

20.6.1

55b (משנה א') → 56b (ולטטים נמי דהכישוה)

1. או נודע כי שור נגח הוא מתמול שלשם ולא ישמרנו בעליו שלם ישלם שור תחת השור והמת יהיה לו: שמות פרק כא פסוק לו
2. וכי יפתח איש בור או כי יכרה איש בר ולא יכסנו ונפל שמה שור או חמור: שמות פרק כא פסוק לג
3. כי תצא אש ומצאה קצים ונאכל גדיש או הקמה או השדה שלם המבער את הבערה: שמות פרק כב פסוק ה
4. כי יבער איש שדה או כרם ושלח את בעירו ובער בשדה אחר מיטב שדהו ומיטב כרמו ישלם: שמות פרק כב פסוק ד
5. אשריכם זרעי על כל מים משלחי רגל השור והחמור: ישעיהו פרק לב פסוק כ
6. לכן הנני מביא רעה אל בית ירבעם והכרתי לירבעם משתין בקיר עצור ועזוב בישראל ובערתי אחרי בית ירבעם כאשור יבער הגלל עד תמו: מ"א פרק יד פסוק י
7. ונפש כי תחטא ושמעה קול אלה והוא עד או ראה או ידע אם לוא יגיד ונשא עונו: ויקרא פרק ה פסוק א

- I 'א' משנה: definition of proper encagement (i.e. a gate which will withstand a normal wind) which renders owner exempt
- a If: he put the flock into the corral and locked up כראוי and it went out and damaged – פטור
- b If: he didn't lock up כראוי (i.e. a gate which cannot stand up to a normal wind) liable
- i Authority: perhaps this is only יהודה ר"י who requires only minimal שמירה for a מועד (as above, ט:ד, as per v. 1)
- ii Correction: might even be ר"מ – our משנה is discussing שן ורגל (as evidenced by the switch to צאן from שור)
- 1 And: ר"א taught that שן ורגל, אש, שן ורגל require minimal שמירה בור, אש, שן ורגל
- (a) בור: as per v. 2 – as long as he covers it, exempt
- (b) אש: as per v. 3 – only liable if he enflames in the usual way
- (c) שן: as per v. 4 (ובער) which refers to שן as per v. 6
- (d) דגל: as per v. 4 (ושלח) which refers to רגל as per v. 5
- II Tangential discussion: ה'ר' list of 4 acts which carry moral culpability but legal exemption (פטור מדיני אדם וחייב בדיני שמיים)
- a Note – there are more (as below); this list includes 4 that we would have reason to think don't even carry moral culpability
- b The list:
- i Breaking a fence down before a fellow's animal
- 1 Note: must be a shaky fence; else he's legally liable
- (a) We would have thought: since the fence has to come down, not even liable בדיני שמים
- ii Bending over a fellow's stalks when a fire is coming (to make them more accessible to fire)
- 1 Note: case where it would only come with an unusual wind (else, he's liable)
- (a) We would have thought: he had no way of knowing that this unusual wind would come
- 2 Or (ר' אשי): he buries the stalk, such that the מזיק is exempt due to פטור טמון באש
- (a) We would have thought: he did him a favor, by hiding his stalk from the fire
- 3 Hiring false witnesses
- 4 Note: iut must be for another; if for himself, he's legally liable for the loss to his opposite number
- (a) We would have thought: the witnesses should have ignored him (דברי מי שומעין, דברי הרב ודברי התלמיד, דברי מי שומעין)
- iii Refusing to testify when he has testimony which would help a fellow
- 1 Note: there must be no one else to testify (he's not part of a כת), else he's fully liable as per v. 7
- (a) We would have thought: he could argue that the defendant might have lied under oath (→no loss)
- c Other cases of חייב בדיני שמים: doing מלאכה with מי חטאת, putting poison in front of a fellow's animal, sending a fire with an incompetent, scaring a fellow with a sound, leaving a broken pot or fallen animal in ר"ה, (לחכמים)
- III (continuation of משנה): If the fence/door broke down at night or thieves broke it open and it damaged – exempt
- a רבה: only exempt if the animal dug it out
- i Challenge: if the wall was strong, in any case, he should be exempt; if not, he should be liable
- ii Rather: רבה's comment is in re: משנה ב' – even if it digs out, since he was negligent leaving it (e.g.) in the sun, liable
- IV (conclusion of משנה): and if the thieves took it out – they are liable
- a Challenge: this is obvious
- b Answer: in this case, they guided the animal to the stalk by standing around it without leading it
- c Alternatively: they hit it with a stick towards the stalks