

23.9.2

76b (משנה א) → 78a (פטור)

1. או באיבה הפהו בידו וימת מות יומת המכה רצח הוא גאל הדם ומית את הרצח בפגעו בו: במדבר לה, כא
 2. ואיש כי יכה כל נפש אדם מות יומת: ויקרא כד, יז
 3. והנביא ההוא או חלם החלום ההוא יומת... ובערת הרע מקרקע: דברים יג, ו
 4. ואם שור נגח הוא מתמל שלשם והועד בבגליו ולא ישמרנו והמית איש או אשה השור יסקל וגם בעליו יומת: שמות כא, כט

- I אנשי עיר הנדחת: חייבים הרג (סייף) משנה 2א
- a *Direct murder which carries liability*: if someone hit another with a stone or metal, or held him under water or prevented his escape from a fire and he cannot get out – liable
- 1 *Note*: even though he didn't push him in but only forced him under, since he cannot get out – חייב
 - (a) *Source (for liability for pushing him in)*: v. 1 – באיבה extends to מצמצם
 - (b) *Story/dispute*: man pushed another's animal out into the sun, with no way out and it died
 - (i) דבניא found him liable; ק"ו from רוצח, where intent matters
 - (ii) דב אחא בר רב exempted him; מצמצם is only liable in murder, as per special threshold of v. 1
 - ii *But*: if he could get out of there – the perpetrator is exempt
 - 1 *Note*: even though he pushed him in; since he could get out - exempt
 - iii *If*: he sicced a dog or snake on him – exempt
 - iv *But*: if he caused the dog to bite him – יהודה ר' holds that he is liable; חכמים exempt him
 - 1 *Note*: the תורה doesn't mention a "handle" for metal, (unlike wood or stone) in במדבר לה
 - (a) *Reason*: there is no minimum שיעור to metal - if used to pierce/stab.
- II Series of rulings by רבא re: direct or indirect murder
- a *Note*: general rule – if he tied him down at a point where the cause of death was already present – liable; else – פטור
- i *If*: he tied a man down and he later died of hunger – פטור
 - ii *But if*: he tied him down in the sun and he died of exposure or in the cold and he died of hypothermia – חייב
 - 1 *But*: if the heat or cold came later – פטור
 - iii *If*: he tied him down in front of a lion – פטור (see רש"י); in front of mosquitoes – חייב
 - 1 *Dissent*: רב אשי – even in the case of mosquitoes; the ones who eventually kill him are "new" to the scene
- b *מימרא*: if he put a pot over the other's head and he died of asphyxiation; or destroyed his roof and he died of cold
- i דבא ר' זירא one finds liable, the other exempts
 - 1 *Assumption*: רבא exempts as per examples above
 - (a) *Challenge*: ר' זירא may exempt, as per his ruling re: putting another in a marble room and lighting נר – חייב
 - (i) *Implication*: only because he lit the candle (affecting air) – else, פטור
 - (ii) *Rejection*: in that case, without the candle, he would live; here, the pot would eventually kill as is
- c *More of רבא's rulings*: causal killing
- i *If*: he pushed someone into a בור (too deep to get out) that had a ladder, and another came by and removed it
 - 1 *Or even*: if he removed it, even while the other was falling in – פטור
 - 2 *Reason*: at time he pushed him, it was an escapable בור
 - ii *Parallel*: if he shot an arrow at someone with a shield, and another removed it and he consequently died
 - 1 *Or even*: if he ran ahead and took it away after the shot - פטור (same reasoning)
 - iii *Parallel*: if he shot an arrow and the victim was holding a salve, and another came by and blew it away
 - 1 *Or even*: if he himself ran and blew it away, even before the arrow hit – פטור (same reasoning)
 - 2 *Implication (ר' אשי)*: even if there were drugs/salves available to buy and the victim declined
 - (a) *Question asked of רב אשי*: what if סמנין became available to him afterwards and he declined to buy them?
 - (i) *Answer*: shooter is exempt
 - iv *If*: he threw a rock against a wall and it bounced off and killed someone – חייב (if he intended to kill him)
 - 1 *As per*: ברייתא – those who throw balls against a wall – if intentionally – נהרג; if inadvertently – גלות – חייב
 - (a) *Question*: isn't גלות obvious here?
 - (b) *Answer*: the חידוש is נהרג – as it is a התראה ספק (we don't know if it will kill)
 - 2 *Note*: רבא taught that if the victim is within ד"א of the wall – thrower is פטור; if further – חייב
 - (a) *Question (רבא לר' אשי)*: if it was his intent, even ד"א תוך should be חייב; if not – even further – פטור
 - (i) *Answer*: when people play this game, distance matters → if it doesn't go far, not his דעת

- (b) *Question*: is this (ricochet) considered כחו?
 (i) *Challenge*: rule about קידוש מי חטאת; if some of the ashes fell elsewhere and then “bounced” in to the rock-well for the water – פסול
 1. *Block*: in that case, it didn’t “bounce” from his energy, but dripped in
 (ii) *Challenge*: if a טמא-מת needle is sitting on piece of ceramic and he did הזאה towards it, but there is a ספק if he hit the needle or it “squeezed” off of the ceramic – invalid הזאה
 1. *Block*: read “מצא” instead of “מיצה”; i.e. the הזאה was found on it afterwards
- d פפא ד' rules of indirect killing:
 i *If*: someone tied another down and then directed tributary of a river towards him (and he died) – חייב
 1 *Limitation*: only if directly כחו; if, e.g. the river filled a pond which overflowed & drowned him – כח כחו → פטור
 ii *If*: someone threw a rock directly up and it veered away and killed someone – liable
 1 *Challenge* (מר בר ר' אשי): - if it is כחו, it should've gone straight!
 2 *Defense*: if it isn't כחו, it wouldn't have gone at all
 (a) *Rather*: it is a “weak” כחו
- III בריתא about “group murder”
 a *If*: ten people beat someone up and he died, they are exempt
 i *If*: they beat him in sequence:
 1 חכמים exempt
 2 יהודה בן בתירה ד' יהודה בן בתירה last one is liable
 (a) *Explanation* (ר' יוחנן) v. 2 – כל נפש אדם –
 (i) דבנן must kill the whole person
 (ii) דיבנן any part of the נפש
- b *Analysis* (רבא): all agree that killing a טריפה carries no liability; killing a “natural גוסס” carries full liability
 i *Dispute*: killing a “man-made” גוסס
 1 חכמים compare with טריפה – he was attacked and is dying
 2 דיבנן compare with גוסס בידי שמים – he doesn't have סימנים cut
 ii *Analysis* (רבא) taught before ר' ש' v. 2 – כל נפש includes someone who dealt a mortal blow but another came and hit him before dying and he died – that the latter is liable
 1 *Note*: this בריתא סתם בריתא follows ר יהודה בן בתירה
- IV רבא rules about a טריפה as perpetrator and victim
 a *If*: someone kills a טריפה – he is exempt
 i *But*: a טריפה who kills is only liable if he does so in front of ב"ד as per הרע מקרבך (v. 3)
 ii *However*: if elsewhere, cannot be killed as testimony against him is יכול להזימה → עדות שא"א יכול להזימה → לאו שמה עדות
 b *If*: someone rapes a טריפה – liable
 i *But*: a טריפה who rapes another is only liable if he does so in presence of ב"ד (as above)
 1 *Question*: why the need for both rulings? Aren't they parallel?
 2 *Answer*: רובע טריפה isn't obvious; perhaps we should consider it akin to necrophilia – קמ"ל –
- c *If*: witnesses conspired against a טריפה (הזמו) – cannot be killed
 i *But*: witnesses who were טריפות who were found to be זוממים are killed
 1 *Dissent* (רב אשי): even here, they can't be killed, as זוממי זוממין can't be executed properly
- d *If*: a שור who was a טריפה killed a person – he is still killed
 i *But*: the ox of a טריפה who killed isn't killed; as per v. 4 (ox only killed if his master could be)
 ii *Dissent* (רב אשי): even a שור טריפה isn't killed; since, if his master were טריפה, he wouldn't be killed → can't be killed
- V Analysis of end of משנה – dispute between יהודה/חכמים about “fanging” a snake on someone
 a *Bone of contention*: where poison is positioned in snake
 i יהודה ד' the poison is sitting between his fangs, ready to come out → snake is exempt, “fanger” is liable
 ii חכמים poison is manufactured internally → snake is killed; “fanger” is exempt