

23.9.4

78b (משנה ב) → 79b (ולאו בר ממונא הוא)

1. וכי יהיה איש שגא לרעהו וארב לו וקם עליו והכהו נפש ומת ונס אל אחת הערים האל: דברים יט, יא  
 2. וכי ינצו אנשים ונגפו אשה הרה ויצאו ילדיה ולא יהיה אסון ענוש יעגש פאשר ישית עליו בעל האשה ונתן בפללים: שמות כא, כב  
 3. ואם אסון יהיה ונתתה נפש תחת נפש: שמות כא, כג  
 4. ומכה בהמה ישלמנה ומכה אדם יומת: ויקרא כד, כא

## I 'משנה ב': role of intent in murder

- a If: he intended to kill one for whom he wouldn't be liable (e.g. animal, נכרי, foetus) and killed a בר חיוב – exempt
- b If: he intended a non-mortal blow but erred and it was a mortal blow (elsewhere on the body) – exempt
- i Parallel: if he intended a mortal blow, erred and it hit him where it should not have been mortal but he died - פטור
- c if: if he intended a non-mortal blow to a גדול, but erred and it killed a קטן – exempt
- i parallel: if he intended mortal blow to a קטן, erred and it hit a גדול and shouldn't have been mortal but he died- פטור
- d however: if he intended a mortal blow to one part and he missed but it was a mortal blow elsewhere – חייב
- i parallel: if he intended a mortal blow to a גדול and missed but it was a mortal blow to קטן – חייב
- ii dissent (ר"ש): only liable if he kills the person he intended to kill
- 1 Observation (from language): ר"ש disagrees with the רישא:
    - (a) חייב – בני חיוב A but killed B, if both are חיוב ת"ק
    - (b) ר"ש even in this case he exempts
      - (i) Analysis: disagreement in case where A and B are standing there and he explicitly states that he only wants to kill A, not B, and kills B
      - (ii) question: if A and B are standing there and he says "I want to kill one of you" does ר"ש still exempt?
        1. or: if he mistook A for B; does ר"ש still exempt?
        - (iii) Answer: ר"ש explicitly rules that he is not liable until he explicates his intended victim and succeeds
  - 2 Source: ר"ש – v. 1 – he has to intend to harm that victim
    - (a) דבנן: this excludes throwing a rock into a group (and it kills – that the thrower is exempt)
      - (i) Note: case must be where there is a majority of ישראלים in the group; else, he'd be exempt due to רוב
        1. And even if: it was 50/50, ספק נפשות להקל
        2. Reason for exemption: קבוע is נכרי → considered 50/50
  - 3 Source: רבנן – vv. 2-3, as per ר"א's explanation, that this is a "duel to death" (& חייב for killing the bystander)
    - (a) But: according to ר"ש, why does the text state ונתת נפש תחת נפש if he isn't liable for killing the woman?
      - (i) Answer: as per רבי, this means financial compensation, as per נתינה:נתינה (vv. 2-3)

## II תנא דבי חזקיה about רבא's observation

- a תנא דבי חזקיה's approach is different from both רבנן and רבי (ר"ש) in his interpretation of v. 4
- i V. 4 compares נזקין (מכה בהמה) to assault/murder (מכה אדם)
- 1 Just as: re נזקין, intent is irrelevant and the perpetrator is liable
  - 2 So too: in re: מכה אדם, intent is irrelevant and the perpetrator is exempt from financial liability
    - (a) Hence: he differs from רבנן and exempts from חיוב מיתה if he intended to kill A but killed B
      - (i) But: he also differs from רבי and exempts from ממון in such a case
      - (ii) Rhetorical analysis: since תנא דבי חזקיה used both שוגג/מזיד and מתכוין/אינו מתכוין, the latter must refer to intent for a specific victim → he agrees with ר"ש that he isn't liable
        1. explanation: if he were liable for death, he'd be exempt from payment per קלב"מ