

20.3.03

29a (ר"א אומר) → 30a (לא קשיא הא דידה הא דרביה) →

- I משנה א in ר"מ/ר' יהודה dispute
- a ר"א – (as אביי) – dispute is both at point of falling (נתקל פושע) and afterwards (מפקיר נזקיו)
- b ר' יוחנן – concurs, but limits the exemption of מפקיר נזקיו to a case like this – where the onset of נזק was אונס
- II dispute between ר' יוחנן ר"א/ר' יהודה as to status of מפקיר נזקיו (attempts to identify who took which position)
- a suggestion #1: position of ר' יהודה פטור follows ר"מ and position of ר' יוחנן חייב follows ר"א
- i rejection: all agree that ר"מ finds liability; dispute is whether ר"א's exemption here is global or limited to a case like this
- b suggestion #2: ר"א is the authority who finds liability
- i support: he quotes ר' ישמעאל – 2 things aren't owned by generator, but they're "placed" in his domain (for liability):
- 1 בור ברה"ר (and חמץ after 6 hours)
- ii challenge: משנה: if someone turns over up a גלל in רה"ר, he isn't liable for subsequent damages
- 1 ר"א. limits rule - only if he intends to take possession → מפקיר נזקיו פטור
- (a) defense: he's exempt if he puts it back
- (i) challenge: that's parallel to finding a pit open, covering it and reopening it – פטור
- (ii) block: analogy doesn't work - in this case, he never undid the original potential for damage
1. rather: parallel to finding a pit, filling it in and redigging it – חייב
- (b) defense (ר' אשי): he's exempt if he never lifted it over ג"ט
- (i) Challenge: why does ר"א interpret משנה as dependent on intent to take possession and below ג"ט
- (ii) He should: interpret it as above ג"ט and even without intent to take possession – liable
- (iii) Answer: he's bothered by use of הפך instead of הגביה → must be below ג"ט
- iii Implication: ר' יוחנן must find no liability (if ר"א holds חייב)
- 1 Challenge: ruling that if someone buries thorns or glass or makes a wall of thorns or his fence fell into רה"ר and another was hurt – חייב
- (a) ר' יוחנן. only applies if he shoots the thorns out into רה"ר, but if he draws them in – exempt
- (b) assumption: drawing them in exempts him because it's a בור in his own domain, even though he declared it ownerless (accessible to the public) → מפקיר נזקיו פטור
- (c) rejection: reason for his exemption is because people don't generally rub up against walls
- (i) challenge: ר' יוחנן rules that הלכה כסתם משנה –
1. סתם משנה: if someone digs a בור ברה"ר and an animal falls in – liable → מפקיר נזקיו חייב
2. implication: ר"א must find for exemption
3. challenge from ruling of ר"א (in name of ר' ישמעאל): 2 things which aren't owned by are "placed" in domain of one who generated them → מפקיר נזקיו חייב
- a. answer: that was his teacher's (ר' ישמעאל) – but he maintains - exempt