

21.10.1

116b (משנה א) → 117b (הילכך אית ליה תילתא)



- I א **משנה**: Division of remains of collapsed building among owners
- a *If*: a (floor-level) house and loft belong to two partners and the entire structure collapsed
 - b *Then*: they split the materials (wood, stone, dirt)
 - c *But*: we assess which stones were more likely to have shattered (based on direction of collapse)
 - i *Implication*: we can tell if they were crushed or fell over – so why split (evenly?) in the first clause?
 - 1 *Argument*: if they fell over, the upper ones broke; if they crushed, the lower ones broke
 - 2 *Answer*: if it fell at night and were removed by anonymous passersby before morning
 - (a) *Challenge*: why not see in whose domain they fell; other is considered מוציא מחבירו
 - (b) *Answer*: if it is in a joint or public domain, or since they are partners, רשויות aren't reckoned
 - d *If*: one of them claimed to recognize his (unshattered) stones, he takes them and they reckon those when dividing rest
 - i *Question*: what does the other claim?
 - 1 *If*: he assents, it is obvious that the first one keeps them
 - 2 *If*: he dissents, why should the first one keep them?
 - 3 *Rather*: must be that the other one says that he doesn't know (שמה v. ברי)
 - (a) *Note*: this should be a challenge to ר"נ who ruled (רב יהודה) that if A claims money from B and B says he doesn't know if he owes it that B is exempt
 - (b) *Block*: ר"נ explains our case as a case where there was already עסק שבועה between them
 - (i) *Example (דבא)*: A claims B owes him 100; B admits to 50 and doesn't know about other 50
 - 1. *Since*: B is liable שבועה (מודה במקצת) but can't swear ("איני יודע") – must pay
 - ii *The reckoning*: רבא assumed that he counts them parallel to broken ones;
 - 1 *Evidently*: רבא holds that his response of יודע איני יודע harms him
 - 2 *אבני*: the first one's position is worse – since he recognizes these few, he doesn't recognize others
 - (a) *Rather (אבני)*: he reckons them against other full stones
 - (b) *Yet*: the first one gains in that he gets good rectangular stones (etc.)

II ב **משנה**: Rights of the lost-resident who is renting in case the floor is opened up

 - a *If*: loft-floor opens and owner doesn't want to fix it, the loft-resident may come and live downstairs until he repairs it
 - i *יוסי*: the owner is responsible for the ceiling (beams etc.) and the loft-resident for the roof/floor (plaster etc.)
 - b *Discussion*: how much had to open to generate this ruling?
 - i *דב*: a majority of the floor – if only 4x4 opens, he can live partially upstairs and partially below
 - ii *שמואל*: 4x4 – we can't ask him to live partially above and partially below
 - c *דבא*: (if it was עליה – it's gone; if עליה – he can rent other) original rental had to be termed as "this loft which I'm renting to you – if it's up, stay there; if it comes down, come down with it"
 - i *Challenge*: then it should be obvious that he can come down and live there
 - ii *Rather (אשי)*: terms were "this loft over this house" – made house "encumbered" to loft
 - iii *Parallel*: man sold arbor over peach tree; tree was uprooted; ר' חייא ruled that owner must plant new one
 - d *ממל*: ר' אבא בר ממל's questions: when he descends, does he live there alone or with house owner?
 - i *Argument*: house owner can claim that he never rented loft to be ousted from his own house
 - ii *If*: we accept that argument, does loft-resident keep entering through roof (as it was originally)
 - 1 *Or*: can he argue that he never agreed to go up (outside) and down (inside)?
 - 2 *If*: we accept that argument, if there were 2 lofts and floor between them broke, can owner make him live on top or can renter claim that he never agreed to going up 2 floors? תיקו
 - e *Story and analysis*: upstairs was leaking into downstairs and causing damage
 - i *Dispute*: רחב"א – upper resident must repair; ר' אלעי – downstairs resident must repair (hint: v. 1)
 - ii *Suggestion*: they're adopting positions of רבנור"י (ב"ב ב:א) as to whether מזיק or ניזק must distance self
 - 1 *Rejection*: ר' יוסי holds ניזק must move (unlike his position here)
 - 2 *Rather*: local dispute (ר"י/רבנן) is what is the purpose of the flooring – to support roof (→ on lower resident)
 - (a) *Or*: is it to even out holes in floor (→ on upper resident)
 - (b) *Challenge*: ר' יוסי agrees that if the "arrows" cause נזק, the מזיק must move
 - (c) *Answer*: in this case, the water pooled up and then fell (not גירי דיליה)

- III ג משנה: Rights of the renter if the entire house w/loft collapses and owner refuses to rebuild
- a *Upper renter*: may may build the house and live in it until the owner pays him for his expenses
 - b *יהודה* ג' he would then have to pay rent to the owner
 - i *Rather (ר' יהודה)*: the renter builds both stories, roofing the upper, and lives in the lower house rent-free until the owner pays him
 - c *יוחנן* ג' in 3 places ר' יהודה ר' taught that a person is not allowed to get a "free ride" from another's property
 - i *One*: our case
 - 1 *Rejection*: while he lives in the house, his use of it depreciates it
 - ii *Two*: ב"ק ט:ד regarding the dyer who dyed wool the wrong color (dyer gets lower of appreciation or expenses)
 - 1 *Rejection*: perhaps it is because the dyer was משנה – and התחתונה ידו על המשנה (ב"מ ו:ב) כל המשנה ידו על התחתונה
 - iii *Three*: י:ה – ב"ב – if someone paid off part of his debt and entrusted the שטר to a middleman, saying "if I don't pay rest until a set date, return שטר to lender" - ר' יוסי allows it; ר' יהודה disallows returning שטר to מלווה
 - 1 *Rejection*: perhaps it is simply אסמכתא לא קניא – ר' יהודה (אסמכתא לא קניא – ר' יהודה)
 - d *עולא*: modifications to original design
 - i *If*: lower wants to change to larger stones, better wood, fewer windows or to lower the building – we allow it
 - 1 *But*: if he wants to change to smaller stones, weaker wood, more windows or raise building – don't allow
 - 2 *Inverse*: is true for changes proposed by upper resident
 - e *נתן* ג' ruling: if neither of them have land below, the lower resident gets 2/3 of the material, upper gets 1/3.
 - i *Dissent (אחרים)*: lower gets 3/4 and upper gets 1/4 .
 - ii *דבא*: we favor נתן ג' ruling – since the loft typically takes up 1/3 of the house