

20.1.04

6b (כי היכי דתקפון עלה זבינא) → 7b (לשלם תשלומי נזק)

1. כי יבער איש שדה או כרם ושלח את בעירו ובער בשדה אחר מיטב שדהו ומיטב פרמו ושלם: שמות כב, ד
 2. וכי יגוף שור איש את שור רעהו ומת ומכרו את השור החי וקצו את כספו וגם את המת יקצו: שמות כא, לה
 3. בעל הבור ושלם קסף ושיב לבגליו והמת יהיה לו: שמות כא, לד

I Analysis of the rule of מיטב שדהו – paying from עדיית

a ברייתא commenting on מיטב in v. 1:

i ניזק of מיטב ד' ישמעאל

ii עקיבא ד' עקיבא: the text comes to grant ניזק from עדיית – and ק"ו for הקדש (meaning discussed below)

1 challenge (to ישמעאל ד'): 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) ד"י. we rate based on ניזק (and מזיק cannot be asked to pay more) – based on parallel occurrences of שדה in v. 1

(ii) ד"ע. we rate based on best of מזיק – implication of verse “the best of the one who is paying”

1. ד"ש works as per above; implication of verse works for case where מזיק has עדיית and זיבורית and his זיבורית is worth less than עדיית of ניזק – he pays from his own עדיית (“של מזיק”)

2 ק"ו ד'ע ק"ו

(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 שור רעהו

(b) might mean: if someone pledged money to הקדש, the גזבר can collect from עדיית

(i) rejection: in that case, he is a בעל חוב – should only collect בינונית

1. even if: ד"ע maintains that בעל"ח collects עדיית we could challenge by pointing out that at least a הקדש has full collected rights if damaged, unlike בעל"ח

(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 שור של הקדש – whether תם or מועד – pays full

(i) Note: if so, perhaps their dispute isn't about a case where עדיית = ניזק; perhaps their dispute is whether to accept מנסיא בן שמעון or בן מנסיא?

1. rejection: the phrase “לא בא הכתוב” has no meaning; neither does להקדש ק"ו also, explicit ברייתא supporting straight-up dispute as to בשל ניזק or בשל מזיק

b אב"י's challenge to רבא – מיטב implies עדיית only, ישיב (v. 3) implies any form of payment

i רבא is for seizure (בע"כ); ישיב is if he pays willingly

1 Support (from עולא) – the word ישלם implies בע"כ (אב"י rejects this – doesn't state ישלם)

ii אב"י: per ruling re עניי, מעשר עניי, is he can't sell his land, we give him up to 100 זוז (1/2 “minimum assets”) of מע"ע

1 Comment (of רבה): must be case where real estate appreciates later; all others wait to sell but he needs cash

2 Parallel: if ניזק wants more בינונית (rather than עדיית), מזיק gives him choice of עדיית as per now or בינונית as per old price (based on ישיב)

(a) Rejection: this reduces ניזק's power even in re: זיבורית, where תורה empowered him even re: עדיית

iii ר' אחא בר יעקב: compare מע"ע to בע"ח who will take more זיבורית (etc. as per above)

1 Rejection: this will prevent lenders from lending, as follows:

(a) If he had the money (hadn't lent it), could be as per current price; now, the borrower is forcing him to buy as per older, higher price

iv ר' אחא בריה דרב איקא: compare מע"ע to כתובה, where she's willing to take a smaller parcel of זיבורית (etc. as above)

v In any case: the contradiction (מיטב v. ישיב) still awaits resolution

1 רבא: whatever he pays, must be from “the best” (מיטב) – even the best grains etc.

2 Challenge: the verse states מיטב שדהו

3 Rather: all chattel considered מיטב, (hence – ישיב includes all מטלטלין) since it can be sold anywhere

(a) Exception: land, which must be עדיית to encourage buyers