

20.2.03

19a (היתה מבעטת) → 19b (משום בורו המתגלגל ברגלי אדם וברגלי בהמה)

1. וכי קפתח איש בור או כי יכרה איש בר ולא יכסנו ונפל שמה שור או חמור שמות כא, לג

- I Analysis of 2nd clause in משנה (צרויות) – ½ נזק
- a How is statement parsed?
- i Possibility #1: animal was kicking and damaged or stones shot out in their normal fashion → רבנן
 - ii Possibility #2: animals was kicking and stones shot out as a result in an unusual fashion → סומכוס
 - iii Possible solution: from next clause – stomping on vessel which then damages – ח"נ for secondary damage → רבנן
 - 1 Provisional rejection: perhaps "1st" is first to get shot out, 2nd is next one (follows סומכוס)
 - 2 Block: ר' אשי's question (above) if סומכוס regards כח כחו as substantially different than כחו – should be solved
 - 3 Defense: ר' אשי interprets our משנה as רבנן and asked, from that approach, if שינוי → ¼ נזק or still ½ (תיקו)
- II Series of questions about צרויות
- a If: the animal was walking in a narrow place (couldn't avoid stones) and the stones shot out and did damage –
- i Since: it is unable to go elsewhere, considered "usual" → נזק שלם
 - ii Or since: it shot out due to kicking, considered צרויות → ח"נ --- תיקו
- b If: צרויות in רה"ר – what is the ruling?
- i Do we: consider it a subset of קרן and it is liable
 - ii Or do we: consider it a subset of רגל and it is exempt ברה"ר ---
 - 1 זירא ד' זירא (exempt) subset of רגל
 - iii follow up: if it kicked in רה"ר but the stones flew into רה"י (of the ניזק) and damaged – what is the ruling?
 - 1 זירא ד' זירא (exempt (since the initial impact took place in רה"ר))
 - (a) challenge: ruling that kicked stones generate liability, whether in רה"ר or רה"י
 - (i) meaning of "רה"ר" – kicked in רה"ר and the stones damaged in רה"י
 1. answer: זירא ר' changed his mind and accepted the ruling in favor of liability
 - (b) 2nd challenge: ruling in our משנה of the 2-stage damages
 - (i) comment: only applies in רשות הניזק; in רה"ר, exempt for the first (רגל) and liable for the 2nd (צרויות)
 - (ii) meaning: if it kicked the first vessel in רה"ר which then shot into רשות הניזק and damaged
 1. answer: זירא ר' changed his mind
 - (c) 3rd challenge: רה"ר/רה"י יוחנן ר' stated that ½ נזק isn't differentiated by רה"ר
 - (i) meaning: if it kicked the first vessel in רה"ר which then shot into רשות הניזק and damaged
 1. answer: זירא ר' changed his mind
 2. alternatively: זירא ר' ruling may have been made in re: קרן only
- c if: it shook its tail (in רה"ר) violently and caused damage – what is the ruling?
- i Retort: does the owner have to hold the tail when walking?
 - ii Comeback: re: קרן, does the owner have to hold the horns while walking? (nonetheless, there's liability)
 - 1 Defense: קרן is unusual, as opposed to this (shaking/wagging tail)
 - (a) Follow up question: if it is אורחיה, why question the exemption in רה"ר?
 - (i) Answer: question asked re: extra shaking (beyond what it normally does)
 - iii Related question: if it shook its אמה violently and caused damage
 - 1 Is it: similar to קרן (pushed by its יצר)
 - 2 Or is it: different than קרן where there is intent to damage? --- תיקו
- III Analysis of last clause in 'א משנה – the fowl who breaks things with a string tied around its foot – חצי נזק
- a Limitation (רב הונא): only if it was tied by itself (got tangled) – but if a person tied it on – חייב
- i Question: if tied by itself, who is liable for the חצי נזק?
 - 1 Suggestion: owner of the string?
 - (a) rejection: if he hid it (and the fowl found it) - he's אנוס (exempt); if not, he's fully negligent (נזק שלם)
 - 2 rather: owner of the fowl?
 - (a) Question: why not pay full נזק? –v. 1 limits נזקין to those created by people (איש, בור איש, not שור איש)
 - 3 Rather: case in משנה must be where the fowl threw the string - צרויות
 - ii Note: רב הונא's ruling is in re: א הפקר fowl; if a person tied string on it and that causes נזק, the one who tied it is liable;
 - 1 Category: בור
 - (a) if it got tied on by itself, clearly exempt