

No fine and no seduction

לא קנס ולא פיתוי -

Overview

The ברייתא teaches that if one has relations with one of the עריות ושניות there is no payment of קנס (if he forced himself on her), and also no payment if he seduces her.¹

The payment for פיתוי is also a קנס, however from the expression of the ברייתא of לא (אונס ופיתוי), it would seem that the term קנס applies (only) to אונס and not to פיתוי, which is not so. תוספות resolves this issue.

אית דגרס ולא² אונס משום דפיתוי נמי קנס הוא³ -

There are those whose text reads, 'לא (ו)לא אונס ולא פיתוי', instead of פיתוי ולא קנס, since פיתוי is also a קנס –

The ר"י supports our גירסא of קנס ופיתוי:

ואומר רבינו יצחק דגרסינן ליה דשייך למיקרי לאונס קנס טפי מלפיתוי -

And the ר"י maintains that our texts should read קנס ופיתוי (not אונס ופיתוי), for it is more applicable to refer to אונס as קנס, than to refer to פיתוי as קנס -

משום דאונס שותה בעציצו⁴ (לקמן דף לט,א):

Because the אונס must 'drink in the cup he chose' (he must marry her).

Summary

קנס may refer (exclusively) to אונס, since only by קנס is he forced to marry her.

Thinking it over

Despite תוספות justification, why indeed did not the ברייתא state אונס ופיתוי; what advantage is there in stating קנס ופיתוי?!

¹ The general rule is if one is מאנס a בתולה, נערה בתולה, he must pay fifty שקלים to the father, and he is required to marry her. If one is מפתה a בתולה, נערה בתולה, he pays fifty שקלים if either of them do not want to marry, otherwise if they agree to marry, he pays nothing. The payment of fifty שקלים in both instances (by אונס ומפתה) is a קנס payment.

² The רש"י amends this to read לא (not ולא).

³ The ברייתא seems to be referring to אונס (only) as קנס, when in truth, קנס refers to both אונס and פיתוי. Why write קנס and פיתוי, it seems more correct to write אונס ופיתוי.

⁴ שותה בעציצו is a euphemism, meaning that (if she wants) he must marry her and still pay the fifty שקלים. Therefore, since there is a greater קנס by אונס than by מפתה (he must marry her by אונס, if she wants, regardless of her condition [and pay]), we use קנס to refer to אונס, more than מפתה.