

20.3.09

34a (משנה ט) → 35a (השתא בשוגג פטור)

1. וכי יגף שור איש את שור רעהו ומת ומקרו את השור החי וחיצו את קספו וְגַם אֶת הַמֵּת יִחְצוּן: שמות כא, לה
 2. או נודע כי שור נגח הוא מתמול שלשם ולא ישמרנו בעליו שלם ושלם שור תחת השור והמת יהיה לו: שמות כא, לו
 3. ומפה בהמה שלמנה ומפה אדם יומת: ויקרא כד, כא

- I 20 משנה ט: dispute between ר"מ/ר' יהודה regarding application of v. 1
- a ר"מ: case where מזיק and ניזק are worth same amount and the carcass is worth nothing – split the מזיק
- b ר' יהודה: true; but it doesn't take into account the end of the פסוק: applies when carcass has value which is also split
- i explicatory ר"מ: בריתא יחצונו וגם... יחצונו as a measure: we measure ½ the depreciation from "live" to "dead"
- ii question: if so, what is the practical difference between them? Either way, מזיק and ניזק split תם and carcass
- iii answer1: פחת נבילה:
- 1 ר"מ: belongs to ניזק (he sustains loss)
 - 2 ר' יהודה: belongs to both and מזיק sustains ½ the depreciation
 - 3 Challenge: תם is more severe (to מזיק) than מועד, where the ניזק fully takes control of the נבילה
 - (a) Explanation: ר"י does have such a calculus later (ט:ד) – but that's based on v. 2
 - (b) And: ר' יהודה explicitly rules that vis-à-vis תשלומין, a תם can never be more severe than תם
- iv Answer2 (ר' יוחנן): שבח נבילה:
- 1 ר"מ: belongs to ניזק (he gains 100% of appreciation)
 - 2 ר' יהודה: belongs to both - split appreciation
 - 3 support: ר' יהודה wondered where we find a model where מזיק gains – v. 2 indicates that מזיק always pays
 - (a) Note: use of v. 2 is there to counter possibility that מזיק cannot gain only when that is a loss to ניזק
 - (b) Challenge: according to ר' יהודה, תם could pay more than ½ damage – contra v. 1
 - (c) Answer: he reads (from וגם in v. 1) "halving" as loss made up through חי
- II י' משנה י: parallels and distinctions between נזקי גופו and נזקי ממון (examples are only distinctions)
- a בשת, שן ועין, only he is liable, not his ox
- b battering his (owner's) parents, starting a fire on שבת: only ox is liable; he's exempt (liable for capital punishment – קלב"מ)
- III related discussion: תנא taught in presence of ר' יוחנן: all מקלקלין are exempt (from liability for שבת חילול) except for חובל and מבעיר
- a reaction: rejection (even those are exempt):
- i חובל: only liable if he wants the blood (from the wound) for his dog
 - ii מבעיר: only liable if his aim is to gain ashes
- b Challenge: our משנה – compares owner::ox; just as ox doesn't care about results, similarly he – and he is מיתה
- i Answer1: ox::owner; just as owner does want it, so too with ox (e.g. wants ashes to scratch his back on)
 - ii challenge: how can we compare ox::owner; we included בשת and a שור could never have intent to shame
 - 1 answer: liability for בשת doesn't require intent to shame, just intent to hurt
 - iii answer2 (רבא): in our משנה, he is exempt even if he acted בשוגג as per חזקיה's application of juxtaposition in v. 3
 - 1 Note: even though משנה states מפני שנודו בנפשו, means "if this were מזיד..."