

20.6.7

61b (משנה 27) → 62b (סיום הפרק)

7. כי תצא אש ומצאה קצים ונאכל גדיש או הקמה או השדה שלם ישלם המבער את הבערה: שמות פרק כב מסוק ה

- I נזקי אש: range of liability for משנה 4ד
- a ר"א: he is given a radius of ½ כור בית (anything outside of it is exempt)
 - b ר"ב: he is given טו אמות as is the width of ר"ר
 - c ר"ג: he is given 50 אמות
 - d ר"ד: each fire is judged on its own circumstances **הלכה**
 - i *Meaning*: depends on height of flame
 - 1 *Explanation*: ר"ד agrees that a fire has a standardized שיעור (as per ברייתא), which depends on its height
- II 'ה משנה: areas of liability for נזקי אש
- a *If*: a flame destroys vessels:
 - i ר"י: liable for the contents
 - ii **חכמים**: only liable for stacked wheat or barley – and living beings nearby, as follows:
 - 1 *If*: a goat was tied to it or a slave was nearby (and were killed) – he is liable
 - 2 *But if*: a goat was nearby or a slave tied to it (and were killed) – exempt
 - iii *However*: **חכמים** accede to ר"י in case A burns down a castle, because people typically leave כלים in a בירה
 - 1 *Note*: ניזק may only claim such items as he would typically have (based on his wealth) or if he's so trusted that others entrust their goods with him, he may swear and collect (תקנת נגזל באש...see below)
 - iv *Range of dispute*:
 - 1 ר"י only exempts if he lit in his own yard and it spread – but if he lights in the other's yard, liable for all
 - (a) *Challenge* (**דבא**): if so, סיפא of משנה (where **חכמים** agree with ר"י), should state that; *rather*
 - 2 **דבא**: disagreement in two areas:
 - (a) *if he lit in his own property*: liability for טמון (**חכמים** – exempt; ר"י – liable)
 - (b) *if he lit on the ניזק's property*: liability for all כלים (ר"י) or just those that would be expected to be there (**חכמים**)
 - 3 **ברייתא**: fire lit from his own property, dispute as per משנה
 - (a) *note*: **חכמים** do add liability for the buried vessels at the rate of wheat taking up that space
 - (b) *But*: if it was lit on the ניזק's property – all agree that there is liability for כלים
 - (i) **דבא**: must mean כלים that are normally there, e.g. plows
 - (c) *And*: ר"י agrees that if A lends B space in his field to stack grain and A starts a fire, only liable for the גדיש
 - (i) *If*: A lent for barley & B stacked wheat or vice-versa; or B stacked wheat & covered w/ barley or vice-versa
 - (ii) *Ruling*: only pays value of barley
 - (d) *Associated ruling* (**דבא**): if A gives a gold coin to a woman to watch, telling her it's silver
 - (i) *If*: she damages it – pays for gold – since she had no reason to destroy it
 - (ii) *But if*: she is negligent and it is damaged – only pays silver
 1. *Reason*: she claims that she only watched as per silver
 - (iii) **ד' אשי**: inferrable from our ברייתא – only pays for barley as he only accepted that level of responsibility
 - v *Related discussion*: רב reported ruling in name of ר"י – there is a תקנת נגזל applied to אש
 - 1 *Meaning*: just as a נגזל can swear to the value stolen and collect, so too with נזקי אש (since he extends to טמון)
 - (a) *Question* (**אמימר**): does תקנת נגזל apply to a מוסר (only valid if we rule on דינא דגרמי) – תיקו
 - 2 *Story*: fellow kicked another's safe in the river; ר' אשי wasn't sure if ניזק can swear to the contents & collect
 - (a) *Suggested solution*: from our משנה (end) – owner of castle collects because they keep כלים there
 - (i) **תיקו**? *כספת*: in this case, the ניזק claimed there were jewels there – do people leave jewels in a כספת?
 - vi *Tangent*: diff. גזלן and חמסן – גזלן doesn't pay, חמסן forces sale but pays (only חמסן if the buyer never says אני רוצה)
- III 'ו משנה: liability for נזקי אש in the marketplace/street with contributory negligence
- a a spark that shoots out from the anvil and damages – the smith is liable
 - b flax-laden camel is walking through the market place and the flax catches on fire from the storekeeper's lantern → נזק
 - i *if*: the flax went into the store, the camel-owner is liable
 - ii *but if*: the lantern was outside, the storekeeper is liable
 - 1 *note*: ר' יהודה – if it was חנוכה, the storekeeper is exempt
 - 2 → ר"י: נ"ח must be placed lower than ט"ט; else, בעל גמל could claim that he should've raised it higher
 - (a) *Rejection*: he may allow for it to be higher, but since it's מצוה רבנן, might not have troubled him to do so
 - (b) **ד' תנחום**: נ"ח (like סוכה and מבוי) higher than 20 אמה is invalid