

## לענין עבד פלוגתא דרבן שמעון בן גמליאל ורבנן –

### Regarding a slave it is a dispute between רשב"ג and the Rabonon

#### OVERVIEW

The גמרא, while discussing the rule if a person unknowingly had a stone in his bosom and it fell out and did damage, states that if it blinded his כנעני<sup>1</sup>, it will depend on the dispute between רשב"ג ורבנן whether the עבד is free (the רבנן) or not (רשב"ג).<sup>2</sup> Our גמרא reconciles our תוספות with a seemingly contradictory גמרא.

תוספות asks:

תימה דבפרק קמא דקדושין (דף כד,ב ושם דיבור המתחיל מיבעי) מוקמי רבנן האי ושחתה<sup>3</sup> -

**It is astounding! For in the first פרק of מסכת קידושין the רבנן establish this word 'ושחתה', to exclude (the עבד from becoming free) in a case -**

**להושיט ידו במעי שפחה וסימא עובר שבמעיה דפטור משום שלא נתכוין לעין<sup>4</sup> -**

**Where the master stuck his hand in his maidservant's womb, and blinded the fetus in the womb, that the master is exempt from freeing the fetus (when it is born), since he had no intention of coming in contact with the eye -**

**והכא נמי לא נתכוין<sup>5</sup> –**

**So here too** where he was unaware that he had a stone בחיקו, **he had no intent** of damaging the עבד at all (including the eye); why should the עבד be freed.

תוספות answers:

**ויש לומר דלא פטרוהו רבנן אלא היכא דלא נתכוין לעין -**

**And one can say; that the רבנן did not exempt the master from freeing the slave only if two conditions are met,<sup>6</sup> firstly when he had no intention of touching the eye -**

<sup>1</sup> The תורה writes (in כא,כו) [משפטים] שמות that ויג' ושלחנו תחת עינו ויג' ושחתה לחפשי ישראלי.

<sup>2</sup> They argue in a case where the עבד asked the master (who was a doctor); perform a procedure on my eye, and the master blinded him while performing the procedure; according to the רבנן, the עבד goes free, however רשב"ג argues that since the תורה writes 'ושחתה', the master must have intent to destroy the eye. Therefore the slave is not freed. The same argument will apply to our case of אבן בחיקו; according to the רבנן he is free but not according to רשב"ג.

<sup>3</sup> See previous footnote # 2 that the רשב"ג interprets the ושחתה that the master must have intent to blind the עבד.

<sup>4</sup> The רבנן disagree with רשב"ג in the case where the servant asked the master עיניי לכוּחַל אַתְּ עִינִי, for since the master intended to do something to the eye (even though he did not intend to blind him), the exclusion of ושחתה does not apply (not as רשב"ג maintains); however it does apply to the case of עובר, since he had no intention of touching the eye at all (he merely wanted to assist in the delivery of the baby)..

<sup>5</sup> רבנן is arguing that the case of אבן בחיקו is more similar to the case of עובר שבמעיה (where the רבנן maintain he is not freed), than to the case of כחול את עיני (where the חכמים maintain that he is freed).

<sup>6</sup> See 'Thinking it over' # 1.

וגם נתכוין לטובתו של עבד כי התם<sup>7</sup> -

- עובר the עובר And also his intention was for the benefit of the slave<sup>8</sup> like there by the

אבל נתכוין לעין אף על פי שנתכוין לטובתו -

However if he intended to do something for the eye, even if his intention was for the slave's benefit (as the case of עיני את עיני - (כחול

או לא נתכוין לטובתו אף על גב דלא נתכוין לעין לא:

Or if there was no intention for the slave's benefit, even though he had no intention for the eye (as in the case here of אבן בחיקו), the master is not exempt from freeing the slave.

### SUMMARY

The רבנן maintain that the exemption of ושחתה is only if he had no intention for the eye and his interaction with the עבד was for the slave's benefit, otherwise he is free.

### THINKING IT OVER

1. How do the רבנן see in word ושחתה that there are two requirements<sup>9</sup> to be met (no intended eye interaction, and the interaction was for the slave's benefit), in order to exempt the owner from freeing the slave?

2. According to תוספות that נתכוין לטובתו is a reason (together with לעין לא נתכוין) to exempt him from freeing the slave,<sup>10</sup> how does the גמרא know that רשב"ג will maintain in the case of עבד that he is not freed, perhaps רשב"ג ruled only in the case of עיני לי עיני that he is not freed since the master was נתכוין לטובתו, however by אבן בחיקו perhaps he will admit to the רבנן that the עבד is freed?!<sup>11</sup>

<sup>7</sup> See footnote # 4. He only wanted to deliver the baby, which is לטובתו of the עבד and no intention for the eye at all.

<sup>8</sup> See 'Thinking it over' # 2.

<sup>9</sup> See footnote # 6.

<sup>10</sup> See footnote # 8.

<sup>11</sup> See # 67. אוצר מפרשי התלמוד