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#### Intro

Today we will בע"ה learn מסכת בבא קמא of אין פון מסכת בבא קמא of the topics we will learn about include.

ארבעה דברים העושה אותן פטור מדיני אדם ארבעה דברים וחייב בדיני שמים

The four claims of damage for which a person cannot be compelled by בית דין to pay, but he is liable בדיני שמים. He has a moral obligation to pay for the damages.

Five other applications of this Halachah that are alluded in

סימן העושה בסם ושליח חבירו נשבר

The Mishnah's Halachos of נפרצה בלילה או שפרצוה לסטים

ויצאה והזיקה פטור

If the fence broke during the night or thieves broke the fence, and the animal escaped on its own and caused damage, the owner is not liable for the היזק, ואפילו לא חתרה

Regardless of whether the animal broke the fence or even if it collapsed on its own;

ארבעה דברים העושה אותן פטור מדיני אדם וחייב בדיני שמים העושה בסם ושלים חבירו נשבר תבירו נשבר או שפרצוה לסטים ויצאה והזיקה פטור

הניחה בחמה

או שמסרה לחרש שוטה וקטן ויצאה והזיקה או שמסרה

If the owner left his animal under the blazing sun, or he entrusted his animal with a mentally incompetent person, and the animal escaped on its own and caused damage, the owner is liable for the היוק.

ואפילו חתרה

Regardless of whether the fence collapsed on its own, and even if the animal broke the fence

הוציאוה לסטים

לסטים חייבין

If the thieves actually took out the animal, they are liable for the הייק, as the **G**emara explains;

Either

דקמו לה באפה

The לסטים did not actually pull the animal, but rather they blocked its path in a way that the animal was diverted toward the קמו and ate the grain, and the חייב are איים even though there was no קמו לה באפה because קמו לה באפה is considered like מעמיד, as if they actually placed the animal on the grain.

OR

דהכישוה

The לסטים hit the animal and compelled it to run forward, and they are חייב even though they did not actually pull the animal, because קנין משיכה is considered like a קנין משיכה and the animal was transferred into their jurisdiction.









C

מסרה לרועה

נכנס הרועה תחתיו

If the owner handed over his animal into the care of a shepherd, the רועה assumes all responsibilities.

As the Gemara explains

תחתיו דשומר

Even if the owner entrusted his animal to a שומר, a guardian, and the שומר handed over the animal to the רועה, the אומר assumes the שומר responsibilities, while the שומר emains.

The Machlokes regarding

שומר שמסר לשומר

If a שומר gave the פקדון to a second שומר and the פקדון was damaged, is the first שומר liable or not?









So let's review ...

The Gemara cites a Braisa תניא אמר רבי יהושע ארבעה דברים העושה אותן פטור מדיני אדם וחייב בדיני שמים

There are four claims of damage for which a person cannot be compelled by בית דין to pay, but he is liable בדיני the has a moral obligation to pay for the damages.

הפורץ גדר בפני בהמת חבירו

If a person broke open someone's fence and his animal escaped; as the Gemara explains בכותל רעוע

דלמסתריה קאי

The wall or fence was weak and in danger of collapsing and needed to be torn down. Therefore, as Tosfos explains, he is completely פטור for the wall even בדיני שמים he is

פטור מדיני אדם וחייב בדיני שמים

However בכותל בריא בדיני אדם נמי חייב

As Rashi explains, if the wall was sturdy, he is liable for the wall even בדיני אדם, because he actually broke it בידים, but he is סטור בדיני אדם for the animal because he did not actually remove it, it was merely a גרמא.

(ed note, please label each one of the next explanations

(ed note, please label each one of the next explanations בידים or גרמא as applicable)

## תניא אמר רבי יהושע ארבעה דברים העושה אותן פטור מדיני אדם וחייב בדיני שמים

There are four claims of damage for which a person cannot be compelled by בית דין to pay, but he is liable בדיני שמים.



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Howeve

## בכותל בריא

בדיני אדם נמי חייב

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Dedicated By: \_





2.

והכופף קמתו של חבירו בפני הדליקה

If a person turned someone's produce toward the path of a fire, and the fire destroyed it;

The Gemara offers two explanations. Either דמטיא ברוח שאינה מצויה

The fire was now only able to catch on through an uncommon wind. Therefore, he is פטור מדיני אדם, because he did not actually ignite the grain (גרמא), but even so he is liable בדיני שמים. However,

ברוח מצויה

בדיני אדם נמי חייב

If the fire was now able to catch on even through an average wind, he is חייב בדיני אדם because, as Rashi explains

הרי בידים הבעיר

He is considered to have actually ignited the grain.

#### OR

דשויה טמון באש

He did not turn the קמה, rather he covered it so that the owner of the שא became פטור from reimbursing the owner of the קמה.

He is פטור מדיני אדם because this was not his fire, and he did not actually cause it to burn (גרמא), but he is still חייב because he caused a loss to the owner.

## והכופף קמתו של חבירו בפני הדליקה

If a person turned someone's produce toward the path of a fire, and the fire destroyed it;

### דמטיא <u>בר</u>וח מצויה

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## דמטיא ברוח שאינה מצויה

בדיני אדם פטור

The fire was now only able to catch on through an uncommon wind.

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3

והשוכר עדי שקר להעיד

If a person hires witnesses to testify falsely that someone owed money; as the Gemara explains, לחבריה

The עדים testified that the person owed money to someone else. Therefore, the שוכר is not liable בדיני אדם because he did not actually testify, but even so he is liable בדיני שמים because he caused him a loss. However,

לנפשיה

בדיני אדם נמי ניחייב

If they testified that the money was owed to him, the שוכר, then he is liable, even בדיני אדם, to return the money that was wrongly extracted.

והשוכר עדי שקר להעיד

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4.

והיודע עדות לחבירו

ואינו מעיד לו

If a person knows that someone is owed money, but he refuses to testify for him; as the Gemara explains,

He is the only witness, and can only compel the נתבע to swear but not to pay. Nevertheless, he is liable בדיני שמים because perhaps the נתבע would choose to pay rather than to swear falsely. However,

בבי תרי

פשיטא דאורייתא הוא

If they were two witnesses, he is already held liable בדיני through the Pasuk of

אם לא יגיד ונשא עונו

והיודע עדות לחבירו ואינו מעיד לו If a person knows that someone is owed money, but he refuses to testify... בבי תרי בחד פשיטא דאורייתא הוא בדיני אדם פטור If they were two He is the only witness. witnesses, he is already and can only compel the נתבע held liable בדיני שמים through the Pasuk of to swear but not to pay. Nevertheless, he is liable בדיני שמים because perhaps the כתבע would choose to pay ונשא עונו rather than swear fal

The Gemara mentions five more instances in which we apply the Halachah of

פטור מדיני אדם

וחייב בדיני שמים

And they are alluded to in the סימן

העושה בסם ושליח חבירו נשבר

1.

העושה מלאכה במי חטאת ובפרת חטאת

If a person performed work with הטאח ים or with the actual פרה אדומה and it became פסול, he is not liable בדיני because as Rashi explains

היזק שאינו ניכר

The damage is not discernible

ב. הנותן סם המות בפני בהמת חבירו

If a person placed poison before someone's animal, which consumed the poison and died; he is not liable בדיני אדם, because he did not actually feed the animal.









השולח את הבערה ביד חרש שוטה וקטן

If a person handed over his fire to a חרש שוטה וקטן, and the fire spread and caused damage, he is not liable בדיני אדם because he did not actually spread the fire.

4

המבעית את חבירו

If someone suddenly screamed into a person's ear and he became deaf from fright, he is not liable בדיני אדם because לא עביד מעשה בגופו

He did not actually harm him.

5.

נשברה כדו ברה"ר ולא סלקה נפלה גמלו ולא העמידה

If someone's jug broke and he did not remove it, or his camel fell and he did not stand it up, the חכמים hold he is not liable בדיני אדם, but even so in all these cases

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7 The

The previous Mishnah taught

נפרצה בלילה או שפרצוה לסטים

ויצאה והזיקה פטור

If the fence broke during the night or thieves broke the fence, and the animal escaped on its own and caused damage, the owner is not liable for the היזק. However, הוציאוה לסטים

לסטים חייבין

If the thieves actually took out the animal, they are liable for the היוק.

הניחה בחמה

או שמסרה לחרש שוטה וקטן ויצאה והזיקה

חייב

If the owner left his animal under the blazing sun, or he entrusted his animal with a mentally incompetent person, and the animal escaped on its own and caused damage, the owner is liable for the הייק.

נפרצה בלילה או שפרצוה לסמים ויצאה והזיקה פמור If the fence broke during the night or thieves broke the fence, and the animal escaped on its own and caused damage, the owner is not liable for the היזק However, הוציאוה לסמים לסטים חייביו If the thieves actually took out the animal they are liable for the היזה. הניחה בחמה או שמסרה לחרש שומה וקמן ויצאה והזיקה חייב If the owner left his animal under the blazing sun, or he entrusted his animal with a mentally incompetent person, and the animal escaped on its own and caused damage, the owner is liable for the היזק.

The Gemara explains that the Mishnah refers to a כותל בריאם, a sturdy wall, and in the רישא נפרצה בלילה

פטור

ואפילו לא חתרה

The owner is פטור regardless of whether the animal broke the fence, or even if it collapsed on its own, because he was not פושע, since it was a כותל בריא. However, in the סיפא הניחה בחמה

חייב

ואפילו חתרה

The owner is חייב regardless of whether the fence collapsed on its own, and even if the animal broke the fence, because he was פושע since he left the animal under the blazing sun. And

כל טצדקא דאית לה למיעבד עבדא ונפקא

The owner knows that the animal would do anything to escape its suffering.

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The Gemara now discusses the Mishnah's Halachah of הוציאוה לסטים לסטים חייבין

### The Gemara asks

פשיטא כיון דאפקוה

קיימא לה ברשותייהו לכל מילי

Why did the Mishnah need to teach that the חייב are חייב if the animal caused damage? When the לסטים pulled the animal, it was transferred to their jurisdiction for all matters through קנין משיכה, as in the case of a גוב? Similarly, the Gemara compares it to

המעמיד בהמת חברו

על קמת חבירו

חייב

If someone stands one person's animal on another person's grain, he is liable. Here too, we can ask מעמיד פשיטא

If he did this בידים, he is certainly liable?

## הוציאוה לסמים - לסמים חייבין

## פשיטא כיון דאפקוה קיימא לה ברשותייהו לכל מילי

Why did the Mishnah need to teach that the לסטים are לסטים if the animal caused damage? When the לסטים pulled the animal, it was transferred to their jurisdiction for all matters through קנין משיכה, as in the case of a?

# המעמיד בהמת חברו על קמת חבירו

If someone stands one person's animal on another's grain, he is liable. Here too, we can ask

### מעמיד פשיטא

If he did this בידים, he is certainly liable?

The Gemara offers two explanations

דקמו לה באפה

In both cases, the לסטים did not actually pull the animal, but rather they blocked it path in a way that the animal was diverted toward the קמה and ate the grain. The לסטים even though there was no קנין משיכה even though there was no קנין משיכה, because this is considered like מעמיד, as if they actually placed the animal on the grain.

2.

#### OR

דקמו לה באפה

פטור

If they only blocked the animal they would be פטור because מעמיד is not considered מעמיד.

However, the Mishnah is a case of

דהכישוה

The לסטים hit the animal and compelled it to run forward; and they are חייב even though they did not actually pull the animal, because קנין IS considered מעמיד, and like a קנין, and the animal was transferred to their jurisdiction to be liable.

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### דהכישוה – חייב

The למטים hit the animal and compelled it to run forward; they are חייב even though they did not pull the animal, because קכין משיכה is considered, מעמיד, which is a קכין משיכה and the animal was transferred to their jurisdiction.







### The previous Mishnah taught

מסרה לרועה

נכנס הרועה תחתיו

If the owner handed over his animal into the care of a shepherd, the דועה assumes all responsibilities.

### The Gemara explains

תחתיו דשומר

Even if the owner entrusted his animal to a שומר, a guardian, and the שומר handed over the animal to the רועה, the משומר assumes the 'שומר's responsibilities, while the שומר remains שומר.

## However, according to the opinion that שומר חייב

If a שומר transferred the פקדון to a second שומר and the שומר was damaged, the first שומר is liable for all damages; we must explain the Mishnah as a case of מאי מסרו לרועה

לברזיליה

The first שומר was a רועה who handed over the animal to his apprentice, and he is פטור because

דאורחיה דרועה למימסר לברזילי

It is acceptable for a רועה to entrust his apprentice with the animals. However,

לאחר חייב

If the שומר handed over the animal to someone else, he would be liable for all damages.

## While according to the opinion that שומר שמסר לשומר פטור

The first שומר שומר is not liable for damages for which he would have been פטור while the פקדון was in his care; לרועה

אורחא דמילתא קתני

והוא הדין לאחר

The Mishnah only mentions to a דועה because it is common, but the same applies if the שומר handed the animal to anyone else, he remains פטור for the damages for which he would have been פטור while the animal was in his care.





