

20.5.06

50b (משנה 2) → 51a (אמרי מתני' דאיגוד לבור)

1. וְכִי יִפְתַּח אִישׁ בּוֹר אוֹ כִּי יַכְרֶה אִישׁ בֵּר וְלֹא יִכְסֶנּוּ וְנָפַל שָׁמָּה שׂוֹר אוֹ חֲמוֹר: שְׁמוֹת פְּרָק כּא פְּסוּק לֹג
 2. לֹא תִקֵּם וְלֹא תִטֵּר אֶת בְּנֵי עַמֶּךָ וְאֶהְיֶה לְרֵעֶךָ כְּמוֹךָ אֲנִי ה': וַיִּקְרָא פְּרָק יֵט פְּסוּק יח
 3. כִּי תִבְנֶה בַּיִת חֲדָשׁ וְעָשִׂיתָ מַעֲקֶה לְגַגְךָ וְלֹא תִשִּׂים דָּמַיִם בְּבֵיתְךָ כִּסְסִי: יֵפֵל הַנָּפֵל מִקּוֹנֵי: דְּבָרִים פְּרָק כֵּב פְּסוּק ח

חריצין ונעיצין - בור עגול הוא שיח ארוכה וקצרה מערה מרובעת ומכוסה בקרוי אלא שיח לה פה חריצין רחבין ומרובעין כמערה ואינן מקורין אלא כל פיו פתוח. נעיצין - קצרין מלמטה ורחבין מלמעלה. רש"י מסכת בבא קמא דף ג עמוד ב

- I 2ה משנה: extent of בור נזקי
- a if: someone digs a בור ברה"ר and an animal falls in and dies – he is liable
- i extension: whether he digs a בור, cave, tunnel, trench etc. – always liable
- ii if so: why does the תורה use “בור” as the example?
- iii Answer: just as a בור (typically) is deep enough to kill, so too with these other excavations
- 1 Therefore: if they are 10 טפחים deep and the animal dies – liable
- 2 However: if they are more shallow and the animal dies – exempt
- (a) Note: if the בור is <10 but the animal is only injured – liable
- II Dispute רב/שמואל re: the essential liability for בור נזקי
- a רב: liable due to the הבל (air space created by digging the pit) – but not חבטה (hitting the ground)
- i reason: the ground is קרקע עולם, not owned by him → can't be liable for that
- ii therefore: if he built a 10-high mound and the animal fell – exempt
- iii source: v.1 – נפל implies normal “falling”
- 1 extension of בור (in משנה ב) – “אף כל” explained via מערות etc.
- b שמואל: liable due to הבל and ק"ו for the חבטה
- i challenge: perhaps it should only be חבטה
- ii answer: any בור generates liability, even if filled with sponges (i.e. no חבטה)
- iii therefore: if he built a 10-high mound and the animal fell – liable
- iv source: v. 1 – נפל implies any sort of falling
- 1 extension of בור (in משנה ב) – “אף כל” extends to 10-high mound
- III Justification of list of excavations in משנה:
- a If: only said בור, סד"א that he is liable (at ט"ט) because it is small and round (generates lots of heat), but שיח (which is long), must be deeper to generate liability
- b And if: only said שיח, סד"א that 10 is enough because it is narrow, but not מערה, which is large
- c And if: only said מערה, סד"א that 10 is enough because it is covered, but not תrenches
- d And if: only said חריצין, סד"א that 10 is enough because they are no wider at the top than at the bottom, but not קמ"ל – נעיצין
- IV Revisiting רב/שמואל:
- a Ruling in our משנה <10 is still liable for damages (but not death) - seems to support שמואל (חבטה)
- i Defense: the air-space (of <10) is sufficient for damages, not for death
- b Story: ox fell into pond (6 טפחים deep), owner slaughtered it quickly;
- i Ruling: ר"נ declared it a טריפה (note: had the owner waited 24 hours to see if it would live – would've been כשר)
- ii Observation: ר"נ seems to feel that חבטה of less than ט"ט is enough to mortally wound (→ טריפה)
- 1 and: he explains the ruling of the משנה as in re: הבל (less than 10 doesn't have enough הבל to kill, just injure)
- iii challenge: ruling about height of בית הסקילה; but if less than 10 has enough to kill, why make the scaffold so high?
- 1 Answer: v. 2 stipulates that we make a more humane death (but not too high, as it is degrading)
- iv Challenge: ruling in re: v. 3 that מעקה only applies if it will involve a fall of 10 טפחים or more
- 1 Defense: less than 10 טפחים doesn't constitute a בית → no obligation of מעקה
- 2 Challenge: even if it's 10, the roof has width → less than 10
- (a) Answer: could be a case where they dug into the floor (now more than 10)
- (b) Challenge: if so, even the house that's less than 10 could have been dug out inside and be > 10
- v Rather: ר"נ's reason is that it is ד"ט from the stomach of the cow to the ground + ט"ט of depth of the pond → ט"ט
- 1 Challenge: why does the משנה stipulate “10” to kill, 6 should be sufficient
- 2 Answer: משנה is referring to a case where the animal was lying on the ground and rolled in (no additional height)