

20.2.10

26a (משנה ו') → 27a (סיום הפרק)

1. כוונה תחת כוונה פצע תחת פצע חבורה תחת חבורה: שמות פרק כא פסוק כה
 2. וכי יכה איש את עינו עבדו או את עין אמתו וְשָׁתָהּ לַחֲפָזִי יִשְׁלַחַנּוּ תַּחַת עֵינָיו: שמות פרק כא פסוק כו
 3. והקרייתם לכם ערים ערי מקלט תהיינה לכם וְנָס שָׂמָה רֹצֵחַ מִכָּה נָפֶשׁ בְּשִׁנְיָהּ: במדבר פרק לה פסוק יא
 4. וְאִשָּׁר לֹא צָדָה וְהָאֱלֹהִים אָנָּה לִידּוֹ וְשָׁמַתִּי לָהּ מְקוֹם אֲשֶׁר יָנוּס שָׂמָה: שמות פרק כא פסוק יג
 5. אם כפר יושת עליו וְנָתַן פְּדִיָן נַפְשׁוֹ כָּל אֲשֶׁר יוֹשֵׁת עָלָיו: שמות פרק כא פסוק ל
 6. כי ינצו אנשים יחדו איש ואחיו וקרבה אשת האחד להציל את אישה מיד מכהו וְשָׁלַחַה יָדָהּ וְהִחְזִיקָהּ בְּמַבְשָׁיו: דברים פרק כה פסוק יא

- I א:ד #5 מועד (explicating מועד) as a category of “Man” (אדם) משנה ו'
- a אדם is מועד at all times, whether awake or asleep
- b If: he blinded another (unintentionally) or broke vessels (while asleep) – pays נ”ש
- c Observation: the משנה equated “blinding” (battery) with “breaking vessels” (monetary damage)
- i → no payment of “4 categories” (צער, רפוי, בשת, שבת) for blinding → must have been בשוגג
- ii source for liability for שוגג v. 1 – פצע תחת פצע is superfluous → liability for שוגג
- 1 challenge: that phrase is used to add liability of צער
- 2 answer: had it said פצע תחת פצע, we would have only derived צער
- II רבא's series of odd situations involving some level of שגגה and culpability arising from each in several areas
- a if: he was unaware of a rock under his arm, it fell out and did damage:
- i נזקין – liable (as per our משנה – this will be true about נזקין in each case)
- ii 4 payments related to battery – exempt (needs intent to damage)
- iii מלאכת מחשבת אסרה תורה – exempt – prohibition of carrying
- iv גלות (if the rock fell and killed someone) – exempt – without foreknowledge of the weapon, no liability
- v עבד (going free if it took out one of his limbs) – dispute between רשב”ג/חכמים
- 1 if his master was a doctor or dentist and the slave asked him to heal his tooth or eye and he damaged it:
- (a) חכמים: slave goes free
- (b) רשב”ג: v. 2 indicates that the master must intend to harm
- b if: he was originally aware of the rock and then forgot about it – same as case #a except for גלות, as per v. 3
- c if: he threw the rock, intending to throw it 2 אמות and it went 4 אמות – same as case #a, except for גלות as per v. 4
- i note: 2 polar approaches (גלות/נו גלות) cited by רש”י, both discussed and analyzed by ראשונים
- d if: he threw the rock, intending to throw it ד”א and it went 8 אמות – same as case #c, except for שבת:
- i if: he said “anywhere it lands is fine with me” – liable;
- ii but if: he only wanted it to land at the spot 4 אמות away – exempt
- e if: he threw a vessel from the roof and another came and hit it with a stick on the way down – the 2nd is exempt
- i reason: he hit an already broken vessel
- f if: he threw a vessel from the roof and there were pillows below, and another (or even he) removed them – exempt
- i reason: when he threw them, they weren't “already broken” (the remover is exempt as per בנוקין)
- g ריב”ב/רבנן: dispute if: someone threw a baby from the roof and another put out a sword and killed him (on the way down):
- i case: if 10 people struck someone with sticks and he died, all exempt
- ii ריב”ב: if they acted simultaneously, exempt, if in sequence, last one is liable
- h if: in that case, an ox came along and caught it with its horns and it died – dispute של ריב”ב/רבנן re: v. 5
- i pay as per value of מזיק (here, there would be liability for כופר as per “value” of owner of ox)
- ii חכמים: pay as per value of ניזק (no כופר here, as baby was going to die in any case)
- i if: he fell from roof (רוח מצויה) באשה – liable for 4 payments (קרוב למזיד) but no אישות – even במה
- i note: even though קנין needs no דעת, there has to be intent for a מעשה ביאה
- ii note: payment for בשת is dependent on intent to damage (not necessarily to embarrass – see cases j-k)
- j if: he fell off the roof (ברוח שאינה מצויה) and damaged and caused בשת: liable for נזקין and exempt from other payments
- k if: he fell off the roof (רוח מצויה) as above – liable for all 4 payments, but exempt from בשת
- i if: he turned over in-flight (demonstrating intent to damage), liable for all 5 payments, including בשת
- ii source: v. 6 – once there is intent to damage, there is liability for בשת
- l if: he placed a coal on someone's chest and he died – פטור (the fellow should have removed it as per ט:א)
- i but if: he placed a coal on someone's clothes and it burned – liable as per ח:ז
- m רבא's question: is placing a coal on the chest of another's slave like גוף (he should have removed it) or בגד (liable)?
- i If: it's like a גוף, how would we rule in a case of placing it on the other's animal?
- ii Resolution: עבד is a person, exempt; שור is property and the מזיק is liable