

20.5.02

47a (משנה ב') → 48a (הלכה עלה דידיה רמיא נטירותא)

- I 'ב משנה: liability of homeowner for damaged or damaging items left in his property
- a if: it was placed there without the homeowner's permission – he is exempt for damages done to it and any damage caused by it carries liability for its owner
- i example1: if a potter left his pots in someone's yard without permission
- ii example2: if someone put his fruit in another's yard without permission
- 1 however: if he had the בעה"ב's permission, בעה"ב is liable for damage done to the pots or fruit
- 2 dissent: רבי – the בעה"ב is never liable until he explicitly accepts such liability
- b Analysis: 1st clause → if he had permission, the potter isn't liable for damage done to בעה"ב's animals - follows רבי
- i However: 2nd clause (בעה"ב is liable) → potter is also liable (assumes mutual liability) - follows רבנן (רבי *contra*)
- ii And: final clause of (ג) משנה is explicitly רבי (again?)
- 1 Answer1 (ר' זירא): indeed, משנה reflects different schools
- 2 Answer2 (רבא): clauses 1-2 are רבנן, with permission, בעה"ב accepts liability for pots, even if broken באונס
- II Analyzing liability of בעל הפירות if the animal gets hurt by the fruit (placed there without רשות)
- a רב: only applies if the animal slipped on them - but not if it ate them – shouldn't have eaten them (הוה לה שלא תאכל)
- i challenge (ר' ששת): ruling that if A puts poison in front of B's animal and he dies – exempt (but liable בדיני שמים)
- 1 implication: had he put food in front of the animal, he'd be liable (→ no rule of הוה לה שלא תאכל)
- ii defense1: also exempt if he put food in front of the animal; ruling teaches even poison (inedible) שמים חייב בדיני שמים
- iii defense2: "poison" in question is e.g. toxic grass, which is "edible".
- iv Challenge: ruling - if woman enters חצר without permission in order to grind wheat and animal of בעל החצר eats her wheat – owner is exempt; if the animal is harmed by her wheat, she is liable
- 1 Explanation: why don't we employ principle of הוה לה שלא תאכל?
- 2 Block: this is the same as our משנה (which we interpreted as "injured by slipping on food")
- (a) Note: reason we may have thought this to be different is the omission of בה (הזקה בה)
- v Challenge: ruling that if someone brought his ox into a חצר without permission and he ate food there, which led to diarrhea and he died – the בעל החצר is exempt; but if he had permission to be there – בעל החצר is liable
- 1 Explanation: why don't we employ the principle of הוה לה שלא תאכל?
- 2 Answer (רבא): if בעל החצר gave permission, he accepted liability for any damage to the ox – even self-induced
- III Question raised about liability:
- a When the בעל החצר gives permission for someone to bring his ox there, does he accept liability regarding damage he or his property inflicts, or all liability occurring within his domain?
- i Proposed answer: – if A put his fruit in B's yard without permission and C's ox came along and ate them
- 1 Ruling: he is exempt; if B gave permission, he is liable
- 2 Observation: isn't exemption/liability that of בעל החצר? (→ liable for damage emanating from elsewhere)
- 3 Rejection: פטור/חייב is of the owner of the ox:
- (a) If: he has permission, it is then רשות הניזק → liable for שן; if not, considered רה"ר → exempt from שן
- ii Proposed answer: if A brought his ox into B's yard without permission and C's ox came along and gored him:
- 1 Ruling: he is exempt; if B gave permission, he is liable
- 2 Observation: isn't exemption/liability that of בעל החצר? (→ liable for damage emanating from elsewhere)
- 3 Rejection: פטור/חייב is of the owner of the ox; ruling follows ר"ט (full liability for הניזק (קרן ברשות הניזק))
- (a) If: he has permission, it is then רשות הניזק → חייב נ"ש; if not, considered רה"ר → חייב ה"נ
- IV Case: woman went into חצר (ברשות) to bake bread; a goat, owned by the בעל החצר, ate her dough and died as a result:
- a Ruling: רבא found her liable for the death of the goat
- i Suggestion: this is at odds with רב (principle of הוה לה שלא תאכל)
- ii Rejection: when she entered ברשות, she accepted liability for damages caused by her food
- 1 Challenge: why is this different from the ruling (above) of the woman who entered to grind wheat
- (a) Explanation: in that case, if she entered with permission and the owner's animal gets hurt due to her wheat – she is liable
- (b) Answer: in that case (grinding), there's no need for privacy; the owners remain in sight and can watch their animals
- (c) However: in our case, since kneading bread involves some exposure (of arms) and the men must move away, they can no longer watch their animals and she accepts liability for their welfare (in any case, as it relates to her foodstuffs)

20.5.03; 48a (אלא חצי נזק) → 48b (משנה ג' [הכניס שורו])

7. וכי יפתח איש בור או כי יקרה איש בר ולא יבסנו ונפל שמה שור או חמור: שמות כא, לג

- I (מז-מזו on משנה ב' printed with 'ב' משנה ג':)
- a משנה: if A brought his ox into B's yard without permission:
- i If: B's ox or dog hurt A's ox, B is exempt, but if A's ox gored B's ox – A is liable
 - ii If: A's ox fell into B's cistern and fouled the waters – he is liable
 - 1 Furthermore: if B's father or son (e.g.) was in the cistern and was killed, A pays כופר
 - iii If, however: A had permission to bring his ox into B's yard, B is liable
 - iv Dissent: רבי – B isn't liable unless he has explicitly accepted responsibility to guard A's ox
 - 1 Note: רב rules according to ת"ק ומואל according to רבי (discussion in last section below)
- b משנה's rulings related to our משנה:
- i If: A brings his ox into B's yard without permission and the ox digs holes:
 - 1 Ruling: A is liable for damage caused by ox; B is liable for damage caused by pits
 - (a) Reason: in spite of v. 1 which excludes a pit "dug" by an animal (איש בור ולא שור בור), nonetheless, B should've filled it in and didn't do so – he is liable.
 - ii If: A brought his ox into B's yard without permission and he hurt the בעה"ב (or the בעה"ב was hurt by him; e.g. fell)
 - 1 Ruling: A is liable
 - 2 However: if רבץ (jumped?) – A is exempt
 - (a) Explanation (ר' פנא): רבץ means הרביץ גללים (defecated) - B's clothes were dirtied by the גללים
 - (b) Reason for exemption: גללים are a form of בור (even according to רב, since people are generally מפיקר them)
 - (i) And since: there is no liability for כלים in a בור, he's exempt
 - iii If: A walked into B's yard without permission and hurt B (even inadvertently) or B was hurt by him (e.g. fell)
 - 1 Ruling: A is liable
 - 2 However, if: B hurt A, he is exempt
 - (a) Clarification (ר' פנא): only if B was unaware of A;
 - (i) Else: A can claim "you have rights to throw me out, but not to hurt me"
 - 3 Consistency: רבא (or ר"פ) – if both of them are acting ברשות (e.g. both walking in רה"ר) or שלא ברשות (e.g. running in רה"ר) – and they hurt each other (even inadvertently) - exempt
 - (a) However: if one has permission and the other does not (e.g. 1 running, the other walking in רה"ר)
 - (b) Ruling: the one who has permission is exempt, the other is liable

II Analysis of 2nd case in משנה – animal falling into cistern and fouling the waters

 - a רבא (version #1): only liable if he fouled the waters on his way down, but if he fouled them while down there – exempt
 - i Reason: the שור is now a form of בור and the water – כלים (there is no liability for כלים בבור)
 - ii Challenge: this is only valid according to שמואל (all such נזקין are a subset of בור); but according to רב, it isn't בור unless the owner disowns it (and there's no reason to think that the בעל השור would be מפיקר his ox)
 - b רבא (corrected version): only liable if water is fouled from the animals body (e.g. urine), but not from his smell
 - i Reason: fouling via smell is גרמא, which is always exempt in damages (גרמא בנוזקין פטור)

III Analysis of variant on 2nd case – if the animal killed a person while falling into the בור – pays כופר

 - a Challenge: he is תם (this was inadvertent) – should be exempt from כופר
 - b Answer1 (רב): he is מועד to fall on to people in pits
 - i Challenge: if so, he should be killed (or should already have been killed)
 - ii Answer: he does so inadvertently, going for the food that's in the pit (no כוונה → not killed)
 - c Answer2 (שמואל): follows ריה"ג כופר ½ – תם כופר ½ (משנה in כופר) means "כופר ½"
 - d Answer3 (עולא): follows ריה"ג and he follows ר"ט that holds full liability for קרן ברשות הניזק
 - i Therefore: he also holds full כופר for אנוקא הניזק
 - ii Note: to עולא, we understand why the משנה uses "father or son" – it's ברשות הניזק, but why do so according to שמואל?
 - 1 Answer: just uses them as the typical example

IV Discussion re: רבי's dissent (see dispute שמואל/רב above)

 - a ברייתא: A allows B to bring ox & says "שמר" – B is liable, A exempt (if ox is hurt); if he doesn't say שמר, B is פטור, A חייב
 - i Implications: רישא: without saying "watch him", A accepts liability (ת"ק); סיפא: w/o saying שמר, A doesn't (רבי)
 - 1 Answer1 (ר"א): ברייתא represents both opinions (fragmented teaching)
 - 2 Answer2 (רבא): all רבנן – parallel construction
 - 3 Answer3 (ר"פ): all רבי, following ר"ט – if he says שמר, he didn't give him space and it's חצר הניזק...(pays נ"ש)