

A) Mishna 2

- 1) When the mishna says אדם, which of the אבות הנזיקים is it specifically referring to?
- 2) When the mishna says שור, which of the אבות הנזיקין is it referring to?
- 3) In light of the answers to the two above questions, which אבות נזיקין seem to have fallen between the cracks?
- 4) What do you think the law is concerning the אבות נזיקין highlighted in the previous question?
- 5) Does the end of the previous mishna shed any light on the issue that is aroused by the previous question?
- 6) In general and in light of the answer to the second question, in what sense is the use of the term שור in the mishna imprecise?
- 7) Where earlier in our tractate have we found an explanation of why the mishna in general feels justified in using the term שור in this imprecise fashion?
- 8) Where is the biblical source for the payment of דמי ולדות?
- 9) Where in the tractate has the concept of דמי ולדות been discussed earlier?

B) Tractate Baba Kama, page 53b with Rashi and Tosphot

מסכת בבא קמא, דף נג עמוד ב'

אמר רבא שור ואדם שדחפו לבור לענין נזקין כולן חייבין לענין ארבעה דברים ודמי ולדות אדם חייב ושור ובור פטור

פירוש רש"י על אתר

שור ואדם שדחפו - דבר אחד לבור ונמצאו שלשתן שותפין בנזק השור והבור והאדם:
לענין נזקין - כגון אם דחפו שם אדם והוזק משלמין בין כולן פחת דמיו דכולן חייבין בנזקי אדם דהא דקיימא לן לגבי בור שור ולא אדם בקטלא קיימא לן כגון אם נפל לתוכו עבד ומת אבל בנזקין חייב וכרבי נתן היא דלא אזיל בתר דחיפה לחודה:
ארבעה דברים - שהן לבד מנזק:
אדם - שדחפו חייב אבל השור והבור פטורים...

תוספות

שור ואדם שדחפו לבור - ולא שדחף אדם בכוונה דא"כ בעל הבור אמאי מחייב דאטו אם ישים אדם טליתו של חברו באש של חברו וכי יתחייב בעל האש ואם תאמר אי שלא בכוונה אמאי יתחייב בבושת ויש לומר כגון שידע האדם בשעת נפילת חברו וחשיב בכוונה מידי דהוה אנתהפך דסוף פ"ב (לעיל ד' כז.):

C) Encyclopedia Talmudit, volume 2, entry אש, page 236, heading באדם

אנציקלופדיה תלמודית כרך ב, אש (מזיק) [עמוד רלן]

באדם. האש שהזיקה אדם בגופו, כשהחויב הוא משום חציו, כגון לר' יוחנן... חייב המדליק לשלם לניזק ארבעה דברים, שהם: נזק, צער, ריפוי ושבתי, כאילו הזיקו בידיים. בבושת יש מהראשונים פוטרים, כדין בושת שלא בכוונה, ויש מחייבים, שאש הרי היא כאילו ידע ונתכוין. ... כשהחויב הוא משום ממונו - כגון ... לריש לקיש ... - פטור מארבעה דברים, כמו שפטור בכל ממון שהזיק אדם.

D) Sources for mishna 3

- 1) Sefer Shmot 21:15
- 2) Tractate Sanhedrin chapter 11, mishna 1

משנה מסכת סנהדרין פרק יא משנה א

אלו הן הנחנקין המכה אביו ... המכה אביו ואמו אינו חייב עד שיעשה בהן חבורה

E) Mishna 3

- 1) When the mishna uses the word כולן, what is it referring to?
- 2) In the case of מכה אביו and in the case of הכפורים, what is the principle that is lurking in the background here?
- 3) Where in the tractate have been encountered this principle?

- 4) What would the law be in a case of עשה בהם חבורה?
 - 5) What is it about the laws of יום כפורים that allows the ruling here of חייב בכולן?
 - 6) In which case of חובל בחברו that is not mentioned here would the law be different than the law that is cited here?
 - 7) What is the rationale behind the ruling in the case of עבד עברי that says חוץ מן השבת?
 - 8) Do the words חוץ מן השבת modify שלו or also חייב בכולן?
 - 9) Who receives the payments in the case of עבד עברי?
 - 10) Who receives the payments in the case of עבד כנעני?
 - 11) What would be the law in the case of חובל בעבד כנעני של עצמו?
 - 12) Where in this tractate have we encountered a mishna that related to the previous question?
 - 13) Upon which ruling in the previous mishna is רבי יהודה basing his opinion?
 - 14) In what sense does it appear that there are two levels of meaning in the way that רבי יהודה uses the word בושת?
 - 15) Do you think that the תנא קמא disagrees with רבי יהודה?
- F) Babylonian Talmud, Tractate Baba Kama, page 86a

תלמוד בבלי מסכת בבא קמא דף פו עמוד א

האי לא עשה חבורה היכי דמי? ... אלא הכא במאי עסקינן - כגון שגילחו. גילחו מהדר הדר, והיינו בעיין! אמרי: הכא במאי עסקינן - כגון שסכו נשא, דלא הדר; צער - דאית ליה קרטופני ברישיה וצווחי מהנהו קרטופני, ריפוי - דבעיא אסויי, שבת - דהוה מרקיד בי כובי, דבעיא מחוי גוני ארישא ולא מחוי מהנהו קרטופני, בושת - אין לך בושת גדול מזה.

- G) Mishna 5
 H) Mishna 4
- 1) Where have we earlier seen in this tractate a parallel lack of symmetry vis-à-vis a normal person's interactions with חרש שוטה וקטן?
 - 2) What type of עבד is this mishna referring to?
 - 3) What is the essential – not practical – difference between the two sets of exemptions mentioned in this mishna?
- I) Babylonian Talmud, Tractate Baba Kama, page 86b

תלמוד בבלי מסכת בבא קמא דף פו עמוד ב

תא שמע, רבי מאיר אומר: חרש וקטן יש להן בושת, שוטה אין לו בושת ... והתניא, ר' אומר: חרש יש לו בושת, שוטה אין לו בושת, קטן - פעמים יש לו, פעמים אין לו, הא דמיכלמו ליה ומיכלם, הא דמיכלמו ליה ולא מיכלם.

- J) Practical Applications in Our Day

Minor Damage Bava Kama 87a – Katan

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“C’mon Dovi,” Yoni Balsam said to his twin brother. “The sun’s out! Let’s play catch.”

The two eleven-year olds grabbed their gloves and a softball. “We’re going outside to play ball,” Yoni called to his mother.

“Please be careful,” Mrs. Balsam said, “and keep the ball away from other people’s property, especially the Glazers’.”

Last year, the boys had broken their neighbor’s window and the Balsams had paid to replace it.

After tossing the ball back and forth a few times, Dovi suggested, “How about a high fly?” Yoni threw the ball wildly in the air.

The ball soared up, slanting to the side. Dovi chased after the ball, running through the Glazers' bushes into their yard. As he reached up to catch the ball, he heard a loud, "Crash!" Dovi looked down. He had knocked over a large, artistic planter in the Glazers' garden and smashed it.

Mr. Glazer came outside. "What's going on here?" he yelled.

"We were playing catch, and I knocked over this planter," Dovi said apologetically. "I warned you many times not to play ball near our house," said Mr. Glazer sternly.

"I'm going to speak with your parents."

He walked the boys home. "Your boys damaged our property again,"

Mr. Glazer told the Balsams. "They're going to have to pay."

"I'm sorry about the damage," said Mrs. Balsam. "We'll talk to them."

"Last year we paid for the window," Mr. Balsam said to the twins. "This time, you're going to have to pay from your allowance money, as a lesson to be more careful. We'll drive to the gardening shop now and you'll buy the Glazers another planter, similar to the one you broke."

The Balsams chose a nice ceramic planter and the boys brought it over to the Glazers. "We brought this to replace the planter we broke," Dovi said.

Mrs. Glazer looked at the planter. "Thank you," she said, "but this will not suffice! The planter you broke was artistic and more expensive than this."

Dovi and Yoni looked at each other, flustered. "We thought this planter looked almost the same," Yoni said.

"I'm sorry," said Mrs. Glazer, "but the other planter was worth more. I expect you or your parents to fill in the full value of the damage."

The boys returned home dejected. "What should we do now?" they asked. "We spent almost all of our saved allowance!"

"Let this be a lesson about how careful you have to be with other people's property," said their father. "But we'll talk the issue over with Rabbi Tzedek."

After Ma'ariv, Mr. Balsam, the twins, and Mr. Glazer sat down with Rabbi Tzedek. "It's already the second time the boys damaged our property with their ball-playing," said Mr. Glazer. "Isn't it my right to demand full compensation for the damage?" Rabbi Tzedek said, "A child who damages is legally exempt from paying, even when he grows up, but it is proper for him or his parents to pay nonetheless."

Rabbi Tzedek then explained: “The Mishna (B.K. 87a) teaches that a child under bar-mitzvah who damages is legally exempt, since he has no legal culpability. Even when he matures, he is not accountable for the damages of his childhood (C.M. 424:8).

“Similarly, a child who stole must return whatever he still has, but is legally exempt from returning what was lost, even after he matures. However, Beis Din or his parents should discipline the child for having stolen or damaged, so that he should not continue doing so (C.M. 349:3,5).”

“Are you saying they don’t have to pay at all?” asked Mr. Glazer incredulously.

“No. The Gemara (B.K. 98b) relates that Rav Ashi was made to pay for a loan document that he destroyed,” said Rabbi Tzedek. “Rashi explains that he burned it when he was a child. Many authorities derive from this that although the child is legally exempt, there is a moral responsibility for him to pay when he matures. Nowadays, the parents usually pay instead, to relieve him of that responsibility.

“Rama (O.C. 343:1) also writes that if a child sinned, it is proper that he do something for atonement when he matures. Thus, if he stole or damaged, it is proper to pay (Mishna Berura 343:9). Some infer from the Rama’s language, ‘do something,’ that it is not necessary to pay the full amount, but Sefer Chasidim advocates paying fully to achieve complete atonement (Pischei Teshuva 349:2; Yechaveh Da’as 8:6). It is especially advisable to properly compensate and appease neighbors, to preserve good relations with them.”