

20.1.07

9b (משנה ב') → 10b (כר' יהודה בן בתירא ולא כרבנן לא מוקמינן)

note: only that part of the משנה discussed in this שיעור will be presented here; as the גמרא analyzes further clauses, they'll be presented

- I משנה ב' (part 1a): additional perspectives on liability for damages
- a anyone who enable the נזק is liable – כל שחבתי בשמירתו הכשרתי את נזקו –
- i explanatory ברייתא with example:
- 1 handing over responsibility for שור ובור to an incompetent renders owner liable; unlike אש
- (a) question: what is the circumstance of these נזקים?
- (i) If: ox leashed and pit covered; parallel אש – why distinguish? (all should be פטור)
- (ii) Rather: the ox must be unleashed and the pit uncovered; parallel אש (actual fire) – untrue (חייב)
1. ל"ז: if you gave a חש"ו a fire and he spread it – חייב, since the damage is clear
- (iii) rather: ox leashed and pit covered – חייב; glowing ember – פטור
1. reason: oxen gnaw at their leash, pit-covers fall; but embers burn out unless rekindled
- (b) note: ר' יוחנן maintains that even if you gave a flame to the חש"ו, you are פטור
- (i) Reason for distinction: the actions of the חש"ו (grabbing and moving it) cause the fire; unlike שור ובור
- II שור, בור ואש comparing unique חומרות of each pair
- a בור v. שור –
- i שור pays 30, כופר, for killing slave, becomes אסור בהנאה (שור הנסקל) and typically moves and damages
- ii בור is a מזיק from its creation and is מועד from the start
- b אש v. שור –
- i שור pays 30, כופר, for killing slave, becomes אסור בהנאה (שור הנסקל) and, if handed to a חש"ו, still חייב
- ii אש is מועד from the start
- c אש v. בור –
- i בור is a מזיק from its creation and, if handed to a חש"ו, still חייב
- ii אש typically moves and damages and is מועד to devour that which is fit for it and that which isn't fit for it
- d Question: why not count כלים as a חומרא of שור relative to בור (if vessels are broken by בור – owner is exempt)
- i Answer: author must be יהודה ב' ר', who holds owner liable for נזקי כלים בבור
- ii Challenge: can't be יהודה ב' ר' – wouldn't list "דבר שאין ראוי" (assumption: כלים) as פטור בבור
- iii Rather: follows רבנן and they omitted (תנא ושייר) חומרא of שור over כלים
- 1 Defense: they also omitted טמון (which is exempt in case of אש)
- iv Alternatively: author is יהודה ב' ר'; "דבר שאין ראוי" doesn't refer to כלים, rather to singed rocks and furrow
- v פטור-בור: why isn't המוקדשין listed as a חומרא of שור over בור (if a formerly הקדש animal falls into בור)
- 1 answer: if we accept that it follows רבנן, that was omitted as was נזקי כלים בבור
- 2 however: if we suggest that it is יהודה ב' ר', what else was omitted?
- (a) Answer: omitted דש בניר (if the animal, while plowing, hurt the land – תולדה דקורן – inapplicable to בור)
- (b) Rejection: that is already included in להזיק וליחזק
- III משנה ב' (part 1b): enabling part of the נזק renders full liability – כל נזקו כהכשר כל נזקו –
- a ברייתא gives one example – digging a pit ט' and another digs the next טפח – only the last one is חייב
- i contra: רבי, who holds the last one liable for מיתה (not a "בור" under 10) and both for damages
- ii Note: ברייתא could be sympathetic to רבי – intent is liability in case of death
- b Challenges: there are other examples:
- i If: he entrusted his ox to 5 people and 1 didn't watch properly and it damaged
- 1 Rejection: if he was needed for watching, obvious that he's liable; if not, why would he be חייב?
- ii If: someone added on to the flammable pile of a fire
- 1 Rejection: if it helped the fire along, obvious that he's liable; if not, exempt
- iii If: ברייתא: if 5 sat on a bench and it didn't break and a sixth (like פפא!) came along, sat down and broke it
- 1 Rejection: if it wouldn't have broken without his sitting on it, obvious that he's חייב; if not, he's exempt
- 2 Note: ברייתא must be a case where it broke sooner as a result (and they claim they would've risen before)
- (a) Challenge: he may argue back that without their sitting, he wouldn't have broken it
- (b) Rather: it never would've broken, but he leaned on it, breaking it – teaching that כחו כנופו
- iv If: 10 people hit someone with 10 sticks, simultaneously or not, they're all exempt
- 1 Dissent: ריב"ב holds last one liable if not done simultaneously
- 2 Answer1: our ברייתא isn't addressing cases of death
- 3 Answer2: ברייתא doesn't want to use examples subject to dissent
- (a) Note: ריב"ב vs. רבנן considered dissent; רבי vs. רבנן not considered dissent, as הלכה כרבי