

22.2.6

23a (משנה ה' 2) → 24b (אימור באיברורי הוה מנחי) →

1. והנה העיר הקרובה אל החלל ולקחו זקני העיר ההוא עגלת בקר אשר לא עבד בה אשר לא משכה בעל: דברים פרק כ"א מסוק ג

- I **מסנה 2ה**: permissible area to set up dove-cotes (distance to protect land-owners from damage done by birds)
- a *From city*: must be 50 אמות away
 - b *In own property*: may not set up, unless he has 50 אמות radius in every direction
 - i *Dissent (ר' יהודה)*: כורין 4: (ר' יהודה), a pigeon's flight distance
 - 1 *Challenge*: (תוספתא) we may not set traps for pigeons unless they are at least 30 ריס (4 מיל) from town
 - (a) *Answer*: they fly further, but fill their stomachs within 50 אמות (→ no concern of their eating crops)
 - (b) *Challenge*: they fly further than 30 ריס – ruling that traps may not be laid out up to 100 מיל from town
 - (i) *answers*: ר' יוסף – referent is a settlement of vineyards; רבא – a settlement of dove-cotes
 - 1. *Challenge*: if so, the dove-cotes themselves are too close
 - 2. *Answers*: could be owned by כותים, or ownerless, or his own
 - c *But*: if he bought it as is, even within (הקב) בית רובע, it is בחזקתו and he cannot be forcibly moved out or away
 - i *Implication*: we argue on behalf of an heir and on behalf of a purchaser
 - 1 *Challenge*: both of these have already been taught
 - (a) *Answer*: needed to be said for לוקה; other ruling (ב"ב ג"ח) is in re: רה"ר
 - (i) *Justification*: if ג"ח: א, סד"א, applies to רה"ר, since he built within his own or they were מוחל
 - (ii) *And*: if our מסנה, סד"א, he appeased the neighbor or he was מוחל, but not בני רה"ר – קמ"ל
 - 2 *Challenge*: there is no חזקה for נזקין
 - (a) *Answer*: that ruling is limited to noxious presences, e.g. smoke or בית הכסא
- II **מסנה ר'**: rights of someone who finds a bird
- a *If*: within 50 אמות of the cote – belongs to cote-owner; beyond that, of finder
 - b *If*: found between two cotes – belongs to owner of closer cote; if equidistant, they split it
- III **Backdoor** (ר' חנינא) if proximity and probability lead to different conclusions of reality, probability trumps (רוב עדיף)
- a *Even though*: both are מה"ת
 - b *Challenge*: v. 1 – we find the closest town
 - i *Answer*: only if the further town is not more populous
 - ii *Challenge*: why not follow the general רוב of towns in the area
 - 1 *Answer*: if the town in question is isolated (in a mountainous region)
 - c *Challenge*; our מסנה provides rights to owner of closest cote
 - i *Answer*: only if there is no cote more populous nearby
 - ii *Challenge*: סיפא – if found outside of 50 אמה, goes to finder; but if there are no others, certainly belongs to this one
 - 1 *Answer*: case is where the bird is walking (not flying) – won't walk more than 50 אמה
 - (a) *Question (ר' ירמיה)* – got him expelled! what if one foot is within 50 אמה and other is outside?
 - iii *Challenge*: last clause – if found equidistant, split – even though one may be more populous
 - 1 *Answer*: case where they are of equal numbers
 - 2 *Challenge*: why not consider universal רוב
 - (a) *Answer*: case where it was found (walking) among vineyards, wouldn't do so if it couldn't see its nest
 - (i) *(in other words)*: it cannot have wandered far → don't take into account universal רוב
 - d Proposed support (אביי) **דמ**: found in vaginal canal is adjudged טמא, even though it's proximate to outside
 - i *Challenge (רבא)*: this is רוב and מצוי (common) – no one would challenge this as a determinant
 - ii *Block*: ר' חייא ruled that such דמ generates חיוב for ביאת מקדש and שריפת תרומה (i.e. טמא)
 - 1 *Implications (רבא)*: רוב beats רוב (!) קרוב (רבא) changed his mind and negated מצוי as a factor
 - (a) *Amd*: רוב is a determinant מה"ת
 - (b) *And*: we accept זירא ר' that even one רוב is a determinant (אשה: "closed city walls")
 - e *barrel of wine*: found floating in a river; רב: if near a Jewish town, מותר; else – שמואל/אסור – in any case, forbidden
 - i *rejection*: they don't disagree about ר' חנינא; question is whether barrel could've made it intact from a distance
 - f *case*: barrel of wine found in vineyard with ערלה; רבינא permitted; not due to ר"ח, but since no גנב would hide it there
 - i *caveat*: only applies to wine (he wouldn't hide it in vineyard from which he stole); but he would hide grapes
 - g *case*: רבא permitted wine found in skins found among the vines of a Jewish-owned vineyard,
 - i *not*: a rejection of ר"ח; rather, a majority of people who pour into wineskins are ישראל
 - 1 *note*: only large wineskins OR if there are both large/small; we assume the small ones were used for balance