מכות עיון שיעור

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9th Grade, Rabbi Balsam

Intro:

- משנה:

The עדים have to be מזים "the pair themselves."

- רש"י, תוספות, רבינו חננאל, רמב"ן:

פירוש: They have to be מזים pair #1 themselves.

- רבינו חננאל\גאונים:

פירוש: They actually have to be מזים themselves – they need to be silent/admit to pair #2.

- R' Balsam:

קשה #1 על שיטת הגאונים: The גמרא doesn't say anything about this?

קשה #2 על שיטת הגאונים: Why should we care what they say? We never care anywhere else in the תורה!

- רמב"ן:

הכחשה = Busting the עדות. הזמה = Busting the עדים.

- רמב"ם:

ע"ז is a חידוש, because there is no reason that pair #2 should be believed over pair #1 (which is in fact what we say by הכחשה).

- גמרא חולין:

If you have a ספק whether meat is כושר where רוב meat in that place is כושר: If it was קבוע – you can't eat it. If it wasn't קבוע – You can eat it.

- ר"ן על חולין:

Reason you can't eat it if it was קבוע – we consider it מחצה על מחצה.

- נפקא מינה: If you bought meat from a store, and later you found out that one of the meats in the the store at the time when you bought it were not כושר, SINCE CONSIDERING IT מחצה על מחצה IS A חידוש, you can eat the meat, since we don't extend a חידוש.

- גמרא בבא קמא:

It's a מחלוקת אביי ורבא whether ע"ז are פסול למפרע (i.e., are they פסול for their testimony on Mon. after being הוזם on Tues. for their testimony on Sun.?)

- אביי: Yes. Reason: Because they are רשעים from the point of their busted testimony.

- רבא: No. Reason: ע"ז is a חידוש, so we don't extend it further than it's חידוש.

- קובץ שיעורים:

There are 2 ways to understand שיטת אביי:

A) He argues on the fact that we don't extend a חידוש.

B) He holds ע"ז isn't a חידוש.

The רמב"ם must hold like צד A, because he says ע"ז is a חידוש, and we פסקין like אביי (see כסף משנה).

The ר"ן must hold like צד B, since he assumes that we don't extend חידושים.

דף ב.

- משנה:

Two cases of no כאשר זמם: חלל & גלות. Instead, they get מלקות.

- תוספות ד"ה מעידין:

קשה: How can Pair #1 give testimony in the first place? It's עדות שאי אתה יכול להזימה, which is not acceptable עדות.

תירוץ #1: Getting מלקות is a sort of [backup] כאשר זמם.

Intro to קשה: גמרא סנהדרין: Case: Pair #1 says that a woman was מזנה and they are busted. דין: There is no כאשר זמם/they don't get killed. Reason: They can say that they just meant to אסור her to the בועל. Question: But they had to have given her התראה (which includes stating that she will be punished)? Answer: They didn't give התראה, because this woman is a חבירה, and it's according to יוסי בר' יהודה ר'. Question: If there's no כאשר זמם, it should be עדות שאי אתה יכול להזימה? Answer: אין הכי נמי, the עידות is not accepted.

קשה: Why do we say that it's עדות שאי אתה יכול להזימה? They get מלקות!

תירוץ: Over there it's a חיוב מיתה.

תירוץ #2: The whole source for עדות שאי אתה יכול להזימה not being accepable is כאשר זמם, and we learn from the דרשה that כאשר זמם doesn't apply over here "בשום צד שבעולם."

- Rabbi Balsam: #1 הערה: לכאורה, the 2nd תירוץ only applies to the case of חלל, where the דרשה is לו ולא לזרעו, and not to the case of גלות, where the דרשה is #2 הערה. הוא ולא זוממין : The 1st תירוץ assumes that the fact that we need עדות שאתה יכול להזימה is מסברא, that a good punishment to scare the עדים is a punishment equal to the one that they are trying to give the נידון. Therefore, the answer to the קשה מסנהדרין is געשמאק, because we are saying that for a חיוב מיתה we can't give מלקות as a punishment, (i.e., it's not enough to scare the עדים).

- So the מחלוקת between the two תירוצים of תוספות is whether עדות שאי אתה יכול להזימה is מסברא or a גזירת הכתוב.

- רמב"ן:

Intro to קשה: A טריפה who killed can't be killed because it's עדות שאי אתה יכול להזימה.

קשה: Why is it עדות שאי אתה יכול להזימה? He gets מלקות!

תירוץ: The עדים wouldn't even get anything, not מלקות from והצדיקו and not death from כאשר זמם, if they are busted, because they didn't plan to do anything – they were trying to kill a dead guy.

- The רמב"ן seems to be going like the 2nd תירוץ of תוספות, since he refers to the מלקות being from והצדיקו (and not from כאשר זמם).

- ריטב"א:

תוספות's second תירוץ is a "טעם נכון מאוד."

פשט בגמרא ב' ע"ב: The גמרא's מסקנא is that the פסוק of "והצדיקו" teaches us that we can give מלקות for לא תענה, even though it's a מעשה לאו שאין בו.

- בית הבחירה:

Background: We learn from the פסוק that עדים זוממין don't need התראה.

הוה אמינא: But if they get מלקות maybe they do need התראה, since כאשר זמם doesn't apply over here to tell us that they don't.

מסקנא: Even when they get מלקות they don't need התראה, because כאשר זמם does apply, since מלקות is backup כאשר זמם.

- The מאירי seems to hold of #1 תירוץ of תוספות.

- תוספות ד"ה מעידין אנו באיש פלוני שחייב גלות:

קשה: Why doesn't the נידון just פטור himself by saying that he killed on purpose?

#1 תירוץ: It's a case where there's רגלים בדבר – it's obvious that he killed on by accident, e.g. נשמט הברזל מקטו.

קשה: So why doesn't a שונא go to גלות according to everyone when there is רגלים בדבר?

תירוץ: By a שונא we have more reason to believe that he did it on purpose.

#2 תירוץ: The case of the משנה is where he didn't say מזיד הייתי.

- גמרא (לפי רש"י):

#1 קשה: Why doesn't the משנה say "כיצד אין העדים נעשים זוממין"?

#2 קשה: Why does the משנה only answer the question of "כיצד העדים נעדים זוממין" later on, on דף ה ע"א?

- גמרא (תוספות ד"ה ועוד):

#1 קשה: Why doesn't the משנה say "כיצד אין העדים נעשים זוממין"?

- And you can't say משנה really means to ask "כיצד העדים נעשים זוממין" because that question is answered later on, on דף ה ע"א.

- גמרא (המשך):

תירוץ: The משנה's question was כיצד אין העדים נעשים זוממין, but it didn't have to say that, since we are continuing from a pattern started in סנהדרין, which ended off with a case of full כאשר זמם, and then a case of partial כאשר זמם, which leads up to our משנה, a case of no כשאר זמם.

- רש"י ד"ה חוץ מזוממי:

"פשט ב"מקדימין לאותה מיתה: We don't give the עדים זוממין time to run away.

- תוספות שנ"ץ:

"פשט ב"מקדימין לאותה מיתה: We don't do עינוי הדין.

- תוספות ד"ה כל הזוממין:

קשה על רש"י ועל תוספות שנ"ץ: פשיטא!

"פירוש הר"י ב"מקדימין לאותה מיתה: We kill them with any מיתה possible, even if it's not the right מיתה. Source: הכה תכה

#1 קשה: But we learn from כתובין הבאין כאחד ב' that we only give any מיתה possible by גואל & רוצח הדם?

- This is an especially good question, since there's even a תוספתא that says that we learn from "ובערת הרע מקרבך" to give them any מיתה, despite the fact that it's כאחד כתובין הבאין ב'.

תירוץ: Over there the כאחד כתובין הבאין ב' are teaching us that you can kill them with any מיתה, even not one of the מיתות בית דין ד', (while by עדים זוממין we only learn from "ובערת הרע מקרבך" that you can give any of the מיתות בית דין ד').

- תוספות ד"ה זוממי בת כהן:

קשה: Why do we need the דרשה of ולא לאחותו "לאחיו"? Just say ולא זוממיה "היא" like ולא בועלה "היא"?

תירוץ: לאחיו & היא together teach us ולא זוממיה.

קשה: But why do you need "היא"? Just learn it out from "לאחיו"?

תירוץ: "היא" can only teach to exlude a case where the בועל is a נידון.

ר"י: קשה: Do we still say that עדים זוממין get מיתת בועלה when they only testified about the אישה?

Intro to תירוץ: גמרא סנהדרין: There are cases of מיתה אחת כעין שתי מיתות, e.g., זוממי זוממיה & זוממי בת כהן ובועלה.

- The case of זוממי זוממיה is where Pair #1 testifies that a בת כהן was מזנה. Then Pair #2 comes and busts Pair #1. Then Pair #3 comes and busts Pair #2, making the original עדות stand.

- הערה: What exactly is the case of זוממי זוממיה? It can't be a case where Pair #1 testified about the אישה AND בועלה, because then it would already be a case of מיתה אחת כעין שתי מיתות by the time Pair #2 busts Pair #1. Rather, it must be a case where Pair #1 only testified about the אישה.

תירוץ: Based on the הערה: We see that even in a case where they only testified testified about the אישה they still get מיתת בועלה.

- גמרא:

שאלה: What is the source that we don't give כאשר זמם by חלל אנו שהוא מעידין?

ר' יהושע בן לוי: #1 תירוץ: ולא לזרעו "לא".

קשה: So just פסול him and not his children?

תירוץ: That wouldn't be a fulfillment of כאשר זמם, since they planned to פסול him AND his children.

- תוספות ד"ה בעינן:

אוקימתא: We also don't say כאשר זמם by busted testimony of a מצרי שני.

קשה: Why is there no כאשר זמם? They aren't being פוסל his children.

תירוץ: But they are being פוסל his wife, and we say לו ולא לאשתו.

- גמרא:

בר פדא: #2 תירוץ: קל וחומר triers and doers:

If: A כהן who married a גרושה\חלוצה, who succeeded in making a חלל, doesn't himself become a חלל, then...

Surely: עדים זוממין, who just tried to make a חלל, should not become חללים.

דף ב:

עאפשלאג: You can't make trier-doer קל וחומרים by עדים זוממין, because then the whole תורת עדים זוממין would be ruined with the following קל וחומר:

If: עדים who succeed in getting the נידון killed (with סקילה) don't get killed (with (סקילה רש"י)), then...

Surely: עדים זוממין, who just tried to get the נידון to get killed, should not be killed.

- תוספות ד"ה ומה הסוקל & ריטב"א\מורי הרב\ראב"ד:

קשה #1 on רש"י: According to this פשט, why doesn't the גמרא just say a סתם case of הריגה?

קשה #2 on רש"י: We only know the case of סקילה from ולא כאשר עשה "כאשר זמם", which has no שייכות to חלילות?

קשה #3 on רש"י: Maybe ולא כאשר עשה "כאשר זמם" only applies by the other 3 מיתות בית דין, but not סקילה?

תירוץ: This is פשט in the גמרא: Someone who stones someone to death isn't stoned, rather beheaded, so maybe there shouldn't be סקילה by עדים זוממין who just tried to give someone סקילה.

- Rabbi Balsam:

Arguement for רש"י: The לשון of the גמרא that "בטלה תורת עדים זוממין לגמרי" fits much better with רש"י's פשט.

- גמרא:

שאלה: What's the source that we don't give כאשר זמם by מעידין אנו שחייב לגלות?

תירוץ #1 לקיש: ריש לקיש: Hu velo zomimin.

ריש לקיש: #1 תירוץ: ולא זוממין "הוא".

ר' יוחנן: #2 תירוץ: קל וחומר action doers and non-acction doers:

If: Someone who killed with a מעשה, doesn't go to גלות, then...

Surely: עדים זוממין, who killed without a מעשה, should not go to גלות.

עאפשלאג: That actually gives credence to say that they should go to גלות, because:

If: someone who killed with a מעשה, is so bad that we don't send him to גלות, because we don't want him to get a כפרה, then...

Maybe: עדים זוממין, who killed without a מעשה, should go to גלות, because we do want them to get a כפרה.

עולה: שאלה: Where in the תורה do we find a רמז that, when עדים זוממין can't get כאשר זמם, they get מלקות?

תירוץ: והצדיקו את הצדיק והרשיעו את הרשע והיה אם בין הכות הרשע

קשה: Why don't we just learn it from the לאו of לא תענה?

תירוץ: You don't get מלקות for a לאו שאין בו מעשה.

מימרא: ברייתא: There are 4-5 things that don't get כאשר זמם: חלל, גלות, כופר, and עבד עברי. ר' עקיבא: Also עדים who come into בית דין and say that they were busted in another בית דין.

שאלה: Why isn't there כאשר זמם by כופר?

תירוץ: Because כופרא כפרה.

- רש"י ד"ה והני לאו בני כפרה:

פשט בגמרא: And their ox didn't kill, so they don't need get a כפרה.

- Rabbi Balsam:

קשה: Why don't we say that in every case, e.g., the עדים זוממין didn't kill, so they don't need a כפרה of סקילה, or the עדים זוממין didn't steal, so they don't need to pay back money. Alternatively, why can't the כופר be the עדים זוממין's כפרה?

כופר #1: תירוץ is a highly specific כפרה that only helps to be מכפר for your cow killing.

כופר #2: תירוץ is not enough of a כפרה for עדים זוממין; it's not applicable to עדים זוממין, because it's an עונש.

- ריטב"א:

פשט ברש"י: The עדים זוממין don't get כופר because they are too bad for the כפרה (since they did it במזיד, while the כופר guy did it בפשיעה).

ריטב"א's own פשט: The main reason that the עדים זוממין don't get כפרה is because they didn't plan to do anything to the נידון, since we say in בבא קמא that, according to the opinion that כופרא כפרה, we don't force the נידון to pay. When the גמרא says "הני לאו בני כפרה נינהו" it is saying that even if the עדים זוממין want to pay there is no point in them paying, since they are not בני כפרה (either because it's just not שייך or they are too bad).

- ר' שמואל גרעזבסקי:

פשט בריטב"א: The ריטב"א holds that when עדים זוממין pay when they were trying to be מחייב the נידון a ממון or קנס it is מדין תורת מזיק – that we view it as if the עדים זוממין were מזיק the נידון and therefore they have to pay whatever they tried to be מחייב him.

- גמרא (המשך):

ר' המנונא #1: הוה אמינא: The case where there is no כאשר זמם by עבד עברי is when the נידון had money, but if the נידון didn't have money then the עדים זוממין are sold.

עאפשלאג: But the עדים could say that, just like the נידון had the option of pay or be sold, they should also have the option of pay or be sold.

ר' המנונא #2: הוה אמינא: The case where there is no כאשר זמם by עבד עברי is when the עדים זוממין have money, but if the עדים זוממין don't have money, they are sold.

עאפשלאג: But the עדים could say that, just like the נידון wouldn't have been sold, so too, they shouldn't be sold.

ר' המנונא: מסקנא: The case where there is no כאשר זמם by עבד עברי is when either the נידון has money or the עדים זוממין have money, but if neither have money then they are sold.

רבא: We learn from "בגנבתו" ולא בזממו that there is never כאשר זמם by עבד עברי.

- רמב"ם:

Paskins that in a case where the עדים testified "פלוני is supposed to be sold as an עבד עברי" and then they get busted, they don't get כאשר זמם, rather מלקות.

- You might have thought that not all the 4 things in the ברייתא get מלקות...

- The רמב"ם concludes otherwise.

- The ריטב"א would hold that you would get מלקות too, (maybe not for the same reason, though,) since he says that the reason you get מלקות is because of לא תענה, (and והצדיקו teaches

that you can give מלקות for לא תענה, despite the fact that it's a מעשה בו שאין לאו,) and the לאו of לא תענה applies by all the cases.

- מנחת חינוך:

קשה: Why didn't the רמב"ם say they testified "פלוני stole" instead of "פלונית is supposed to be sold as an עבד עברי"?

תירוץ: The רמב"ם holds that we פסקין like רבא and that רבא's שיטה is that any time the עדים tried to make the נידון an עבד עברי there is no כאשר זמם, because of בגנבתו ולא בזממו.

- נימוקי יוסף:

The case of עבד עברי is where they testified "פלוני stole." Some explain (i.e., the רמב"ם) that the case is where they testified "פלוני is supposed to be sold as an עבד עברי."

- The נימוקי יוסף seems to understand the רמב"ם as saying that only when the נידון actually would have been sold do the עדים זוממין not get כאשר זמם.

- ריטב"א:

קשה: Why aren't all 4 cases of no כאשר זמם in the משנה?

#1 תירוץ: Because we only wanted to bring things that are the only things learned from their פסוק, and בגנבתו teaches a bunch of other stuff, too.

#2 תירוץ: We only taught things that were connected to what we are discussing, so חלילות continuing from סנהדרין and גלות leading into the second פרק.

- רלב"ג:

הערה on the ריטב"א: We see from the ריטב"א's קשה that he holds that you get מלקות for all 4 cases in of no כאשר זמם, since he says that we should've put them all in the משנה, and the משנה was listing cases where you get מלקות instead of כאשר זמם.

- רא"ש:

Paskins like רבא – that you never have כאשר זמם by עבד עברי.

- נימוקי יוסף:

Says that the case is where they testified "פלוני stole from someone."

- גמרא:

What's the reason that there's no כאשר זמם when the עדים admit, according to ר' עקיבא?

תירוץ: Because ר' עקיבא holds עדים זוממין is a קנס, and מודה בקנס פטור.

ר' נחמן & רבה: Proof that עדים זוממין is a קנס: The נידון didn't loose anything, and still the עדים זוממין are paying.

- פני יהושע:

קשה: What's the reason for those who argue on ר"ע?

#1 תירוץ: It's a כפרה, and you can pay upon your own admittion for a כפרה.

- This is a little bit of a חידוש.

- קובץ ביאורים:

#2 תירוץ: It's ממון because what you are doing is taking the גמר דין from the נידון and putting it on the עדים זוממין.

- This is like בן סורה ומורה: It's a חלות שם רשות על הגברא – the תורה is מחדש that this is what they should get, even though they didn't do a מעשה.

- מנחת אשר על מכות:

#3 תירוץ: קנס is a very specific term, and if something doesn't fit into those rules exactly, it's not a קנס, and if it's not a קנס, ממילא it's ממון.

- The גדר of a קנס is that anything that's יש מאין – something from nothing; it's not based off/corrosponding to anything that was done, e.g., you damaged a certain amount and you have to pay more or less than that amount. However, by eidim zomimin, it matches exactly what what you tried to damage, so it's not יש מאין.

דף ג.

- גמרא:

מימרא: רב יהודה אמר רב: עד זומם משלם לפי חלקו – an עד זומם pays according to his portion.

שאלה: What's the case?

#1 תירוץ: When they were busted on a testimony of $100 – each pay $50.

עאפשלאג: But that's a straighup משנה!

#2 תירוץ: When one of the עדים was busted on a testimony of $100 – he pays $50.

עאפשלאג: But both עדים have to be busted in order to have to pay.

#3 תירוץ: Joe and George testify. Joe admits he lied. Then pair #2 busts Joe and George.

עאפשלאג: But Joe admitting doesn't do anything, because עדות – כיון שהיגיד שוב אינו חוזר ומגיד is not retractable.

#4 תירוץ: When they were busted and then one of the עדים ran away to a different בית דין and said "we testified and were busted in the first בית דין."

עאפשלאג: But that's not like עקיבא ר'.

#5 תירוץ: When they were busted and had a גמר דין to pay and then one of the עדים ran way to a different בית דין and said "we testified, were busted, and had a גמר דין to pay in a different בית דין."

- רש"י:

ולא היספיק הבעל דין למעמידן בדין – for the קנס to become ממון, besides for the בית דין needing to have a גמר דין, the נידון has to claim the money from the עדים.

- תוספות שנ"ץ:

קשה על רש"י: Why does רש"י have to say that the case is where they went to a different בית דין? It could be a case where they were in the same בית דין and after they were busted they admitted?

- Rabbi Balsam:

הערה on the תוספות שנ"ץ: This תסופות שנ"ץ isn't really a question on רש"י, it's really a question, since the גמרא on דף ג. says a case where העדנו והוזמנו בבית דין פלוני.

- תוספות רבינו פרץ:

קשה on the תוספות שנ"ץ: מהיכא תיתי to the תוספות שנ"ץ that you can just admit and be פטור? That's crazy! Then, in any case that someone is convicted, he can just say, "Great job guys, you caught me!" and then he is פטור!?! Additionally, they're not really admitting in such a case, because they're not telling us something we don't already know.

- This is also what מורי ורבי says.

- רמב"ם:

?

- תוספות רי"ד:

קשה: What's the case of "אין משלם על פי עצמן"? Once pair #2 busts them they are חייב, even if they go to a different בית דין.

תירוץ: The case is where the עדים admitted that they testified falsely and then pair #2 came and busted them.

קשה: But the גמרא on .ג דף sounds like the case of עקיבא ר' is like רש"י, since it suggests that the case of "עד זומם משלם לפי חלקו" is where the עדים were busted in בית דין, and before the גמר דין they ran away and admitted in a different בית דין, and in that גמרא we said that that only works like עקיבא ר', not like the רבנן – sounds like that's exactly the case of עקיבא ר' – that they were busted in one בית דין and then ran away and admitted in another בית דין. [Furthermore, the גמרא seems to have rejected the case of the תוספות רי"ד, since it rejected #3 תירוץ with כיון שהיגיד שוב אינו חוזר ומגיד?!]

תירוץ: The cases of #3 תירוצים and #4 are different, since only one of the 2 are admitting, and we always need both of them to be busted.

- Rabbi Balsam:

פשט במחלוקת: רש"י and the תוספות רי"ד might be arguing about what is classified as a חידוש regarding what the עדים "admit."

- קצות החושן:

ב"ח: It has to be that he was מודה when he was claimed from in the first beis דין and denied when he was claimed from in the second בית דין.

My Brother: קשה: Why does it matter that he goes to another בית דין? Once he admits he's off the hook!

קצות Himself: I think the ב"ח is right:

- The whole דין of בודה בקנס is particular to that first בית דין, because אשר ירשיעון אלהים פרט למרשע את עצמו only applies to one בית דין.

Is מחדש: Even once someone admits in one בית דין, they can still be חייב if עדים testify against him in another בית דין.

- This is a BIG חידוש.

- נתיבות המשפט:

?ואס גיט די פארט?!?!?!?!?!?!?!?!?!?

- משנה:

Case: עדים testified about someone that he divorced his wife but didn't pay her for the כתובה. The עדים are then busted. דין: We evaluate how much a person would pay for the כתובה.

- גמרא:

שאלה: How do we evaluate (see below for explanation)?

ר' חסדא: #1 תירוץ: on the husband.

ר' נתן בר אושעיא: #2 תירוץ: Based on the woman.

ר' פפא: #3 תירוץ (see רש"י): Based on the woman and her כתובה.

- רש"י ד"ה כיצד שמין:

- זכות ספיקו -- How much the man can sell the כתובה for, based on his טובת הנאה (the הנאה he has from being able to use the נכסי מלוג).

- זכות ספיקה -- How much the woman can sell the כתובה for.

- זכות ספיקו > זכות ספיקה. Reason: He gets a lot of $ per year, from the נכסי מלוג, but she gets nothing at the moment (refered to as מחוסר גוביינא – lacking collecting, i.e., she isn't getting anything from the כתובה, unless they get divroced/the husband dies.

קשה on ר' חסדא שיטת: How could we evaluate based on the woman? The עדים were trying to be מחייב the husband, which has nothing to do with the woman.

- This is made more problematic, from the fact that the משנה itself implies that we evaluate based on the woman, since it says "אם נתאלמנה או נתגרשה".

ר' חסדא פשט בשיטת: Whole כתובה - זכות ספיקה. Reason: Really the husband owns the whole כתובה, but you can't make the עדים זוממין pay that much, because the woman is able to sell it if she wants. Reason he doesn't want to say like ר' נתן: How much the husband can sell it for is not necessarily how much it's worth to the husband himself.

ר' נתן פשט בשיטת: The עדים pay זכות ספיקו. Reason: The עדים were trying to make him loose how much he could've made if he wanted to sell the כתובה. Reason he doesn't want to say like ר' חסדא: How much the husband can sell it for

- According to this, you read the משנה as follows: We evaluate how much someone would've payed for זכות ספיקו, based on the ספק of whether she will get divorced/widowed or she will die.

ר' נתן פשט בשיטת: He agrees with ר' נתן, but adds that we only include the נכסי צאן ברזל, not the נכסי מלוג.

ר' פפא לפי פשט בשיטת From What I Heard: ר' פפא is explaining that "באשה" means "– בזכות ספקה בכתובתה".

#1 קשה on This: How could we evaluate based on the woman? The עדים were trying to be מחייב the husband, which has nothing to do with the woman (see above).

#2 קשה on This: If this פשט is right, the גמרא should've said this: בנכסי הבעל.

- תוספות ד"ה כיצד שמין:

Explain like רש"י.

- תוספות ד"ה מעידין אנו:

קשה: Why don't the עדים זוממין also have to pay for the woman's שאר וכסות that she's not getting from her husband anymore?

#1 תירוץ: The case is where ידיה מעשה is equivalent to the שאר וכסות.

#2 תירוץ: The case is where the woman herself confirmed that she was divorced, thereby forfitting

her שאר וכסות.

#2 קשה על תירוץ: But isn't there a דין that a woman is automatically believed to say that she is divorced?

תירוץ: That's only if she doesn't also bring עדים, but if she brings עדים and then another pair of עדים bust them we don't believe the woman anymore.

- גליון:

Takes "עונה" out of the תוספות.

- משנה:

Case: עדים say רואבן's loan-time is 30 days, and ראובן says he has 10 years. Then the עדים are busted. דין: The עדים pay how much a person would pay for an extra 9yrs 11months loan-time.

- א"ריטב & ן"רמב:

Intro to קשה: It seems like the משנה is saying that really the עדים weren't trying to make him loose anything except time, so we make the עדים זוממין pay for the time they were trying to make him loose.

קשה: The value of that time should be nothing, since if it were something it would be an איסור ריבית?

#1 תירוץ: The עדים are paying for the שעבוד of extra time. Proof that that has value: If the guy was to pay back early, he would get a discount.

- According to this, the amount the עדים pay is the amount of the discount for paying up 9yrs 11mnths early.

- בית יוסף:

#2 תירוץ: There is a value to the time, which is how much interest you would pay in a deal with a גוי or with a Jew באיסור.

- According to this, the amount the עדים pay is just the normal amount of interest for 9yrs 11mnths.

- מהר"ם מרוטנברג:

#3 תירוץ: The case where it would be אסור is where you had a deal with someone involving ריבית, but not if it's stolen, because there was a רווח (profit) that the owner wanted to have made with the money.

- According to this, the amount the עדים pay is the amount the נידון could've made over 9yrs 11mnths.

- ן"רמב:

טעם איסור ריבית: You wouldn't charge ריבית if you were lending to your brother, and all Jews are our brothers.

- This is why ריבית is מותר when lending to a גוי – not because we hate the גויים – ריבית is really an ethical thing, you just shouldn't do it with your brother.

דף ג:

- גמרא:

ר' יהודה אמר שמואל #1: שמיטה cancels a ten year loan. Reason: Because, although right now there is no איסור לא יגוש, there will eventually be an איסור לא יגוש.

קשה: But then in the משנה you should have to pay all of it?

תירוץ: The משנה could be a case of מלוה על המשכון or מוסר שטרותיו לבית דין, where, as the משנה says, שמיטה doesn't cancel.

ר' יהודה אמר שמואל #2: שמיטה doesn't cancel a ten year loan. Reason: Because, although eventually there will be an איסור לא יגוש, right now there is no איסור לא יגוש.

ראיה: if שמיטה did cancel then in the משנה you should have to pay all of it.

רבא: עאפשלאג to ראיה: The משנה could be a case of מלוה על המשכון or מודר שטרותיו לבית דין, where, as the משנה says, שמיטה doesn't cancel.

- תוספות ד"ה איכא דאמרי:

רבינו תם: We פסקין like the לישנא בתרא, since the משנה was a proof to the the לשנא בתרא but a קשיא on the לשנא קמא.

- You have to add "לא" to the פיוטים of the גאונים.

- רא"ש:

ריב"א & רבינו אליהו הזקן: We always פסקין like the לישנא קמא.

- This is just like the פשוט גירסא in the פיוט of the גאונים.

רבינו תם #1 ראיה: פרק מי שמת: We don't say יגוש לא by שדכנות because right now there is no יגוש לא.

עאפשלאג: There are many more reasons that could be מעכב the פרעון in that case.

ראיה #2: פרק כל הגט: [Same idea].

עאפשלאג: The כהן could return it and be מבטל the מקח.

רא"ש Himself: Paskins like רבינו תם.

- Reason #1: Same as the reason in תוספות.

- Reason #2: שמיטה is מדרבנן בזמן הזה, and ספק דרבנן לקולה. (The reason it's דרבנן is because רוב people in ארץ ישראל are non-Jewish).

- The רמב"ם and רמב"ן also פסקין like the לישנא בתרא.

- רמב"ם:

Paskins like the לישנא בתרא.

- פלפולא חריפתא:

קשה on Reason #2: But don't we go לקולה for the ניטבע?

תירוץ: We don't view this case as a case of ממנות, we view it as a case of איסור והיתר.

- רש"י:

The case of המוסר שטרותיו לבית דין is a case of פרוזבול.

- תוספות ד"ה המוסר שטרותיו:

קשה על רש"י: But the משנה says two cases, one of המוסר שטרותיו לבית דין and one of פרוזבול, which implies that they are two separate cases?

- Rather, the case is המוסר שטרותיו לבית דין, which works מדאורייתא.

- ירושלמי מכות:

In this context gives a case of פרוזבול.

- Rabbi Balsam:

#1 תירוץ for רש"י: It could be רש"י was just going based on the ירושלמי.

#2 תירוץ for רש"י: הלל was מתקן – פרוזבול based on המוסר שטרותיו לבית דין. It could be that, based on this idea, רש"י chose the case of פרוזבול, especially since it's much more common/easy to use a פרוזבול.

- גמרא:

ר' יהודה אמר שמואל: You can't be מוחל on שמיטה canceling a 10 year loan.

קשה: But doesn't שמואל say that you can be מוחל on אונאה, so he must hold that you can be מתנה על מה שכתוב בתורה?

- תוספות ד"ה ושמואל:

קשה: How can you ask a קשיא from a case of אונאה? By אונאה it's possible that you are not being עוקר דבר מן התורה, because it might turn out that he wasn't really being overcharged? However, by שמיטה you are definitely being עוקר דבר מן התורה?

תירוץ: By שמיטה it's also not definite that you are being עוקר דבר מן התורה, because it could turn out that the borrower will pay back early.

- גמרא (המשך):

תירוץ: It depends how you word it:

- "אין לו עליו אונאה" – good, because מתנה על מה שכתוב בתורה works.
- "אין בו אונאה" – not good, (see רש"י and תוספות below for reason).
- "לא תשמטני בשביעית" – good, because מתנה על מה שכתוב בתורה works.
- "לא תשמטני שביעית" – not good, because you don't control שביעית.

- רש"י:

פשט why אין בו אונאה doesn't work: Because it's a מקח טעות – there really is אונאה in it, and you said there is not.

- תוספות ד"ה על מנת:

קשה על רש"י: But we were comparing the two case of שמיטה and אונאה, so the reason for why אין בו אונאה doesn't work and the reason לא תשמטני שביעית doesn't work should be the same?

רשב"ם: פשט why אין בו אונאה doesn't work: Because you were saying there should be no איסור אונאה and you don't control אונאה.

- תוספות בבא מציעא:

#1 תירוץ for רש"י: The way the cases of אונאה and שמיטה are related is how we have שיטת שמואל that generally we say you are able to be מתנה על מה שכתוב בתורה, although in some cases it doesn't work.

- According to this פשט, רש"י holds that only the case of the תנאי's working are parallel, based on מתנה על מה שכתוב בתורה.

- רש"י's פשט reads better into the פשוט פשט of – אין בו אונאה that there is no אונאה IN IT.

- ערוך לנר:

#2 תירוץ for רש"י: Really cases of the תנאי's working are parallel also, in the following way: Just like you can't say that there isn't any אונאה in this sale because it's factually untrue, and therefore it's a מקח טעות, so too, you can say that שמיטה doesn't apply, because you don't control שמיטה, and therefore it's a מקח טעות.

- According to this רש"י ,פשט also holds that the cases of תנאי's not working are also parallel, based on מקח טעות.

- ריטב"א:

קשה: Why did הלל have to create the idea of פרוזבול, why can't you just make a תנאי?

#1 תירוץ: Not everyone can remember to make a תנאי.

#2 תירוץ: He doesn't want it to look like he's just being מייאש on the money.

#3 תירוץ: It looks bad to say that שמיטה won't apply.

#4 תירוץ: The whole דין of שמיטה canceling will be forgotten, which won't happen with a פרוזבול when there's a whole deal of writting a שטר.

- רמב"ם:

If, when lending something, you make a תנאי that you can take it back whenever you want, because it's דיני ממנות.

- חידושי מרן רי"ז הלוי:

קשה: Why does the רמב"ם have to say that it's because it's דיני ממנות? It should just be because the תנאי works?

תירוץ: Because, really this is a case of מתנה על מה שכתוב בתורה, because it's a דין דאורייתא that you can't collect before 30 days. The only reason this מתנה על מה שכתוב בתורה works is because it's דיני ממנות.

- רמב"ם:

שמיטה doesn't cancel a ten year loan, unless he makes a תנאי that he won't bother the borrower for 10 years.

- כסף משנה\מהר"י קורקוס:

קשה on the רמב"ם: Why does making a תנאי help?

Intro to חקירה :תירוץ: How do we view a loan:

A) Really, every day he owes the money, but he's just allowing it to be pushed off, so once שמיטה comes it cancels the loan.

B) The guy doesn't owe the money until 10 years are over, and until then no obligation exists, so when שמיטה comes there's nothing for it to cancel.

תירוץ: The מחלוקת whether שמיטה cancels a 10 year loan is תלוי on this חקירה. The רמב"ם, by paskining that it doesn't cancel, is paskining like צד B. However, with this תנאי, he really owes the money every day, so the loan does exist when שמיטה arrives.

- That's one נפקא מינה: Whether שמיטה cancels.

- Rabbi Balsam:

It's מדויק from the גמרא like this understanding, because the גמרא says "אינו רשאי לטובעו פחות משלושים יום" – the reason it doesn't say "זמנו שלושים יום" because it's not – the borrower doesn't owe anything until 30 days.

- טור:

Paskins like the רמב"ם – that שמיטה doesn't cancel a 10 year loan.

- ב"ח:

Based on the נפקא מינה mentioned in the כסף משנה: According to everyone, שמיטה will cancel a סתם loan, because really every day the borrower owes the money.

- Rabbi Balsam:

#2 נפקא מינה: In a case where the lender stole the money back from the borrower early (i.e., whether תפיסה works).

- In such a case, according to the רמב"ם, who paskins like צד B, he would have to give back the money, because the borrower doesn't owe anything until the end of the due-date.

- ריטב"א\תוספות (maybe):

#3 נפקא מינה: Whether the borrower is believed (with a שבועת היסת) that he payed early:

- If it was a סתם loan, then the borrower really owes every day, so we would believe him that he paid back.

- If it was a loan where they explicitely said the זמן is 30 days, the borrower doesn't owe anything until 30 days, and therefore he's not believed that he payed back early – "אם אמר פרטיך קודם זמנו אינו מאמינו."

- רבינו תם:

סתם שאלה is the same as סתם הלואה.

ראייה: If someone borrows a טלית they aren't חייב to put on ציצית after 30 days of borrowing it.

- רמב"ם:

Paskins not like רבינו תם – סתם שאלה is not the same as סתם הלואה.

- רמב"ן:

עאפשלעג לראייתו של רבינו תם: The only reason you need to put on ציצית is because of מאית העין – a person doesn't usually borrow something more than 30 days, so people will think he owns the טלית.

- Rather, by a סתם שאלה ends whenever the owner wants to take it back.

- ר' שמואל גרזעבסקי:

Intro: The reason רבינו תם argues on the רמב"ן & רמב"ם is because he doesn't hold of the חקירה that we had above.

קשה: Everyone agrees that שאלה is different than הלואה; by שאלה, you don't own the item, while by הלואה, you own the money. So how could רבינו תם compare the two?

תירוץ: According to רבינו תם, the answer of the גמרא still assumes that the דין of סתם הלואה being 30 days is an עומדנא, it just has an אסמכתא, and that עומדנא should apply to שאלה, too.

- If you hold that למסקנא it's an עומדנא, then he holds like צד B of the חקירה, but not because there's a גזירת הכתוב tha tell's you that he doesn't owe anything until the end of the 30

days (like the רמב"ם), rather, because of the עומדנא, that a סתם loan is the same thing as a normal case of loaning something for 30 days, where the person doesn't owe anything until the end of the 30 days.

- גמרא:

ר' יהודה אמר רב: If you open a neck-hole on שבת you are חייב a חטאת.

ר' כהנא: קשה: Why is that different than the plug of a wine barrel, which you are not חייב for cutting open?

תירוץ: That's different, because the wine plug is not completely connected, so it's not really one piece, while by the case of a neck hold, it is completely connected, and therefore really one piece.

- רש"י:

פשט בגמרא: It's מתקן מנה\מכה בפטיש.

- רמב"ם:

פשט בגמרא: It's קוראה.

- מגיד משנה:

Quotes רש"י.

- כסף משנה:

Reason רש"י doesn't hold it's קורע: It's not על מנת לתפור.

- שולחן ערוך שי"ז:ג':

You can't open a בית הצוואר for the first time because of מתקן מנה\מכה בפטיש.

- שולחן ערוך ש"מ:י"ד:

Conecting papers is תופר. Disconnecting papers is קורע.

- ביאור הלכה שם:

פשט בשיטת הרמב"ם: Any קורע for a constructive purpose is אסור, even if it's not על מנת לתפור.

- Therefore, the שולחן ערוך here is paskining like the רמב"ם.

נשמת אדם: קשה על השולחן ערוך: It should be a מלאכה שאינה צריכה לגופה, and the שולחן ערוך says that מלאכה שאינה צריכה לגופה is פטור, so why does he say here that it's חייב?

ביאור הלכה himself: תירוץ: תוספות holds the case of tearing over a מת is חייב because it's actually a תיקון in the בגד, because it's for a מצווה, while רש"י holds that it's a תיקון because it's a מצווה.

Summary: Everyone holds that קורע for a constructive purpose is חייב.

- The ריטב"א doesn't hold like this but he's a דעת יחיד and also against the גמרא, (as ר' עקיבא איגר points out).

קשה: So why does רש"י say that פותח בית הצוואר is מכה בפטיש?

תירוץ: Because, according to רש"י, the definition of קורע is where there is an act of קלקול, it will just lead to a תיקון. However, a tear that is a תיקון in it of itself, and has no negative, like tearing a neck hole, is not קורע.

- קהלת יעקב:

Intro: All the destructive/deconstructive מלאכות need to be על מנת to reconstruct them, i.e.,

סתירה ע"מ לבנות, כתיבה ע"מ למחוק, מתיר ע"מ לקשור, קורע ע"מ לתפור.

- קורע בחמתו is different than any other tearing, because the point isn't the shirt being torn, it's the tearing itself; it's not like tearing the item, it's using the item.

- רש"י:

Seems to say: פשט בגמרא: The shirt was never opened before, while the barrel was opened before, it was just sealed back up.

- רמב"ן\רבינו תם, רבינו פרחיה\ר' אברהם בן הרמב"ם, ריטב"א:

פשט בגמרא: Both the shirt and the barrel have been opened before and are now sealed. The difference is that, while the seal for the shirt (a seal which the kovsin do before they give the shirt back) is a strong seal, the seal for the barrel is not so.

- How we categorize "strong seal": It's גוף אחד; the shirt is sewn with the same material, while the barrel is potery+glue+potery.

- רבינו ירוחם:

בשט בגמרא: A kind of in between רבינו תם & רש"י: The case of the גמרא is where the shirt was made in the factory and then was sewn up.

- This is not like רש"י, who holds that it's a case where it was never opened up before.

- This is not like רבינו תם, who holds that the גמרא could be a case where it was sealed up the by כובסין.

- שמירת שבת כהלכתה:

#1 פסק: You can open a bottle cap. Reason: It was always a recongnizably different piece.

#2 פסק: You can't take a bandaid out of it's paper cover. Reason: It's like פותח בית הצוואר, since you're being מכשיר the bandaid for use.

#3 פסק: You can take the off the paper on the bandaid. Reason: It's just there to protect the stickyness of the bandaid.

- בנין שבת:

#1 קשה על פסק: According to שיטת רבינו תם, it should be the same as a sown shirt?

ר' שלמה זלמן: תירוץ: The ring is just there to show it was never opened before, so it's not like the ring and cap are גוף אחד.

Argues on #2 פסק: You can take it out of it's paper cover, since the only point of the cover is to protect it.

One more case similar to בית הצוואר: Cutting pages of a book that were not cut in the factory (ביאור הלכה).

- מנחת אשר:

ר' שלמה זלמן: You can open plastic bottle caps, but not metal ones.

#1 שאלה: Does a disposable container have a תורת כלי?

Intro to תירוץ: גמרא ביצא: You can't cut a thorn for a toothpick or a fix a wick because it's מכה בפטיש.

- תירוץ: You see from here that even for a one time use there is an איסור מכה בפטיש.

קשה: But the גמרא ביצה says that you are not עובר on מכה בפטיש by מאכל בהמה, and the ר"ן explains

that it's because they are very flimsy.

תירוץ: That case is different since you couldn't keep it even if you wanted to.

ר' שלמה זלמן: You can open plastic bottle caps because it was a cap before it was put on the bottle.

קשה על זה: This should be like the case of פותח בית הצוואר according to תם רבינו.

- And his comparisson to the חבית, because it's not גוף אחד, is not correct, because it's the same material, not a glue kind of connection (the answer to this is answered in the בנין שבת – the ring is just there to show that it was never opened, unlike the shirt sewing, which is there to keep it in shape).

- [The נקודת המחלוקת between ר' שלמה זלמן and ר' אשר וואייס is whether גוף אחד is based on what the connection is supposed to be for or what it really is.]

שאלה #2: Can you be מיקל if you have more bottles in the house?

Background: Case: You pull berries off a הדס to eat the berries, but you are also fixing the הדס for the מצווה on סוכות. דין: If you have another הדס it's not אסור, since you aren't really fixing the הדס.

תירוץ: You are making a new bottle cap, and when it's a physical thing it's not subjective.

- [ר' שלמה זלמן would say that it is still subjective by a physical change – when you open a bottle you never think "oh, i just made a new bottle cap."]

מאירי: By the בית הצואר, if there are just a few strands keeping it together it's מותר.

- The bottle cap is not like this, because it's a full connection.

שאלה #3: Does it matter if it was already usable?

תירוץ: It's like painting a bottle, which is מכה בפטיש, even though it was already usable, since you are finishing off the כלי.

שאלה #4: Is it allowed because the completion just happens ממילא of your מעשה פתיחה.

- גמרא:

Background: גזירה: If you put 3 לוגין of מים שאובין in a מקווה it פסול's the מקווה, because people will think you can have a מקווה of just מים אחרונים. This doesn't apply to wine or fruit juice, because no one will think you can use those for a מקווה.

3 :ר' יהודה אמר רב lugin of מים שאובין with a little bit of wine – it looks like wine. דין: Doesn't פסול the מקווה. [Reason: רב holds that if the reason for the איסור doesn't apply we don't אסור, a.k.a. מראה\חזותא.]

ר' כהנא: קשה: So then why does dyed water פסול a מקווה?

תירוץ: Because the חזותא of dyed water is water, while the חזותא of diluted wine is wine.

קשה: ר' חייא: Case: [Case of רב]. דין: פסול.

רבא: תירוץ: ר' חייא holds like the תנא קמא and רב like ר' יוחנן בן נורי in the following משנה:

משנה: Case: 2.9 water+0.1 wine. דין: Doesn't פסול. Case: 2.9 water+0.1 milk. דין: תנא קמא: Doesn't פסול. ר' יוחנן בן נורי: Does פסול, because we go after מראה.

ר' פפא: שאלה: Why don't you change 2.9 to 3.0 in the רישא, and then רב can go like everyone.

רבא: תירוץ: רב had the גירסא of 2.9.

אביי\ר' יוסף: רב had the גירסא of 3.0.

- רש"י:

The מים שאובין passuling the מקווה is מדרבנן.

- ערוך לנר:

קשה על רש"י: But doesn't רש"י say in 14) משבת a) that מים שאובין passuls the מדאורייתא.

תירוץ: רש"י here means that 3 לוגין of מים שאובין passuls מדרבנן.

- רמב"ם & רע"ב:

פסקין like the version without חסר קורטוב.

- ר' עקיבא איגר:

קשה על הרמב"ם והרע"ב: We should פסקין like רבא?

- באר אברהם:

#1 תירוץ: You can't argue הילכתא כבתראי, because many say that we only say הילכתא כבתראי before אביי ורבא.

#2 תירוץ: ספק דרבנן לקולה.

#3 תירוץ: ר' יוסף would know better, because he was a תלמיד תלמידו של רב.

#4 תירוץ: It works better to say that רב goes according to everyone.

#5 תירוץ: You can't argue that רבא was a ודאי and פפא ר' was a ספק, because יוסף ר' was also a ודאי.

#6 תירוץ: The fact that we bring יוסף ר' at the end shows that we פסקין like him.

- Rabbi Balsam:

#7 תירוץ: We say הלכתא כבתראי because the later person knew what the earlier person said and they still argued, but if the earlier person also knew what the later person said and still argued, as in this case, where יוסף ר' heard what רבא said, we would פסקין like the earlier person.

דף ה.

- משנה (המשך התחילת הרשימות):

ר"י: It's a conspiracy (איסטטית), so only the first pair is killed. דין: באו אחרים וזמום באו אחרים וזמום. רבנן: They are all killed.

- רש"י:

פירוש של איסטטית: Conspiracy.

- תוספות ד"ה איסטטית/ר"ף:

פירוש של איסטטית: It's a לשון סטיס, that they are throwing red paint at the world, i.e., blood.

- גמרא:

רבא: Case: Pair #1 says that in the east of a mansion ראובן killed שמעון. Pair #2 says that Pair #1 was with them on the west side of the mansion. דין: We see whether it's possible to see what's going on on the east side from the west side.

קשה: What's the חידוש?

תירוץ: You might have thought that we are חושש that the עדים had super strong vision.

רבא: Similar Case: Pair #1 says that, in the morning, ראובן killed שמעון in סורא. Pair #2 says that, at night, Pair #1 was with them in נהרדאה. דין: We see if it's possible to get from סורא to נהרדאה in that time span.

קשה: What's the חידוש?

תירוץ: You might have thought that we are חושש that the עדים had flying cammels.

- ריטב"א:

קשה: What was the הוה אמינא?

תירוץ: The הוה אמינא was that we don't kill the עדים (but not that we kill the נידון). The מסקנא is that we kill the עדים.

- גמרא יבמות:

We are חושש for flying cammels.

- תוספות יבמות:

קשה: So then why do we say in מכות that we are not חושש for flying cammels?

רבינו תם: #1 תירוץ: In the case of the גיט you can understand why the husband was trying to make a little bit of trouble, so it makes more sense for him to use a flying cammel, but it doesn't make sense for the עדים to use flying cammels, on the contrary, they are making themselves look more like liers.

רבינו מנחם: #2 תירוץ: In מכות, the עדים should've said something about having a flying cammel.

- תוספות שנ"ץ:

#3 תירוץ: Actually, we are חושש for a flying cammel in מכות, so we don't kill anyone.

- רמב"ן & ריטב"א:

אפשלאג: It could be that the only reason they didn't mention it was because they were scared or because they didn't think they would be believed.

#4תירוץ: The main חשש of the גמרא in יבמות is not flying cammels (or קפיצה), rather it is מילי מסר.

- גמרא:

רבא: Case: Pair #1 says ראובן killed שמעון on Sunday. Pair #2 says that Pair #1 was with them on Sunday, and ראובן really killed שמעון on Friday/Monday. דין: Both ראובן and Pair #1 are killed.

קשה: What's the חידוש?

- If the חידוש is that both the נידון and the עדים can be killed, that's a straight up משנה later on in the פרק.

תירוץ: The חידוש is the end of רבא's statement: Case: Pair #1 says ראובן killed שמעון on Suday. Pair #2 says that Pair #1 was with them on Sunday, and ראובן really killed שמעון and had a גמר דין on Friday/Monday. דין: ראובן is killed, Pair #1 is not. Reason: Pair #1 testified about a גברא קטילא (a dead man).

- The same is true by קנסות.

- רש"י:

פשט בגמרא: Reason he's not a גברא קטילא until the גמר דין: Until the גמר דין he can admit and be פטור.

- תוספות ד"ה דבעידנא:

קשה על רש"י: מהיכא תיתי that if he admits he's פטור? Also, that doesn't even make sense, because then anyone can just admit and be פטור!

פשט בגמרא: Reason he's not a גברא קטילא until the גמר דין: It is very unlikely that he will be convicted until the גמר דין because: a) maybe עדים won't come to testify about him; b) even if עדים do come, maybe the עדות won't stand.

- רבי עקיבא איגר:

Intro to קשה על תוספות: חילוק: By ממון, someone is always חייב, even if בית דין doesn't know. By קנס or מיתה, there is no חיוב until בית דין is מחייב him.

קשה על תוספות: Why does תוספות have to get into a discussion of possibilites? There's a clear חילוק between whether he has had a גמר דין yet – whether a חיוב מיתה/קנס exists at all.

- חשק שלמה:

תירוץ לרש"י: תירוץ לרש"י: רש"י's פשט is that if he walks into בית דין and says he's חייב מיתה we don't kill him, and the reason for that is because he is not yet חייב מיתה from בית דין, i.e., because he's not a בר קטלא.

קשה #1 על זה: That would work perfectly if it fit with what רש"י says. But רש"י says, "Even if he would admit he would be פטור." According to this פשט, he should've said, "If he would admit he wouldn't be חייב." Saying he would be פטור sounds like he is פטור-ing himself from something, but he's not, he just isn't חייב.

- Rocky Rothenberg:

תירוץ לקשה זה: In the גמרא (cited below in ערוך לנר) אביי uses the word "פטור" to mean "not חייב," so you see that they could be used to mean the same thing.

- ר' שמואל גרזבסקי:

קשה #2 על ר' אליהו רוגלער: According to ר' אליהו רוגלער, if he had a גמר דין in one בית דין for מיתה, and then comes to another בית דין and admits he would be חייב.

  - This just isn't true – in such a case he would be פטור.

- ערוך לנר:

Intro to תירוץ לרש"י: גמרא: Discusses whether one is חייב כפל if עדים come to בית דין after he already admitted.

  - רב: He is exempt (וסלחת לעוונינו כי רב הוא)

  - שמואל: He is חייב.

אביי:

רבא: כפכנו לסבא דבי רב.

  - רש"י: פשט ברבא: We disproved what בי רב said.

  - תוספות: פשט ברבא: We hold like בי רב.

תירוץ לרש"י: רש"י is explaining לשיטתו in his explanation of רבא (which isn't accepted להלכה).

  - תוספות says he has not idea what רש"י is talking about, because he understands רבא as

holding the exact opposite.

- ר' שמואל גרזבסקי:

ר' אלחנן: Intro to תירוץ: שמיטה does not cancel a קנס, not because it doesn't exist, but because he doesn't yet owe it to the other person.

גמרא כתובות: Case: A person is appointed as כהן before bringing חטאת – does he bring a regular חטאת or does he bring a חטאת כהן? דין: Regular חטאת, based on when he did the עבירה.

- You see freom here that he is already חייב a חטאת from the point that he does the עבירה.

- This is also why קם ליה בדרבה מיניה works – because you are חייב from when you do the עבירה.

תירוץ: Really the קנס is created when the עבירה is done. Why then do you not have to pay without בית דין? Although there is a חיוב of קנס right when you do the עבירה, the חיוב of קנס is to be found guilty and be collected from by בית דין.

- מאירי:

שאלה: I get that the עדים aren't killed, because they tried to kill a גברא קטילא, but what is their status?

Intro to תירוץ: A) עידי הכחשה can't joing together for עדות. B) Even if עדים are contradicted, they can come back the next day and prosecuted.

תירוץ: They are not פסול לעדות.

- This is the מאירי לשיטתו, that עדים זוממין is not a חידוש.

- רמב"ן:

A little bit of a סברא for עדים זוממין: We don't kill the עדים after the נידון is killed, because we assume, if 'ד allowed it to happen that the בית דין made such a big mistake and killed someone, 'ד must have wanted it to happen.

- חידושי הגר"ח:

קשה: Isn't the case of the gemara גמרא case of עדות שאי אתה יכול להזימה, since the עדים are פסול למפרע, so they aren't getting

תירוץ #1: If the point of עדות שאי אתה יכול להזימה is just that we the עדים to be scared, then this is not a problem, because the עדים will still be scared.

תירוץ #2: The case must be where each pair is saying the previous pair was with them in a different place then the next.

- גמרא:

קשה: Why is the first pair in the משנה killed? If it's an איסטטית, none of them should be killed

ר' אבהו: #1 תירוץ: It's a case where one of them were killed before we realized it was an איסטטית.

עאפשלאג Who cares? That's ancient history!

רבא: #2 תירוץ: We are saying that in a case where it's not an איסטטית, only the first pair is killed.

קשה: But it says "בלבד"?

תירוץ: קשיא.

- ריטב"א:

שאלה: What does "קשיא" mean?

תירוץ: It means that we have to explain the גמרא like רבא, although it's still a little bit of a question, why the משנה wasn't dak.

- גמרא:

Case: A woman brought two pairs of עדים that were found to be עדים שקרים, but the third pair was not.

- ריש לקיש: She is מוחזק to bring false witnesses.

- ר' אלעזר: The 3rd pair is good.

The same case came before ר' יוחנן and ריש לקיש.

- ריש לקיש: [Same thing].

- ר' יוחנן: Exact same words as ר' אלעזר.

ריש לקיש got very upset at ר' אלעזר for not saying that he was quoting ר' יוחנן.

- רש"י:

"They were found to be עדים קשרים" = They didn't pass דרישה וחקירה.

- רמב"ם:

Paskins like ר' יוחנן.

- Rabbi Balsam:

רש"י could agree even in a case where they were actually found to be עדים זוממין, because the same סברא would apply – we aren't מוחזק כל ישראל to be מוחזקין as liers.

- It doesn't matter that ריש לקיש wouldn't say the same thing, because we don't פסקין like him.

- ריא"ף:

פשט בגמרא: The comparisson of ר' יוחנן to the רבנן is that they both say that just because one pair is not believed, that shouldn't פסול everyone else. The comparisson of ריש לקיש to ר' יהודה is that they both say that it's to suspicious once one pair is not good.

- ריטב"א/בעל המאור:

קשה על הריא"ף: If you explain like this, then ריש לקיש is going according to neither opinion of what makes a חזקה – either 2 times or 3 times, not one time.

תירוץ: That מחלוקת is only by דיני ממנות, not דיני נפשות.

- However, a) this doesn't really fit with the לשון of the גמרא over there, and b) the גמרא should've said something about this.

Correct פשט בגמרא: The מחלוקת ר' יוחנן וריש לקיש is whether or not we have an אומדנא that once they are proven to be liers once they aren't good anymore.

- The הוה אמינא is that the עומדנא of ההוא איתתא and the משנה is the same, and the מסקנא is that they are not.

- משנה:

Unlike the צידוקים, who hold that there is only כאשר זמם after the נידון was punished, based on the פסוק "נפש בנפש," we hold הרגו אין נהרגין based on לאחיו – הרי אחיו קיים.

- "נפש בנפש" teaches that the נידון has to have a גמר דין in order for the עדים זוממין to get כאשר זמם.

- רש"י (ב ע"ב):

The source for הרגו אין נהרגין is "כאשר זמם" ולא כאשר עשה.

- ריטב"א:

קשה על המשנה: But חליצה and other places "אחיו" means אחיו מת?

תירוץ: אחיו isn't a real דרשה, and we really learn it from כשר זמם combined with אין עונשין מן הדין.

- The reason the משנה says the source is "אחיו" is להרווחה דמילתא.

קשה: So how do we learn from "ונקלה אחיך לעיניך" that he can't be killed?

תירוץ: That's because of the word "לעיניך".

- ריטב"א/רמב"ן & רמב"ם:

שאלה: Is there כאשר זמם by ממון after they already lost the money?

Intro to תירוץ: גמרא סנהדרין: If דיינים judged incorrectly, they have to return the money, because it's דינה דגרמי.

תירוץ: No, there is no כאשר זמם by ממון (because there is no source), but they still have to give the money back מדינא דגרמי.

- חידושי הרמב"ן:

If the עדים זוממין succeeded at making the נידון pay they have to pay back בהזמה.

- ר' איסור זלמן:

This רמב"ם is against what the ריטב"א quotes from the רמב"ן, because it implies that there really is a דין of כאשר זמם.

- רמב"ם:

Paskins: Even after the נידון has gotten מלקות the עדים זוממין can get מלקות.

- ראב"ד:

"That's" a mistake.

- רדב"ז:

It could be that the ראב"ד thought that the following is a mistake: Why is there מלקות even after the נידון got מלקות? Both the reason of כאשר זמם ולא כאשר עשה and אין עונשין מן הדין apply!

תירוץ #1 להרמב"ם: לאחיו הרי אחיו קיים doesn't apply.

- צרוך תלמוד [presumably because the רמב"ם himself says that לאחיו is not the עיקר לימוד].

- כסף משנה:

תירוץ #2 להרמב"ם: The reason for הרגו אין נהרגין is because at that point, the עדים זוממין are too bad to get מיתה, but by מלקות, they aren't as bad.

- ר' חיים הלוי:

תירוץ #3: מלקות בטעות doesn't even have a דין of מלקות.

- That's why: מלקות needs to be in front of בית דין; if he's tied up and then runs away, he's good; if he was sick at the time of evaluation but later he gets better, he's good.

- מהר"ל ב"ח:

הערה: If you say like this ר' חיים הלוי, that the מחייב of בית דין is an essential part of the מלקות, then when people wanted שמיכה to be reinstituted so that they could get מלקות as a כפרה for כרת, it could be that wouldn't have worked, because they would just be getting it upon their own admittion and desire.

- ר' חיים הלוי (המשך):

קשה: So how could there ever be כאשר זמם by מלקות?

תירוץ: the דין of כאשר זמם is that we judge it as if the עדות was true.

Proof: On דף ב, we said that we can't just make him a חלל and not his children, because we need כאשר זמם לעשות, and just passuling him would not be כאשר זמם לעשות.

- The reason just passuling him would not be כאשר זמם לעשות is because that wouldn't be what the דין would've been if it was true.

קשה: So why does the ראב"ד argue?

Intro to תירוץ חקירה: Is the reason for כאשר זמם ולא כאשר עשה because:

A) The עדים are פטור because it's not זמם, (i.e., the stress is on the זמם),

or

B) The עדים are פטור because they did עשה, (i.e., the stress is on the עשה).

תירוץ: The ראב"ד holds like צד A, and in this case they are פטור, since they are not planning to do anything anymore. The רמב"ם holds like צד B, because they didn't do anything (as explained above).

- גמרא:

מירמרא: The משנה in a nutshel: If the נידון isn't killed the עדים are killed, if the נידון is killed the עדים are not killed.

קשה: Shouldn't there be a קל וחומר, certainly if the נידון is killed that the עדים should be killed? :אביו של בריבי

תירוץ: אין עונשין מן הדין, as it was taught in a ברייתא....

- מהרש"א:

שאלה: What's the reason that אין עונשין מן הדין?

תירוץ: Because it could be that the case that is more חמור is too חמור to deserve this עונש/for the עונש to help.

Source: גמרא: By מולך we דרשין « זרעך – ולא כל זרעך; you only get מיתת בית דין for giving up some of your children to the מולך, not all of them.

- סמ"ג: Reason: Someone who gave up all of his children is too bad to get מיתת בית דין.

- גמרא:

שאלה: From where do we know that you also can't give מלקות to the עדים without a גמר דין?

תירוץ: A גזירה שוה of "רשע" "רשע".

שאלה: From where do we know that you also can't give כאשר זמם for גלות to the עדים without a גמר דין?

תירוץ: A גזירה שוה of "רוצח" "רוצח".

- תוספות ד"ה חייבי מלקויות:

פירוש: From where do we know that you also can't give מלקות to the עדים without a גמר דין (like רש"י).

קשה: Why don't we ask the same question by ממון.

תירוץ: Because we learn it from "יד ביד", just like we learn דיני נפשות from "נפש בנפש."

- תוספות ד"ה חייבי גלויות:

פירוש: From where do we know that you also can't give כאשר זמם for גלות to the עדים without a גמר דין?

קשה: But by גלות they get מלקות, and we already learned out that you can't give מלקות unless the עדים had a גמר דין from "רשע" "רשי".

תירוץ: The דרשה of "רשע" "רשע" only teaches in a case where they were מרשיע the נידון to get מלקות, not if they were מרשיע the נידון to get מלקות.

- גמרא:

ר' יהודה בן טבאי: בריתא: אראה בנחמא, if it's not true that killed one עד זומם. The reason I did this was to be הוציא מליבן של צידוקים, who say that כאשר זמם is only given if the נידון was punished.

שמעון בן שטח: אראה בנחמה, that you (ר' יהודה בן טבאי), killed innocent blood, becuase you always need to bust both.

- From then on, ר' יהודה בן טבאי only paskined in front of שמעון בן שטח.

Epilogue: ר' יהודה בן טבאי would go to the עד-that-he-killed's grave and cry for forgiveness. People thought that it was the עד-that-he-killed that was crying. ר' יהודה בן טבאי said that it has to be him, because once he dies, the crying will stop.

- ר' אחא בריה דרבא לר' אשי: That's not a good proof, because it could be that the עד-that-he-killed was either finally appeased or was satisfied that he died and got what he deserved.

- רש"י:

שאלה: What does "אראה בנחמה" mean?

#1 תירוץ: I should not see נחמה.

- I should see נחמה with the death of his children, if this (that he killed the עד זומם inproperly) isn't true.

- תוספות חגיגה ד"ה אראה בנחמה:

#2 תירוץ: It's a לשון of a קללה-שבועה – he won't see נחמת ציון.

- This is like ר' טרפון saying in שבת, "אקפח את בני".

- Like the פסוק, "ואולם חי אני וימלא כבוד ד' וגו' אם יראו וגו'."

- מהרש"א:

קשה על תוספות: But ר' יהודה בן טבאי was still around in the times of בית שני?

תירוץ: Even then, there were many things that were lacking in the בית שני that people were mourning.

- However, רש"י's פשט is really better.

- ריטב"א:

קשה: How could ר' יהודה בן טבאי let ד' make such a big mistake, if we know that even the animals of צדיקים don't make mistakes?

תירוץ #1: Really the guy was חייב מיתה, but ר' יהודה בן טבאי went about doing it the wrong way.

- תוספות חגיגה:

תירוץ #2: We only say that a תלמיד חכם and his animal won't make a mistake by something that is inherintly אסור, like non-כושר food, because that is a בזיון to him, but not by something that's done in the wrong curcumstance.

- Like ר' ירמיה בר אבא who accidentally ate before הבדלה – that was something inhernintly מותר in the wrong curcumstance.

- ריטב"א:

קשה: Why did ר' יהודה בן טבאי need to give a proof that it was him yelling in the בית הקברות? He should be believed because he's a צדיק?

תירוץ: אין הכי נמי, we do believe him, and he was just giving an extra reason to believe him.

- ר' אחא בריה דרבא was saying that this isn't a good extra reason, not that we don't believed him.

קשה: Why do we need to know this whole story?

תירוץ: To tell us that there is פיוס and כפרה with death.

- משנה וגמרא סוכה:

Another thing that we do just to be הוציא מלבן של צידוקים: The whole שמחת בית השואבה is to go against the צידוקים, who don't hold of ניסוח המים.

- משנה מנחות:

Another thing that we do just to be הוציא מלבן של צידוקים: By the קצירת העומר we make a whole gathering with big announcements and shtik, to go against the צידוקים who don't hold of the קצירת העומר.

- Rabbi Balsam:

קשה #1: What's פשט in שמעון בן שטח telling ר' יהודה בן טבאי that he did something wrong? He just said himself that he did something wrong!?

קשה #2: Why does ר' יהודה בן טבאי then decide to only פסקין in front of שמעון בן שטח.

קשה #3: How could ר' יהודה בן טבאי make such a big mistake?

תירוץ: ר' יהודה בן טבאי thought that he may have still done a good thing, by being מוציא מלבן של צידוקים, and ר' שמעון בן שטח was pointing out that he didn't even do that, since he was going like the צידוקים, who say that you are able to just bust one of the עדים.

- Therefore, ר' יהודה בן טבאי would only paskin by שמעון בן שטח because ר' שמעון בן שטח, who was the נשיא (גמרא חגיגה), would be more up to date with the practices of the צידוקים to let him know what not to do, (גמרא חגיגה: and יהודה בן טבאי was the אב בית דין).

- יעב"ץ:

[קשה #1: Why doesn't שמעון בן שטח have the title of רבן, if he was the נשיא?]

The זוגות didn't usually have titles, (like אבטליון & שמעיון, הילל & שמאי).

- Therefore, you need to take out the גירסא of יהודה בן טבאי "רבי".

- משנה:

Intro: פסוק: על פי שנים או שלשה עדים יומת המת.

- There are 4 opinions on what we דרשין from this פסוק:

1. #1 תנא קמא: Just like 3 can bust 2, so too, 2 can bust 3.
2. ר' שמעון: Just like must bust all by 2 עדים, so too, must bust all by 3 עדים.
3. ר' עקיבה: In a group of 3 עדים, even though the 3rd wasn't needed, he still gets כאשר זמם.

- אגדתה: We learn from here: If those טפל to the עושי עבירה get punished equally, קל וחומר those טפל to the עושי מצווה get rewarded equally. 4. #2 תנא קמא: Just like if 1 פסול\קרוב ruins an עדות of 2, so too, 1 פסול\קרוב ruins an עדות of 3.

- ר' יוסי That only applies by ממנות, but not by נפשות.

- רבי: That also applies by נפשות.

- Only those who gave התראה are part of the עדים regarding the דין of #2 תנא קמא, because otherwise, someone could kill in a very public place and if there are two brothers that happen to be walking by, the murderer will get off.

– In all of these cases, "עדים" teaches not only 3, but even 100.

- תוספות ד"ה אף שנים:

קשה: In all of these cases, why does "עדים" teach even 100? It should just be able to teach 1 more, i.e., 4?

תירוץ: אי הכי נמי, it just teaches 4, but once 2 can bust 4, i.e., 1 pair can bust 2 pairs, there should be no reason that 1 pair can't also bust 3 pairs, 4 pairs, 5 pairs, etc.

- רש"י ד"ה ר' עקיבא:

ר' עקיבא isn't arguing on ר' שמעון, he is just saying that we don't need a passuk to teach ר' שמעון's din, because it is obvious, and therefore, the passuk must be teaching us something else.

- ריטב"א & נימוקי יוסף/רשב"א:

ר' עקיבא is arguing on ר' שמעון. However, ר' שמעון agrees to ר' עקיבא.

- According to רש"י, the only מחלוקת between ר' שמעון and ר' עקיבא is "משמעות דורשין" – where we know what from.

- נמוקי יוסף/ריץ גאות:

פשט בשיטת ר' עקיבא: Even if only 2 of the 3 are busted, the 3rd still gets כאשר זמם.

- We don't פסקין like ר' עקיבא. Reason: It's 2 against 1 in the משנה, since the תנא קמא and ר' שמעון agree.

- Rabbi Balsam:

#1 קשה: What is the נקודת המחלוקת betweeen רש"י and the גיאות ריטב"א & רי"ץ?

#2 קשה: Why don't we go after the רוב in the cases of the משנה?

Intro to תירוץ: חקירה: How do we look at the עדות of 100 people:

1. It's the עדות of 100 people (like a coorporation).

2. It's the עדות of 2 people, with 98 other people who also happen to be testifying (עיקר וטפל).

תירוץ: רש"י holds like tzad 1, and therefore, it's obvious that you must bust all, since it couldn't work to only bust partially. However, the ריטב"א & רי"ץ גאות hold like 2 צד, that there's an עיקר and a טפל, so if you bust the עיקר, that's good enough.

- The רי"ץ גאות is adding that even if you only bust the עיקר, the טפל goes along with it for the punishment.

קשה: What's the נקודת המחלוקת between the ריטב"א and גיאות רי"ץ?

Intro to תירוץ חקירה: There are two kinds of עיקר and טפל (we'll use the example of cream on a cake):

1. The cream doesn't need a ברכה, because it's טפל.

2. The ברכה on the cake covers the cream.

תירוץ: The ריטב"א holds like 1 צד, that the cream doesn't need a ברכה, because it is being eaten together with the cake – however, if you just bust 2 of 3 עדים, the 3rd doesn't get punished (like eating the cream by itself). The גאות ריץ holds like 2 צד, that the cream is covered by the cake – therefore, if you bust 2 of 3, the 3rd עד is still covered.

- רש"י בדיני נפשות:

יוסי ר' טעם לשיטת: והיצילו העדה teaches that we don't convict him even for small reasons.

- תוספות ד"ה אמר רבי יוסי:

קשה על רש"י: Then we should also be מיקל by ממנות, because: a) The פסוק says they're the same – משפט אחד יהיה לכם; and b) by ממנות, the פסוק is also 1 מקיש to 2.

ר"י יוסי ר' טעם לשיטת: Because, by ממנות by 2, even if 1 of them is קרוב/פסול, the other isn't disqualified.

- מהרש"א:

תירוץ לרש"י: True, we say משפט אחד יהיה לכם, but והצילו העדה teaches that sometimes we don't say the same thing.

- Rabbi Balsam:

שאלה: Why doesn't רש"י hold like the ר"י?

Intro to תירוץ חקירה: What is the reason that an עד אחד can make someone swear:

A) Because he has a weak level of עדות.

B) Because he strengthens the claim of the טוען.

תירוץ: רש"י understands like צד B, so really the other is completely disqualified (and the ר"י holds like צד A).

- גמרא:

רבא: The case of the משנה (see רש"י and תוספות below) is where they all testified תוך כדי דיבור.

אחא מדפתי ר': קשה: How could 100 people all tesify in 2 seconds?

רבינא: תירוץ: What רבא means is that each עד has to testify within 2 seconds of the previous עד's testimony.

- רש"י:

The statement of רבא is going לכל דבר – on all of the cases in the משנה.

- תוספות ד"ה אמר רבא:

קשה על רש"י: But we see in the המשך of the גמרא that it's not לכל דבר; from הרוג יציל, we see that regarding קרוב/פסול, they don't need to testify תוך כדי דיבור, because the dead guy isn't testifying?

Correct פשט: תוך כדי דיבור only applies by the din דין must bust all – that "all" = all that testified.

קשה: Why is there a difference between must bust all and קרוב/פסול?

תירוץ: In the case of קרוב/פסול, their עדות is true, and therefore, their עדות starts מראיה שלהם, which happened all at the same time. However, by must bust all, they are עדים זוממין, so they never had a ראיה, and their עדות only starts in בית דין. Therefore, it must be all at the same time, i.e., תוך כדי דיבור.

- גמרא:

פפא ר': קשה: According to יוסי ר', that the עדים don't have to have given התראה to פסול the עדות, the guy who's killed should פסול the עדות, since he saw the murder.

אביי: תירוץ: It's a case where he killed him from behind, so he didn't see the murderer.

פפא ר': But any time someone is raped he should פסול the עדות, since he saw the raping?

אביי: תירוץ: It's a case where he was raped from behind.

פפא ר': The murderer or the raper should פסול the עדות?

- אביי was silent to this question.

רבא: תירוץ (to all these questions): The פסוק says "יקום דבר" – that excludes the עושי הדבר from pasuling the עדות.

- תוספות ד"ה אלא מעתה:

שאלה: Why should הרוג יציל?

תירוץ #1: He's a קרוב לעצמו.

תירוץ #2: He's a שונא.

- תוספות ד"ה נרבע:

שאלה: Why should נרבע יציל?

תירוץ #1: He's a שונא.

עאפשלאג: גמרא סנהדרין: A נרבע לאונסו is פסול לעדות.

- So, our גמרא must be talking about נרבע לרצונו, which would not be a שונא. Therefore, we need a different פשט...

תירוץ #2: He's a רשע.

קשה: But in סנהדרין we say that someone who admitted that they were רובע לרצונו is still כשר לעדות.

- Why is he still כשר לעדות? According to what we are saying, he should be a רשע?

תירוץ: In the גמרא סנהדרין we don't say that he is פסול, since all we have is his admittion that he was רובע לרצונו. In our גמרא, he is פסול, since we have עדים saying that he was רובע.

- גמרא:

שאלה: What do we ask the עדים to know whether they intended to testify?

תירוץ: "Were you just there to watch a gemshmakeh murder or were you there intending to testify?"

- תוספות ד"ה היכי:

קשה: What is the גמרא's שאלה? The משנה said how we know whether they intended to testify – if they gave התראה or not.

תירוץ: The שאלה is in a case of ממנות, where there is no התראה.

- גמרא:

ר' יהודה אמר שמואל: We פסקין like ר' יוסי in the משנה.

ר' נחמן: We פסקין like רבי in the משנה.

דף ו:

- משנה:

Case: Two pairs by two windows witnessing a murder, with one guy giving התראה in the middle. דין: If some of the עדים in one pair can see some of the עדים in the other pair – they are מצטרף.

- ר' יוסי: Argues: That doesn't work at all, because we learn from "על פי שנים עדים" that the התראה needs to be from the עדים.

- דבר אחר: "על פי שנים עדים" teaches that it can't be heard through a translator.

- גמרא:

ר' זוטרא בר טוביה שאלה: What's the source that עדות מיוחדת is no good?

- "עדות מיוחדת" is when there is one עד by one window, one עד by another window, and they can't see each other.

תירוץ: "לא יומת על פי עד אחד."

- The ברייתא says like this too, and adds that even if it's one עד after the other by the same window they are not מצטרף.

ר' פפא קשה על הוספת הברייתא: Isn't it a קל וחומר that the latter case won't work, since in that case they each only saw half of the מעשה?

אביי: It's talking about a case of בעול את הערוה, where they each saw מעשה כולה.

רבא #1: By עדות מיוחדת, if they saw the מתרה or the מתרה saw them they are מצטרף.

רבא #2: The מתרה in the case of the גר"א can even be מיפי עצמו and even מיפי שד.

ר' נחמן: Although עדות מיוחדת is פסול by דיני נפשות, it is כאשר זמם by דיני ממנות.

- Source: "לא יומת על פי עד אחד".

ר' זטרא קשה: But והצילו העדה – how could we be more מחמיר by נפשות?

תירוץ: It's takeh a good קשיא.

- ר' שמואל גרזבסקי:

קשה #1: How could the גמרא ask that we should be more מחמיר? We learn from לשון of the פסוק that it only applies by מיתה?

#2 קשה: Why does the גמרא end off with "קשיא" and not "תיובתא".

Intro to תירוצים: חקירה: What exactly is the difference between ממנות and נפשות when it comes to צירוף:

A) By ממנות there is צירוף, while by נפשות there isn't.

B) There is an equal amount of צירוף by ממנות and נפשות. However, that amount of צירוף is not sufficient to give someone the death penalty.

#1 תירוץ לקשה: The קשה of the גמרא is assuming like צד B.

#2 תירוץ לקשה: The גמרא doesn't end off with תיובתא because it is possible to answer that we go like צד A.

- גמרא:

ר' יוסי in the משנה: Doesn't ר' יוסי hold that a שונא is killed because he's כמועד, even though he didn't get התראה? :ר' פפא קשה on

אביי: That's ר' יוסי בר יהודה, who holds that the whole purpose of התראה is to be מבחין בין שוגג למזיד.

- גמרא סנהדרין:

There are 3 things you need by התראה:

1. You need to tell him it's אסור.

2. He needs to be מתיר עצמו למיתה – he needs to say "even though this is אסור, I'm still going to do it.

3. He needs to do the עבירה « תוך כדי דיבור of the התראה.

- Rabbi Balsam:

From this גמרא, we can see the 3 functions of התראה:

1. To be מבחין בין שוגג למזיד.

2. To deter him from doing the עבירה.

3. חידוש שחדשה תורה – it's just part of the fact that you need a דין התראה.

- לכאורה, ר' יוסי in the משנה holds that the main thing we need by התראה is a דין התראה, and that's why it matters who gives the התראה.

- רש"י:

"על פי עצמו" in the גמרא refers to the הרוג.

- רמב"ם:

"על פי עצמו" in the גמרא refers to the הורג.

- Rabbi Balsam:

רש"י is being more inclusive; רש"י also understands that עצמו means the הורג, he just understands רבא's opinion as being that ANYONE can give the התראה.

- Reason: It's more likely that he's being sarcastic if he says it himself, as opposed to the עדים giving him התראה, which makes us pretty certain that he wasn't being sarcastic.

- תוספות סנהדרין:

קשה: on the case of נערה המאורסה: But in that case, the woman still wasn't matir atzmah lemisah?

#1 תירוץ: ר' יוסי בר' יהודה doesn't require מתיר עצמו למיתה.

- This seems to assume that the purpose of מתיר עצמו למיתה is to make sure he's thinking straight.

#2 תירוץ: A חבר is כאילו מתיר עצמו למיתה.

- This seems to assume that the purpose of מתיר עצמו למיתה is to make sure he's a מזיד.

- רמב"ם:

Paskins: Everyone needs התראה. Reason: התראה להבחין בין שוגג למזיד.

- רדב"ז:

קשה על הרמב"ם: Why does he פסקין like the חכמים and then quote the reason of ר' יוסי בר' יהודה?

#1 תירוץ: להבחין = To let us know that the person did it with a full understanding of their actions. Therefore, even a תלמיד חכם needs התראה.

- This works very well with the לשון of the רמב"ם – he says that התראה is needed for everyone, BECAUSE it's to be מבחין בין שוגג למזיד; according to our הוה אמינא, the רמב"ם should've written something along the following lines: "An כם הארץ needs התראה, because התראה is to מבחין בין שוגג למזיד. Nevertheless, a תלמיד חכם also needs התראה."

- כסף משנה:

#2 תירוץ: When the רמב"ם says that a תלמיד חכם needs התראה it's for a case where the תלמיד חכם might not be aware that, due to the מציאות of what he's doing, it's an עבירה.

- Rabbi Balsam:

קשה על תורצת הכסף משנה: That doesn't work well with the לשון of the רמב"ם, who says that the REASON is because התראה is to be מבחין בין שוגג.

- קצות:

#3 תירוץ: When עדים testify, they need to be able to testify that the person killed במזיד. How is it possible for them to say with %100 certainty that the killed במזיד? By giving התראה and his agreeing to the התראה.

- ריטב"א/(רמ"ה & יש אומרים):

Althought the פסוק quoted in the שנה is discussing the עד, the פשטות of the case of רבא is of בעלי דין, since it says "אתו לקמיה דרבא".

- גמרא:

Story: רבא once used a translator for a דין תורה.

קשה: But we learned in the משנה that you can't do that?

תירוץ: רבא understood what the foreign guy was saying, he just didn't know how to respond.

- רש"י:

Reason for no translator: You can't have עד מפי עד.

- He doesn't quote the פסוק; it could be he holds it's מדאורייתא, from the idea of עד מפי עד, but not from the פסוק of כל פי שנים עדים.

- ריטב"א/רבותינו:

It can't be talking about the בעלי דין, because the פסוק says "eidim".

- We see from this that the ריטב"א & רש"י holds that this is a דרשה מדאורייתא.

- תוספות יום טוב/נמוקי יוסף:

2 Reasons for no translator: 1) They might change what the עדים really said. 2) They won't be able to go back and forth and do דרישה וחקירה with the עדים as well.

- Therefore, it also applies by the בעלי דין.

- תופסות יום טוב:

קשה על הנמוקי יוסף: But לא דרשינן טעמא דקרא?

תירוץ: It must be that this is really an אסמכתא, and we don't really learn it from the פסוק.

- We don't necessarily see from this that he holds that it's a דרבנן, since he doesn't say that straight out, and maybe it really is a דואורייתא since it's a really great סברא.

- Other cases where we find really great סברא's being מדאורייתא: המוציא מחבירו עליו הראיה and ברכות according to the פני יהושע.

- שו"ת הרדב"ז:

The case of רבא has to be a case of foreign עדים, because the משנה learns it out from עדים.

- Reason for no translator: It would be עדות שאי אתה יכול להזימה.

Most ראשונים agree with me.

קשה: Why does the רמב"ם say that it could be a case of foreign בעלי דין?

תירוץ: That's only מדרבנן.

- So we can be מיקל on this דרבנן if there's no other option – but only by ממנות, because even if they are wrong, הפקר בית דין הפקר.

– It could be that even the דין that you can't have a מתורגמן is דרבנן even by the עדים, based on ר"י רבינו תם & ר"י רבינו תם: You can send עדות על פי כתב if there is no other option.

- It could be that even those who argue on רבינו תם.

It's possible that it's partially the בעלי דין's fault for not gettting regular people to be their עדים.

Possible reason not to use translator by בעלי דין: They may feel more comfortable being brazen if they are not talking speaking themself.

- מנחת אשר:

שאלה: Can someone be מגייר if they don't speak the same language as the בית דין?

... Conclusion: תירוץ: It is מותר, even לכתחילה, because all the reasons given by עדות don't apply by גרות, or it's all דרבנן, and even if it's מדאורייתא, there's no טענות and stuff here. Also, since it's obvious that a mute can become a גר [Rabbi Balsam: he's making a little bit of an assumption with that], even though he can't speak, and a mute can't testify, so too, even though someone can't testify through a translator, they can become a גר through a translator.

- משנה:

A בית דין that kills once in every 7/70 years is called a חובלנית.

- ר' משה:

שאלה from the Mayor: Should there be a death penalty in New York.

תירוץ: We take people's lives very seriously. [He gives many examples.] However, we still have death in Jewish law, not for the purpose of giving them death, but rather to show the seriousness of the עברות, and to make sure they AREN'T מיתה חייב.