

20.3.07

32b (משנה ז) → 33a (ליה קמ"ל) → 33a

1. או בן יגח או בת יגח כמשפט הזה יעשה לו: שמות כא, לא
 2. ואיש פי יתן מום בעמיתו כאשר עשה כן יעשה לו: ויקרא כד, יט

- I chopping wood –liable in all three cases
 - a whether in רה"ר and the chips fly in to רה"י (of the ניזק) and do damage
 - b or in his own רה"י and they go out and damage in רה"ר,
 - c or in his own רה"י and they go out and damage in רה"י of the ניזק
 - d justification:
 - i if: we only had 1st ruling, we would have reasoned that he is liable because רה"ר has lots of people going by
 - 1 but: if he's working in his own yard, no liability, and...
 - ii if: we only had 2nd ruling, we would have reasoned that he is liable because he had no right to work there
 - 1 but: we wouldn't apply to 3rd ruling, which has neither of these considerations – צריכא
- II related ברייתא: A dies or is injured as a result of having walked into a carpentry shop and getting hit by flying piece of wood
 - a If: he entered without permission – carpenter is exempt
 - b If: he entered with permission – carpenter is liable
 - i Interpretation (ר' יוסי בר חנינא): liable for 4 type of payment (if he was only injured) but exempt from גלות
 - 1 Challenge (רבא): ק"ו from "the forest", where each entered of his own "permission" and the killer is liable
 - ii Rather: ר' יוסי בר חנינא must mean "exempt" from גלות because it's too close to מזיד → גלות isn't enough
 - 1 Challenge (רבא): ruling that if the שליח ב"ד added one more flogging-stripe and he died, he's exiled (גולה)
 - (a) Explanation: this is also שווג קרוב למזיד; he should've known that an extra flogging-stripe could kill
 - (b) Defense: the דיין erred in the amount to give the fellow (fully שווג)
 - 2 Challenge: if someone throws a rock into רה"ר and it kills someone (שווג קרוב למזיד) – is exiled
 - (a) Answer: case is fully שווג (refers to tearing down a wall during the day in a location where most people come to use it as a privy at night but a few come during the day)
 - iii Variant version of ר' יוסי בר חנינא (ר' פפא בשם רבא): liability for 4/exemption for גלות is on the 1st case:
 - 1 Explication: if he entered without permission, the carpenter is exempt from exile, but liable for 4 payments (injury)
 - 2 Note: the first version will certainly agree that here, there is no גלות;
 - 3 However: this second version will argue that in the 2nd case, there is liability (entered with נגר's permission)
 - (a) Challenge: if someone enters a forge and is hit by sparks and dies, even if he entered ברשות, the נפח is פטור
 - (i) Answer: case refers to apprentice of נפח, where master told him to leave and thought he was gone
 - 1. challenge: then it should apply to anyone (not just the apprentice)
 - 2. answer: others have no fear of נפח, he should make sure they're gone; when he told apprentice to leave, safe assumption that he obeyed → פטור
 - iv 2nd variant (ר' זבד בשם רבא): ר' יוסי בר חנינא's ruling is a comment on דרשה of "מצא" (in context of בושוג רוצח)
 - 1 excludes: someone who "makes himself found" (by the flying rock – i.e. walks into it) – nonetheless, חייב בד' דברים
 - (a) note: this version certainly agrees with liability in the other(s); but the others would find for full פטור here
- III related ברייתא: if workers come to claim their wages and the owner's dog or ox attacks and kills them:
 - a ת"ק: owner is exempt
 - b אחרים: workers have right to come to claim wages (→ liable)
 - i circumstance: must be owner that is sometimes at home, and the workers knocked on the door:
 - 1 he said: "yes"; ת"ק: "yes" means "stay there (I'm coming)"; אחרים: "yes" means "come in"
 - 2 ת"ק supports ברייתא
- IV משנה ח' – when there is נזק on both sides
 - a If 2 תמים gored each other – pay ½ of the difference
 - b If 2 מועדים gored each other – pay the difference (same applies to people)
 - c If מועד gored תם – pay ½ of the difference; if תם gored תם, pay full amount of difference
 - d Same applies to people – a man who attacks a תם pays difference; a תם who attacks a person pays ½ difference
 - i Dissent: ר"ע – if a תם attacks a person, pays full difference (נזק חצי doesn't apply)
 - ii Support (תכמים): v. 1 – the rule of the תם applies to people (1/2 נזק)
 - 1 Counter (ר"ע): הוה משפט הזה refers to the last verse – but still pays מגופו and not מיטב (from לו יעשה)
 - 2 Counter: that verse exempts from 4 payments (ר"ע infers from v. 2)
 - (a) Counter: that verse only exempts צער רפוי ובשת; קמ"ל – might have been included – קמ"ל