

20.5.07

51a (משנה ו) → 52a (עבדא לפנגדא סמותא)

1. וְכִי יִפְתַּח אִישׁ בּוֹר אוֹ כִּי יִכְרֶה אִישׁ בַּר וְלֹא יִכְסְנוּ וְנִפְל שָׁמָּה שׁוֹר אוֹ חֲמוֹר: שְׁמוֹת פֶּרֶק כֹּא פֶסוּק לֵג
 2. בְּעַל הַבּוֹר יִשְׁלַם כְּסוֹף יִשְׁיב לְבַעְלָיו וְהַמָּת יִהְיֶה לוֹ: שְׁמוֹת פֶּרֶק כֹּא פֶסוּק לֵד

- I נזקי בור between partners
- א if: a jointly-owned בור is uncovered, and 1 partner passes it by without covering as does the 2nd - the 2nd is liable
- א i question: how can a בור be jointly owned? (to ר"ע, not a problem, since he includes ברשותו, question according to ר"י)
- א ii cannot be: that one appointed the other to dig a cistern in רה"ר – עבירה
- א iii cannot be: that one dug the first 5 טפחים and the other completed it – only the last one is liable
- א 1 note: this would be valid according to רבי in re: נזקין (as below), but not למיתה and not לרבנן for either
- א iv answer (ר' יוחנן): case where both of them dug out the last bit together, deepening it to ט"ט
- II רבי v. רבנן in re: liability for extending the בור; if one digs 9 and another digs the final טפח:
- א רבנן – only the last one is liable at all
- א רבי – the last one is liable for מיתה, they share liability for נזקין
- א i רבנן's source: v. 1 (יכרה+יפתח) includes one who digs after another, that he has erased the 1st one's actions
- א ii counter: both are needed (as above – see p. 48)
- א 1 רבנן: agree that both are necessary; rather...
- א iii רבנן's source: כי יכרה implies that only one can be liable (the last one to dig)
- א 1 ולא שור בור – כי יכרה איש בור דבי
- א 2 רבנן: agree, but איש בור is written twice
- א 3 דבי: since it uses that phrase in re: כי יפתח, it uses it again in re: כי יכרה (parallel phrasing)
- א (a) question: how do we know that the singular כי יכרה assigns liability to the last one – perhaps it's the 1st one?
- א (b) answer: v.2 grants the carcass to the one who caused the death (the last one)
- א (i) challenge: this phrase is needed for רבא's teaching that שור פסולי המוקדשין carries no בור-liability (יהיה לו)
- א (ii) answer: this proves the point – that it normally belongs to the one who caused the death
- א c contradiction in ברייתות re: subsequent or shared liability:
- א i בריתא #1: if someone digs 10, another deepens to 20, another to 30 – they share liability
- א ii בריתא #2: if someone digs 10 and another plasters the cistern – only the last one is liable
- א 1 suggested resolution: 1st בריתא is רבי, 2nd is רבנן
- א 2 resolution #1 (א"ר זבד): both רבנן – they only limited liability to the last one when the earlier one(s) didn't dig ט"ט
- א (a) challenge: in the 2nd case, there was already 10
- א (b) answer: there wasn't enough noxious air to cause death until the 2nd one plastered it
- א 3 resolution #2 (א"ר זבד): both רבי – 2nd בריתא is a case where there wasn't noxious air for death or damages
- א d רבא: if someone placed a rock at the lip of a בור, extending the height to 10, the consequences fall under this dispute
- א i challenge: this is obvious
- א ii answer: רבא סד"א their dispute is only in re: below ground, where there is noxious air; קמ"ל that it extends above ground
- א e רבא (question): if A finds a pit of 9 and he adds a 10th טפח and then removes it – does it revert to the 1st fellow or has the 1st fellow been removed from liability by his actions? תיקו
- III Ruling: if the pit was 8 deep, of which 2 were water, he is liable
- א Reason: each טפח of water generates as much noxious air as טפחים of dry space
- א Question: what if the בור was 9 deep, of which 1 was water?
- א i Argument: since there's little water, there's less generation of noxious air (פטור ממיתה)
- א ii Or: since the pit is deeper, there's certainly bad air (חייב במיתה)
- א c Question: what if the בור was 7 deep, of which 3 were water? (invert arguments) – תיקו (also to first question)

- IV Widening the בור: if someone found a בור י"ט and widened the opening – is he now liable?
- a *Argument (for exemption)*: he has “ventilated” it and made it less likely to damage
 - b *Or*: he has extended the range of damage by widening the opening – more likely to damage (he assumes liability)
 - i **אשי 1**: if he dies due to הבל, the “widener” is exempt; if due to the impact, the “widener” is liable
 - ii **אשי 2**: if he falls in from the widened side, the “widener” is liable; if from the other side, he is exempt
 - c *note*: if width=depth, we might consider noxious or not; ([W>D = safe] OR [D>W = unsafe])
- V Analysis of משנה –point when 1st partner relinquishes liability to the 2nd: leaving him to draw water *or* handing him the pail
- a Parallel dispute in ברייתא:
 - i **ראב"י** – until he hands over the pail (or cover)
 - ii **רבנן** – once he leaves the other partner to draw water
 - b *explanation of dispute*: whether יש ברירה (if we can determine specific ownership between partners)
 - i **ראב"י** – ברירה – יש ברירה → each has half until one accepts (with the דלי) full liability
 - ii **רבנן** – אין ברירה → there is immediate full liability to each; once one leaves, the other assumes it all
 - c *Parallel*: they disagree (גדרים ה:א) if partners who have declared איסור הנאה against each other may enter common area
 - i **ראב"י** – each may enter, considering wherever he walks to be (temporarily) his territory
 - ii **רבנן** – may not enter at all
- VI 3 parallel rulings about “handing over” as a קנין
- a **ר"א** – handing over the דלי is a proper קנין of בור
 - i *challenge*:
 - 1 *if*: he is acquiring via כסף, the כסף should be the קנין
 - 2 *if*: he is acquiring via חזקה, let his חזקה (e.g. using the בור) be the קנין
 - ii *answer*: it is via חזקה, and the seller failed to say ולך חזק וקני; handing over the דלי is tantamount to the declaration
 - b **ריב"ל** – handing over the keys to a house is a proper קנין
 - i *challenge*:
 - 1 *if*: he is acquiring via כסף, the כסף should be the קנין
 - 2 *if*: he is acquiring via חזקה, let his חזקה (e.g. changing the lock, putting up a fence) be the קנין
 - ii *answer*: it is via חזקה, and the seller failed to say ולך חזק וקני; handing over the key is tantamount to the declaration
 - c **ר"ל** – handing over the משכוכית is a proper קנין of the flock
 - i *challenge*:
 - 1 *if*: he is acquiring via משיכה, the משיכה should be the קנין
 - 2 *if*: he is acquiring via מסירה his מסירה be the קנין
 - ii *answer*: it is via משיכה, the seller failed to say ולך משוך וקני; handing over the משכוכית is tantamount to the declaration
 - 1 *note*: meaning of משכוכית:
 - (a) *in זבל*: it was understood to mean “bell” that they ring to lead the flock
 - (b) **ד' יעקב**: an energetic goat that leads the flock
 - (i) *as per*: the saying of the Galilean דרשן חסדא in בית מדרש ר'ס:
 1. “when the shepherd is angry at the flock, he blinds the lead goat” (see רש"י)