

20.5.08

52a (משנה 21) → 53a (וזה וזה בבור)

- I 21 משנה 21: various laws regarding liability for בור
- a if: 1<sup>st</sup> uses בור, leaves it covered and 2<sup>nd</sup> comes to use it and it isn't covered and he doesn't cover it - 2<sup>nd</sup> is liable
- i note: liability is shouldered by 2<sup>nd</sup> alone only until:
- 1 דב: 1<sup>st</sup> knows about it
  - 2 שמואל: 1<sup>st</sup> is told by others
  - 3 ד' יוחנן: there's time for 1<sup>st</sup> to be told, hire workers, chop wood (for new cover) and cover it
- b if: he covered it properly and an animal fell in – exempt; (e.g. it got wormy *on its own* and fell apart)
- c if: he didn't cover it properly - liable
- i question: if he covered it properly for oxen but not (strong enough) for camels
- 1 and then: camels came and weakened it and then oxen fell through – is he liable?
    - (a) Note: cannot be case where camels regularly pass by – he's certainly liable
    - (b) nor: can it be case where camels never come – he's certainly exempt (אנוס)
    - (c) Must be: case where camels come by on (rare) occasion
  - 2 Suggestion: this may be the case of כסהו כראוי – and he's exempt
    - (a) Rejection: meaning of כראוי is strong enough for both – it caved in due to worms (as above)
  - 3 Suggestion: this may be the case of לא כסהו כראוי – and he's liable
    - (a) Explanation: it must have been strong enough for oxen but not for camels (else, he would be exempt)
      - (i) And: it had to be a case where camels only came occasionally, as above
    - (b) Rejection: לא כסהו כראוי is strong enough for oxen but not for camels – but camels are there frequently
      - (i) And: since the רישא used the term כראוי, the סיפא uses כראוי [כסהו] לא (parallel construction)
- ii Alternate version: if (in such a case) camels weakened it (even if they only come occasionally), he's liable
- 1 However: if, in such a case, it "wormed out", do we apply מינו?
    - (a) Since: he'd be liable if camels weakened it, therefore he's liable for התלעה
    - (b) Or: do we not apply מינו here?
  - 2 Suggestion: רישא must be a case where it was fit for oxen but not camels, and it "wormed out" → no מינו (exempt)
    - (a) Rejection: perhaps it was strong enough for both, and כד"א he'd be responsible to regularly check it for worms – קמ"ל
  - 3 Suggestion: סיפא may be case where it was strong enough for oxen but not camels and camels frequent the place, but it "wormed out"; he's liable → we apply מינו (liable)
    - (a) Rejection: wasn't strong enough for camels and they weakened it
      - (i) And: since the רישא used the term כראוי, the סיפא uses כראוי [כסהו] לא (parallel construction)
  - 4 Solution: ruling that if a deaf (e.g.) ox fell in – or any one fell in at night – liable; however, an able ox that fell in during the day – exempt (and we don't claim since he's liable for the deaf one, he's also liable here)
    - (a) Ergo: we do not apply מינו
- d If: the animal fell "forward" from the sound of digging – liable
- e But if: the animal fell "backward" from the sound of digging – exempt
- i Explanation(s) of לפנוי ולאחריו
- 1 דב: both are in the בור – לפנוי (liable) is when he fell in face-first (the הבל killed him)
    - (a) challenge: ruling stating that בור, whether לפנוי or אחריו – is liable
      - (i) answer1 (ר"ח): רב agrees if בור is in owner's property, he's liable for חבטה as well (impact is on his "earth")
      - (ii) Answer2 (רבה): case where animal turned over and ended up falling on his back – all הבל
      - (iii) Answer3 (ר' יוסף): referent is damage done to the בור by שור (fouling waters) – direction isn't relevant
      - (iv) support (ר' חנניה): רב ברייתא reads like רב – both לפנוי and לאחריו are in the בור
  - 2 שמואל: in any case, if he falls in the בור – liable (if the הבל doesn't get him, the חבטה will)
    - (a) לאחריו (exempt): means he fell backward away from the pit (on the ground)