

A) Mishna

- 1) To what two earlier cases in this chapter is the case of קשו ואת תבנו similar?
- 2) What further description is found in this case that is not found in the two similar cases?
- 3) How does this further description serve to distinguish this case from the similar case in mishna 2?
- 4) Is the above mentioned difference more of a reason for culpability or less of a reason for culpability?
- 5) When the mishna says that כל הקודם בהם זכה, what is the legal description of what the halacha is doing to the ownership of the תבן and the קש?
- 6) What is the legal description of what the halacha is doing to the owner of the תבן and the קש?
- 7) What is the relationship between the words of רבן שמעון בן גמליאל and the material that preceded? To how much of the preceding material are his words related?
- 8) Why is the case of הגלל את ההפוך brought after the words of רבן שמעון בן גמליאל? How is this case different that the cases that preceded?
- 9) If הגלל את ההפוך is responsible for the damage, who is implicitly exempted from responsibility?

B) Babylonian Talmud, Tractate Baba Kama, page 30a – 30b

תלמוד בבלי מסכת בבא קמא דף ל עמוד א ועמוד ב

גמ'. לימא, מתני' דלא כר' יהודה! דתניא, ר' יהודה אומר: בשעת הוצאת זבלים, אדם מוציא זבלו לרה"ר וצוברו כל שלשים יום, כדי שיהא נישוף ברגלי אדם וברגלי בהמה, שעל מנת כן הנחיל יהושע את הארץ! ... אמר רב נחמן: מתני' - שלא בשעת הוצאת זבלים, ור' יהודה היא. רב אשי אמר: תבנו וקשו תנו, משום דמשרקי.

GEMARA. May we say that the Mishnaic ruling is not in accordance with R. Judah? For it was taught: R. Judah says: When it is the season of taking out foliage everybody is entitled to take out his foliage into the public ground and heap it up there for the whole period of thirty days so that it may be trodden upon by the feet of men and by the feet of animals; for upon this understanding did Joshua allow [Israel] to inherit the Land.... R. Nahman said: The Mishnah refers to the time when it is not the season to take out foliage and thus it may be in accordance with R. Judah. R. Ashi further [said]: The Mishnah states, HIS STRAW AND STUBBLE which are slippery.

c) Babylonian Talmud, Tractate Baba Kama, pages 80b – 81a

תלמוד בבלי מסכת בבא קמא דף פ עמוד ב

ת"ר, עשרה תנאין התנה יהושע:

שיהו מרעין בחורשין, ומלקטין עצים בשדותיהם, ומלקטים עשבים בכל מקום חוץ מתלתן, וקוטמים נטיעות בכל מקום חוץ מגרופיות של זית, ומעין היוצא בתחילה בני העיר מסתפקין ממנו, ומחכין בימה של טבריא ובלבד שלא יפרוס קלע ויעמיד את הספינה, ונפנין לאחורי הגדר ואפילו בשדה מליאה כרכום, ומהלכים בשבילי הרשות עד שתחד רביעה שניה, ומסתלקין לצדי הדרכים מפני יתידות הדרכים, והתועה בין הכרמים מפסיג ועולה מפסיג ויורד, ומת מצוה קונה מקומו.

Our Rabbis taught: Joshua [on his entry into Eretz Yisrael] laid down ten stipulations: That cattle be permitted to pasture in woods;1 that wood may be gathered [by all] in private fields;1 that grasses may similarly be gathered [by all] in all places, with the exception, however, of a field where fenugrec is growing;1 that shoots be permitted to be cut off [by all] in all places. with the exception, however, of stumps of olive trees;1 that a spring emerging [even] for the first time may be used by the townspeople; that it

be permitted to fish with an angle in the Sea of Tiberias, provided no sail is spread as this would detain boats [and thus interfere with navigation]; that it be permitted to ease one's self at the back of a fence even in a field full of saffron; that it be permitted [to the public] to use the paths in private fields until the time when the second rain is expected;² that it be permitted to turn aside to [private] sidewalks in order to avoid the road-pegs; that one who has lost himself in the vineyards be permitted to cut his way through when going up and cut his way through when coming down;³ and that a dead body, which anyone finds has to bury should acquire [the right to be buried on] the spot [where found].

(1) The reason is given below.

(2) I.e., the seventeenth of Marcheshvan; cf. Ta'an. 6b and Ned VIII,5.

(3) Though damage be done thereby to the vineyard.