

A) Chapter 3, mishna 1

- 1) Who is פטור?
- 2) What linguistic inconsistency can you find in this mishna?
- 3) Who is חייב (the second time that the mishna says חייב)?
- 4) What is the foundational rationale concerning את הכד for everything the Tana Kama rules?
- 5) Can you think of circumstances in which this foundational rationale would not apply and therefore the law would be different?
- 6) Can you see any possible contradiction between this mishna and the previous one?
- 7) What might be the solution to the apparent contradiction?
- 8) How is this solution already presented by the Rambam?
- 9) Under which category of the אבות נזיקין is בעל החבית חייב בנזקו?
- 10) Where did this מים come from?
- 11) When the Tana Kama rules חייב near the end of the mishna, why can this not be explained on the basis of the previous mishna?
- 12) How might we in any case try to understand the ruling of the Tana Kama here?
- 13) Which case or cases is רבי יהודה referring to?
- 14) What would be the rationale behind the position of רבי יהודה? In other words, how might he respond to the answer to question 12?

B) Babylonian Talmud, Tractate Baba Kama page 28b

תלמוד בבלי מסכת בבא קמא דף כח עמוד ב

א"ל אביי: מכלל דמחייב ר"מ אפילו נפשרה! א"ל: אין, מחייב היה ר"מ אפי' אזנה בידו. אמאי? אנוס הוא, ואנוס רחמנא פטריה, דכתיב: +דברים כ"ב+ ולנערה לא תעשה דבר!

Said Abaye to him: Does this imply that R. Meir imposes liability even when the pitcher slipped down [by sheer accident]? He answered him: Yes, R. Meir imposes liability even where the handle remained in the carrier's hand. But why? Is it not sheer accident, and has not the Divine Law prescribed exemption in cases of accident as recorded, (Deuteronomy 22:26) But unto the damsel thou shalt do nothing?

C) Babylonian Talmud, Tractate Baba Kama pages 28b – 29a

תלמוד בבלי מסכת בבא קמא דף כח עמוד ב - דף כט עמוד א

והתניא: נשברה כדו ולא סלקו, נפל גמלו ולא העמידו - ר"מ מחייב בהזיקן, וחכמים אומרים: פטור מדיני אדם וחייב בדיני שמים

It was taught: If his pitcher broke and he did not remove the potsherds, [or] his camel fell down and he did not raise it, R. Meir orders payment for any damage resulting therefrom, whereas the Sages maintain that no action can be instituted against him in civil courts though there is liability according to divine justice.

D) Tosephta Baba Kama chapter 2, halacha 4

תוספתא מסכת בבא קמא (ליברמן) פרק ב הלכה ד

נשברה כדו וצלוחיתו ברשות הרבים ובא אחר והוזק בהן הרי זה חייב ר' יהודה פוטר שאין שמירתן עליו מודה ר' יהוד' לחכמים במניח אבנו וצלוחיתו ברשות הרבים ובא אחר והוזק בהן שהוא חייב ששמירתו עליו מודים חכמים לר' יהודה במניח קנקנים לראש הגג לנגבן ונפלו ונשברו ובא אחר והוזק בהן שהוא פטור מפני שאין שמירתן עליו הניח אבנו ומשאו ברשות הרבים אמרו לו פנה אותן אמ' להן אי איפשי בהן כל הקודם בהן זכה ואם בא אחר והוזק בהן הרי זה חייב נפלה כותלו לרשות הרבים אמ' לו פנה אותן ואמ' אי איפשי בהן כל הקודם בהן זכה ואם בא אחר והוזק בהן הרי זה חייב

If his barrel or pitcher broke in the public domain and someone came and was hurt by them, behold he is culpable. Rabbi Yehudah exempts because he is not obligated to take care of them.

Rebbi Yehudah agrees with the sages in the case in which he placed his stone or pitcher in the public domain and someone came and was hurt by them that he is culpable because he is obligated to take care of them.

The sages agree with Rebbi Yehudah in the case in which he placed his jugs on the top of the roof and they fell and broke and someone came and was hurt by them that he is exempt because he is not obligated to take care of them.

He is placed his stone or bundle in the public domain and they said to him – remove them from here, and he said – I no longer want them; anyone who wants them can take them. And if someone came and was hurt by them behold he is culpable.

If his wall fell into the public domain and they said to him - remove them from here, and he said – I no longer want them; anyone who wants them can take them. And if someone came and was hurt by them behold he is culpable.