

A) Mishna 5

- 1) What exactly does the word כולן refer to?
- 2) What is the principle that serves as the rationale for the law that פטור מכולן?
- 3) In what earlier mishna in an earlier chapter did we see the same principle at work?
- 4) Which earlier mishna in this chapter discusses the same cases as in the first half of this mishna, but under slightly different circumstances such that the law is radically different?
 - a) What are the different circumstances?
 - b) Why is the law different under those circumstances?
- 5) In what additional ways could the circumstances in the cases discussed in the first half of the mishna be different such that the law would be different?
- 6) Where near the beginning of Parshat Mishpatim might be the source of the law stated in the second half of this mishna?
 - a) How could we indeed read this verse in Mishpatim such that it does imply the law of the mishna and how we read the verse such that it does not necessarily imply the law of the mishna?
- 7) Where do we find near the beginning of Parshat Mishpatim a case in which there are indeed consequences in the case of חובל בעבד כנעני שלו?
 - a) Where has the case in which there are consequences for the חובל בעבד כנעני שלו been discussed earlier in the tractate?

B) 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) Can you think of certain types of payments that a שוטה might not be eligible for when injury is done to him?
- 3) Can you think of certain types of payments that a קטן might not be eligible for when injury is done to him?
- 4) What type of עבד is this mishna referring to (The answer can be inferred from mishna 3 of this chapter)?
- 5) What is the essential theoretical difference between the two sets of exemptions mentioned in this mishna, and what is the practical difference between them?
- 6) Why do you think we studied mishna 5 before mishna 4?

C) 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.

D) Mishna, Tractate Yadayim, chapter 4, mishna 7

משנת ידיים, פרק ד', משנה ז'

אומרים צדוקין, קובלין אנו עליכם פרושים, (שאתם אומרים, שורי וחמורי שהזיקו, חיבין, ועבדי ואמתי שהזיקו, פטורין). מה אם שורי וחמורי שאיני חיב בהם מצות, הרי אני חיב בנזקן. עבדי ואמתי שאני חיב בהן מצות, אינו דין שאהא חיב בנזקן. אמרו להם, ל'א. אם אמרתם בשורי וחמורי, שאין בהם דעת, ת' אמרו בעבדי ובאמתי, שיש בהם דעת, שאם אקניטם, ילך וידליק גדישו של אחר ואהא חיב לשלם:

E) Practical Applications in Our Day

Minor Damage Bava Kama 87a – Katan

“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.”

F) Mishna 6

- 1) Looking at the mishna as a whole, which of the חמישה דברים discussed in mishna 1 is the focus of the this mishna?
- 2) Do you think that this mishna is discussing only the payment referred to in the previous question, or to others as well?
- 3) Why do you think there is liability only if הגיע בו רוק and not if the spittle did not actually reach him?
- 4) What might the answer to the previous question teach about payment in the case of oral insult?
- 5) What is the meaning here of the word שוק and why does the law apply only in the שוק?
- 6) What potential parallel to the case of פרע ראש האישה בשוק is missing, and what might we learn from the fact that it is missing?
- 7) In light of the first mishna in the chapter, what is a bit incongruous about this mishna?
- 8) What internal contradiction does there seem to be within this mishna?
- 9) Bringing the opinion of רבי עקיבא into the mix, in what different ways might we solve the internal contradiction?
- 10) What seems to be problematic with the proofs that רבי עקיבא offers at the end of the mishna?

G) Rambam, Mishna Torah, Hilchot Chovel, chapter 3, halachot 8-9

משנה תורה לרמב"ם, הלכות חובל ומזיק, פרק ג' הלכות ח' - ט'
(ח) יש הכאות רבות שיש בהן בזוי וצער מעט ואין בהן נזק וכבר פסקו להם חכמים דמים קצובים וכל המכה חבירו הכאה מהן משלם אותו הממון הקצוב וכולן קנסות הן ואותו הממון הקצוב הוא דמי הצער והבושת והריפוי והשבת בין צריך לרפואה ושבת בין לא צריך כזה הוא משלם:
(ט) וכמה הוא משלם ... תקע את חבירו בכפו משלם סלע סטרו על פניו משלם חמשים סלע סטרו באחר ידו משלם מאה סלע וכן אם צרם באזנו או תלש בשערו או שרקק והגיע הרוק בבשרו או שהעביר טליתו מעליו או שפרע ראש האשה משלם מאה סלע ...

H) Tur, Hoshen Mishpat, section 420

טור, חושן משפט, סימן תכ
כתב הרמב"ם יש הכאות רבות שיש בהן צער וביזוי מעט ואין להן נזק וכבר פסקו להם חכמים דמים קצובים שיתן אותו דבר הקצוב ובכללן הוא דמי הצער והריפוי והשבת והבושת בין אם צריך לרפואה בין אין צריך כזה הוא משלם וכמה הוא משלם ... סטרו כלאחר יד משלם ק' סלעים צרם אזנו או תלש שערו רקק והגיע הרוק בבשרו או שהעביר טליתו ממנו או שפרע ראש האשה משלם ק' סלעים ... ורב אלפס כתב שאלו דמים הקצובים אינן אלא בשביל הבושת והצער ששני דברים אלו ישנן ברוב היזק שאדם עושה לחבירו ואם יש ריפוי ושבת הכל לפי הענין ובזה לא יכלו חכמים ליתן קצבה וכך כתב אבי אדוני הרא"ש ז"ל:

I) Babylonian Talmud, Tractate Baba Kama, page 91a

תלמוד בבלי, מסכת בבא קמא דף צא עמוד א'
רקק והגיע בו הרוק והעביר טו': אמר רב פפא לא שנו אלא בו אבל בבגדו לא וניהוי כי בייש בדברים. אמרי במערבא משמיה דרבי יוסי בר אבין זאת אומרת ביישו בדברים פטור מכלום: