

For what pain

צער דמאי -

Overview

The גמרא stated that a מאנס must also pay for the pain that he caused her. The גמרא asks what צער (pain) is he paying for. תוספות attempts to clarify this question.

תוספות asks:

קשה לרבינו יצחק דמאי קא מיבעיא ליה -

The ר"י has a difficulty with this question, for what is the גמרא asking 'צער דמאי' - וכי לא ידע הש"ס שיש צער גדול לבתולה בביאה ראשונה וכמה קטנות חולות מזה -

For did not the גמרא know that there is immense pain for a virgin by her first ביאה, and many young girls become sick from it, so obviously there is צער -

תוספות anticipates a possible resolution to this question:

וכי תימא דמאותו צער פשיטא ליה להש"ס דפטור שהרי סופה להצטער בכך תחת בעלה¹ -

And if you will say that it was obvious to the גמרא that the מאנס is exempt from paying for that צער of the ביאה ראשונה, since eventually she will have to undergo this pain with her husband (if he would not have been מאנס her) -

תוספות rejects this answer:

והא איכא כמה תנאי בהכונס (בבא קמא דף נט,א ושם) דלא חיישי לכחש גופנא² -

But there are those תנאים in פרק הכונס who are not concerned for the weakening of the vines -

פירוש דבר שסופו להיות כן³ -

The meaning of כחש גופנא refers to something which will eventually happen -

תוספות answers:

ונראה לרבינו יצחק דצער בעילה משום תאות תשמיש אינו בא בשעת תשמיש אלא אחר כך -

¹ The מאנס is not causing her any extra pain; either she has this pain by her husband or by the מאנס. See the very bottom of this עמוד.

² In a case where an animal ate someone else's grapes which were not ripe yet (בוסר), the rule is that the owner of the animal must pay the price of ripened grapes. Some opinions maintain that we deduct from the payment the amount which the vine will decrease in its value had the grapes been left on the vine to mature. We assume that grapes growing on a vine decrease the value of the vine by absorbing its nutrients. This is called כחש גופנא. However other תנאים maintain that we do not deduct anything for כחש גופנא and he must pay the full value of ripe grapes.

³ Our case of אונס is similar to כחש גופנא, if we are concerned for כחש גופנא (and we deduct the amount which the vines will deteriorate from the grapes), so here too we deduct the צער that she will have later, so it evens out and he owes her nothing. However, according to those who do not take כחש גופנא into account, but rather assess the damage as it is worth now, so here too he will have to pay her for her צער, and we are not concerned what the future brings.

And it appears to the ר"י that the pain of intercourse⁴ is not felt during תשמיש because of the desire for תשמיש, rather the pain is felt later after תשמיש -

וכל צער החבלה דמחייב היינו אותו צער הבא לו בשעת חבלה -

And his liability for causing the pain of the wound is only regarding the pain that is inflicted at the time of the wound -

אבל מה שבא לו אחר כך מיפטר דגרמא⁵ בעלמא הוא הלכך בעי צער דמאי⁶ -

However any pain which is felt later (after the act of wounding [in this case after the בעילה, which causes the wound]), one is exempt from paying for that צער, for it is considered merely as a גרמא, therefore the גמרא asked for which צער is he liable -

ורבינו שמשון בן אברהם מפרש דפשיטא דצער של בתולים ליכא למימר -

And the רשב"א explains that it was obvious (to the one who asked דמאי צער) that we cannot say that it is צער של בתולים (as asked תוספות) -

דעל כרחך תנא דמתניתין חייש לכחש גופנא⁷ מדמפתה⁸ פטור :

For perforce you must say that the תנא of our משנה is concerned for כחש גופנא, since he maintains that a מפתה (a seducer) is exempt from paying צער.

Summary

There is no חיוב צער for afterwards, since it is considered גרמא. Or there is no חיוב צער for ביאה since the משנה is concerned for כחש גופנא.

Thinking it over

How can we say that the צער which she feels after תשמיש is considered גרמא; but he inflicted the wound directly which is causing her now pain?⁹

⁴ This is the pain of the tearing of her בתולים (hymen).

⁵ גרמא means an indirect damage. the case here, where she is being damaged (feeling pain) by something which already happened, is considered גרמא בנזקין. See 'Thinking it over'.

⁶ During the ביאה when he makes the חבלה she does not experience pain because of תשמיש, and for the pain she feels later, he is not liable because he is not inflicting that pain on her while she is experiencing it.

⁷ Therefore since we are concerned for כחש גופנא he is פטור (see footnote # 3), since סופה להצטער תחת בעלה

⁸ The proof that the תנא of our משנה is concerned for כחש גופנא is from the fact that מפתה is פטור from צער. Seemingly it is the same צער for אונס or מפתה, therefore we must say that by מפתה he does not pay since סופה להצטער תחת בעלה (and we are the same צער for אונס), the same should apply to מאנס, therefore the גמרא asks what צער is there by מאנס which is not there by מפתה.

⁹ See שו"ת הרא"ש כלל כא סי' ב and הרא"מ הורו"ק.