אביי לא אמר כרבא שלא יהא חוטא נשכר –

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

Overview

אביי ורבא cited separate ברייתות to challenge the ruling of רב יוסף (that הגדילו יכולין למחות). The גמרא explains that אביי did not challenge from the ברייתא of רבא regarding 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 שלא יהא חוטא נשכר.

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משמע דרבא לית ליה טעמא דשלא יהא חוטא נשכר[[1]](#footnote-1) -

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

תוספות asks

וקשה דאמרינן בפרק שור שנגח ד' וה' (בבא קמא דף לח,ב ושם) קסבר רבי מאיר כותים גירי אמת הן -

And there is a difficulty, for the גמרא explains in פרק שור שנגח ד' וה'; ‘ר"מ maintains that כותים are[[2]](#footnote-2) valid גרים -

וקנס הוא דקניס רבי מאיר בממונם לענין שור שנגח[[3]](#footnote-3) שלא יטמעו בהן[[4]](#footnote-4) –

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 אלו[[5]](#footnote-5) נערות שיש להן קנס הבא על הכותית -

And רב זירא there challenged this explanation, for we learnt in a משנה, ‘These are the נערות which receive קנס, one who lives with a כותית’, etc. -

ואי קניס רבי מאיר בממונם הכא נמי ניקנוס -

And if ר"מ punishes the כותים with their money (as was explained regarding שור של כותי), here too (by קנס) ר"מ should punish the כותית and not award her the קנס.

ומשני דהכא לא בעי למקנס שלא יהא חוטא נשכר[[6]](#footnote-6) -

And אביי 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 התם[[7]](#footnote-7) -

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

תוספות answers:

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 שלא יהא חוטא נשכר, since lawfully the כותים deserve being paid the קנס for they are valid גרים -

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 שלא יהא חוטא נשכר, we revert to the legal status, which is that they receive קנס -

אבל הכא[[8]](#footnote-8) סבירא ליה לרבא דמשום טעמא שלא יהא חוטא נשכר אין ליתן לה -

However here (by the גיורת) רבא maintains that the reason of שלא יהא חוטא 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.

תוספות resolves an anticipated difficulty:

ובפרק אלו נערות (לקמן דף לו,ב) דאית ליה לרבא[[9]](#footnote-9) שלא יהא חוטא נשכר גבי שבויה[[10]](#footnote-10) -

And in פרק אלו נערות where רבא maintains the logic of שלא יהא חוטא נשכר regarding[[11]](#footnote-11) a captive woman[[12]](#footnote-12) -

תוספות responds; she receives the קנס payment -

משום דמוקמינן לה בקדושתה:[[13]](#footnote-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

תוספות discusses why regarding a שבויה does רבא maintain שלא יהא חוטא נשכר.[[14]](#footnote-14) 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]](#footnote-15)

1. If רבא follows the logic of שלא יהא חוטא נשכר, how can he challenge רב יוסף from the ruling of קנס, by קנס it is different since we wish to punish the חוטא who was מאנס (see ‘Overview’). [↑](#footnote-ref-1)
2. The כותים were a nation which סנחריב (who exiled the עשרת השבטים) brought from כותא and settled them in שומרון. They were מגייר later when they were attacked by lions (see מלכים ב, יז,כד-כח). It is questionable whether the כותים were גרי אמת (and are considered as Jews), or whether they were גרי אריות (they converted only because the lions were killing them) and are considered גוים. [↑](#footnote-ref-2)
3. ר"מ rules that if a Jewish ox gored a sכותי' ox the Jew is פטור; however if a sכותי' 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. [↑](#footnote-ref-3)
4. Their original גירות was proper. However they became corrupted later, and were not faithful to תומ"צ. [↑](#footnote-ref-4)
5. לקמן כט,א. This is a סתם משנה, which presumably is according to ר"מ, since סתם משנה ר"מ. [↑](#footnote-ref-5)
6. By שור של ישראל שנגח שור של כותי where ר"מ rules that the ישראל is פטור, the ישראל is not a חוטא; the ישראל did not instigate his ox to gore a שור של כותי. See סוכ"ד אות פח. [↑](#footnote-ref-6)
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. [↑](#footnote-ref-7)
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 מוחה 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. לא יהא חוטא נשכר prevents us from punishing her and not giving her, her legal due. [↑](#footnote-ref-8)
9. In our text there it reads רבה. See however the marginal note there (who amends it to רבא). [↑](#footnote-ref-9)
10. The משנה there states if one is מאנס a woman who was a שבויה and was redeemed, he does not pay her קנס, because we assume that she was נבעלה by the גוים when she was a שבויה. However ר' יהודה disagrees and maintains that she receives קנס because she retains her קדושה status. [↑](#footnote-ref-10)
11. The גמרא there initially said that the aforementioned ר' יהודה agrees with ר' דוסא, who maintains (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. [↑](#footnote-ref-11)
12. The question is that since seemingly she does not deserve this קנס payment lawfully (for she is seemingly בחזקת בעולה; see previous footnote # 11), how can the לא יהא חוטא נשכר create an obligation to pay her. 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’. [↑](#footnote-ref-12)
13. תוספות dismisses the assumptions mentioned in footnotes # 11 & 12. ר' יהודה maintains that a שבויה is בחזקת שלא נבעלה and therefore lawfully she should receive קנס payment, the reason she is not אוכלת בתרומה is merely a חומרא; however by the מאנס we do not implement this חומרא in order שלא יהא חוטא נשכר. [↑](#footnote-ref-13)
14. See footnote # 12. [↑](#footnote-ref-14)
15. See שיטה ישנה in שטמ"ק and כסא שלמה. [↑](#footnote-ref-15)