

20.1.08

10b (האי לא מהימן לי בשבועה) → 11b (חבתי בתשלומי נזקו)

1. ומנה נפש בהמה ישלמה נפש תחת נפש: ויקרא כד, יח
 2. אם טרף יטרף ובאהו עד הטרפה לא ישלם: שמות כב, יב
 3. או נודע כי שור נגח הוא מתמול שלשם ולא ישמרנו בעליו שלם ישלם שור תחת השור והמת יהיה לו: שמות כא, לו
 4. בעל הבור ישלם פסוק ישיב לבעליו והמת יהיה לו: שמות כא, לד
 5. כל פטר רחם לכל בשר אשר יקריבו לה באדם ובבהמה יהיה לו אך פדה תפדה את בכור האדם ואת בכור הבהמה הטמאה תפדה: במדבר יח, טו

- I Analysis of תשלומי נזקו as per 2nd clause of משנה כל נזקו - הכשר כל נזקו - משנה כל נזקו
- a Phrase תשלומי נזקו (in lieu of "ניזק") teaches that the owner keeps the carcass (of his dead animal)
- i Sources:
- 1 V. 1 – read ישלימה (make up the difference)
 - 2 V. 2 – read “עד טריפה ישלם” - but not the whole טריפה
 - 3 V. 3 – he keeps the carcass, “he” being the original owner (else, no need to add the phrase)
- ii Justification:
- 1 If: we only had v. 1 – read “א”א”א” since it’s unlikely (that a man damages an animal), but in a common case (e.g. טריפה) – קמ”ל – keeps carcass and he pays full – מ”ל
 - 2 If: we only had v. 2 – read “א”א”א” since it was due to negligence of שומר – but in case of active damage (v. 1) – מ”ל – keeps carcass and he pays full – קמ”ל
 - 3 If: we had vv. 1-2; read “א”א”א” due to their oddity (uncommon/negligence) – but where his ממון (בור) did damage...
 - 4 And if: we only had v. 3, read “א”א”א” since it is (only) his property doing damage, but vv. 1-2 where he does the damage himself, – קמ”ל – keeps carcass and he pays full – מ”ל
 - (a) Challenge (to רב): without v. 3, we would still consider the נבילה goes to ניזק, since he could pay (as per v. 4) with a few טריפות (or any other goods)
 - (b) Answer: verse needed for פחת נבילה (depreciation from time of damage until payment – is ניזק’s loss)
 - (c) Suggestion: פחת נבילה is subject to מחלוקת תנאים in interpretation of v. 2 – ביניהו עד –
 - (i) bring testimony (that the שומר wasn’t negligent) ת”ק
 - (ii) bring the עבודה (carcass) to ב”ד (we assume – for appraisal) אבא שאול
 - (iii) rejection: all agree that it belongs to ניזק; dispute is in re: who has to trouble himself to bring to ב”ד (ישיב לבעליו והמת) – v. 4
 - (iv) support: ברייתא – the הבור בעל הבור must lift out the ox that fell in – v. 4
 1. question (אב”י לדבא): carcass is worth more outside of the בור. Isn’t the מ”ל working for his own gain?
 2. answer: it may have the same value in both places as per the adage
- II שמואל’s ruling, limiting פחת נבילה
- a courts don’t generally calculate פחת נבילה for a גנב/גזלן; he adds “also for a שואל and רב concurs”
- i question: does he mean that שואל also gets פחת נבילה or that שואל is also excluded?
- 1 Resolution: case where a שואל broke an item and רב ordered him to replace a new one
 - (a) Challenge: from רב אסי and רב כהנא reactions of amazement at the ruling (and רב’s subsequent silence)
- b אבא שאול: we do figure פחת נבילה for a גנב/גזלן;
- c רב אסי: we don’t (in accord with שמואל) ד’ פפי
- d final ruling: we don’t figure פחת נבילה for a גנב/גזלן but we do for a שואל as per רב אסי and רב כהנא’s protest
- III tangential listing of other rulings reported by שמואל in the name of רב אסי
- a if a placenta comes out over two days, we begin counting טהרה ימי טומאה ימי טהרה from the first day
- i challenge: this is a חומרא that leads to a קולא – beginning טהרה ימי טהרה a (possible) day early
- ii rather (רבא): we are חושש from the 1st day but only begin counting from the 2nd
- 1 Challenge: if this is teaching that every segment of placenta has some וולד in it – already taught:
 - (a) If: a placenta (of an animal) comes partially out (before שחיטה) – the שחיטה of the mother doesn’t permit it
 - (b) Defense: that only teaches that there is room for a גזירה of some of the placenta against all of it
- b A בהמה טהורה that becomes a טריפה during 1st 30 days isn’t redeemed, as per v. 5 (אך limits תפדה)
- c A בהמה גסה is acquired via משיכה as per dissenting opinion recorded in קידושין (חכמים vs. ר”ש vs. ת”ק)
- d Brothers who divide estate – we estimate what they are wearing (towards their portion) but not what their children are wearing (so as not to shame them to come to ב”ד)
- i Note: ר”פ – sometimes we don’t reckon what they wear (eldest brother; allowed to use funds for clothing to give “clout”)
- e If שומר (even ש”ש) entrusts פקדון to another שומר (even חנם) – he is exempt from damages, since he gave it to a דעת בן
 - i Dissent (רבא): even a שומר חנם entrusting to ש”ש is still liable – מפקיד claims that he doesn’t trust the 2nd בשבועה