

23.9.3

78a (משנה א) → 78b (נחמיה כ)

1. אם יקום והתהלך בחוץ על משענתו ונקה המכה רק שבתו יתן ורפא ורפא: שמות כא, יט
 2. ושמתם את השבת כי קדש הוא לכם מחלליה מות יומת כי כל העשה בה מלאכה ונכרתה הנפש ההוא מקרב עמיה: שמות לא, יד
 3. ויניחו אתו במשמר פי לא פרש מה יעשה לו: במדבר טו, לד
 4. ויניחהו במשמר לקרש להם על פי ה': ויקרא כד, יב

- I 3א liability for a murder victim who recovered then relapsed
- a If: someone struck another and the doctor's diagnosis was that it was a fatal
- b And then: he recovered; but subsequently had a relapse and died
- i חכמים liable
- ii ד' נחמיה exempt – as per the context
- 1 Source: v. 1 – דרשה ר"ר נחמיה – we wouldn't think that if the victim got better, we'd kill the perpetrator;
 (a) rather: if he recovered, the perpetrator is immediately (and permanently) exonerated
- 2 חכמים read verse as teaching that we imprison him (to see what will happen to the victim)
- (a) ד' נ' derives חובשין (holding him) from the מקושש (v. 3)
 (i) ד' נ' in that case, we knew he was מיתה (v. 2); here, we don't know if he'll have to die at all
 (b) ד' נ' (agrees, rather he derives from) מקלל (v. 4)
 (c) ד' נ' that was an unusual circumstance (הוראת שעה) (supporting ברייתא)
- iii Analysis:
- 1 ד' נ' we understand why the text alludes to 2 אומדנות –
 (a) 1: for original diagnosis that the blow was fatal and he fully recovered;
 (b) 2: for original diagnosis that it was fatal; he recovered and relapsed and died
- 2 חכמים why 2 אומדנות? Even with relapse the perpetrator is liable
 (a) 1: if they diagnosed it to be fatal and he fully recovered (exempt)
 (b) 2: if they diagnosed it not to be fatal and then he died – (exempt)
 (i) ד' נ' in that case, he's already been permanently exonerated – no need for a פסוק to exempt him
- II ברייתות:
- a if: he was assessed as mortally wounded and then improved, they reassess for monetary liability (per end of v. 1)
- i ד' נחמיה if he relapses and dies, pays per ממון
- ii חכמים there is no "2nd assessment" (i.e. liable for death)
- b If: he was diagnosed as mortal and then improved, we reassess for damages
- i But if: he was diagnosed as non-fatal and then died, we don't reassess for death
- ii And if: they assessed him to die and he improved, we reassess for financial liability
- 1 And if: he relapsed and died, we don't reassess for death; rather the צער ונוק is given to his heirs
 (a) Note: this assessment is made as per the date of the attack
- iii Note: this ברייתא, presented anonymously, follows נחמיה ר'