

שבתו ורפואתו לרבו – His unemployment and healing go to his master

OVERVIEW

ruled; if one chops off the hand of his friend's slave, he is liable to pay the master שבתו and רפואתו and the slave is supported from צדקה. The גמרא derives from this ruling that the master can tell the slave עשה עמי ואיני זנך. Our תוספות discusses the other obligations of צער, נזק, and בושת which a מזיק normally has to pay.

שבתו היינו שבת קטנה וגדולה דהיינו נזק¹ -

The word שבתו includes both the minor שבת (which is his temporary unemployment)² and major שבת which is the damage that was done to the עבד.

והוא הדין צער ובושת לרבו -

And the same rule applies to צער (pain) and בושת (shame); they also belong to his master. תוספות qualifies that לרבו, only -

לרבנן דרבי יהודה דאמרי בהחובל (בבא קמא דף פז, א) דיש לעבד בושת -

According to the רבנן who argue with ר"י and maintain that there is a בושת payment for shaming an עבד. According to ר"י there is no בושת payment at all.

תוספות explains why ר"י does not mention צער (and בושת):

ולא נקט להו משום דאין חידוש שהן לרבו -

And ר"י did not mention צער ובושת because there is no novelty that they belong to his master -

אבל בשבתו קא משמע לן דאף על גב דשקיל הרב שבת דידיה לא מיחייב במזונותיו -

ר"י, (לרבו חידוש that it belongs to him), שבת (even though there is no חידוש that it belongs to him), However concerning שבת (even though there is no חידוש that it belongs to him), ר"י is teaching us that even though the master takes the שבת of the עבד, nevertheless, the master is not obligated to feed the עבד -

דיכול הרב לומר לעבד עשה עמי ואיני זנך³ -

Because the master can say to the slave עשה עמי ואיני זנך.

תוספות anticipates the following difficulty:

¹ נזק is included in שבת because the עבד cannot continue to do the same work [permanently] as he did previously because of this נזק. See רש"י ד"ה ורפואתו that it was not necessary for ר"י to mention נזק (and צער) because it is obvious that it belongs to the master (see ש"ף).

² See רש"י ד"ה נותן.

³ The חידוש that the master takes the payment and need not feed the עבד is applicable only to שבת (קטנה וגדולה), since the עבד cannot work to feed himself and the owner is taking his benefit away from him. It has no bearing however for צער ובושת (and רפואה [see (however) מ"נ]) which has no connection to his ability to work and support himself. See 'Thinking it over' # 2.

והא דפריך בסמוך שבתו פשיטא -

And that which the גמרא shortly asks; 'it is obvious that שבתו belongs לרבו'⁴

responds: תוספות

הכי פירושא פשיטא דשבתו לרבו אף על פי שלא יזוננו -

This is the explanation of the question; it is obvious that שבתו belongs לרבו even if the master will not feed the עבד -

כיון דיכול הרב לומר לעבד עשה עמי כולי -

Since the master can tell the slave עשה עמי, etc. so therefore -

ולא הוה ליה לרבי יוחנן למינקט קוטע יד עבדו של חבירו -

ר"י should not have mentioned the case of chopping off the hand of his friend's slave -

אלא הוה ליה למימר בהדיא יכול הרב לומר לעבד כולי אם לא בא להשמיענו דבר אחר⁵ -

But rather ר"י should have stated explicitly that יכול הרב לומר לעבד, etc., unless he wants to teach us an additional concept (besides 'וכו' עמי וכו' -

ומשני דנקט קוטע יד עבדו לאשמעינן חידוש שני -

To which the גמרא responds that he mentioned קוטע יד עבד to let us know a second חידוש (besides יכול הרב לומר לעבד וכו' which is -

דרפואתו לרבו דהיינו צער דסמא חריפא -

That his healing profit also belongs to his master, which is the pain of the sharp medicine -

כדמסיק דהוה אמינא שיהא לעצמו כמו רפואתו שהיא לעצמו -

As the גמרא concludes, that I would have thought that the profit of חריפא סמא should belong to the slave, just as the healing goes to the slave,⁶ similarly

גם כשיסבול צער כדי להרויח שכר רפואתו יהא לעצמו -

When he suffers pain to gain the profit of his healing⁷ it should also belong to the slave. The חידוש of ר"י is that the master receives this profit as well.

אבל צער קטיעת היד פשיטא דלרבו ולהכי לא תני וכן לבושת. רבינו יצחק:

However the pain the slave endured by the chopping of his hand, that obviously belongs to the master and therefore ר"י did not teach it and similarly with בושת. The above is the view of the ר"י.

⁴ What is the question?! תוספות just explained that the חידוש of שבתו is (not that it is לרבו, but rather that even though שבתו, nevertheless) that the master can say זנך עמי ואיני זנך.

⁵ The only חידוש of שבתו לרבו is that nonetheless the master is not obligated to feed him, since יכול הרב לומר וכו'. So ר"י should have just taught us that יכול הרב וכו' and I would know that שבתו לרבו even if he does not feed him.

⁶ The master must heal the slave with the רפואה money paid to him by the קוטע.

⁷ The עבד accepted a more painful healing procedure which reduced the cost of his ריפוי. The difference in price between a regular treatment and the lower cost of the painful treatment is what we are discussing.

SUMMARY

צער obviously belong to the master. נזק and שבת also belong to the master however the חידוש is that the master need not feed him. The reason for mentioning צערא דסמא חריפא of שכר is that the master retains the קוטע יד עבדו.

THINKING IT OVER

רפואתו asks that שבתו is פשיטא, so why mention it. The גמרא answered רפואתו If the reason he mentions שבתו is [only] because of רפואתו, why did he not mention (instead) צערו and say that רפואתו איצטריכא ליה, just as we say regarding שבתו?!

2. Why did not the גמרא prove that יכול הרב וכו' from the fact that ר"י mentioned יכול שבתו by חידוש?⁸ This indicates that there is a חידוש by שבתו and not צערו ובשתו לרבו!¹⁰ צערו ובשתו by חידוש; however there is no such חידוש; הרב וכו'!

⁸ This is (seemingly) a stronger proof that how the גמרא infers it (that it should say מתפרנס instead of ניזון).

⁹ See footnote # 3.

¹⁰ See מהרש"א (הארוך).