

26.4.10; 60b (משנה י) → 61b (סוים הפרק)

- I בשתיה ר"ש, מותר בהנאה – י"נ in all cases miscellaneous circumstances with משנה י.
- a If: found standing next to בור of ישראל's wine
- i If: the ישראל borrowed money from this גוי – and the בור is the security – אסור
- Resason: he'll assume that he has rights to the wine and won't be afraid to touch it
 - Note: ר' אשי finds a דיוק in the later משנה to support this limitation (only if the בור is security on the loan)
 - איינו מניחו (note: only אסור – if ישראל won't let עכ"ם take out wine from his רשות w/o payment – אסור)
- ii But if: there is no loan on that wine – מותר
- b If: the עכ"ם fell into the בור
- i Note: only if he died; if he lived, he'll regard it as a salvation and wine is י"נ
- c Or: he measured the בור with a stick
- d Or: used the stick to kill a bug (and inadvertently touched the wine)
- e Or: if he was clearing the foam off the top of the wine
- i In all these cases: אין הלכה כ"ש
- Note: ר"ש takes extreme position; when he permits, even allows drinking; when he bans, even הנאה
- f However: if the עכ"ם threw the barrel in anger – may even be drunk (ruling in בית שאן)
- i backdoor: ר' אשי equated contact for זב (if עכ"ם has contact)
- ii Challenge; our משנה → if not in anger – י"נ (but parallel case with זב is not טמא)
- Answer: our case is where he rolled it, at each step he may touch it → טמא (if it were זב מוגע)
- II משנה יא: if someone is using עכ"ם's grapes and press to make proper wine,
- a If: he places it in a house open to רה"ר, in a town with both עכ"ם and ישראלים – מותר (גוי is watched)
- b But if: there are no ישראלים there, אסור – unless he is constantly watching
- i Question: there are peddlers coming through town
- ii Answer: town is walled and bolted (all know when gates are open and who's arrived)
- Note: a window, אשפה or tall tree (which looks into house) are like an opening to רה"ר
 - Question: if the tree is cut so that there are no fruit atop it – still counts?
 - No: why would anyone go up?
 - Yes: people may still go up to look afar (e.g. to look for stray animals)
- iii ברייתא: if someone buys or rents a building in a courtyard of an עכ"ם and he fills it with wine
- If: another ישראל lives in that חצר – even if he doesn't have a key to the building – מותר
 - But if: he only lives in another (nearby) חצר – only מותר if he has a key
 - However: if he is making wine in the עכ"ם's courtyard – מותר if another ישראל lives there and has key
 - But if: he lives in another חצר – אסור even if he holds a key – (ר"מ)
 - Dissent (חכמים): אסור until he watches constantly or the (randomly appearing) official arrives
 - Question: to which clause are חכמים referring (and prohibiting)?
 - Cannot be: last clause – as ר"מ also finds אסור
 - Might be: prior clause – but יוחנן ר' taught here – that even if he doesn't have the key – מותר
 - Msut be: end of first clause (about the building) :
 - permitted if the ישראל (in other חצר) has a key
 - prohibited without תמידית (or the ממונה)
- c However: he need not literally constantly watch- he may even come in and out (randomly)
- d Dissent: רשב"א – all property of עכ"ם is one
- i Question: is he taking a lenient or stringent position?
- ii Answer: dispute ר"נ/רב יהודה about the ruling of זעירי
- אסור – עכ"ם any – ת"ק says that if done in the property of any עכ"ם – דב יהודה
 - only in his own is it אסור; in another's – מותר and we aren't concerned with "backscratching"
 - גומלין – stringent- ת"ק - in another's רשות it is ok – we aren't concerned with גומלין
 - and in any עכ"ם's property we are concerned – due to גומלין
 - Support: ברייתא which associates רשב"א's opinion with a concern for רמאים
- iii Case: deputy mayor seized ישראלי wine and kept it with his אריס
- Suggestion: even if we are concerned with גומלין – that's only between equals
 - Retort: here we are certainly concerned that even if the אריס touches it, he'll be afraid and lie
- iv Ruling (רבא): עכ"ם found among barrels of ישראל wine in city; if he seems "caught" like גנב – מותר
- III משנה יב: same case as above; if the עכ"ם writes that he already received moneys from ישראל, he can use it
- a But if: the עכ"ם won't let the ישראל take the wine without paying – אסור (wine is like a משכון for payment)