

20.6.4

58b (אם סאה סאה אם סאתים סאתים) → 59b (משנה ב) כיצד משלמת

1. כי יבער איש שדה או כרם ושלח את בעירו ובער בשדה אחר מיטב שדהו ומיטב כרמו ושלם: שמות פרק כב פסוק ד

- I (end of 'ב' משנה ב') evaluation of liability for שן נזקי שן:
- a ק"ק: estimate how much similar area in that field is worth against how much this bed is worth after damage
- i source: v. 1 (ובער בשדה אחר) which teaches 2:
- 1 exemption for שן ברה"ר (else would've been written at end of verse)
 - 2 we estimate against another part of the field (בשדה אחר)
 - (a) method:
 - (i) value of 1 סאה among 60 ר' יוסי בר חנינא
 - (ii) value of 1/2 (סאה) תרקב among 60 ר' ינאי
 - (iii) value of 1 stalk (that it ate) among 60 חזקיה
 - (b) challenge (to all of these):
 - (i) ruling: if the animal ate a קב or 2, we don't estimate it's own value, but imagine it as a vegetable bed and estimate the loss (→ on it's own; not as a 1/60)
 - (ii) answer: as a bed within 60 beds (and each אמורא will apply it to his own שעור)
 - (c) explanatory בריתא:
 - (i) we cannot: use a קב (small amount) for that overestimates the damage – hurts the מזיק
 - (ii) and we cannot: use a בית כור (large area) for that underestimates damage – hurts the ניזק
 1. note: should say "כור", not "בית כור"
 2. means: we don't measure a קב by itself, (as above), nor a קב within 60 כור;
 - a. rather: a קב within 60 קבים
 - ii story: man chopped down a palm tree of another came to ריש גלותא who estimated the loss based on the value of the tree itself (rejected by defendant) they went to ר"ג, who ruled 1/60
 - 1 challenge (רבא): 1/60 was stated in re: damage done by his property – here it was done by him
 - (a) support: בריתא ruling on payment for someone destroying another's vineyard – doesn't use 1/60
 - (b) Block: similar בריתא in re: damage done by animal (omits "1/60")
 - (i) Rather: in both cases, the meaning of its value is using the 1/60 model
 - (ii) Note: in 1st בריתא ריה"ג, בריתא ריה"ג rules that we evaluate based on what the remaining stalks will produce
 1. Observation (אב"י) ריה"ג (above) and ר' ישמעאל ruled in parallel:
 - a. ד' v. 1 means מיטב of the ניזק (contra ר"ע and application to הקדש)
 - i. Not meaning: if it ate fruit and we don't know if it was better or worse (המע"ה)
 - ii. Rather: we use the remaining stalks to judge what it would've produced
 - iii Revisiting בריתא חכמים: in case it ate budding grapes, we estimate loss in value to vine
 - 1 But: ר"ש – only if it ate vines or shoots; if it ate half-ripe grapes or figs, we estimate as if they were ripe
 - (a) Contradiction: in 1st clause, ר"ש finds budding grapes as mature ones; from 2nd clause – only בוטר etc.
 - (b) Resolution (רבנא): read all together – budding or half-ripe grapes are estimated as ripe ones
 - (i) Challenge: if so, ר"ש = חכמים (but they disagree in בריתא)
 - (ii) Answer: 1 of them (?) considers the loss to the vine (had the fruit remained until ripe)
 1. ביאה ר"ש considers גופנא from צער since she'll eventually have ביאה with him once they're married (חכמים's counter distinguish from rape)
 2. מזונות ר"ש parallels opinions that we reduce payment for וולדות by דמי חיה or (only) מזונות
 - iv Final ruling: ר"פ ור"ה בריה דר"י: 1/60 accepted in re: insignificant losses, e.g. Aramean palm
 - 1 Story: אלוזר קטינא proved his scholarship in such a case with someone taking dates from a tree
 - v Final ruling: ריש גלותא – (estimate full value) in re: significant losses, e.g. Persian palm

b ר"ש: if the animal ate ripe fruit – value of fruit

i Source: v. 1 – בשדה אחר – only when it still needs the field (for growth) (רב ruled in favor of ר"ש's position)

 - 1 Addendum: ר"מ ruled like ר"מ in re: a husband selling a field set aside for כתובה, where she refused to sign on it for one לוקח but signed for a second – she loses rights to collection and cannot claim that she was merely bringing רוה נחת to her husband