

One who comes upon his daughter

הבא¹ על בתו -

Overview

The משנה enumerates הבא על בתו, among those who do not receive קנס on account of (מחוייב מיתת בי"ד). The issue here is how is it possible that there should be קנס at all by בא על בתו, since the קנס of a נערה belongs to the father! One possible explanation is that she was נתארסה ונתגרשה before he was בא עליה, in which case the קנס belongs to her (according to ר"ע לקמן לה, א). Our תוספות offers another option.

למאי דמוקי מתניתין בפרק בן סורר (סנהדרין דף עג, ב ושם) במפוחה² -

According to how משנה here, in פרק בן סורר that we are discussing a מפוחה -

צריך לאוקמה בשבא עליה ובגרה³ כדפרישית⁴ לעיל:

It is necessary to establish this case, where he was בא עליה before she was a בגרת, and the העמדה בדין was after she was a בגרת, as I explained previously.

Summary

If the daughter was a מפוחה, the העמדה בדין was after she became a בגרת.

Thinking it over

Is there any difference, regarding הבא על בתו, whether he is exempt from paying her the קנס, because technically there is no קנס (since קנסה לאביה, or she is מוחל, etc.), or that he is exempt from paying on account of מיניה בדרכה?

¹ This משנה references the תוספות on לו, ב.

² The daughter was seduced by the father. [עיי"ש, ש there found it necessary to establish our משנה in the case of a מפוחה in order to resolve a certain difficulty there, עיי"ש]. This presents a difficulty, since we are assuming that it is a situation of נתארסה ונתגרשה (see 'Overview'), so she receives no קנס, for generally a מפוחה (who was ברצון) is מוחל the קנס. It is only when קנסה לאביה that she cannot be מוחל but if it is קנסה לעצמה, she is מוחל. The question remains, how is it possible the whole idea of קנס by בא על בתו if she is a מפוחה.

³ The פיתוי was when she was a נערה; however, she took her father to בי"ד, to collect the קנס when she was a בגרת, in which case the rule is that since the העמדה בדין was when she is a בגרת the קנס belongs to her (see לקמן מא, ב). We cannot argue that she was מוחל, for since the פיתוי took place before שנתבגרה, the קנס belongs to her father and she cannot be מוחל. Now that בגרה she can claim the קנס from her father. We need not establish it in a case of נתארסה ונתגרשה.

⁴ כט, א ד"ה ועל אשת.