

Improved it

נטייבה –

Overview

posed a query; if someone sold his עבד כנעני to a נכרי and then died, do we penalize his son to redeem the slave from the נכרי or not. ר' אסי resolved this query from a משנה which stated that if one improved (נטייבה) his field on שביעית, he may not plant it on שביעית מוצאי, and ר' יוסי בר' חנינא concluded that we only penalize the father but not the son. The same will apply by selling the עבד, that the son is not penalized. There is a dispute between רש"י and תוספות as to the meaning of נטייבה.

פירש בקונטרס¹ נזדבלה -

רש"י explained that נטייבה means that the field was fertilized.

פרש"י asks on תוספות:

וקשה דהא איסורא דרבנן הוא² והיכי פשיט מינה בבכורות בפרק פסולי המוקדשין (דף לד,ב) -
And there is a difficulty with פרש"י, since fertilizing a field on שביעית is merely prohibited, מדרבנן, so how did the גמרא, in מסכת בכורות, resolve from this ruling by שביעית, regarding the case -

אצרם אונ³ דהוי איסורא דאורייתא⁴ -

Of nicking the ear of a בכור, which is a תורה prohibition?!

An additional difficulty with פרש"י:

וכן⁵ הכא מפקע ליה ממצות היכי פשיט מינה⁶ -

And similarly here where he denies the עבד the ability to do מצות; how can we

¹ בד"ה נטייבה.

² one is prohibited from plowing, seeding and harvesting on שביעית, but not fertilizing.

³ One is forbidden from inflicting a מום on a בכור, and if he did so he is forbidden to שחט and eat it; (one may eat a בכור only if it happens to receive a מום on its own). The גמרא there queried what is the ruling if the father made the מום and died, whether the son may eat the בכור. The גמרא there resolved the query from this same case of שביעית, that just like by שביעית we do not penalize the son where נטייבה, the same by בכור that we do not penalize him if the father was אונ בכור.

⁴ How can we resolve the query by צרם און בכור (whether we penalize the son), which is a (stricter) תורה prohibition, from the fact that we do not penalize the son by נטייבה which is a more lenient איסור דרבנן? See 'Thinking it over'.

⁵ Granted that selling a slave to a נכרי is also only an איסור דרבנן, so therefore the previous question by בכור does not apply to עבד, nevertheless there is still a difficulty, as to how we can derive עבד from שביעית.

⁶ See previous התם ד"ה תוס' that the גמרא in בכורות states that even if we assume that by עבד the rule is אחריו it would not resolve the query by און בכור, since the crime of selling an עבד is so severe for we are denying him the opportunity to do מצות. We see that the גמרא considers עבד more severe than even און, which is an איסור מה"ת, so certainly עבד should be more severe than נטייבה, which is only an איסור מדרבנן, so how did the גמרא resolve the query by עבד from the ruling of נטייבה?!

derive this from?! נטייבה

offers his explanation:

ומפרש רבינו חננאל נטייבה חרש בה חרישה יתירא⁷ דהוי דאורייתא⁸ -

And the ר"ה explained that נטייבה means he plowed it an extra plowing, which is a תורה prohibition -

ונדיירה כפירוש הקונטרס⁹ ואף על פי¹⁰ שהוא דרבנן חשיב טפי מנתקווצה¹¹ -

And נדיירה means as רש"י explained it, and even though fertilizing is אסור only אסור, nevertheless it is considered a greater improvement than נתקווצה, therefore by נדיירה there is an איסור למוצאי שביעית -

ומייתי ראיה מנטייבה -

However the proof to צרם אוןן is brought from נטייבה which is an איסור מה"ת, just like צרם אוןן; we derive that just as by נטייבה we do not penalize בנו אחריו, the same applies by צרם אוןן. We have resolved the גמרא in בכורות.

asks:

ומיהו אכתי קשה הכא היכי פשיט דילמא עבד שאני דמפקע ליה ממצות -

However there is still a difficulty here, how are we resolving the case of עבד from the case of נטייבה, perhaps an עבד is different and stricter, for since he is denying him his observance of the מצות-

חמיר טפי מאיסורא דאורייתא כדאמרינן¹² בפרק כל פסולי המוקדשין¹³ (שם דף לד, ב) -

It is more strict than an איסור מה"ת as the גמרא states in פרק כל פסולי המוקדשין -

answers:

ואומר רבינו תם דגבי שביעית אית לן להחמיר טפי מבשום מקום לפי שהיו מזלזלין בה¹⁴ -

And the ר"ה says that regarding שביעית we need to be stricter than in any other place, because they belittled it -

כדאמרינן בסוף הניזקין (לקמן נד, א) שהיו חשודין על השביעית -

⁷ See there in ד"ה נטייבה who writes, בכורות לד, ב תוס' ד"ה נטייבה, בירושלמי מפרש איזהו טיוב כל העם חורשין פעם אחת והוא חורש שתי פעמים.

⁸ This answers (only) the first difficulty with פרש"י, for now both נטייבה or צרם אוןן are איסור מה"ת.

⁹ See נדיירה ד"ה נדיירה that it is natural fertilization by stationing animals in the field.

¹⁰ According to רש"י that נטייבה and נדיירה are both fertilization processes, it is understood why by both of them there is a prohibition to work the field מוצאי שביעית; however according to תוספות that נטייבה is an איסור מה"ת, so we can understand why by נטייבה there is an איסור for מוצאי שביעית, but why is there an איסור for נדיירה, since it too is merely an איסור דרבנן just like נתקווצה, which is מוצאי שביעית?

¹¹ See נטייבה ד"ה נתקווצה that that he removed thorns from the field.

¹² See footnote # 6.

¹³ Just as the גמרא there states that עבד is more חמור than צרם אוןן (which is a דאורייתא), here too עבד may be more חמור than נטייבה (even if it is a דאורייתא), so how can we resolve עבד from נטייבה?

¹⁴ See 'Thinking it over'.

As the גמרא stated in the end of פרק הניזקין, that the people were suspect regarding שביעית (they would not keep it properly) -

לכך מייתי שפיר מינה¹⁵ דלא קנסו בנו אחריו -

So therefore the גמרא correctly brought a resolution from שביעית that they did not penalize the son after the father's death –

תוספות responds to an anticipated difficulty:

ובשטר שיש בו רבית¹⁶ שקונסים אותו דמשמע לעולם אפילו בנו כיון דקנסו זכה בו הלואה¹⁷ -

And regarding a שטר where there is interest payment due, where the ruling is that we penalize him, and it seems that this קנס is forever, so that even the son cannot collect, why is it more severe there; תוספות replies; once they penalized the father that he cannot collect, the borrower acquired those monies –

תוספות responds to another difficulty:

ובשנים שהפקידו אצל אחד זה מנה וזה מאתים -

And regarding the case of two people who deposited money by someone, one deposited a מנה and the other deposited two [מנה] hundred דינרים -

דאמר ר' יוסי הכל יהא מונח¹⁸ עד שיבא אליהו (בבא מציעא דף לז, א) -

Where ר"י ruled that all the monies should be set aside until אליהו will come and ascertain who has the מנה and who the מאתיים, why do we penalize them and their children –

תוספות responds:

התם קנסינן להו כי היכי דלודי¹⁹ ואם היה מחזיר לבנו²⁰ לא היה מודה:

There, the reason we penalize them is in order that they should admit, but if we would return the מנה to his son, he would not admit.

¹⁵ Indeed עבד may be more חמור than צרם און, but it is certainly not more חמור (regarding קנסות) than שביעית, for since people were lax regarding שביעית it is appropriate to penalize them even more than by עבד. Once we see that לא קנסו עבד by לא קנסו בנו אחריו, we can be sure that שביעית by בנו אחריו.

¹⁶ See ב"ק ל, ב. According to ר"מ there, the מלוה cannot even collect the principle.

¹⁷ The חכמים penalized the מלוה that he cannot collect the קרן (see footnote # 16); this is assumed to mean that the לווה no longer owes him any money, therefore the children cannot collect on this loan since the לווה does not owe any money.

¹⁸ Even though we know that each one deposited at least a מנה, so let us return a מנה to each one and the remaining מנה should be שיבא אליהו (as the חכמים rule), nevertheless ר' יוסי maintains that since one of them is a רמאי (a swindler) we punish him that he does not receive even his מנה. The question is that after the litigants die, we should give their children each a מנה; why are we penalizing the children since we say here that לא קנסו בנו אחריו?!

¹⁹ If we would return a מנה to each one, the רמאי would think that he has nothing to lose (and perhaps work out a deal to get some of the third מנה), however if he knows that he loses even his own מנה, he will readily admit that he only has a מנה so he should not lose his principle.

²⁰ He says to himself my מנה is not lost, my children will have it, so he will remain unrepentant.

Summary

according to נטייבה רש"י means to fertilize (which is אסור מדרבנן), and according to תוספות it means (extra) plowing which is אסור מדאורייתא. We are stricter by שביעית more than all other איסורים since people are lax in their observance. Generally we are not קונס בנו אחריו except by רבית (where זכה בו הלוחה) and מנה שלישיית to insure that the רמאי admits.

Thinking it over

asks on רש"י how can we resolve צרם און דאורייתא from נטייבה, which is only מדרבנן.²¹ However according to תוספות that we need to be מחמיר by שביעית more than anywhere,²² there is seemingly no question?²³

²¹ See footnote # 4.

²² See footnote # 14.

²³ See תפארת יעקב