

32.1.5

6b → 7b (מסנה ג)

1. כל חרם אשר יחרם מן האדם לא יפדה מות יומת: ויקרא כז, כט  
 2. אם כפר יושע עליו ונתן פדיון נפשו ככל אשר יושע עליו: שמות כא, ל  
 3. וכי ינצו אנשים ונגפו אשה הרה וינצאו ילדיה ולא יהיה אסון ענוש יענש פאשר ישית עליו בעל האשה ונתן בפללים: שמות כא, כב  
 4. כי ימצא איש שכב עם אשה בעלת בעל ומתו גם שניהם האיש השכב עם האשה והאשה ובערת הרע מישראל: דברים כב, כב

- I ג status of גוסס (someone at last stages of life) or someone about to be executed
- a ד"ק cannot be an object of ערכין or דמים
  - b ד' חנינא בן עקביא can be an object of ערכין, as that has a fixed value
  - c ד' יוסי (all agree that he may be נודר ומקדיש, נודר ומוקדש, נודר ומוקדש) if (יוצא ליהרג) causes נזק, he is liable
- II Analysis of dispute ת"ק/רחב"ע: whether someone about to be executed can be an object of ערכין
- a ד"ק source – v. 1 (יוצא ליהרג) is considered "חרם" → may not be "redeemed"
    - i However: before גמר דין, the limitation of מן האדם (v. 1) applies and allows for ערך
    - ii ד"ק applies v. 1 to teach that someone about to be executed cannot "redeem himself" (ransom his life)
      - 1 Background: v. 2 teaches that מיתה בידי שמים is "redeemed"; but v. 1 blocks that possibility from מב"ד
      - 2 And: כל חרם extends even to "lighter" מיתות that have expiation for שוגג (e.g. חילול שבת)
- III Analysis of יוסי's addition (misleading – for no one disagrees about גוסס's ability to be נודר or מעריך, נודר or מקדיש)
- a Dispute: about whether any נזק caused by יוצא ליהרג can be collected
    - i ד"ק: dispute if oral debt is collected from heirs (i.e. all agree that נזקין are על פה, as מלוה בתורה)
    - ii Or (possibly רבא or רבא): dispute if מלוה הכתובה בתורה ככתובה בשטר; all agree that מלוה על פה not collected from heirs
    - iii Note: some learned these two interpretations as being applied to the following ברייתא:
      - 1 If: someone is about to be executed; if he does נזק, he is liable; if others harm him – exempt
        - (a) Dissent: רשב"א – he is also exempt if he is מזיק – as he cannot be taken to stand in ב"ד (due to ענוי הדין)
    - iv Challenge: ברייתא – if someone digs a בור and an ox falls in and kills him – the בעל השור is exempt; indeed, if the ox dies, the heirs of the "digger" are liable (→ נזקין are either ככתובים בשטר or מן היורשין)
      - 1 Defense (רב): this is only if the "digger" was first taken to ב"ד and was found liable (then died)
        - (a) Challenge: the ברייתא says "והרגו" (i.e. the ox killed him)
        - (b) Defense: the ox made him טריפה, but he was still able to appear in ב"ד
          - (i) Challenge: ר"נ (per חנא) – the case is where the ox died and was buried in that pit
          - (ii) Ruling: heirs are only liable if the ב"ד was assembled at the lip of the pit
- IV Tangential discussion – status of יוצא ליהרג
- a ברייתא while he is taken out, if he has a חטאת ואשם in the מקדש, the כהנים still perform זריקת הדם on his behalf
  - b But if: he sinned at that time, we do not delay his execution to allow him to offer קרבן
    - i Reason (רב יוסף): violates principle of ענוי הדין
    - ii Challenge (אב"י): then even in first case, we shouldn't delay his execution
      - 1 Answer: first case was where the קרבן was already slaughtered at that moment
      - 2 Challenge: if so, ברייתא should specify that – we only sprinkle דם if the קרבן is already slaughtered
      - 3 Answer: that is the intent of the מסנה; if it isn't נשחט, as if he sinned at that moment and not brought for him

## V משנה ד: status of woman to be executed

- a If she is pregnant, we do not delay execution
  - i However: if she has already gone into labor, we birth the child first
  - ii Explanation: before she goes into labor, it is part of her body; afterwards, it is a separate life
    - 1 Justification: following v. 3, we would think that it is father's domain- קמ"ל
    - 2 Reason: v. 4 – the word גם extends to her וולד
      - (a) Note: שניהם also teaches (per ראשיה ר') that they must both (נואף ונואפת) be בני עונשין to be מיתה
  - iii שמואל: if a pregnant woman is being executed, they would strike her belly to kill וולד before her
    - 1 Reason: she should not be degraded by posthumous bleeding etc.
    - 2 implication: when a pregnant woman dies, mother dies first
      - (a) challenge: נדה ה:ג – a day-old baby can inherit and bequeath
        - (i) ששת ד' explains that he can inherit from mother and bequeath to paternal brothers
        - (ii) Note: משנה started him at 1 day – not 'as born', because he would predecease mother
        - (iii) And: a son doesn't inherit from mother "in the grave" (posthumously) to bequeath to האב מן אחים
      - (b) Answer: this is only true vis-à-vis natural death, since embryo's strength is low, whatever kills mother kills it first; but if she is executed, she dies first
        - (i) Challenge: there was a case of natural death and the עובר spasmed after the mother died
        - (ii) Answer: that means nothing, like the twitching of a reptile's tail
- b Tangent: שמואל's ruling regarding a woman who died in labor on שבת
  - i Practicum: we bring a knife and cut open her belly to take out וולד
  - ii Challenge: this is obvious – there is no מלאכה involved (cutting into flesh)
    - 1 Answer (רבה): teaches that we may bring knife, even through הרבים רשות
    - 2 Challenge: if this is teaching that we violate שבת even for a נפש ספק פקוח נפש – this has also been taught:
    - 3 זימא ח:ה if someone was buried alive, we dig out on שבת, even if unsure if he is there, if he is still alive or if unsure if he is ישראל
      - (a) Answer: from there, we would only apply it to someone who had a חזקת חיים;
      - (b) But: here, there is no חזקת חיים קמ"ל → that we still violate שבת for the נפש פקוח נפש
- c הגאון: if a woman is executed, we may benefit from her hair; not so with a בהמה that is killed (אסורה בהנאה)
  - i Question: why is her hair permitted? It is איסורי הנאה (as being part of a מת)
    - 1 דב: in a case where she directed that her hair be given to her daughter
    - 2 Challenge: if she directed that her hand be given to her daughter, would we do so?
    - 3 דב: our משנה is referring to a wig (not her real hair)
      - (a) If so: only if she directed "תנו" are we allowed to use it → it is considered part of her body
        - (i) However: יוסי בר חנינא ר' queried: what is the status of righteous women of an נדחת עיר?
          - 1. Lemma1: it is considered their property and is burned (along with all possessions of the city)
          - 2. Lemma2: it is considered part of their body and is spared (along with them)
          - 3. And: רבא explained that ריב"ח's question was about a wig
        - (b) Answer: he was asking about a case where she has it pinned on, in our case it is fully attached
          - (i) Therefore: unless she directs that it be given to her daughter (e.g.), it is considered גופה → אסור
          - (ii) Challenge (רנב"י): it is presented in our משנה as parallel to בהמה – but that refers to the animal's body
            - 1. Therefore: the woman's "hair" should be her "real hair"
          - (iii) Rather: רנב"י resolved the problem (assuming it is the woman's natural hair under discussion)
            - 1. In the case of the woman: it is her death that generates the הנאה איסור – and hair isn't "killed"
              - a. But: in the case of the animal, the גמר דין generates the הנאה איסור – on all of it
    - ii לוי taught ברייתות in support of each position
      - 1 דב: if a woman was being taken out for execution and said "give my hair to my daughter", we give it –
        - (a) But: if she already died, we do not give it to her, because מת is אסור בהנאה
          - (i) Challenge: this is obvious (that מת is אסור בהנאה)
          - (ii) Rather: נויי המת are prohibited (including wig)
      - 2 דנב"י: if a woman died, we may benefit from her hair; not so with an animal that was executed
        - (a) Explanation: one is prohibited by her death, the other, by the גמר דין