

הכי גרסינן ממאי מדקתני האונס חייב והמפתה פטור יתומה פשיטא אלא הא קא משמע לן כולי - This is how the text reads: 'from where; since it states the rapist is liable but the seducer is exempt; if it is an orphan, it is obvious, but rather this is what he is informing us, etc.'

Overview

taught in the משנה that if an orphan was betrothed and then divorced, if someone was מאנס her, he is liable for the קנס payment, however if he was מפתה her, he is exempt from the קנס payment. חנה stated in the name of ר"י that ר"א was following the view of his teacher עקיבא גמרא¹. The גמרא continues, how do we know this, since he said that by an אונס he is חייב and by מפתה he is פטור, it is obvious that this is so by a יתומה, rather we must say that he is restating the view of ר"ע that a נערה שנתארסה ונתגרשה receives the קנס for herself. תוספות explains the inference.

כלומר² מדקתני האונס חייב והמפתה פטור שמע מינה דיש לה קנס וקנסה לעצמה -

The גמרא (when it states 'וכו' מדקתני וכו') means to say, since ר"א taught, the אונס is חייב and the מפתה is פטור, we can derive from this that by a נערה שנתארסה ונתגרשה there is a קנס payment (for the מאנס)³ and the קנס payment belongs to her -

דאי משום יתומה נקט מפתה פטור⁴ פשיטא דפטור דהא מחלה⁵ -

For if ר"א mentioned that the מפתה is פטור in order to teach this rule only by a יתומה, it is obvious that by a יתומה the מפתה is פטור, since she forgave him -

¹ See the משנה on לה,א where ר"ע maintains that קנס וקנסה לעצמה יש לה קנס וקנסה לעצמה. This נערה is still technically ברשות אביה (her father can be מקדש her to whomever he desires), however regarding the קנס it belongs to her, not to her father (according to ר"ע). This is (also) what ר"א is teaching us in our משנה.

² In our גמרות the text reads, מדקתני האונס חייב (instead of מדקתני האונס). From our גירסא it seems that the proof (that ר"א follows ר"ע [that קנסה לעצמה]) is since ר"א said יתומה (as it states according to our גירסא that ממאי יתומה); this would imply that if it did not say יתומה we would not know that ר"א is following ר"ע, but this is not so, for if ר"א did not say יתומה, but rather only שנתארסה ונתגרשה we would certainly know that he agrees with ר"ע that קנסה לעצמה and therefore the מפתה is פטור. תוספות therefore rejects this גירסא and maintains instead that the proof is from המפתה פטור, which proves that קנסה לעצמה, and we cannot say that he is פטור only because she is a יתומה, for תוספות continues to explain.

³ However by the מפתה there is no קנס payment for (since she is the recipient of the קנס), she forgave him (since she joined him willingly),

⁴ Normally a מפתה is required to pay קנס to the father (of the נערה), and even though it was done willingly, the נערה cannot be מוחל the payment due to her father; however by a יתומה, where there is no father, we do not give her any קנס (by מפתה) because since she did it willingly she is מוחל him the קנס.

⁵ There is no חידוש that by אונס the קנס is hers (since she has no father) and no חידוש that by מפתה he is פטור (since she is מוחל); so what is ר"א teaching us?! See 'Thinking it over'.

אלא על כרחך לא נקט מפתה פטור אלא משום נערה שנתארסה ונתגרשה -

Rather perforce you must say that the only reason he mentions that מפתה is because he is really teaching us the ruling regarding a נערה שנתארסה -
(פטור is מפתה (that even in that case ונתגרשה, who has a father

- ולא נקט יתומה במתניתין אלא ליתן טעם אמאי מפתה פטור והלא קנסה לאביה -

And the only reason he mentions יתומה in our משנה is to give an explanation why מפתה is פטור by a נערה שנתארסה ונתגרשה, since seemingly the קנס should belong to her father -

ואשמעינן דהרי היא כיתומה שקנסה לעצמה -

So this is what ר"א is informing us that this נערה שנתארסה ונתגרשה is like a יתומה that the קנס belongs to her –

Tosfos asks:

ואם תאמר ומנלן הא אדרבה אימא דנקט יתומה למידק -

And if you will say; but how do we know this, perhaps let us say the contrary, that he mentions יתומה for the inference -

- טעמא דהויא נמי יתומה הא אינה יתומה אפילו מפתה חייב דקנסה לאביה -

The reason why מפתה is פטור is because she is also a יתומה (besides being נתארסה ונתגרשה), however if she is not a יתומה (and was ונתגרשה), even מפתה is חייב since the קנס belongs to her father (and she cannot be מוחל what is due to him) –

Tosfos answers:

ויש לומר דלית לן למימר דלדיוקא אתא כל זמן דנוכל לומר דלגופיה⁶ אתא:

And one can say that that we do not say that this rule is coming (merely) for an inference, as long as we can say that it is coming for its own teaching -

Summary

The inference that ר"א agrees with ר"ע is from the ruling that מפתה is פטור. A direct

⁶ It seems that we have two options; one that the word יתומה is inappropriate (for it is obvious that by a יתומה the מפתה is פטור), but rather ר"א means a נערה (who has a father) שנתארסה ונתגרשה, and he refers to her as a יתומה to explain that קנסה לעצמה because (once that ונתגרשה ונתארסה) she is considered like a יתומה and לעצמה. In this interpretation ר"א is telling us a direct ruling that קנסה of a נערה שנתארסה ונתגרשה is לעצמה. (even though the word יתומה is inappropriate). The other option is to say that ר"א is discussing a יתומה (שנתארסה ונתגרשה) (so the word יתומה is appropriate), and even though there is no חידוש in this ruling that קנס מפתה אין לה (for it is obvious), nevertheless he is teaching this rule in order that we should infer from it, that only if she is a יתומה is מפתה פטור (since she is מוחל it), but if she would not be a יתומה, but a נערה שנתארסה ונתגרשה, קנס would be to the father and she cannot be מוחל it (not like ר"ע). Tosfos maintains that it is preferable to say that the משנה is teaching us a clear ruling (albeit the difficulty with the wording), rather than to say that the teaching itself is superfluous, it is only being taught for the inference. We do not chose an inference over a direct teaching.

teaching has priority over an inference.

Thinking it over

תוספות writes that we cannot say that ר"א is discussing a יתומה (only), for it is obvious that there is no קנס if one was מפתה a יתומה.⁷ However let us say that ר"א is only discussing יתומה and the חידוש is that a מאנס must pay her the קנס even though the תורה writes ונתן לאבי הנערה (but not to the daughter), and he mentions מפתה since he already mentions אונס?

⁷ See footnote # 5.