

23.10.2

(רמיזא לאו כלום הוא) 86b → (משנה א) 85b

<p>1. כי איש איש אשר יקלל את אביו ואת אמו מות יומת אביו ואמו קלל דמיו בו: ויקרא פרק כ פסוק ט</p> <p>2. ומקלל אביו ואמו מות יומת: שמות כא, יז</p> <p>3. כי ימצא איש גנב נפש מאחיו מבני ישראל והתעמר בו ומכרו ומת הגנב ההוא ובערת הרע מקרבך: דברים פרק כד פסוק ז</p> <p>4. וגנב איש ומכרו ונמצא בידו מות יומת: שמות כא, טז</p> <p>5. כי ימצא איש שכב עם אשה בעלת בעל ומתו גם שניהם האיש השכב עם האשה והאשה ובערת הרע מישראל: דברים כב:כב</p> <p>6. כי ינצו אנשים יחדו איש ואחיו וקרבה אשת האחד להציל את אישה מיד מכהו ושלחה ידה והחזיקה במבשיו: דברים כה:יא</p> <p>7. לא תרצח ס לא תנאף ס לא תגנב ס לא תענה ברעך עד שקר: שמות פרק כ פסוק יב</p> <p>8. כי עבדי הם אשר הוצאתי אתם מארץ מצרים לא ימכרו ממקרת עבד: ויקרא פרק כה פסוק מב</p> <p>9. לא תגנבו ולא תחששו ולא תשקרו איש בעמיתו: ויקרא פרק יט פסוק יא</p>

I הכאת אב ואם: details of משנה א

- a *Limitations*: only liable if he makes a wound → not liable if he hits posthumously
- b *In apposition to*: cursing, for which there is liability even after death of parent
- i *Source*: end of v. 1 (extra) extends prohibition and liability to posthumous cursing
- 1 *In spite of*: analogy of: קללה:הכאה and ק"ו which would limit קללה to lifetime
 - (a) עושה מעשה עמך ק"ו if הכאה (אסור) even to someone who isn't
 - 2 *Note*: this is only valid according to ר', for whom קלל אביו ואמו קלל is extra – but not for יאשיהו
 - (a) *Note*: end of פסוק used to show that cursing either carries liability (not just "both")
 - (i) *And*: beginning of פסוק extends liability to daughters (and טומטום/אנדורגיניוס)
 - (ii) *And*: v. 2 extends to posthumous cursing
 - (b) *Note*: אביו ואמו ד' יונתן איש איש is normal rhetoric
 - (i) *And*: v. 2 extends to daughter etc.
 - (ii) *And*: end of our verse extends to posthumous cursing
 - ii *Question*: why doesn't our משנה point out the חומרה of הכאה – that it extends to עמך מעשה עמך?
 - 1 *Answer*: our תנא holds that קללה:הכאה (and it doesn't extend)
 - 2 *Suggestion*: this dispute parallels dispute if there is liability for striking a כותי
 - (a) *Assumption*: all agree that כותים were legitimate גרים; dispute if we apply עמך מעשה עמך to הכאה
 - (b) *Rejection*: all agree that we do not apply קללה → הכאה; dispute if they are אמת גירי or אריות גירי
 - (c) *Block*: סיפא establishes that we treat his property (שורו) like that of a ישראל → קללה → הכאה

II 3א: liability for kidnapping (v. 3)

- a ת"ק: must bring the victim into the perpetrator's property to be liable
- b יהודה ר': must also make him work, as per היתעמר בו
- i *Note*: ת"ק agrees that he must put him to work; ר' יהודה requires work that is ש"פ
- ii *ד' רמיה questions*: what if he kidnaps and sells him while asleep (but uses him by lying on him) or kidnaps and sells a pregnant woman for her foetus (but uses her as a windshield) – is this considered עימור תיקו
- c *If*: someone kidnaps his own son; ר' ישמעאל בנו של ריב"ב; liable; חכמים: exempt
- i *Source*: כי ימצא v. 3 – אביו excludes one who is "already found" (i.e. familiar)
 - 1 *Challenge* (ר"פ): v. 5 would exempt a "familiar" from חיוב מיתה for adultery (e.g. families that reside together)
 - ii *Rather* (אבוי): end of v. 3 – ונמצא בידו excludes one who is always found there
 - 1 *Implication* (דבא): a schoolteacher who kidnaps his charges is exempt from חיוב מיתה
- d *If*: someone kidnaps a 1/2 ע"כ/1/2; בן חורין ר' יהודה holds liable; חכמים exempt
- i *Backdoor*: חג: ב"ק חג: – יהודה ר' rules that ע"כ has no claim of בושת, as per v. 6 (source for חיוב תשלומי בושת), stating איש (חיוב תשלומי בושת), stating איש
 - 1 *Dissent* (רבנן): he has fraternity vis-à-vis חיוב במצוות
 - 2 *Question*: how would ר' יהודה apply this read to נפש, since he holds liability here?
 - (a) *Answer*: he reads מאחיו as excluding עבדים; בני"י as excluding 1/2 ע"כ/1/2; בן חורין 1/2 ע"כ/1/2 as another מעוט, excluding 1/2 ע"כ/1/2; רבוי → מעוט אחר מעוט; בן חורין 1/2 ע"כ/1/2, including 1/2 ע"כ/1/2
 - (b) *And* דבנן don't exclude him via אחיו (as per above – אחיו הוא במצוות) and they ignore the significance of the מ"ם in ישראל; one excludes עבדים, the other excludes 1/2 ע"כ/1/2 בן חורין

- III גניבת נפש expounding essential parameters of ברייתות
- a *First*: v. 3 establishes liability for a man kidnapping a man; v. 4 expands to any gender of kidnapper; a woman kidnapping a woman is covered under ומת הגנב הוא (v. 3)
 - b *Second*: includes anyone who is kidnapped, even a גר, an עבד משוחרר or minor
 - i *If*: he kidnaps but doesn't sell him, or the victim is still in the property of the kidnapper – exempt
 - ii *But if*: he sells him, even to his own family (father, brother) – still liable
 - iii *If*: someone kidnaps a slave – exempt
 - 1 *Note*: a תנא repeated this (ספרי) before ר' ששת and he corrected him to read פטור (regarding selling to kin)
 - 2 *Reason*: as per ר"ש, who is the anonymous author of ספרי, who holds that מאחיו means he is taken from family
 - (a) *Note*: 4 of ר"ש's students are the סתם authorities of (ר' יהודה), ספרי (ר"ש), ספרי (ר"ג), תוספתא (ר"ג), משנה (ר"מ), תוספתא (ר"ג)
- IV Source for prohibition against kidnapping
- a ר' יאשיה v. 7
 - b ר' יוחנן v. 8
 - i *Note*: they don't disagree; ר' יאשיה is pointing to the prohibition of taking him; ר"י to the איסור מכירה
 - c דבר הלמד מענינו (דבר הלמד מענינו) v. 7 is understood to refer to kidnapping, not theft, as per hermeneutic of contextual definition
 - i *Context*: all of the others are (potentially) capital crimes
 - d *Parallel*: v. 9 is understood to refer to monetary theft (not kidnapping), as per contextual definition
- V Discussion re: הזמת עדי גניבת נפש
- a *If*: there are separate כתי עדים for גניבה and מכירה:
 - i *חזקה*: neither set can be killed if found to be עדים זוממים
 - ii *ד' יוחנן*: they may be killed
 - 1 *Parallel*: *חזקה* follows ר"ע – דבר – (על פי שנים עדים יקום) excludes "חצי דבר" ר"י follows רבנן – even חצי דבר included
 - 2 *Note*: *חזקה* accedes that the עדים to סורר ומורה ב'ן סורר's second (final) act of debauchery that they can be killed;
 - (a) *Reason*: the first set of עדים can claim that they only testified in order to administer מלקות
 - (i) *And*: these second עדים constitute a full דבר
 - 3 *Challenge* (ר"פ): then *חזקה* should admit that עדי מכירה could be killed, as עדי גניבה can claim להלקותו באנו
 - (a) *Note*: *חזקה* certainly holds that kidnapping alone (w/o מכירה) earns מכות
 - (i) *As per*: dispute *ד' יוחנן* whether there are מכות and we conclude that *חזקה* rules that there are
 1. *Proof*: *ד' יוחנן* ruled, in our case, that עדי גניבה are killed; but if they could get מכות, it is a לשנלאמב"ד
 - 4 *Rather* (ר"פ): all agree that עדי מכירה are killed (as per challenge, above);
 - (a) *Point of contention*: עדי גניבה alone
 - (i) *חזקה*: not killed, as גניבה has independent significance (מלקות)
 - (ii) *ד' יוחנן*: killed as גניבה is the beginning of a single process leading to מכירה
 1. *And*: *ד' יוחנן* accedes that the 1st set of עדי בסו"מ aren't killed; they can claim that להלקותו באנו
 - b *Tangential statement of אב"י*: all agree about בסו"מ (2x) and the dispute is about בסו"מ
 - i *Explanation*: all agree that the 1st set of עדים cannot be killed, as above;
 - 1 *And*: all agree that the last set of witnesses can be killed, as the first set can claim להלקותו באנו
 - 2 *But*: the disagreement (*חזקה/ר"י*) is if there are two sets of עדים; the 1st set testifies that he stole (father's) money and the other set testifies to his gluttony and drunkenness
 - c *Late dissent* (ר' אסי): witnesses to מכירה (in case of kidnapping) cannot be killed, as the perpetrator can claim that the victim was really his own slave
 - i *Observation* (ר' יוסף): this follows ר"ע – דבר ולא חצי דבר –
 - 1 *Challenge* (אב"י): then רבנן would agree that he would be killed? (and so would עדים זוממים) – but ר' אסי's reasoning is based on "מתוק" (i.e. a reasonable and potential exonerating claim)
 - 2 *Rather*: even רבנן would agree, if there are no עדי גניבה
 - (a) *Challenge*: this is obvious
 - (b) *Answer*: even if עדי גניבה show up afterwards, עדי מכירה cannot be killed
 - (i) *Challenge*: this is still obvious
 - (ii) *Answer*: even in case the עדי מכירה are signaling to each other (implying that they know that עדי גניבה are on their way) – קמ"ל that such "hints" are insignificant