

21.10.2

117b (משנה ד) → 119a (סיום מסכת)

- I ד משנה: Additional rulings re damage caused by one person's property collapsing
- a Olive press: under a rock overhang with a garden over it (owned by another) – and the rock caved in
 - i Garden owner: may go into olive press and plant until the press owner rebuilds the rock overhang
 - 1 Opening: רב – majority (if less; may plant below and above); שמואל – 4x4 (as before)
 - (a) Justification: if only 1st case, שמואל holds that living in 2 spaces is untenable – but here, concedes
 - (i) Flip: if only 2nd case, רב would agree in 1st that we cannot expect to live in 2 places
 - b Wall or tree: that fell into public space and caused damage – owner is exempt
 - i However: if ב"ד gave him a cutoff date (ר' יוחנן – 30 days) by which he must tear them down and they fell
 - 1 If: they fell before the cutoff time came – exempt
 - 2 But if: they fell afterwards – liable
- II הו משנה: Unenforceable offers and unretractable deals
- a If: A's wall fell into B's garden and B told A to remove his rocks,
 - i A: cannot tell B to keep them for his troubles
 - ii However: if B accepted them, A cannot renege on the offer
 - 1 Note: case must be where B already moved stones – why doesn't his yard acquire for him
 - (a) Per: ר' יוסי בר חנינא: חצרו של אדם קונה לא שלא מדעתו
 - (b) Answer: that's only when giver intends to enable קנין; here, A is avoiding the issue, hoping B will move them
 - b similarly: if C hired D to work collecting hay and straw and when D demanded his salary,
 - i C: cannot make him take hay and straw as payment
 - ii however: once D accepted that as payment, C cannot renege
 - iii justification: if we only had 1st case – סד"א – he can't force him to take it since he doesn't owe him a salary
 - 1 but: in the case of the hay-collector, he owes him a salary, accept it per folk adage
 - 2 flip: in 2nd case, when he accepts it, can't renege since he owes him a salary, but not in case of rock wall – צריכא
 - iv conflicting ruling: בריתא rules that we allow the employer to force the worker to accept the hay (e.g.)
 - 1 ד"נ: if the worker is working in the employer's domain, must pay him with money; if in another's – may pay w/hay
 - (a) Challenge (רבא): in either case, the employer owes him a salary
 - 2 ד"נ: his own property vs. הפקר
 - (a) Challenge (רבא): if a "general" פועל (not hired for a specific task) finds something – belongs to בעה"ב
 - 3 ד"נ: if the worker picks up the hay as part of his work (he was קונה; בעה"ב must pay cash); if he was only שומר
 - 4 דבה: the validity of קנין via "looking" is a dispute among תנאים:
 - (a) תרומת הלשכה: guards of שביעית growth are paid by הלשכה
 - (i) ד' יוסי: if someone wants to volunteer his time, may do so – as שומר חנם (not paid by תרוה"ל)
 - (ii) Response: אתה אומר כן? - if that is so, then עמר and שתי הלחם of that year aren't brought משל צבור
 - (iii) Assumption: dispute is about בהפקר
 - 1. ת"ק: if someone wants to volunteer his time, may do so – as שומר חנם (not paid by תרוה"ל), it's their own offering
 - 2. ד"י: קונה הבטה isn't → doesn't belong to them, when they give to גזבר, belongs to מקדש
 - a. And: meaning of אתה אומר כן is that according to our principle, if we follow you – not של צבור
 - (iv) Rejection (רבא): all agree that בהפקר is קונה; disagree if we are concerned he won't hand it over יפה
 - 1. ת"ק: if we don't pay him, concern that he won't hand over יפה יפה (i.e. with complete דעת)
 - 2. ד"י: no such concern
 - (v) Alternate version (רבא): all agree that בהפקר is not קונה; our concern is about "strong-arm" men
 - 1. ת"ק: by paying him a lot, בעלי זרועות will hear that it's for מקדש and stay away
 - 2. ד"י: תקנה
 - 3. And: meaning of מה אתה אומר is that according to our principle, if we follow your ruling – לא משל צבור
 - (vi) Support: ר' יוחנן said that the dispute is about זרועות

- III משנה 2: putting foul or damaging items in the public domain
- a *If*: someone is removing dung from his property, there must be someone there who wants to take it immediately
- i *Note*: seems to be *contra* ר' יהודה who ruled that one may put dung out in רה"ר to get flattened by people/animals
- ii *Block*: ר"י may agree that if it caused damage, there is liability
- 1 *Challenge*: ר"י (ב"ק ו:ו) rules that storeowner is פטור for fire started w/his נ"ח if outside since he had רשות
- (a) *Doesn't mean*: permission of court (as in his ruling re: dung → should be exempt)?
- (b) *Rejection*: means רשות מצוה
- 2 *Challenge*: ר"י rules (*contra* ת"ק) that anything permitted to be left in רה"ר doesn't carry liability
- 3 *Rather*: our first approach is correct – our משנה does *not* work with יהודה ר'
- 4 *Observation* (אב"י): ר"י: רשב"ג, ר"י and רשב"י all hold that when חכמים permit, no liability obtains if it causes damage
- (a) ר"י. our case
- (b) רשב"ג: in our משנה (below) – may prepare materials in רה"ר for 30 days in advance
- (c) ר"ש: in ב"ב: ב"ב – the שעורים of distancing noxious items – to outline liability (→if distanced – exempt)
- b *Prohibited*: to soak plaster or make bricks in the public domain – but permitted to mix plaster there – but not bricks
- c *Similarly*: if someone is building in רה"ר, stones may only be brought out just before being used
- i *And if*: the rocks caused damage, he is liable
- ii *Dissent*: רשב"ג – he may prepare the materials for 30 days before construction
- iii *ברייתא*: as each worker hands materials over, one receiving them takes liability
- 1 *Once*: he puts the stone on row of stones – all liable (in case of קבלנות – if שכירות, last one alone is liable)
- IV משנה 1: 2 terraced gardens with tree growing out sideways on grass wall common to both of them
- a ד"מ. belongs to upper garden – if he would remove his dirt, it would be gone
- b ד' יהודה. belongs to lower garden – if he would fill up his garden, tree would be buried
- i ד"מ. since each could prevent it, we determine by seeing where the source of its nutrition is
- 1 דבא. dispute only regarding branches – all agree that the root belongs to upper garden
- (a) ד"מ. branch follows root;
- (b) ד"י. we don't rule that branch follows root
- (i) *Note*: parallel dispute regarding selling tree (who owns growth from roots)
- (ii) *And*: parallel dispute re: ערלה (in ד:א ערלה)
- (iii) *Justification*: 1st case is ממון, but ר"י may agree with ר"מ (to be מחמיר) in re: ערלה (and flip)
- c ד"ש. if the upper one can reach down and take the fruit, belongs to him; else – to lower garden
- i דבי ר' ינאי. as long as he doesn't hurt himself bending to get it
- ii *Question posed*: what if he can reach the branch but not the root or vice-versa? תיקו
- iii *Practicum*: in ר"ל's name – we rule like ר"ש (praise for ר"ש)

אֲנִי מֵאֲפֵיכָם לְתַחֲמוֹנֵי בְּזָרְכֵי תוֹרַתְךָ וְתוֹרַנוּ בְּאֲרוֹחוֹת יְרֵאתְךָ