

20.2.06

21b (משנה ג) → 23a (לחייבו בארבעה דברים)

1. **כי תצא אש ומצאה קצים ונאכל גדיש או הקמה או השדה שלם ישלם המבער את הבערה:** שמות פרק כב פסוק ה

I שן ורגל: varieties of משנה ג

- a if an animal (e. g. dog or goat) jumped from a roof and broke vessels – חייב, as they are מועד
 - i note: this is a subset of רגל and therefore exempt in רה"ר
 - ii note: only true if they deliberately jumped, not if they fell (corroborating ברייתא)
 - 1 → anything that began as negligence (letting them up on the roof) but he damage was caused by פטור – אונס
 - 2 challenge: to opinion that תחילתו בפשיעה וסופו באונס חייב
 - 3 answer: vessels were next to the wall – had they jumped, they would've missed them → there isn't any פשיעה
 - (a) לבא: falling could lead to חייב – if the wall was narrow, such that it was inevitable
 - iii associated ברייתא: dog/goat jumped up & damaged – נזק ½; person or fowl – full נזק (jumping down - always full נזק)
 - 1 challenge: ברייתא ruling that dog/goat in either direction is exempt (=½ נזק)
 - 2 answer: they descended in an unusual way (dog – jumping; goat, scaling down with its nails)
- b if a dog took a hot cake from a fire (and a coal with it) and ate it next to another's wheat-pile, which then enflamed
 - i ruling: liable for full damages for the cake (שן) and ½ damages for the fire (משונה)
- c related analysis: what is the essential liability of אש?
 - i חציו: "הציו" – an extension of man's personal liability (lit. "his arrows")
 - 1 reasoning: can't be ממון, as it is intangible
 - ii ד"ל: "ממונו" – another example of liability for damage caused by his property
 - 1 reasoning: can't be חציו, as it isn't his own power that directs the fire
 - iii Arguments:
 - 1 our משנה seems to support ר"י → the כלב is liable for the fire
 - (a) Response (ל"ל): case - dog threw the coal; liable ½ damage for spot where it landed; exempt for rest of גדיש
 - (b) Retort (ל"י): dog placed the coal – חייב נ"ש for that spot and ½ נזק for the rest of the גדיש
 - 2 חציו – liability for camel-driver if flax on camel's back enflamed from storeowner's candle
 - (a) challenge to ד"ל: flame doesn't belong to camel-owner
 - (b) defense: case where camel directly burned the city (i.e. didn't merely extend the fire)
 - (i) challenge: end of that משנה – if חנווני left his candle outside, חנווני is liable – why should he be liable if camel directly burned the city?
 - 1. answer: case where the camel stood still and burned it
 - 2. challenge: if so, the camel-owner should certainly be liable (should've moved the camel away)
 - a. answer: case where camel stood to urinate:
 - i. in first case: camel-owner liable – shouldn't have placed such a large (flammable) burden
 - ii. second case: חנווני liable – shouldn't have placed his candle outside
 - 3 challenge to ד"ל: if someone lit a גדיש
 - (a) if: there was a slave nearby and a goat tied to it (and they died) – חייב (all financial liability)
 - (b) but if: the slave was tied down and the goat nearby – פטור (liable for death for death of slave – מ'קלב"מ)
 - (i) but if: אש is an extension of ממון – why isn't he liable – if his שור had killed, he'd be liable
 - (ii) answer: case where he lit the body of the slave itself – סד"א if owned by 2 different people – חייב – קמ"ל
 - 4 challenge to ד"ל: if someone sent a fire with an incompetent (חש"ו)
 - (a) ruling: he is liable only בדיני שמיים (not actionable in court)
 - (b) inotherwords: the fire is "the arrows of the חש"ו" → exempt
 - (i) defense: ר"ל rules that only exemption is if he gave the חש"ו an ember which he enflamed – היזק ברי
 - (ii) ד"ל: even if he gave him an open flame – the חש"ו's movements helped it along (still פטור)
 - 1. note: ר"י would only find dispatcher liable if he gave the חש"ו twigs, dry wood and a flame
 - 5 רבא: verse (#1 - כי תצא) and ברייתא (text opens with ממון, ending with "himself" – המבער) support ר"י
 - iv נזקי אש: unclear why, according to ר"י, טמון is exempt for אש
 - 1 answer (אב"י): case where fire was in מזיק's yard, fence fell (for other reason) and spread; his "arrows" stop there
 - (a) Challenge: if so, should be exempt for גלוי also
 - 2 Rather: ר"י agrees that it is also ממון – difference being that if it is חציו, must pay 4 forms of payment for battery