

## 20.3.04; 30a (משנה ב') → 31a (הנהו מותרין הו) →

- I רה"ר: liability for damages caused by leaving dangerous objects in רה"ר
- a water: if someone spilled water into רה"ר, he's liable for damages caused
- i דב: only if his clothes were damaged by the water, but not if he tripped
- 1 challenge (הונא): why isn't the mud that his water generated also considered his responsibility?
  - 2 Response: case where the water was limited and was fully absorbed in the ground (no mud)
  - 3 Secondary question: why teach same principle twice? (א' משנה also gave case of someone tripping on the water)
    - (a) Answer: one for summer, one for winter (when you have the right to pour out water into רה"ר)
- b Thorns (and glass): if someone buries thorns or glass, makes a wall of thorns or his fence fell into רה"ר and damaged – חייב
- i ד' יוחנן: only applies if he shoots the thorns out into רה"ר, but if he draws them in – exempt
- 1 reason: people don't generally rub up against walls
  - ii related בזייתא: if someone buries his thorns in another's wall and the wall collapses and the thorns cause damage:
    - 1 Ruling: if the wall was weak, the thorn-hider is liable; if strong, the wall-owner is liable
    - 2 Implication (רבינא): if A covers his pit with B's pail and B comes along and takes his pail – A is liable
      - (a) challenge: the analogy is obvious
      - (b) defense: סד"א - there, A knew B's pail was there; here, the wall-owner didn't know about the thorns – קמ"ל
  - iii Related בזייתא ראשונים: חסידים used to bury their thorns ג"ט deep in the field, so as not to interfere with the plow
    - 1 Practice: ר"ש would throw his in the fire; רבא would throw his thorns in the Tigres
    - 2 Note: someone who wishes to be a חסיד should fulfill דניזיקין (others: מילי דברכות)
- II רה"ר – status of נזקין left in משנה ב' משנה ג'
- a If A takes his straw out to רה"ר for compost (i.e. he wants people to trample it) and B gets hurt - A is liable;
- i Note: seems to be *contra* יהודה ר' who permits leaving זבל in רה"ר for 30 days during that season
- 1 Response: ר"י agrees that if there is damage, there is liability
  - 2 Challenge: ר"י exempts store-owner for fire damage caused by his candle left outside if it was חנוכה – נר חנוכה – permitted
    - (a) Answer: he exempts in case of מצווה רשות, not רשות ב"ד
    - (b) Block: he explicitly exempts in case of רשות ב"ד
      - (i) Answer (נחמן): our משנה is in case when he put it out off-season (not when זבלים are put out) – יהודה כר'
      - (ii) Answer (אשי): our משנה is only in case of straw (not זבל) as they are slippery (more likely to damage)
- b Additionally: the תבן is הפקר and anyone may claim it
- i דב: they may claim the entire stack; both the appreciation of רה"ר as well as the תבן itself
- 1 reason: the owner is fined for the גוף as a precaution against the appreciation
  - ii זעירי: they may only claim the appreciation of רה"ר; the stack itself belongs to the original owner
    - 1 reason: fine only applies to appreciation – owner isn't fined to lose the גוף
    - iii challenge: final clause in our משנה omits rule of כל הקודם... → no decree against גוף גלל (רה"ר doesn't appreciate in גלל)
    - iv answer: what is stated in 1<sup>st</sup> clause applies to final clause (... הקודם)
      - 1 challenge: regarding the last clause, ruling that they are forbidden as גול (we assume – from original owner)
      - 2 answer: גול refers to anyone taking it from the one who picked it up (הזוכה)
        - (a) Challenge: in re: our 2 cases, 1<sup>st</sup> case is ruled מותר משום גול (in re: taking it) and last clause – אסור משום גול
        - (b) Answer (רנב"י): things that don't appreciate (e.g. גלל) - no decree; something that appreciates גופו אטו שבה
    - v Question posed: according to רב, is the גוף fined (confiscated) immediately or only after it appreciates?
      - 1 Answer: from the inclusion of גלל in our discussion → immediately
        - (a) Rejection: we accept רנב"י's answer and גלל is no longer part of the equation (no solution)
      - vi Suggestion: this dispute parallels dispute ר"מ/חכמים of status of קרן in a loan written with רבית (ר"מ – entire loan is lost)
        - 1 Rejection: רב could agree with רנב"י; in that case, the קרן was permissible; here, the "compost" is already a מזיק
        - 2 Rejection: ר"מ could agree with זעירי; in that case, the שטר was written with רבית; here, who's to say there'd be נזק?
      - vii Suggestion: this dispute parallels a different dispute רשב"ג/חכמים in re: our case (taking תבן out and someone is hurt)
        - 1 חכמים: people may take, but there's an איסור גול (→ must be גול on the גוף and anyone may take שבה – כזעירי – שבה)
        - 2 רשב"ג: there is no גול (the entire item is הפקר)
          - (a) note: זעירי must admit that רשב"ג disagrees with him
          - (b) However: רב could interpret dispute as in re: whether we publicize and instruct to take the entire item
          - (c) As per: dispute between רב הונא (רב) and רבא (רבא)
            - (i) Challenge: both הונא ר' and רבא ר' declared certain items הפקר in similar circumstances
              1. answer: this was a case where the owner had been warned and didn't remove it in a timely fashion

c דשב"ג: this is true about all dangerous things left in רה"ר (even if not placed there to benefit the owner)

d Additional ruling: if someone turns over a גלל and another is hurt as a result – the "overturner" is liable