

Why are cities of refuge different

מאי שנא לערי מקלט –

OVERVIEW

The גמרא cited a ברייתא which states that the master is not obligated to feed his slave who was exiled to the ערי מקלט, however the מעשה of that slave belongs to the master; proving that the master can tell the slave עשה עמי ואיני זנך. The גמרא rejects this proof saying that we are discussing a case where the master said במזונותיך ידיך, and when the ברייתא states that the מעשה ידי belong to the master that is referring to the extra מעשה, that is more than his need for food. The גמרא then asks so why mention ערי מקלט, this rule applies everywhere. תוספות explains that if we would maintain יכול האדון לומר עשה עמי ואיני זנך, then it would be understood why ערי מקלט is mentioned.

פירוש¹ אי אמרת בשלמא יכול –

The explanation of the question (מ"ש לערי מקלט) is as follows: if we assume that ברייתא יכול הרב לומר לעבד עשה עמי ואיני זנך -

אשמועינן ערי מקלט דאף על גב דאמר רחמנא² וחי עביד ליה חיותא טפי –

Teaches us this rule (of עשה עמי וכו') by ערי מקלט; for even though the 'Merciful One' writes regarding one who is in an עיר מקלט that 'והי', meaning that you should give him more sustenance which would therefore lead us to assume that in an עיר מקלט the master cannot tell his slave עשה עמי וכו', the ברייתא teaches us that -

אפילו הכי יכול הרב לומר כולי –

Nevertheless the master can say, etc. - עשה עמי ואיני זנך

אבל לענין העדפה לא משמע ליה דמשום וחי תיהוי העדפה דידיה³:

However if we assume that the master cannot say עשה עמי וכו', and we are

¹ תוספות explains that if we maintain זנך עשה עמי ואיני זנך then it will be understood why the ברייתא finds it necessary to mention ערי מקלט; however if we maintain that the master cannot say עשה עמי וכו', then (the assumed that) it is not understood why the ברייתא mentions ערי מקלט (the assumed that).

² In מב ד, (ואתחנן) ד, reads: פסוק דברים (ואתחנן) ד, מב ד.

³ The ברייתא is teaching a novelty that even though one may think that the עבד has more rights in ערי מקלט than elsewhere, nevertheless the rights do not extend to this case. If we assume that usually the master has the right to say עשה עמי וכו', then we may have assumed that by ערי מקלט where the תורה writes וחי, that the עבד has more rights than usual and the master cannot say עשה עמי וכו', for then it will not be וחי. The ברייתא therefore teaches us that this is not so and the master can say עשה עמי even in ערי מקלט. If however we maintain that the master can never say עשה עמי וכו' (he can only say וכו'), then (according to the מקשן), it does not seem to be even a הו"א, that the עבד should receive the העדפה in עיר מקלט; for the העדפה is not considered וחי.

merely discussing the העדפה, **it does not seem** to the מקשן **regarding העדפה, that on account of 'והי' the העדפה should belong to the** slave, therefore there is no עיר מקלט by חידוש⁴.

SUMMARY

The difference between the מקשן and the תרצן is whether we may have assumed that the פסוק of וחי teaches that the העדפה (in an עיר מקלט) belongs to the slave (the תרצן), or not (the מקשן).

THINKING IT OVER

The תרצן assumes that (without the ברייתא) we would have (mistakenly) derived from 'והי', that the העדפה should belong to the עבד.⁵ When the גמרא previously asked that it is פשיטא that the העדפה belongs to the master, why did not the גמרא answer that it is not פשיטא at all, since the 'והי' פסוק may teach us that even the העדפה belongs to the עבד (as the גמרא subsequently answered regarding עירי מקלט)?!⁶

⁴ The גמרא concludes, however, that without the ברייתא we would have assumed that וחי teaches us that even the העדפה belongs to the עבד (see 'Thinking it over'). Therefore it was necessary for the ברייתא to teach us that the העדפה (even) of an עבד who is in an עיר מקלט, belongs to the master.

⁵ See footnote # 4.

⁶ See מהוד"ב and מהרש"א (הארור).