can't find more money there to support his habits, he will go out to the roads and rob from others –
- 1 **So**: the תורה dictated ימות זכאי ואל ימות חייב תורה
- ii **Comment**: the death of רשעים (before they can sin more) is a benefit to them – and to the world
- 1 **But**: the death of צדיקים is bad for them and bad for the world
- iii **Parallel**: sleep and drunkenness of רשעים is a benefit for them and the world; opposite for צדיקים
- iv **And**: dispersion of רשעים is a benefit for them and the world; opposite for צדיקים
- v **But**: gathering of רשעים is bad for them and for the world; the opposite for צדיקים
- vi **And**: peace and quite for רשעים is bad for them and for the world; the opposite for צדיקים