

20.1.11

13b (שלשה כללות בארבע מקומות) → 14b (נכסים המיוחדין)

1. ואם שור נגח הוא מתמל שלשם והוצד בבעליו ולא ישמרנו והמית איש או אשה השור יסקל וגם בעליו ירמז: שמות פרק כב פסוק כט  
 2. כי יבער איש שדה או כרם ושלח את בעירו ובער בשדה אחר מיטב שדהו ומיטב פרמו ישלם: שמות פרק כב פסוק ד

II ב משנה ב (part 2b): (these rules apply only to):

a "private" property (מיוחדין)

i *interepretation #1*: excluding a case where it's unclear whose ox did the damage – as explained later in גיא:ii *interepretation #2*: (ברייתא) – excluding הפקר נכסי1 *circumstance*: must be a case where an unowned שור damaged and was subsequently claimed by someone2 *דבינא*: case where owner was מפקיר (or מקדיש) his animal after the damage(a) *support*: ר' יהודה interprets v. 1 – only liable if the שור has a common status from damage through דין גמר

b in any location except for the domain which

i belongs solely to the מזיק

1 *reason*: the מזיק says to the ניזק "why was your ox in my domain?"

ii is co-owned by the מזיק and ניזק

1 status of שור in co-owned property:

(a) *חסדא* – liable: read משנה as broken up after רשות המזיק; however, co-owned רשות – liable to pay from מיטב(b) *ר"א* – exempt; read משנה as broken up after רשות המזיק והניזק; the last phrase includes קרן (wasn't in מ"א)(i) *note*: this works for שמואל (שור ומבעה) = שור ורגל (קרן omitted)(ii) *however*: to רב = שור = all שור, including קרן – what does the last phrase come to include?1. *answer*: 4 שומרים (of animals) and the animal causes damage – they are liable (תם – ½; מועד – all)2. *however*: if they got out via אונס (wall falling down) and damage – פטור (as in all אונסין)(c) *revisiting* בריתא re 4 שומרים: what is the circumstance?(i) *If*: the borrowed שור damaged the שור of the שומר – the משאיל can argue: "if my שור had damaged another, you'd be liable for all (as the שומר is in lieu of the owner); now that it damaged your שור, I should pay?"(ii) *Rather*: the שומר שור damaged the שור המשאיל; why pay ½ in case of תם? The owner can argue: "if my שור had been damaged by another, you'd have to pay full (as a שומר); now that it was damaged by your שור, you only pay ½?"(iii) *Rather*: the שור המשאיל damaged the שומר שור – but the שומר hadn't accepted liability for damages1. *Challenge*: end of ברייתא – if it got out at night and damaged – פטור → during the day, חייבa. *Explanation*: if he didn't accept liability for damages, why liable during the day?b. *Rather*: ברייתא is deficient; should read "if he did accept liability for damages – חייב..."(iv) *Challenge* (to ר"א): חצר השותפין rules that חצר ברייתא's ר' יוסף (and an inn) – חייב for שור ורגל1. *Response* (ר"א): follows 4 categories of domain laid out by רשב"א:a. *Domain owned by ניזק*: מזיק liable for all damagesb. *Domain owned by ניזק*: מזיק exempt from all damagesc. *Domain owned by both*: שור ורגל – exempt; קרן follows תם/מועד systemd. *Domain owned by neither*: שור ורגל קרן follows usual תם/מועד systemi. *Reconciling ברייתות*: יוסף ברייתא's ר' יוסף refers to a חצר used for פירות only (in re: שור, לניזק, שור)ii. *Our ברייתא*: refers to a חצר used for both פירות and oxen (parallels in each ברייתא support)iii. *Challenge* (ר' זירא): if it's co-owned, can't be called אחר שדה (v. 2)iv. *Answer* (אבני): since he may not bring his oxen there, considered אחר שדה2. *Suggestion*: since we've reconciled תנאים, perhaps ר"ח/ר"א agree and address different circumstances2 *Revisiting רשב"א's 4 categories*: "על הכל" implies שלם, נזק שלם, following ר"ט who holds תם for שלם if it's הניזק, נזק שלם in ברשות הניזק3 *challenge*: "owned by neither" → owned by a 3<sup>rd</sup> party – why תם/מועד...should always be שלם נזק(a) *answer #1* (שמואל): ברייתא is mixed authorship – ר"ט and ר"ב(b) *answer #2* (רבא): all ר"ט – "owned by neither" means only owned by one of them for פירות

(i) but owned by both for bringing oxen in

(ii) *therefore*: in re: שור, considered חצר הניזק (liable); in re: קרן, considered רה"ר (→ תם/מועד)1. *challenge*: רשב"א's rule doesn't touch on 4 locations – only 3 חצר המזיק, חצר המזיק, חצר המזיקa. *indeed* – meaning is "four rules affecting 3 types of domain"

iii when damage occurs, the מזיק must pay from מיטב