

20.1.12; 14b (משנה ג') → 15b (לא תשים דמים בביתך)

1. בעל הבור ישלם כסף וישב לבעליו והמת יהיה לו: שמות כא, לד
 2. דבר אל בני ישראל איש או אשה כי יעשו מקל חטאת האדם למעל מעל בה' ואשמה הנפש ההוא: במדבר ה, ו
 3. ואלה המשפטים אשר תשים לפניהם; שמות כא, א
 4. ואם שור נגח הוא מתמל שלשם והועד בבעליו ולא ישמרנו והמת איש או אשה השור יסקל וגם בעליו יומת: שמות כא, כט
 5. כי תבנה בית חדש ועשית מעקה לגגך ולא תשים דמים בביתך כי יפל הנפל ממנו דברים כב, ח

- I זיקין More categorical statements about משנה ג'
- a שום כסף (appraisal of property)
- i *Meaning*: all appraisals must be done using כסף as the standard (i.e. goods are not exchanged directly as reparation)
- b שווה כסף
- i *meaning*: not כסף itself (=מטלטלין) (other suggestions – that which isn't liable for אונאה or bought with כסף are rejected)
- 1 as per ברייתא ב"ד: ב"ד seizes land for payment of זיקין, but if the זיקן seized מטלטלין, the ב"ד may collect from these
 - 2 challenge: v. 1 allows for any goods to be used as payment
 - 3 answer: our משנה refers to seizing from the estate (heirs)
 - (a) challenge: end of ruling stipulates that if the זיקן seizes goods, ב"ד may use for collection – not true re: יתמי
 - (b) answer: case where the זיקן seized the מטלטלין while the מזיק was still alive
- c בפני ב"ד
- i *suggested meaning*: excluding a case where the מזיק sold his land before coming to ב"ד
- 1 rejection: we always allow for liens to be seized from buyers
- ii *rather*: excludes של הדיוטות ב"ד (i.e. זיקין may only be judged by מומחים)
- d ועל פי עדים בני חורין בני ברית
- i ע"פ עדים – excludes case where מזיק admitted his guilt before עדים came
- 1 note: this is valid only if we accept the ruling that באו עדים – he is exempt
 - 2 however: if he is still liable – phrase is there for end of phrase – בני חורין וב"ב
- ii מצוות בני חורין – excluding slaves, even though he is obligated in מצוות
- iii בני ברית – excluding non-Jews, even though they have חיים (i.e. relations and obligation within family)
- e זיקין; sources: והנשים בכלל הנזק – women are equal players in the world of זיקין; sources:
- i תנא דבי ר"י – v. 2 equates men and women for all punishments
- ii דבי ר"א – v. 3 equates men and women for all civil/criminal laws
- iii חזקיה – v. 4 equates men and women for all deaths
- 1 Justification: if we only had...
 - (a) Punishments: she תורה helps her w/atonement, but not civil laws (men are involved in business)
 - (b) Laws: she must also live, but כופר is only paid for man who fulfills מצוות
 - (c) Deaths: the תורה extends it due to loss of life, but not the others – קמ"ל
- f שור תם) והניזק והמזיק בתשלומין – they cooperate in payment
- i Categorization of נזק חצי for תם
- 1 ממון – ר' פפא – should really be fully liable, but the תורה gave him "a break"
 - 2 קנס – ר' הונא בריה דר"י – should really be fully exempt, but the תורה charged him ½ to ensure that he watch animal
 - (a) Challenge: our משנה rules that the זיקן participates; only appropriate if נזק ממון
 - (i) Answer: refers to פחת נבילה (depreciation comes out of זיקן's pocket)
 1. Challenge: תשלומי נזק already taught as alluded to in phrase פחת נבילה
 - a. answer: once for תם and once for מועד – both needed; תם wasn't yet attested, מועד pays all
 - (b) challenge: contrasting ברייתא תם/מועד omits "not paying for תם by his own admission" (מודה בקנס פטור)
 - (i) answer: list is incomplete – also omitted distinction of כופר (תם doesn't pay ½ כופר)
 1. block: follows ריה"ג who maintains that תם (who kills person) pays ½ כופר
 - (c) challenge: if he admits that his ox gored – pays, but not if he admits that his ox killed a slave (קנס of 30)
 - (i) answer: entire ברייתא refers to מועד
 - (d) challenge: rule of קנס: any payment which is more than he damaged doesn't pay based on his admission
 - (i) implication: if he pays less – does have to pay (should've said "anything different than the damages)
 - (e) final ruling: קנס (even though it was refuted – due to wording of ברייתא – couldn't state "anything different"
 - (i) reason: ½ damages for צרויות ממון (as per הלמ"מ)
 - (ii) implications: if an unusual נזק happens, no collection in בבל (דיני קנסות no),
 1. but: if he seizes property for payment, he may keep it; he may also request a court date in א"י
 2. in any case: he must get rid of מזיק, as per v. 5