

Cut off for me the פיאות of a minor boy

אקפי לי קטן –

OVERVIEW

One of the differences between רבינא and רב סמא is where a man told a woman (who is not a בר חיובא, but is in the category of אי בעי עביד) to cut off the פיאות of a קטן. Our תוספות explains why the גמרא chose the case of cutting the פיאות of a קטן as opposed to a גדול.

והוא הדין דהוה מצי למימר אקפי לי גדול¹ –

And it is equally true that the גמרא could have stated the case where he said to the woman **cut off for me the פיאות on an adult** -

אלא שהגדול לא יניח עצמו להקיף –

However the reason the גמרא did not use this other case is **because an adult will not allow that his פיאות be cut off**. תוספות explains why a גדול would not permit it:

כדאמר פרק אלו הן הלוקין (מכות דף כב) דאחד הניקף ואחד המקיף חייב –

as the ברייתא states in פרק אלו הן הלוקין (whose פיאות are being cut) **and the מקיף (the cutter) are liable** for מלקות. Therefore since the ניקף is (also) חייב, he will not allow this to happen. However a child is not aware, etc.

anticipates a question:

ואף על גב דמוקי לה התם כי ניקף מסייע ליה בהדיה –

And even though the גמרא there established this ברייתא (which states that the ניקף is מלקות (חייב מלקות), (only) in a case where the ניקף assists the מקיף; however, if he does not assist the מקיף he is not חייב. The question remains, why does not our גמרא mention a case where he asked the woman to cut the פיאות of a גדול, where the גדול is not assisting and therefore (seemingly) would not mind.

replies, that when the גמרא there established that the ניקף must be assisting, that is not to be interpreted that when the ניקף is not assisting there is no prohibition, but rather the reason the ברייתא is discussing where the ניקף is assisting -

היינו משום דבענין אחר לא לקי דהוה לאו שאין בו מעשה –

That is because in any other manner (where the ניקף is not assisting) the ניקף **will not receive מלקות** (not because it is permissible, but rather because)

¹ תוספות is explaining that this is not limited to a קטן, but rather it applies in all cases, whether it is a קטן or a גדול. We could have assumed that the נפק"מ between רבינא ורב סמא is only by אקפי לי קטן, but by אקפי לי גדול all would agree that the מקיף is not חייב (since the גדול consented), and/or (certainly) that the משלח will not be חייב for since the ניקף is allowing this to happen, we will assume that the שליח is serving the ניקף and not the משלח. תוספות rejects this and maintains that the same נפק"מ will apply to a גדול.

it is a transgression without action² -

אבל הלאו עובר לעולם –

However he always transgresses the לאו even if he is not assisting. Therefore the גמרא could not discuss a case of גדול לי אקפי, for the גדול will always refuse to have his cut. However if he did say גדול לי אקפי (and she did it), the same נפק"מ will apply

[ועיין תוספות שבועות ג, א דיבור המתחיל ועל הזקן ותוספות נזיר נז, ב דיבור המתחיל ורב אדא]:

SUMMARY

The difference between רבינא and רב סמא would be also in a case of אקפי לי (just as by קטן לי אקפי); however it is not mentioned since a גדול would not allow himself to be cut, even if he is not assisting, for he is always עובר an איסור (and will receive מלקות if he assists in the haircut).

THINKING IT OVER

maintains that by גדול לי אקפי there would be the same נפק"מ; if we maintains that אשלד"ע is only if the שליח is a בר חיובא then in this case where the אשה is not a בר חיובא (for she is not מוזהר for ראש) there will be a חייב מלקות will be משלח שליח לדבר עבירה. Seemingly however the woman is a בר חיובא in a case of גדול לי אקפי, for she is עובר on לפני עור regarding the גדול.³ How can תוספות assume that she is not a בר חיובא?⁴

² We generally maintain (except for ר' יהודה) that אין לוקין על לאו שאין בו מעשה.

³ indeed stated in the previous ד"ה דאמר, that if a שליח is מקדש a גרושה for a כהן, he is not considered a איסור, even though he is עובר on לפני עור, since if he would be מקדש the גרושה for himself there is no איסור, and the same seemingly should apply here. However there is a difference. By a גרושה the only reason there is a לפני עור is because he is doing the שליחות of the משלח. If he were doing it for himself (he was מקדש this same גרושה) there would be no איסור at all (no איסור of עור and no איסור גרושה), therefore the שליח is not considered a בר חיובא. However here she will be עובר לפני עור even if there were no משלח and she was מקדש the גדול on her own. In such a case she should be considered a בר חיובא (because of the לפני עור) and therefore the rule of אשלד"ע should apply, so there is no שליחות at all and the משלח should not be חייב for תקיפו!

⁴ See בל"י אות שנ.