

7.5.5

39a (משנה ה) → 40b (סיום המסכת)

- I. משנה ה2: status of cisterns (and the water)
- a. *Owned by individual*: follows his תחום
 - i. *Challenge (רבא ל"ג)*: river water follows the one who fills them (even if owned by another)
 - ii. *Answer (רבה)*: the referent in our case is stored (not flowing) water
 - b. *Owned by city*: follows city's תחום
 - c. *Public use (for עולי בבל)*: follows the תחום of each user
- II. Discussion: dispute ר"ג/ר"ש re: תחום-status of public well
- a. *ד' נחמן*: follows the תחום of the one on whose behalf it was filled
 - b. *ד' ששת*: follows the תחום of the one who filled it
 - c. *Suggestion*: they disagree about whether the public cistern is הפקר or jointly owned
 - i. *Challenge (רבא ל"ג)*: if people are מודר הנאה from each other, may partake of public works
 - ii. *However*: מודר הנאה may not bathe in jointly owned בור
 - iii. *Answer*: in that case, he bathes in all waters; in this case, he may be filling his own share
 1. *In which case*: dispute is about ברירה (ר"ג allows for ברירה)
 2. *Challenge*: ר"ג rules that even if brothers divided estate equally (goats for goats etc.)
 - a. *Nonetheless*: brothers are always לקוחות (require קלבון, exempt from מע"ב)
 - d. *Rather*: all agree that the בור is הפקר; dispute is the validity of לחבירו מגביה מציאה (ר"ג – valid)
- III. משנה ו1: status of fruit owned by a person in another city
- a. *If*: the citizens of that city made an עירוב to bring them to him – they may not do so
 - i. *But if*: he made an עירוב, then the פירות follow his תחום
- IV. משנה ז1: if he invited guests they may not take portions of food, unless he was מזכה for them before יו"ט
- a. *פקדון*: if one was מפקיד his fruit with another
 - i. *דב*: follows the תחום of the שומר
 - ii. *שמואל*: follows the תחום of the מפקיד
 - iii. *Proposal*: they follow their own positions re: responsibility of בעל חצר for items placed in his חצר
 1. *הלכה כחכמים* – רב) responsible in any case (הלכה כחכמים – רב)
 2. *דבי*: only responsible if he explicitly accepts liability for נזקין (שמואל) – רבי
 3. *Rejection*: each of them could defend their positions as consistent with both רבי ורבנן
 - a. *דב*: in this case, the שומר accepted אחריות → follows his תחום
 - b. *שמואל*: in this case, owner isn't interested in the פירות being in other's רשות
 4. *Challenge (to דב)*: משנה ו1 – if he made an עירוב, פירות follow him
 - a. *But if*: it follows the שומר, how does it help for the owner to make עירוב?
 - b. *Answer*: if the שומר set aside a dedicated location
 5. *Challenge (to דב)*: משנה ז1: how does it help to be מזכה for them before יו"ט?
 - a. *Answer*: being מזכה through another is akin to setting aside a dedicated spot
 - i. *Alternatively*: being מזכה makes the ase different
 6. *Tangents*: story of ר' חנא בר חנילאי - ruling, since he was occupied with study
 - a. *If*: he had put the meat there, it is in his תחום; if not – he may not take

V. 21 משנה: feeding domestic and "wild" animals

- a. **אסור**: to give water or slaughter "desert" animals (definition below)
 - i. *Note*: this teaches that it is a good idea to give them to drink before שחיטה (helps with flaying)
- b. **מותר**: to give water or slaughter domestic animals
- c. *Definition*: those who sleep in the city are **בייתיות**; those who sleep in the grazing areas
- d. **מדבריות** graze from פסח until first rains; **בייתיות** sleep within תחום all year
 - i. **דבי**: both of those are **בייתיות**; **מדבריות** never sleep inside תחום
 - ii. *Challenge*: רבי doesn't accept מוקצה – per his son's question (אליבא דר"ש)
 1. **דבי** only has מוקצה in case of raisins (etc.) that are deliberately placed in מוקצה
 2. *Answer1*: מדבריות are akin to raisins etc.
 3. *Answer2*: he was answering according to ר"ש – but he himself rejects it
 4. *Answer3*: he was answering to רבנן
 - a. *In other words*: he doesn't accept מוקצה (per ר"ש)
 - b. *But*: they, who do, should at least admit that animals
 - i. *Who*: return at any time to within תחום are **בייתיות**
 - c. *And*: רבנן responded that they are also מדבריות

הדרן עלך מסכת יום טוב והדרך עלן
 אַי אַזאַטאַ אַגו אַאַאַ אַאַאַ

יה"ר שנזכה לעלות לארצנו ולשכלל את מקדשנו
 שמה נעבוד אלהינו
 בחדוה בגילה וברננה
 שמה נעלה לרגלינו
 שלש פעמים בשנה