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Intro

Today we will Be"H learn סכת בבא קמא 1 דף פ"ח מסכת בבא קמא מסכת. Some of the topics we will learn about include:

החובל בעבד

The Mishnah discusses one's liability for injuring a slave. This may depend whether he injured אבד עברי, a Jewish slave, or עבד כנעני, a non-Jewish slave; and whether של, it was his slave, or של אחרים, someone else' slave.

It also depends on the criteria for the term אחיו, brothers, mentioned in regard to בשת; it may refer to מי שיש לו אחוה

Someone who is permitted to marry a Yisroel, thereby excluding slaves, or אחיו במצות

One who is obligated in מצות, thereby including slaves;

מלר ועדים

The Gemara discusses who is eligible to serve as a King or to bear witness.



נכסי מלוג

A woman retains ownership of her property when she marries; however, her husband receives whatever profit it produces. The Gemara discusses

אשה שמכרה נכסי מלוג בחיי בעלה

A woman who sold her נכסי, מלוג;

The effectiveness of this sale may depend whether קנין פירות כקנין הגוף דמי או לא

The right to the produce is considered primary ownership in the property or not; or on תקנת אושא

A special decree whereby the חכמים strengthened the husband's rights to the property;









So let's review:

The Mishnah on דף פ"ז continues

החובל בעבד עברי חייב בכולם

חוץ מן השבת בזמן שהוא שלו

One pays all forms of compensation for injuring a Jewish slave;

But if he injures his own Jewish slave he does not compensate him for loss of income, because it belongs to him.

Similarly,

החובל בעבד כנעני של אחרים

חייב בכולם

One who injures someone else's non-Jewish slave is liable for all forms of compensation. However,

רבי יהודה אומר

איו לעבדים בושת

רבי יהודה holds he is exempt from בושת, because the Pasuk of בושת states

כי ינצו אנשים יחדיו איש ואחיו

Referring to

מי שיש לו אחוה

יצא עבד שאין לו אחוה

An עבד כנעני is not considered your brother, because as Rashi explains

שאין בא בקהל

He cannot marry a Yisroelis. Therefore,

עבדים אין להם בושת

There is no liability for humiliating a slave.

However, the חכמים maintain

אחיו הוא במצות

An עבד כנעני is considered your brother, because, like you, he is obligated in כזצות. Therefore,

יש לעבדים בושת

One IS liable for humiliating a slave.

The Gemara now discusses other Halachos where the Torah refers to אחיו:

1.

Regarding עדים זוממים, the Pasuk says

ועשיתם לו כאשר זמם לעשות לאחיו

Witnesses who testify falsely receive whatever punishment they tried to impose on the accused, their brother.

Nevertheless, the Halachah

זוממי עבד יהרוגו

They are also killed if they testified regarding a slave; Can be understood even according to רבי יהודה, who holds that an עבד כנעני is not considered אחיי, because the Torah says

ובערת הרע מקרבך

מ"מ

Requiring the זוממים punishment in all cases;











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2.

Regarding מלך, appointing a king, the Pasuk says מקרב אחיך תשים עליך מלך

You shall appoint one of your brothers as king. Nevertheless, the Halachah

עבד פסול למלכות

A slave is not eligible for the monarchy;

Can be understood even according to the חכמים who hold that an אחיו is considered אחיו, because the Pasuk is read

ממובחר שבאחיך

The king should be from the chosen ones; thereby disqualifying a slave, and similarly גר פסול למלכות

A convert is disqualified for the same reason.









3. Regarding עדות, the testimony of witnesses, the Pasuk says

והנה עד שקר העד

שקר ענה באחיו

He testified falsely about his brother. Nevertheless, the Halachah that

עבד פסול לעדות

A slave is disqualified as a witness;

Can be understood even according to the חכמים who hold that an אחיי is considered אחיי;

And, the Gemara brings two possible sources for his being disqualified:

1.

ק"ו מגזלן

ואשה או קטן

If a thief, who is a full-fledged Jew, is disqualified to be a witness, certainly a slave is disqualified. However, we can argue

מה לגזלן שמעשיו גרמו לו

A thief's actions cause him to become disqualified, and this does not pertain to a slave.

Similarly,

ק״ו

מאשה וקטן

Women and minors are

ראויה לבא בקהל

They are permitted to marry any Yisroel, and yet are disqualified as witnesses; certainly a slave is disqualified.

However, we can argue

מה לאשה שאינה ראויה למילה

Women are not obligated in ברית מילה, while a slave is, and מה לקטן שאינו במצות

A minor is not obligated in מצות, while a slave is.

Therefore, the Gemara concludes we can derive a slave's disqualification

מגזלן ומחד מהנך

From both a thief and either a woman or a minor combined; as Rashi explains

והצד השוה שבהן

. שאינם זהירים בכל המצות

זה מפני רשעו וזה מפני שלא נצטוה

They do not keep all מצות;

The woman or minor, because they are not obligated; and the thief, despite being obligated;

Just as they are disqualified to be witnesses; so too, a slave, who is not obligated in all מצות, is also disqualified.

2.

The second source is from the Pasuk

לא יומתו אבות על בנים

Now, if the Pasuk had said

לא יומתו אבות על בניהם

This would teach us

בעדות בנים

Relatives cannot be witnesses.

The term בנים therefore teaches us

לא יומתו על פי אבות

שאין להם חייס בנים

We may not sentence someone based on a witness such as a slave, whose son does not trace his lineage through him.









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The Mishnah continues

חרש ושוטה וקטן

פגיעתן רעה

An encounter involving injury with a deaf-mute, insane person, or a minor, is always to one's detriment, because החובל בהן חייב

והם שחבלו באחרים פטורין

One is liable for damaging them, while they are not liable for damaging others.

Similarly,

העבד והאשה פגיעתן רעה

Because

החובל בהם חייב

והם שחבלו באחרים פטורין

One is liable for damaging a slave or a woman, while they are not liable for damaging others, as Rashi explains שאין להם מה לשלם

They cannot pay, because the woman's property is beholden to her husband, and the slave does not own anything.

However,

אבל משלמין לאחר זמן

נתגרשה האשה נשתחרר העבד

חייבין לשלם

They must pay later, if and when the woman is divorced or the slave is freed, when they have money of their own. As Rashi explains;

The עבד ואשה are responsible for their actions and do become liable at the time, but they have no money of their own. Therefore, they must pay later, if and when they acquire money of their own.

However, the חרש ושוטה are not responsible for their actions and do not become liable at all. Therefore, they cannot be compelled by בית דין to pay later even if they have money of their own.

However, some Poskim hold that לצאת ידי שמים they have a moral obligation to pay later if they have money of their own.

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An encounter involving injury with a deaf-mute, insane person, or a minor is always to one's detriment

Because

החובל בהן חייב והם שחבלו באחרים פטורין



העבד והאשה פגיעתן רעה

Because

החובל בהן חייב והם שחבלו באחרים פמורין

שאין להם מה לשלם



אבל משלמין לאחר זמן נתגרשה האשה נשתחרר העבד חייבין לשלם

As Rashi explains

חרש ושוטה וקטן

are not responsible for their actions and do not become liable at all

עבד ואשה

are responsible for their actions and do become liable at the time but they have no money







The Mishnah continues; והמכה אביו ואמו ועשה בהן חבורה If one wounds their parent; or והחובל בחבירו בשבת

Or if he wounds someone on Shabbos;

פטור מכולן

מפני שהוא נדון בנפשו

He is exempt from payment, because he is liable for the death penalty, and we apply the principle of קם ליה בדרבה מיניה

One does not pay monetary compensation for an action that is also punishable by death.

The Mishnah concludes והחובל בעבד כנעני שלו פטור מכולן

One is exempt for injuring his own non-Jewish slave.



The Gemara now discusses גכסי מלוג, property that is owned by a woman, but her husband is entitled to its produce or profit. The Gemara will relate this discussion to our Mishnah on the next Daf.

אמר שמואל האשה שמכרה בנכסי מלוג בחיי בעלה ומתה הבעל מוציא מיד הלקוחות

If a woman sold נכסי מלוג and subsequently died in her husband's lifetime, the husband can compel the buyer to return the property.









The Gemara challenges this from the following Mishnah: הכותב נכסיו לבנו לאחר מותו

If a father writes over his belongings to his son to take affect after his death, as Rashi explains

הגוף קנוי לבן מהיום

אלא שהאב אוכל פירות

עד יום מותו

The property transfers to the son immediately, but the father retains the right to its produce until his death. In this case,

הבן אינו יכול למכור

מפני שהן ברשות האב

והאב אינו יכול למכור

מפני שהן כתובין לבן

Neither one can sell the property completely, because the father still controls them, while they are beholden to the son.

However,

מכר האב

מכורים עד שימות

If the father does sell them, the sale is effective until his death, at which point the son gains full control; מכר הבן

אין לו ללוקח עד שימות האב

If the son sold them, the sale is only effective after the father's death.

The Gemara infers

כי מיית אב מיהא אית ליה ללוקח

The son's sale is effective after the father's death; and the Gemara brings a מחלוקת regarding this Halachah:





Dedicated By: __





אר' יוחנן holds ה' יוחנן מת האב בחיי הבן דאתו לידיה דבן הנה לוהח

The sale is effective only if the father died first, and so the property transferred to the buyer AFTER the son took possession of them. However,

מת הבן בחיי האב דלא אתו לידיה דבן

לא קנה לוקח

The sale is not effective if the son died first, and so the buyer would acquire the property BEFORE the son ever took possession, because

קנין פירות כקנין הגוף דמי וכי זבין לאו דידיה זבין

The father's right to the produce is considered the primary ownership, and so the son did not have the ability to unilaterally sell the property.

However, שמעון בן לקיש maintains לא שנא מת הבן בחיי האב דלא אתו לידיה דבן לא שנא מת האב בחיי הבן דאתו לידיה דבן קנה לקוח

The sale is effective whether the father died first, or the son died first, because

קנין פירות לאו כקנין הגוף דמי וכי קא זבין דידיה קא זבין

The father's right to the produce is NOT considered the primary ownership, and so the son rightfully sold the property.

Now, we know

הלכה כר"ל

The Halachah is in this case follows ריש לקיש, and we rule קנין פירות לאו פקנין פירות לאו כקנין פירות לאו כקנין הגוף

If so, why does שמואל say הבעל מוציא מיד הלקוחות

A wife's sale of נכסי מלוג is not effective; since her husband only has קנין פירות in the property, his rights should not hinder the sale?

The Gemara answers

באושא התקינו האשה שמכרה בנכסי מלוג בחיי בעלה ומתה הבעל מוציא מיד הלקוחות

A special enactment was instituted in אושא, as Rashi explains

אלמוה רבנן לשעבודיה

משום איבה

The חכמים strengthened the husband's rights to the property and gave him the right to claim them from the buyer, out of concern that the wife's sale of would lead to animosity between them.







