

20.8.9

91a → (גופני קני דקלי, דקלי לא קני גופני) → 92a (איבעיא להו יש אומד לנזקין)

1. או נפש כי תשבע לבטא בשפתים להרוג או להטיב לכל אשר יבטא האדם בשבעה ונגעלם ממנו והוא ידע ואשם לאחת מאלה: ויקרא פרק ה פסוק ד  
 2. ואך את דמכם לנפשותיכם אדרש מיד כל חיה אדרשנו ומיד האדם מיד איש אחיו אדרש את נפש האדם: בראשית פרק ט פסוק ה  
 3. ועשה הכהן אחד לחטאת ואחד לעלה וכפר עליו מאשר חטא על הנפש וקדש את ראשו ביום ההוא: במדבר פרק ו פסוק יא  
 4. ואיש איש מבני ישראל ומן הגר הגר בתוכם אשר יצוד ציד חיה או עוף אשר יאכל וישפך את דמו ונקסו בעפר: ויקרא פרק יז פסוק יג  
 5. רק עץ אשר תדע כי לא עץ מאכל הוא אתו תשחית וקרתי ובנית מצור על העיר אשר הוא עשה עמך מלחמה עד ירדתה: דברים פרק כ פסוק כ

- I Question (following discussion of presenting evidence in ב"ד) – does ב"ד do an assessment for damages or not?
- a Proposed proof: (ה:ה) – משנה בור – a בור must be ט"ט for killing; if less, only liable for damages
- i Assumption: anything less than 10 generates liability for נזקין
- ii Rejection: it means – if it's a bit less than 10, liable for נזקין → we do assess for נזקין
- b Proposed proof: ruling that if a master strikes a slave near his eye and he loses sight (e.g.) – doesn't go free
- i Implication: need for assessment
- ii Rejection: he doesn't go free as we assume that it was his own reaction of fear that caused the loss of sight
- 1 As per: list of moral culpability without legal liability (חייב בדיני שמים), including hurting near limb leading to loss of use of limb
- c Proposed proof: ruling that the 5 payments are given immediately – רפוי ושבת are paid based on assessment (see below)
- i Modification: we all agree that רפוי ושבת require assessment – question asked in re: נזק
- 1 Note: in that case, if he heals quicker or slower, same payment is made – addition (or delay) is משמים
- d Proof: שמעון התימני (see p. 85) – אבן או אגרוף – must be brought to court as evidence – for assessment
- II Completion of משנה –
- a Spittle – only applies to hitting skin, not his clothes, even though this is tantamount to verbal shaming → verbal shaming isn't liable
- b Ruling that "all is according to his station"
- i Question: is ת"ק lenient (amounts are ceiling) or stringent (amounts are base)?
- ii Answer: from ר"ע's response (enhancing honor of even the poorest) → ת"ק is lenient
- c Story (see above):
- i Challenge1: we don't allow a delay in payment
- 1 Answer: delay not allowed for נזק, where there is real financial loss; but allowed for payment of בושת
- ii Challenge 2: in other version, ר"ע told him that a person is allowed to hurt himself
- 1 Answer1: in re: חבלה, not allowed; in re: בושת, permitted
- (a) Block: in our case, it was בושת and ר"ע stated (as per משנה) that he isn't allowed
- 2 Answer2: he pointed out that certainly בושת, to which a person may subject himself is still forbidden for another to cause – and generates liability; even חבלה which a person may not do still doesn't generate self-חיוב
- iii Challenge3: a person should be allowed to hurt himself, as per application of v. 1 (להרע):
- 1 If: someone made an oath to "harm" himself, he must carry it through
- (a) Assumption: means to physically harm himself
- (b) Rejection: means to fast
- (c) Block: this isn't applicable to others
- (d) Answer: it is – if he locks someone away without food
- (e) However: in re: "others", example is physical harm
- (f) Rather: entire issue of permission to harm self is subject to dispute
- (i) Question: who is authority who forbids?
1. Cannot be: application of v. 2 to suicide – death is different
2. Cannot be: application of v. 3 to clothes – perhaps since they don't "heal" (supportive anecdotes)
3. Rather: ר"א הקפיר in re: חטאת נזיר (v. 4)
- III Final clause of משנה – prohibition of cutting down one's own trees ('tho he is exempt)
- a taught in front of רב – if: מזיק claims to the owner that he asked him to cut down his trees (etc.) – exempt
- i Block: this makes all torts untenable; rather, interpret as case of tree about to be cut down (or ox about to be killed)
- 1 Note: ניזק is wanted to fulfill the מצוה himself (as per v. 5 and ר"ג fining someone who "steals" a מצוה)
- b דב: if a palm tree produces 1 קב (or an olive tree – ¼ קב) – may not cut down (as per v. 6)
- i However: if it is more valuable as wood – permissible (as per interpretation of v. 6) – but deciduous trees come first
- ii Stories: of אמוראים directing uprooting of fruit trees for greater benefit or to preserve neighboring trees