

20.3.08; 33a (משנה ט) → 34a (דא"ל: קרנא דתורן קבירא ביה) → 34a

7. וכי יגף שור איש את שור רעהו ומכרו ומת השור החי ונחצו את קספו וגם את המת יחצו: שמות כא, לה

- I תם: example of payment for damage done by משנה טו
- a *if*: the מזיק was worth 100 זוז and the ניזק had been worth 200 זוז (and the carcass is worthless) – the ניזק is awarded the מזיק
- b *Authority*: משנה follows ר"ע (*contra* ישמעאל ר"י) – in interpretation of v. 1:
- i ½ מזיק ישמעאל directed to ב"ד, that they should fine/charge
- ii מזיק וניזק to ד"ע – that they should split the living ox and carcass
- iii *Split the difference*: if ניזק is מקדיש the animal (to ר"ע, valid, as it is co-owned; to ר"י, invalid, as the ניזק is only owed \$\$)
- 1 *Question* (ר"י of רבא): acc. to ר"י, if the מזיק sold the שור – valid sale? (he does own it, but it's משועבד to the ניזק)
- 2 *Answer* (ר"י): invalid sale (in spite of ruling that it is valid – the מזיק can seize it from לוקח)
- (a) *Question*: if so, what is the value of the sale?
- (b) *Answer*: for the plowing done in the meantime – equity belongs to לוקח and ניזק can't claim it back
- (i) *Challenge*: → if someone borrows money and then sells מטלטלין (ox), it may be seized for the loan
- (ii) *Answer*: in this case, it is as if the שור was designated for collection (אפותיקי)
1. *challenge*: רבא's dictum that an עבד אפותיקי that was sold may be seized, but not a שור
2. *answer*: reason for רבא's distinction – because an עבד made an אפותיקי is well-publicized (אית ליה קלא)
3. *and*: a goring ox is also well-known (it's called נחנא) and, in this case, is similar to an אפותיקי עבד
- iv *seemingly contradictory ruling*: if "he" sells the ox, sale is invalid, but if he is מקדיש it, that is valid
- 1 *identity of actor*: if it is the מזיק, the 1st clause only fits ר"ע (הוחלט השור); but the 2nd clause only fits ר"י (מזיק owes \$\$)
- 2 *however*: if it is the ניזק, the 1st clause only fits ר"י, whereas the 2nd clause (הקדישו מוקדש) only fits ר"ע
- (a) *answer*: actor is מזיק and all agree:
- (i) *if* he sells it, it is invalid; even ר"י agrees, as it is משועבד to the ניזק;
- (ii) *but if* he is מקדיש, even ר"ע agrees, as a precaution against people thinking that הקדש יוצא בלא פדיון
- II *related* *ברייתא*: regarding collection, sale, slaughtering and/or gifting and הקדש of שור תם and שור מועד
- a *before* שור תם: the העמדה בדין, any sale, slaughter and/or gift or הקדש (by מזיק) is valid; *reasons*:
- i *sale*: for plowing
- ii *as per* הקדש: as per אבהו ר' (shouldn't go free without פדיון; i.e. it does go free, but with a token redemption payment)
- iii *gift*: for plowing is clear; but if slaughtered, should be paid from body
- 1 *answer*: means that the depreciation caused by שחיטה is lost to ניזק
- (a) *implication*: if someone damages the שעבוד of another, he has no recourse (דינא דגרמי)
- (i) *application*: not only when he burns another's שטרות, where he only "damaged" parchment
- (ii) *but even*; when he physically damages (e.g. digs holes in land slated for collection)
- iv *note*: after העמדה בדין, any sale, slaughter etc. are invalid
- v *note*: if creditors seize it, invalid; even if debt was incurred even before the ox gored *reason*: it is paid from its body
- 1 *reason*: ניזק can say to ב"ח: even if you had collected it earlier, I could have seized it from you
- b *before or even after* שור מועד: the העמדה בדין, all sales, slaughter and then gifts, הקדש and seizures by creditors are valid
- i *reason*: this debt is paid העלייה בדין (not the body)
- III *Related* *ברייתא*: appreciation and depreciation between הנזק and time of sentencing:
- a *Example*: מזיק and ניזק each worth 200, מזיק damaged 50 זוז worth (value = 150)
- i *If*: ניזק appreciated → 400; without damage, would have appreciated to 800
- 1 *Ruling*: payment is as of time of damage (pays [1/2 or all of] 50, not 450)
- ii *If, however*: ניזק depreciated; *Ruling*: payment is as of time of judgment (lower amount)
- 1 *Circumstance*: must be that it depreciated due to the injury, the ניזק claiming that "the horn is still buried in him"
- (a) *But not*: on account of hard work; if the מזיק makes him work, why should the ניזק suffer?
- iii *If*: מזיק appreciated; *Ruling*: payment as per הנזק (lower) *Observation*: this seems to follow ר"י (liability is for \$\$)
- iv *If, however*: מזיק depreciated; *Ruling*: payment as per העמדה בדין (lower)
- (a) *Observation*: seems to follow ר"ע (liability is on animal)
- (i) *Challenge*: רישא seems to follow ר"י (as above); *Answer*: *ברייתא* is all ר"ע; case is where the owner fattened the ox up, expending money in the process (ניזק should have no claim on that appreciation)
1. *Challenge*: first half of *ברייתא* deals with appreciation/depreciation of ניזק; but if the owner fattened him up, there is no need to teach that that appreciation isn't reckoned
2. *Answer* (ר' פפא): 1st half could be either פטומי or market appreciation (w/o expenditure); 2nd half could only work if he fattened him up