

21.8.8

101b (משנה ז') → 102a (מפני דרכי שלום)

1. כי יקרא קן צפור לפניך בדרך בכל עץ או על הארץ אפרחים או ביצים והאם רבצת על האפרחים או על הביצים לא תקח האם על הבנים: דברים כג.
 2. שלח תשלח את האם ואת הבנים תקח לה למען ייטב לה והארקת ימים: דברים פרק כב פסוק ז

I 'ז משנה: responsibilities of landlord and of tenant

- a Landlord: all things needing professional attention, such as lock, door & hinges,
 - i ברייתא: also roof, walls, support for house
 - b Tenant: anything not needing professional attention
 - i ברייתא: including ladder, parapet, tarring roof, spout – also מזוה (responsibility of dweller) and it's setting
 - 1 Note: when tenant leaves, must leave מזוה behind (story), unless new tenant is non-Jew
 - c Waste products: (specifically manure) belong to landlord, except for detritus from oven and stove (ashes etc.)
 - i Note: must be case of courtyard belonging to landlord (not rented out with house) and cows that come from outside (belonging to neither owner nor tenant)
 - 1 Reason: if חצר is rented along with house and cows belong to tenant, manure should belong to tenant
 - 2 And: if חצר isn't rented and cows belong to owner, obvious that manure belongs to owner
 - ii Support: for אדם קונה לו שלא מדעתו – יוסי בר חנינא
 - 1 Challenge: if someone declares that anything coming into his courtyard that day will be his – invalid
 - 2 Defense: in that case, the חצר isn't guarded (משתמרת)
 - (a) Challenge: end of ברייתא – if everyone hears that a מציאה made its way to his חצר, it's קונה
 - (i) Answer: since everyone knows about his declaration, they avoid it → considered a חצר המשתמרת
 - (b) Challenge: manure (collected in vessel) hanging in air belongs to tenant; but in the barn and חצר - landlord's
 - (i) Answer1 (אביי): if he attached the כלי to the animal itself
 - (ii) Answer2 (רבא): something hanging in the air that isn't inevitably going to fall to ground isn't acquired via the חצר
 - 1. Challenge: רבא was unsure about such a case – with the money pouch thrown through a house, from open door through open door, if the house is קונה
 - a. Defense: in that case, it is purely airborne, here it's in a vessel
 - (iii) Revisiting ברייתא "the barn and courtyard" – why teach both?
 - 1. Answer (אביי): means "barn in a courtyard"
 - a. Inference (ר' אשי): if someone rents a חצר, the barn in it isn't included by default
- 3 Challenge: birds in a cote or loft are liable for שלוח הקן (vv. 1-2), yet there is a violation of theft (if taken by another) מפני דרכי שלום
 - (i) Reason: כי יקרא excludes מזומן (already in someone's property)
 - (ii) But: if we accept יוסי בר חנינא ruling, this is מזומן
 - 1. Answer (רבא): the שלוח of מצוה is generated when a majority of the egg is hatched; it doesn't become the courtyard –owner's until it falls in to the חצר
 - a. Challenge: why is there a גול at all?
 - b. Answer: that is only in re: the mother
 - c. Or: it refers to the eggs; once they begin to hatch, the חצר-owner has them in mind
 - d. However: based on רב's ruling that one may not take possession of the eggs until he's sent the mother away (as per the sequence in v. 2), even if the eggs are in the חצר, it can't make acquisition at a point that he can't take possession.
 - e. Question: if so, why is there גול מפני דרכי שלום? If he sends it away, this is regular גול (the eggs are his) and, if not, the mother must be sent away
 - i. Answer: the "thief" is a קטן, who isn't liable for שלוח (and the mother wasn't yet sent)
 - ii. Though: he's not obligated in דרכי שלום, his father must return it מפני דרכי שלום