20.4.09

44a (משנה ו') → 45a (אלא שור בר טענתא הוא)

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1. וְאִם שׁוֹר נַגָּח הוּא מִתְּמֹל שִׁלְשֹׁם **וְהוּעַד בִּבְעָלָיו וְלֹא יִשְׁמְרֶנּוּ** וְהֵמִית אִישׁ אוֹ אִשָּׁה **הַשּׁוֹר יִסָּקֵל וְגַם בְּעָלָיו יוּמָת**: *שמות כא, כט*
2. וְכִי יִהְיֶה אִישׁ שֹׂנֵא לְרֵעֵהוּ **וְאָרַב לוֹ וְקָם עָלָיו** וְהִכָּהוּ נֶפֶשׁ וָמֵת וְנָס אֶל אַחַת הֶעָרִים הָאֵל: *דברים יט, יא*

I   משנה ו': unintentional homicide by ox
- a   *if*: he was rubbing against a wall and it fell on – and killed – a person
- b   *or if*: he intended to kill an animal and killed a person
- c   *or if*: he intended to kill a כנעני and killed a בן ישראל
- d   *or if*: he intended to kill a (dead) foetus and killed a live person
  - i   *in all cases*: exempt
    - 1   שמואל: exempt from execution; liable for כופר (as per דרשה above – אם כופר includes unintentional killing)
    - 2   רב: exempt from both execution and כופר (as per ruling above – if the שור isn't killed, there's no כופר)
      - (a)   *question (to שמואל)*: the animal is תם, there should be no כופר
      - (b)   *answer*: akin to רב's answer elsewhere – he is מועד to all on people in בורות
        - (i)   *challenge*: if so, he should be killed (seems intentional) – in the case of בורות, it's unintentional; not here
        - (ii)   *answer*: here, too, he is motivated by pleasure (which we see, when he rubs against the wall afterwards)
          - 1. *challenge*: the case of the wall is a case of צרורות (→ no כופר)
          - 2. *answer*: in this case, the stones of the wall are directly pushed by the ox
    - 3   ברייתא *supporting* שמואל: there are 4 categorizations:
      - (a)   *חייב בכופר ובמיתה*: a מועד who kills intentionally
      - (b)   *חייב בכופר בלבד*: a מועד who kills unintentionally (שמואל)
      - (c)   *חייב במיתה בלבד*: a תם who kills intentionally
      - (d)   *פטור משניהם*: a תם who kills unintentionally
      - (e)   *And*: unintentional damages (w/o death):
        - (i)   *ר' יהודה*: liable, as is the case with כופר (תשלומין::תשלומין)
        - (ii)   *ר"ש*: exempt, as is the case with מיתה (liability of the ox::liability of the ox = ~liability of the owner)
  - ii   *implication*: if he intended one ישראלי and killed another – liable
    - 1   *note*: this is *contra* ר"ש, who requires intent to harm the victim
      - (a)   *source*: v. 1 → murder::ox-killing; human murder requires intent for the victim as per v. 2
      - (b)   *counter*: רבנן interpret v. 2 as requiring attack on (at least) a group of ישראלים, without one כנעני there
        - (i)   *Reason*: as long as there is one כנעני, the group is considered קבוע 50/50 and ספק נפשות להקל

II   משנה ז': execution of "killer ox" of various categories of ownership
- a   owned by woman, (minor) orphans (w/o אפטרופוס), trustee, "desert (הפקר) ox", הקדש, owned by גר who dies w/o heirs
  - i   *ruling*: all are killed
    - 1   *Source*: 7 mentions of שור in law of goring a person – 1 for itself, 6 to include these unlikely candidates
  - ii   *dissent*: ר' יהודה exempts last three, as they have no owners
    - 1   *ר"י ד' הונא*: even exempted if the owner was מקדיש (or מפקיר) after goring
    - 2   *Proof*: separate listing of שור המדבר and שור של גר... (which is also הפקר) → even if he was מפקיר afterwards
    - 3   *Further*: ברייתא supports ר' הונא, where ר' יהודה invokes v. 1 to prove that the ox must maintain status throughout

III   משנה ח': status of ox before and after גמר דין
- a   *if*: the owner was מקדיש the animal after גמ"ד (on its way out to be stoned) – invalid; if he slaughters at that point – אסור
- b   *however if*: the owner was מקדיש before גמ"ד – it's valid; if he slaughters it at that point – the meat is permissible
  - i   *ברייתא*: extends distinction to selling and return by שומר to owner (if he returns it before גמ"ד, considered returned)
    - 1   *dissent*: ר' יעקב – even if the שומר returns it <u>after</u> גמ"ד, considered returned (no liability for שומר)
    - 2   *Suggestion*: dispute is whether a bail that has become אסור בהנאה may be returned with הרי שלך לפניך
      - (a)   *Rejection (רבה)*: all hold that it may be returned; else their dispute could've been extended to חמץ בפסח
    - 3   *Rather*: dispute is whether ox must be present for העדאה:
      - (a)   *רבנן*: per v. 1, ox must be present; owner can claim that if he had been returned, he would've hid him
      - (b)   *ר' יעקב*: no requirement for presence of ox (not a בר טענה) → he would've been convicted *in absentia*