

20.3.06

31b (משנה ה') → 32b (בואי כלה בואי כלה)

1. כי כל אשר יעשה מכל התועבות האלה ונקרתו הנפשות העשות מקרב עמם ויקרא יח:כט

- I משנה ה': various collisions between the מזיק (board or candle) and ניזק (pitcher/barrel or flax)
- a if: they collided head-on, מזיק is exempt, as each has right-of-way
 - b if: they were walking in line
 - i if: the מזיק was in front, he is exempt
 - 1 however, if: the מזיק stood (stopped walking), he is liable
 - (a) but: if he told the ניזק to stop – he is exempt
 - ii if: the ניזק was in front, the מזיק is liable
 - 1 However, if: the ניזק stood suddenly, the מזיק is exempt
 - (a) But, if: he told the מזיק to stop, the מזיק is liable
- II Related discussion: if a husband (inadvertently) hurts his wife during coitus – is there liability?
- a Argument: the 1st clause of our משנה indicates that since both had permission to be there, there is no liability
 - i Counter (רצח בשגגה): ק"ו –if, in a forest, where each came in to a "neutral territory", there is liability (רוצח בשגגה), certainly here, where he came into her "domain", he is liable
 - 1 Question: how do we interpret the 1st clause of our משנה?
 - (a) Answer: in our case, both were active, as opposed to coitus where only he is considered active
 - (i) Challenge: v. 1 finds liability (in case of prohibited liaison) for both of them who are called עושות
 - (ii) Answer: that is in re: הנאה (which both have) which is the מחייב in עריות
- III Relationship between our משנה and ר"ל's dictum about the "two cows"
- a Possible support: from the 2nd case (where the board-man was first → liable if he stopped suddenly)
 - i explanation: this case is akin to the lying cow kicking the walking cow (liable)
 - b point: our משנה is a challenge to ר"ל
 - i explanation: only liable if it kicked → if it happened inadvertently, exempt
 - ii as opposed to: our משנה, where it happened inadvertently and the מזיק is liable
 - c response: our משנה is a case where he blocked the entire way (liable); ר"ל's case – where he lay on one side of the road
 - i rather: the last clause evidently supports ר"ל – if the barrel-man stopped suddenly, the מזיק is exempt
 - 1 parallel: walking kicking the cow lying down
 - ii break: in the משנה, he was walking in his usual manner; here, the owner of the lying cow can argue that the other cow had the right to trample him but not to kick him
- IV מה"ר: direct collisions in ר"ל
- a if 2 were walking or running – or 1 walking and the other running – and they collided – both exempt
 - i suggestion: our משנה is contra איסי בן יהודה who finds liability if someone is running as this is odd
 - 1 however: איסי exempts if someone was running on ע"ש at the last minute, since that is permissible
 - (a) Explanation: reference to קבלת שבת (going out to greet שבת as she enters)
 - 2 איסי בניהודה הלכה ד' יוחנן
 - 3 contradiction: ר"ל maintains, as a rule, הלכה כסתם משנה (including ours) – and our משנה is, as we claimed, contra איסי
 - 4 answer: our משנה is referring to a case of ע"ש at twilight
 - 5 support: from the extra clause "or both of them were running"
 - (a) explanation: if 1 running and 1 walking still leaves the "runner" exempt, certainly if they're both running
 - (b) rather: read "1 running and 1 walking – exempt" refers to ע"ש, when it is permissible; at other time, the runner is liable; however, if both are running at any time, they are both exempt