

18.05.01

48b (משנה א) → 49b (אמפר דמשהי לה בניטא)

Note: all lands are categorized into *עדיית* (finest), *בינונית* (middle) and *זיבורית* (worst). There is a dispute whether there is an objective standard (בשל עולם) used here or if it is subjective and dependent on the property of the individuals involved in the payment. Within this latter approach, there is a well-known dispute between ר' ישמעאל and ר' עקיבא as to whether, in cases of damages, we rank the land based on the total estate of the *מזיק* (who must pay – ר"ע) or the *ניזק* (whose property was damaged – ר' ישמעאל)

1. כי יבער איש שדה או כרם ושלח את בעירו ובער בשדה אחר מיטב שדהו ומיטב כרמו ושלם: שמות כב, ד
2. וכי יגף שור איש את שור רעהו ומת ומכרו את השור החי וקצו את כספו וגם את המת יקצו: שמות כא, לה

- I תיקון העולם – assumedly due to כתובה and נזק, בעל חוב, payment for משנה א'
- a נזק – gets עידיית (v. 1)
- i challenge: this isn't תיקון העולם, it's the essential תורה (v. 1)
- ii answer1 (אבני): responds to ר' ישמעאל's position – מה"ת we rank based on ניזק's property; – מפני תיקון העולם – we rank based on מזיק's property:
- 1 the text comes to grant ניזק from עידיית – and ק"ו for הקדש (meaning discussed below)
 - 2 challenge (to ר' ישמעאל): if the offending animal ate up good fruit, it's reasonable that his owner should pay from good land; but if he ate from inferior crops, why should the owner pay from good land?
 - (a) Answer1: dispute is when we don't know the class of crops that he destroyed
 - (i) Block: if so, he should pay the lesser amount – המוציא מחבירו עליו הראיה
 - (b) Answer2: dispute is when ניזק's best is equal to מזיק's worst:
 - (i) ר"ע. we rate based on ניזק (and מזיק cannot be asked to pay more) – based on parallel occurrences of שדה in v. 1
 - (ii) ר"ע. we rate based on best of מזיק – implication of verse "the best of the one who is paying"
 1. ר"ע גז"ש works as per above; implication of verse works for case where מזיק has עידיית and זיבורית and his זיבורית is worth less than עידיית of ניזק – he pays from his own עידיית ("של מזיק")
 - 3 revisiting ק"ו ר"ע:
 - (a) might mean: if one of "our" oxen gored an ox of הקדש –
 - (i) rejected: v. 2 indicates that there are no תשלומין except when he damages רעהו
 - (b) might mean: if someone pledged money to הקדש, the גזבר can collect from עידיית
 - (i) rejection: in that case, he is a בעל חוב – should only collect בינונית
 1. even if: ר"ע maintains that בע"ח collects עידיית we could challenge by pointing out that at least a בע"ח has full collected rights if damaged, unlike הקדש
 - (c) Rather: case is where one of "our" oxen gored an ox of הקדש – follows רשב"מ – if שור הקדש gores one of "ours" – exempt; if one of "ours" gores של הקדש – שור – whether תם or מועד – pays full
 - (i) Note: if so, perhaps their dispute isn't about a case where עידיית of ניזק = עידיית of מזיק; perhaps their dispute is whether to accept מנסיא בן שמעון?
 1. rejection: the phrase "לא בא הכתוב" has no meaning; neither does להקדש also, explicit ברייתא supporting straight-up dispute as to בשל ניזק or בשל מזיק
- iii answer2 (דבינא): our משנה follows ר"ע, also following ר"ש who is המקרא ר"ש; דורש טעם המקרא ר"ש; to wit – the reason the תורה enforced מזיק is בשל עולם (מה"ת!):
- 1 So that: thieves and thugs won't see a field they want and seize it; now they know that they'll lose their best land
 - 2 And: reason that בע"ח collects בינונית; so he won't see a field he wants and jump to lend
 - (a) If so: why not collect זיבורית
 - (b) Answer: that will prevent people from lending
 - 3 Finally: כתובת אשה בזיבורית (ר' יהודה) – because she has more of an interest in marrying; in addition, the man (only) requires דעת (consent) to divorce
 - (a) Meaning: that's why there is no כתובה for her to pay to him
- b בינונית – בעל חוב – gets
- c זיבורית – כתובה – gets
- i dissent: ר"מ – כתובה also gets בינונית