

אי כרבי יצחק קשיא ממזרת –

**If it is like Rabi Yitzchok, Mamzeres is difficult**

**Overview**

מת ומשלם (who maintains that by קנס the rule is established) asked רב פפא how will רבה (who maintains that by קנס the rule is established) establish our משנה. It can't be like רבי מאיר for קשיא בתו, it cannot be כרנב"ה for קשיא, it cannot be ר' יצחק for קשיא ממזרת. Our תוספות explains why ר"פ did not mention (and negate) other possibilities.

לא הוצרך לומר אי כרבנן<sup>1</sup> דלדידהו<sup>2</sup> קשיא ממזרת ואחותו<sup>3</sup> -

**It was not necessary for רב פפא to ask, 'if it is according to the רבנן, there will also be a difficulty'; for it is obvious that according to the רבנן both ממזרת and אחותו, will present a difficulty; therefore, he did not mention it –**

ר"פ discusses why another possibility was not mentioned by תוספות:

ולא מצי למימר נמי דמתניתין כרבי עקיבא<sup>4</sup> דסבר עדים זוממין קנסא<sup>5</sup> -

**And ר"פ could also not have said that our משנה is like ר"ע, who maintains that the payment which עדים זוממין make is a קנס -**

ואית ליה לוקה ומשלם<sup>6</sup> ולית ליה מת ומשלם<sup>7</sup> -

**And ר"ע maintains that one is לוקה ומשלם (like ר"מ), but he disagrees that one is מת ומשלם –**

תוספות responds:

דלרבי עקיבא מצינן למימר דלא גמר עדים זוממין ממוציא שם רע -

<sup>1</sup> The רבנן here refers to the רבנן of ר"מ, who maintain that אין לוקה ומשלם, and also the רבנן of ר' יצחק, who maintain that there is חייבי כריתות by מלקות.

<sup>2</sup> The רבנן will maintain that both by ממזרת (which is a 'regular' לאו), and by אחותו (which is from the חייבי כריתות) there is מלקות. Regarding מלקות, the רבנן maintain that אין לוקה ומשלם, so why do ממזרת ואחותו receive a קנס payment.

<sup>3</sup> Regarding the others (which ר"פ mentions) there is a difficulty from only one case in the משנה (either בתו, אחותו, or ר' יצחק), however, according to the רבנן there will be two difficulties. Therefore, ר"פ felt it was not necessary to mention it (it is obvious that the משנה cannot be established according to the רבנן). See 'Thinking it over'.

<sup>4</sup> See לוקה where ר"ע מוציא שם רע, where he is also לוקה, ר"ע derives ע"ז from ר"ע, for he derives ע"ז from ר"ע, לוקה ומשלם, where ר"מ maintains that ע"ז are לוקה ומשלם. ר"ע explains that ר"מ can derive ע"ז from ר"ע since ר"מ agrees with ר"ע that ע"ז is a קנס. ומשלם.

<sup>5</sup> The reason ע"ז is considered a קנס (according to ר"ע), is because the ע"ז did not actually harm the victim; they merely wanted to harm him.

<sup>6</sup> ר"ע will agree with ר"מ that we derive ע"ז from ר"ע מוציא שם רע that in both cases the ruling is לוקה ומשלם. This will explain why by אחותו and ממזרת there is a קנס payment.

<sup>7</sup> Here ר"ע will agree with the רבנן who maintain that by חיוב מיתות ב"ד we rule מ"מ and there is no monetary payment. This will explain why there is no קנס by בתו (where there is a חיוב מיתות ב"ד). This would seemingly resolve all the issues, so why did not ר"פ try to establish the משנה (according to רבה) like ר"ע?!

For we can say regarding ר"ע that he does not derive ע"ז from מוצש"ר -

אף על גב דהוי קנסא מקנסא כדפרישית לעיל<sup>8</sup> (דף לב, א דיבור המתחיל דאין?) -

Even though that this is case of deriving קנס from קנס (which we usually derive one from the other), as I explained previously -

ואית ליה שפיר כרבנן<sup>10</sup> דלוקה ואינו<sup>11</sup> משלם:

So therefore ר"ע would properly agree with the רבנן that he is לוקה, but does not pay.

### Summary

There was no need for ר"פ to negate the רבנן or ר"ע as a potential candidate for our משנה; since they both (probably<sup>12</sup>) maintain לוקה ומשלם, there would be a double difficulty with אהותו and ממזרת.

### Thinking it over

explained why ר"פ did not mention the רבנן.<sup>13</sup> Why is an explanation even needed; the entire גמרא is based on this question that the משנה cannot follow the רבנן who maintain משלם ואינו<sup>14</sup>; why does תוספות attempt to explain it?!<sup>15</sup>

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<sup>8</sup> One reason is because כדי רשעתו excludes having the punishments of both מלקות and ממון. Another is that מוצש"ר is a greater חידוש than ע"ז, because he is liable for merely his speech, ש, TIE footnote # 34.

<sup>9</sup> See there also TIE footnotes # 37-39.

<sup>10</sup> There is no reason to assume that ר"ע should argue with the רבנן, unless we have some proof like by ר"מ and רנב"ה.

<sup>11</sup> Therefore, we have the dual difficulty from אהותו and ממזרת.

<sup>12</sup> See footnote # 10.

<sup>13</sup> See footnote # 3.

<sup>14</sup> See לא, ב, on the bottom and onward.

<sup>15</sup> See שיטה מקובצת.