

Introduction to גיסכת נזיקין

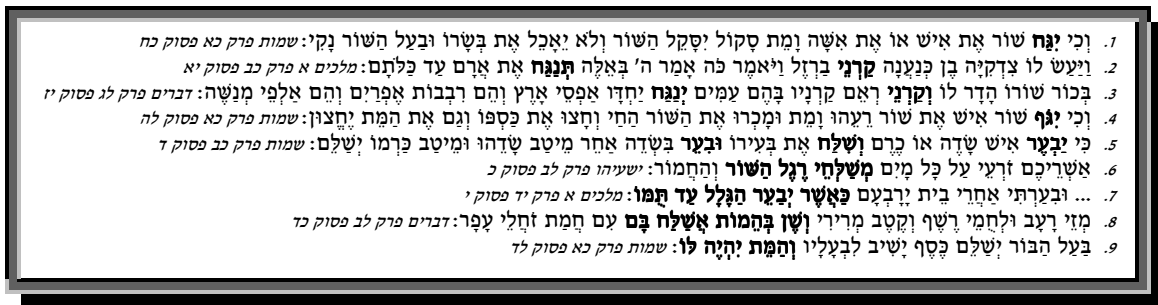
As we begin נזיקין סדר, which focuses on civil and criminal law, including torts, contract law, personal liability and the like, we find that nearly all of the non-judicial elements of that great body of law are contained in one large מסכת, known as נזיקין מסכת. This מסכת contains 30 chapters which deal with property damage, assault and battery, theft, claiming property, bailment, acquisitions, usury, labor law, partnerships, commerce, inheritance and documentations. The מסכת was so large and covered so much ground that, in the latter period of the אמוראים (or later), it was divided into 3 segments – a first gate, a middle gate and a final gate. The word for gate in Aramaic is בבא – as in באב-אל-וואד (famous from 1948) or the city בבל (meaning “gate to the gods”). Hence, the (מסכתות) are now known as באבא מציעא, בבא קמא, and בבא בתרא. The organization of נזיקין מסכת is quite easy to understand and, in most occasions, two or three consecutive chapters deal with one topic and there is an obvious shift to another topic at the beginning of the next chapter.

Although most of the material in נזיקין מסכת is based on reasoning, basic principles of law and their application and lots of case law, each area is generally informed by one or a few פסוקים – generally from מסכת משפטים. It is very worthwhile reviewing the verses there from כב:יד until כא:יב.

We will now commence our study of נזיקין מסכת:

20.1.01

2a (משנה א') → 3b (לפטרה ברה"ר)



I ד' אבות נזיקין: משנה א'

a The four אבות of damages: (terms will be explicated later on)

- i שור
- ii בור
- iii מבעה
- iv הבער

b justification for all four

- i שור and מבעה don't have shared characteristics (this will be dealt with beginning on .ה)
- ii Both שור ומבעה are unlike אש which is inanimate
- iii None of these are like בור, which is a stationary נזק

c Common characteristics and consequence:

- i Characteristics: They all typically cause damage and the owner is liable for watching them
- ii Consequence: if damage occurs, the מזיק must pay with מיטב (meaning, sources & application dealt with later)

II Discussion of use of "אבות" (as "categories") implying תולדות

a Question: are the תולדות similar to the אבות (as they are in the case of שבת) or dissimilar (as in טומאה)?

b Answer (רב פפא): some are similar, some are dissimilar

- i Analysis: שור presents 3 אבות of קרן; שן (vv. 5, 7-8) and רגל (vv. 5-6) (justification for פסוקים)
- ii תולדת "קרן": biting, stomping, pushing etc. – all are similar to קרן (intent to do harm)
- iii תולדת "שן": rubbing against wall, urinating on fruit – all similar to שן (הנאה)
- iv תולדת "רגל": damaging as it walks, with its hair, saddle etc. – all similar to רגל (inadvertent & inevitable damage)
- v תולדת "בור": can't be ט' טפחים as a ט' טפחים of תולדה – v. 9 proves that only a "killer בור" is included
- vi Leaving dangerous items in the public area: if he abandoned them – בור; if not שור or בור (as per רב/שמואל later on)
- vii תולדת "מבעה": if מבעה is "שן" – we've already established שן:תולדת שן – אדם; if אדם – always fully חייב
- viii תולדת "אש": knives etc. falling from roof; if they damaged while falling – כאש, if not – בבור
- ix תולדת "רגל" – meaning חצי נזק צרורות (ב:א) - which, according to ר"פ, even though payment is חצי נזק, it is מיטב (as per רגל)
 - 1 Note: רבא was unsure if payment is from its body (like a normal חצי נזק) or מיטב (as per רגל)
 - 2 Note: according to רבא, called תולדת "רגל" to exempt if damage happened ברה"ר (one of the features of ורגל שן)