20.3.02

28a (משנה אב) → 29a (וכן אמר רב אשי: במתכוין לזכות בחרסיה)

1. וְכִי יִפְתַּח אִישׁ בּוֹר אוֹ כִּי יִכְרֶה אִישׁ בֹּר וְלֹא יְכַסֶּנּוּ וְנָפַל שָׁמָּה **שׁוֹר אוֹ חֲמוֹר**: *שמות כא,לג*
2. **וְלַנַּעֲרָ לֹא תַעֲשֶׂה דָּבָר** אֵין לַנַּעֲרָ חֵטְא מָוֶת כִּי כַּאֲשֶׁר יָקוּם אִישׁ עַל רֵעֵהוּ וּרְצָחוֹ נֶפֶשׁ כֵּן הַדָּבָר הַזֶּה: *דברים כב, כו*

I משנה אב: continuation of משנה או: if someone broke a pitcher in רה"ר
- a *If*: someone slipped on the water (spilled from it) or on the shard – *he* (discussed below) is liable
  - i *Analysis (רב ושמואל)*:
    - 1 *רב*: liability only applies to his clothes (that got wet from the water), not his body (hurt from the impact)
      - (a) *Reason*: he fell on unowned ground – קרקע עולם
    - 2 *שמואל*: the opposite, following the parameters of בור –(v. 1) "שור" excludes אדם, "חמור" excludes כלים
      - (a) *And*: שור only excludes אדם vis-à-vis death; not damage → liable for man, not for clothes
    - 3 *Response (רב)*: parallel to בור only applies if the owner disowned the item (כד); otherwise, it is standard ממון
    - 4 *Challenge*: application of v. 1 – if his ox fell in and its vessels broke, liable for ox, exempt for vessels
      - (a) *Comparable to*: leaving his rock, knife or burden in רה"ר and they caused damage
      - (b) *Therefore*: if his vial knocked into the rock and spilled, he is liable for the loss
        - (i) *Challenge1*: index case is בור, application is rock, knife etc.
        - (ii) *Rather*: read "this is comparable to…"
          1. *Challenge2*: opening line challenges רב (exempt); end challenges שמואל (liable)
          2. *Correction*: the ברייתא is self-contradictory (as above)
          3. *Solutions*:
             a. *רב*: add in "this is only true if he disowned the item; else, he is liable"
             b. *שמואל*: add in "this is according to רבנן; according to ר"י (חייב על נזקי כלים בבור) – liable"
      - (c) *Comment on ruling (ר"א)*:
        - (i) *Version1*: only if he tripped on the rock and the vial hit the rock directly;
          1. *But*: if he tripped on the ground and knocked into the rock, exempt
             a. *Note*: follows opinion *contra* ר' נתן, (if there are 2 contributors to נזק and can't collect from one, collect from other)
        - (ii) *Version2*: even if he tripped on ground and knocked into rock – liable
          1. *Note*: follows ר' נתן – since he can't collect from the בעל הקרקע (public) – collects from בעל האבן
- b *Dissent*: ר' יהודה: if he had intent (discussed below), he is liable; otherwise, he is exempt
  - i *Range of dispute*:
    - 1 *רבה*: only if the owner intended to put it down and it broke
      - (a) *Challenge (אביי)*: → ר"מ (ת"ק) finds liability even if the pitcher broke on its own! but אונס is exempt (v. 2)
      - (b) *Note*: ר"מ agrees that even in ממונות, there is a blanket liability for cases of אונס
        - (i) *Discussion*: if his pitcher fell and he didn't remove it; if his camel fell (and died) and he didn't move it
          1. *ר"מ*: liable for damages
          2. *חכמים*: exempt
             a. *Note*: חכמים concede if he left something on roof and it fell ברוח מצויה and damaged – חייב
             b. *Note*: ר"מ concedes if they fell ברוח שאינה מצויה that he is exempt (אונס)
    - 2 *אביי*: dispute is in both cases: at point of falling and afterwards
      - (a) *At point of falling*: whether the נתקל can be considered פושע (→ liable)
      - (b) *Afterwards*: if he declares it to be הפקר – if there is still liability
        - (i) *Proof*: משנה lists two cases – water or shard
        - (ii) *Suggestion*: perhaps ברייתא also represents a paired dispute (during and after falling)
          1. *Proof*: that's why it mentioned כד and גמל
             a. *Further proof*: there is no possible damage of the camel while falling
             b. *Rejection*: could be case where he took his camel at the dangerous crossing of the river
                i. *Block*: if there is no other way – אנוס; if there is – פושע
             c. *Answer*: could be that the owner fell and that's where the camel fell
        - (iii) *Question*: what sort of מתכוין could there be in case of מפקיר נכסיו?
          1. *answer*: intends to take possession of the shards

