

הרי רובע ונרבע¹ בעדים דבעלי חיים נינהו ואסירי – But Roivah and Nirbah with witnesses, which are live animals and they are prohibited

Overview

מותרת is משולחת (רשב"י in the name of ר' יוחנן said) that we must assume that the גמרא (but not the שחוטא) for we do not find a prohibition on live animals. The גמרא asked, 'but by רובע ונרבע with עדים, they are prohibited from being used while still alive'. Our תוספות reconciles our גמרא with a ruling of the ר"ת elsewhere.

להכי נקט עדים דאי על פי עד אחד או על פי בעלים אינם אסורין להדיוט² -

It was **therefore necessary** for the גמרא to mention that the רביעה took place **with two witnesses, for if it would be only by the testimony of one witness, or by the admission of the owner, it would not be prohibited for common use.**

תוספות asks:

ואם תאמר לפירוש רבינו תם³ דמפרש דשור הנסקל שרי בהנאה כל זמן שהוא חי -

And if you will say; according to the view of the ר"ת, who maintains that a שור is permitted for usage as long as he is alive, for the הנאה by a שור הנסקל does not begin -

אלא עד אחר הסקילה⁴ וכן נמי קאמר ברובע ונרבע⁵ אם כן קשה מהכא -

Only until after the stoning, and the same ruling also applies, by a רובע ונרבע, therefore there is a difficulty from the גמרא here on the פירוש ר"ת -

דמאי קאמר דבעלי חיים אסירי דמשמע אסורין בהנאה אף מחיים⁶ -

For what does the גמרא say, that we see from רובע ונרבע that live animals are prohibited, which indicates that they are אסורים בהנאה even while alive –

¹ A רובע is a male animal who performed bestiality with a woman, while a נרבע is a female animal who had bestiality performed on her by a man. Both these animals need to be put to death (if there were עדים).

² See רש"י ד"ה רובע. The הנאה איסור stems as a result from the סקילה; since there can be no סקילה without two עדים, there can be no הנאה איסור. See 'Thinking it over' # 1.

³ See the marginal note which refers us to תוד"ה אפילו עב, זבחים עב, תוד"ה אפילו עב, זבחים עב, תוד"ה אפילו עב, זבחים עב.

⁴ We know that a שור הנסקל is אסור בהנאה; however according to the ר"ת that איסור הנאה does not take effect as long as the שור הנסקל is alive (one may [for instance] plow with it). The איסור הנאה is effective only after it is dead (whether by סקילה or even שחיטה).

⁵ See footnote # 1; a רובע ונרבע are to be נסקל; however as long as they are alive they are אסורים בהנאה.

⁶ See 'Overview'. ר"י initially said that the משולחת cannot be אסורה בהנאה since we do not find that בעלי חיים are אסורין. The גמרא asked, but we do find it by רובע ונרבע. The implication of the question is that רובע ונרבע are אסורים בהנאה (presumably since they are destined for סקילה [see footnote # 2]). However, according to ר"ת שיטת ר"ת there is no איסור הנאה מחיים by an animal which is destined for סקילה. What is the גמרא's question?!

responds; it will be necessary to say -

ולפי שיטתו לא נזכר כאן הנאה כלל -

That according to the view of the ר"ת, there is no mentions of איסור הנאה מחיים here at all, for there is no איסור הנאה מחיים by רובע ונרבע -

אלא הכי פירוש לא מצינו בעלי חיים דאסירי -

But rather this is the explanation of what ר"י meant when he said, 'we do not find live animals being prohibited' -

כלומר שהזהיר הכתוב שלא לשוחטו כדי לאכול הבשר⁷ -

Meaning we do not find that the תורה prohibited us not to slaughter a live animal in order to eat the meat⁸ -

ופריך הרי רובע ונרבע דבעלי חיים נינהו ולא הזהיר הכתוב אלא לשוחטן כדי לאכול הבשר -

And the גמרא asked but רובע ונרבע, בעלי חיים, and did not the תורה prohibit us from slaughtering it in order to eat the meat?! This was the question -

אבל ליהנות מהם כל זמן שהם חיים ודאי מותר:

However it was certain to the גמרא that it is permitted to derive benefit from them as long as they are alive.

Summary

The s'גמרא question from רובע ונרבע was how can you say that we do not find a prohibition to slaughter a live animal in order to eat it, when there is this prohibition by רובע ונרבע.

Thinking it over

1. Why was it necessary for תוספות to preface his question by mentioning⁹ the need for עדים?

2. Why indeed did not ר"י say explicitly that we do not find איסור הנאה מחיים (so the משולחת cannot be מחיים); and therefore there would be no question from רביעה?!

⁷ Presumably תוס' means that we do not find regarding kosher animals, that there should be a prohibition to slaughter them in order to eat them. Therefore we cannot say that the משולחת should be forbidden to be slaughtered and eaten (which would be the case if we would say that the פסוק of מכבד לא תאכלו מכבד refers to the משולחת).

⁸ However, ר"י did not mean (according to the ר"ת) that we do not find בע"ה to be איסור בהנאה מחיים, for indeed we do not find that (so there can be no question from רובע ונרבע). See 'Thinking it over' # 2.

⁹ See footnote # 2.