

אביי לא אמר כרבא שלא יהא חוטא נשכר –

אביי did not say like רבא; so the sinner should not profit

OVERVIEW

הגדילו יכולין (that רב יוסף to challenge the ruling of רבא cited separate ברייתות אביי ורבא). The רבא explains that אביי did not challenge from the ברייתא of רבא (למחות). קנס, since אביי thought that this ברייתא does not pose a difficulty; she will receive the קנס even if יכולה למחות because we do not want the מאנס (the חוטא) to profit from being מאנס this גיורת. Our תוספות discusses a difficulty from this inference that רבא is not concerned for נשכר.

משמע דרבא לית ליה טעמא דשלא יהא חוטא נשכר¹ -

It seems that רבא does agree with the reasoning of נשכר –

תוספות asks

וקשה דאמרינן בפרק שור שנגח ד' וה' (בבא קמא דף לח, ב ושם) קסבר רבי מאיר כותים גירי אמת הן -
ר"מ; פרק שור שנגח ד' וה' explains in גמרא And there is a difficulty, for the
maintains that גרים² are כותים² -

וקנס הוא דקניס רבי מאיר בממונם לענין שור שנגח³ שלא יטמעו בהן⁴ –
But it is merely a fine that ר"מ imposed on their money regarding an ox that
gored, in order that the Jews should not intermingle with them' -

ופריך אלו⁵ נערות שיש להן קנס הבא על הכותית -
And these are נערות, משנה in a we learnt for we challenged this explanation, for there
the נערות which receive קנס, one who lives with a כותית', etc. -

ואי קניס רבי מאיר בממונם הכא נמי ניקנס -
שור And if ר"מ punishes the כותים with their money (as was explained regarding
קנס. here too (by קנס ר"מ) should punish the כותית and not award her the קנס. (של כותי

¹ If רבא follows the logic of נשכר, how can he challenge the ruling of רבא, by קנס it is different since we wish to punish the חוטא who was מאנס (see 'Overview').

² The כותים were a nation which brought from כותא and settled them in שומרון (עשרת השבטים) (who exiled the סנהריב). It is questionable whether the כותים were גירי אמת (and are considered as Jews), or whether they were גירי אריות (they converted only because the lions were killing them) and are considered גוים.

³ ר"מ rules that if a Jewish ox gored a כותי's ox the Jew is פטור; however if a כותי's ox gored a Jewish ox, the כותי must pay a נזק שלם even if he is a תם (just as the ruling would be regarding a גוי). This is a fine in order to prevent intermingling between the Jews and the כותים.

⁴ Their original גירות was proper. However they became corrupted later, and were not faithful to ת"מ.

⁵ ת"מ משנה ר"מ, since ר"מ, סתם משנה, which presumably is according to ר"מ, לקמן כ"א.

ומשני דהכא לא בעי למקנס שלא יהא חוטא נשכר⁶ -

And כותית **answered that here by** a מאנס, ר"מ **did not want to punish** the כותית, **so that the חוטא** (the מאנס) **should not gain**'. This concludes the citation from the גמרא in **ב"ק**. Now תוספות concludes his question -

והשתא לרבא דלית ליה הכא טעם דחוטא נשכר היכי מצי משני התם⁷ -

But now that we surmised that רבא **does not agree to the reasoning of נשכר**, **how will he explain** the view of ר"מ **there?!**

answers: תוספות

ויש לומר דהתם אית ליה שפיר האי טעמא כיון דבדין יש להן קנס דגרי אמת הן -

And one can say; that there (by מאנס) רבא **rightfully agrees to this reasoning of** **קנס** **for they are** **valid גרים** - **since lawfully the כותים deserve being paid**

אלא דבעינן למקנס להו סברא הוא דמשום טעמא שלא יהא חוטא נשכר מוקמינן לה אדינא -
However we wanted to punish them, therefore logic dictates that on account of
the reason נשכר חוטא יהא חוטא נשכר, **we revert to the legal** status, which is that they receive **קנס** -

אבל הכא⁸ סבירא ליה לרבא דמשום טעמא שלא יהא חוטא נשכר אין ליתן לה -

שלא יהא חוטא נשכר רבא (גיורת) **maintains that the reason of נשכר**
is insufficient to award her the **קנס** -

כיון דמן הדין לית לה שהרי עובדת כוכבים גמורה היא אם תמחה -

Since legally she does not deserve the קנס payment, for if she protests her גרות,
she is a complete gentile.

resolves an anticipated difficulty: תוספות

ובפרק אלו נערות (לקמן דף לו,ב) דאית ליה לרבא⁹ שלא יהא חוטא נשכר גבי שבויה¹⁰ -

⁶ By שור של ישראל שנגח שור של כותי where ר"מ rules that the ישראל is not a חוטא; the ישראל did not instigate his ox to gore a כותי. See סוכ"ד אות פח.

⁷ Why by שור של כותי we fine the כותים and make them pay (and we do not pay them), and by מאנס את הכותית, we make the מאנס pay and we do not fine the כותית.

⁸ The question of רבא to רב יוסף was that if הגדילו יכולים למחות, then how can we give this גיורת the קנס, when she may be מוהה and spend the קנס money as a non-Jew. That fact that the חוטא will gain is not sufficient reason to give her something which she legally does not deserve. This differentiates her from a כותית, who is a valid Jew and deserves her קנס payment; in this instance we will not change the legal ruling and punish her denying her, her legal rights, because we do not want the מאנס who is a חוטא to gain. נשכר לא יהא חוטא נשכר prevents us from punishing her and not giving her, her legal due.

⁹ In our text there it reads רבה. See however the marginal note there (who amends it to רבא).

¹⁰ The משנה there states if one is מאנס a woman who was שבויה and was redeemed, he does not pay her קנס, because we assume that she was גמולה by the גוים when she was שבויה. However יהודה ר' disagrees and maintains that she receives קנס because she retains her קדושה status.

שלא יהא חוטא נשכר רבא maintains the logic of פרק אלו נערים where
regarding¹¹ a captive woman¹² -

- תוספות responds; she receives the קנס payment -

משום דמוקמינן לה בקדושתה:¹³

Because (as ר"י said in the משנה) **that we place her on her קדושה status.**

SUMMARY

According to רבא the logic of שלא יהא חוטא נשכר is not sufficiently powerful to create a legal obligation; however it is sufficiently powerful to prevent the removal of a legal obligation for various reasons.

THINKING IT OVER

¹⁴ שלא יהא חוטא נשכר רבא maintains a שבויה does regarding תוספות discusses why
Perhaps רבא said this only according to ר' יהודה that he maintains שלא יהא חוטא נשכר,
but not that other תנאים (as well as רבא) agree!¹⁵

¹¹ The גמרא there initially said that the aforementioned ר' דוסא agrees with ר' יהודה (in opposition to the חכמים) that a שבויה בת כהן can eat תרומה, for we do not assume that she was נבעלה לעכו"ם (which would render her unfit for תרומה). However רבא challenged this comparison; perhaps ר"י maintains that a שבויה does not eat תרומה (since we assume that נבעלה) and the reason she receives קנס (according to ר"י) is because שלא יהא חוטא נשכר.

¹² The question is that since seemingly she does not deserve this קנס payment lawfully (for she is seemingly בחזקת לא תוספות said that לא יהא חוטא נשכר (according to רבא) is only sufficient to prevent us from removing her legal rights, but not to grant her new rights. See 'Thinking it over'.

¹³ בחזקת שלא is שבויה ר' יהודה maintains that a שבויה is שבויה, the reason she is not אוכלת בתרומה and therefore lawfully she should receive קנס payment, however by the מאנס we do not implement this חומרא in order שלא יהא חוטא נשכר.

¹⁴ See footnote # 12.

¹⁵ See שטמ"ק in שיטה ישנה and כסא שלמה.