

20.3.01; 27a (משנה א') → 28a (ופטור מן המעשר)

1. ולא תקחו כפר לנזק אל עיר מקלטו לשוב לשבת בארץ עד מות הפהן: במדבר פרק לה פסוק לב  
 2. וקצתה את כפה לא תחוס עינך: דברים פרק כה פסוק יבו

## I נזקי בור: application of משנה א'

- a if: someone left a pitcher (כד/חבית) – terms are interchangeable [see below] in רה"ר:
- i observation: חבית and כד are used here (and גה:י, ד:י) interchangeable
- 1 → for commerce (if someone buys a "כד", and receives a "חבית", no claim of טעות מקח)
- (a) challenge: if the terms aren't locally interchanged, it should be טעות מקח
- (b) and: if it's a place where the terms are used interchangeably – obviously valid sale
- (c) answer: most keep terms separate, few use interchangeably; teaching that we don't follow רוב in cases of ממון
- ii if: someone else came along and trampled it and destroyed it – he is exempt
- 1 challenge: the walker should look where he's going
- (a) Answer1 (רב): case where מזיק filled רה"ר with his pitchers
- (b) Answer2 (שמואל): case happened at night (or in darkened place)
- (c) Answer3 (ר' יוחנן): it was at a corner of רה"ר (where visibility was limited)
- (i) Observation (פפא ר'): משנה supports שמואל and יוחנן ("נתקל"), but acc. to רב, should read "שבר"
- (ii) Rejection (ר' זבד): נתקל is parallel construction with סיפא, where the מזיק is only liable for נתקל
- (d) Answer4 (א"י): people aren't accustomed to looking around when they walk
- (e) Rulings: שמואל found the "tripper" liable – consistent with his own ruling (happened during the day)
- (i) לבא: found the tripper liable – because it was next to the olive press, where all know that there are pots
- iii if: the other tripped on it and got hurt, the owner of the pitcher is liable (בור)

## II Discussion of "vigilante justice" (עביד איניש דינא לנפשיה)

- a Lead-in story: partners shared a well and 1 drew water on other's day; when he didn't desist, the other struck him.
- i ר' ינאי's reponse: he was right to strike him, even according to opinion that לא עביד איניש דל"נ, that's only if there's no loss
- b dispute (only in case where there is no loss being saved by enacting 'street justice'):
- i רב יהודה: a man is not permitted to "take the law into his own hands"; there is no loss; let him go to court
- ii ר' נחמן: a man is permitted to do so; since he is within his rights, he need not bother to go to court
- 1 support: בג בג dictum: if someone owes you money, don't sneak into his house to take (and appear to be a גנב)
- (a) Rather: "bust him in his teeth", take it and tell him "I'm taking my own"
- 2 Rejection: בג בג is an isolated opinion (רבנן disagree); or: "bust his teeth" means "in court"
- (a) Challenge: should be "we say to him" and "he's taking his own" – קשיא
- c Proofs:
- i Ruling: if ox jumped another and owner of attacked ox pulled his ox from under and the attacker fell and died – פטור
- 1 Analysis: if the top one is מועד, no loss (proof for ר"י) since he'd get full payment in any case
- 2 Rejection: could be תם, where he'd stand to lose ½ the value of his ox
- (a) Challenge: end of ruling – if he pushed the attacker off and it died – liable; if תם, why is he liable?
- (b) Answer: he should have pulled his own ox out and didn't do so (least intrusive manner of עביד איניש דל"נ)
- ii Ruling: if someone filled another's yard with pots, the owner may break them on his way in and out (challenge to ר"י)
- 1 Rejection: could mean "breaks on his way in" – to ב"ד; "on his way out" – to bring his proof
- iii Ruling: if an ע"ע who is נרצע doesn't want to go free and his master hits him (to force him out) – he is פטור
- 1 Source: v. 1 – no payment for someone "returning" (שב instead of שוב)
- 2 Answer1: עבד is a thief; now that he has no more fear of his master, it is a potential loss
- 3 Answer2: עבד had a שפחה כנענית; now that he is freed, she is prohibited to him and master acts on behalf of ב"ד
- iv Ruling: our משנה – only if he "tripped" is he exempt, not if שבר (rejection: parallel construct as above)
- v Ruling: v. 2 – סד"א even if she couldn't save any other way; correction: only if she could save him otherwise (שליה ב"ד:)
- vi Ruling: if a public road goes through someone's property and he blocks it off and gives them another road, the gift is theirs, but he still has no claim on what he blocked off
- 1 Response: גזרה against him giving them a circuitous route (alternatively – only when he gave them a circ. route)
- (a) Or: every path is "circuitous", since it's always further for someone than the old path
- (i) Note: newly granted public area can't be given back once the רבים have taken possession
- vii Ruling: if someone allotted פאה on one side and the עניים took from the other side – both are פאה
- 1 Answer: he may block them from the other side; both are פאה for exemption from מעשר