

20.6.3

57b (ולאסטמורי בגוה? תיקו) → 58b (משנה 22) [נפלה לגינה]

- I *if*: the animal fell into a garden and got benefit (e.g. eating) – liable for הנאה (only)
- a *דב*: only if the animal fell (and the vegetables cushioned its blow)
- i *inference*: if it ate, it doesn't pay anything
- 1 *suggestion*: רב is following his own approach (above) – הוה לה שלא תאכל
 - 2 *rejection*: הוה לה שלא תאכל is an exemption when the animal is hurt by another's food; not as a פטור for the animal
- ii *rather*: even if it only slips, it must pay for הנאה (certainly if it ate)
- 1 *even though*: סד"א if it slips, the owner of the field is akin to חברו – and the בעל הבהמה is exempt – קמ"ל
 - (a) *question*: why don't we apply מבריה ארי?
 - (b) *Answer1*: מבריה ארי is only applied when the "savior" is aware that he's acting
 - (c) *Answer2*: מבריה ארי is only applied when the "savior" loses nothing as a result of his intervention
- b *Circumstance of falling*:
- i *כהנא* ג' slipped on its own urine
 - ii *דבא*: another animal pushed it
 - 1 *note*: רבא would certainly agree with ר"כ (only pays for הנאה),
 - (a) *but*: ר"כ would distinguish and say that if the animal was pushed, ניזק can claim full damages:
 - (i) *argument*: the animals should have passed in single file
- c *focus point of damage*:
- i *כהנא* ג' only in that vegetable bed where it fell
 - ii *יוחנן* ג' even from bed to bed, all day, until we see it leave and we see it return (intentionally)
 - 1 *פפא* ג' we needn't see its return; if we see it leave, we know that it's likely to return and owner needs שמירה מעולה
- II *if, however*: the animal went in in the usual way and caused damage – liable for all the damage
- a *question*: if it damaged with its "birth waters" – is it liable?
- i *If*: we accept the position that תחילתו בפשיעה וסופו באונס חייב – then there's liability
 - 1 *Reason*: letting the animal go in there was the פשיעה
 - ii *But if*: we accept the position that תחילתו בפשיעה וסופו באונס פטור – how do we judge it here?
 - 1 *Do we say*: since the damage was an אונס, the owner should be exempt
 - 2 *Or do we say*: since she was about to give birth, this negligence is considered a פשיעה → תיקו חייב