

A בס"ד

Intro

Today we will Be"H learn קי"ח of בבא מציעא. Some of the topics we will learn about include:

בית הבד וגינה על גביו

If one person owns an olive-press in an area hollowed out of a rock and another person owns a garden above it, and the roof collapsed;

The Gemara discusses the rights of the owner of the garden, depending on how much of the roof collapsed.

כותל ואילן שנפלו לרה"ר

Whether one is liable for damages caused by his property that fell into a public area?

כותל שנפל לגינת חבירו

If someone's wall falls into his neighbor's property, the Mishnah discusses the removal of the stones.

השוכר לעשות בתבן

If someone hired a worker to collect straw; The Gemara discusses whether he can tell the worker to keep the straw in lieu of payment. This may depend on whether

הבטה בהפקר קני

The act of watching is a valid קנין.

A

בית הבד
וגינה על גביו

כותל ואילן שנפלו לרה"ר

כותל שנפל לגינת חבירו

השוכר לעשות בתבן

הבטה בהפקר קני

B רשות הרבים

The Gemara discusses how an individual may use a public area for his private needs.

כל מקום שנתנו לו חכמים רשות והזיק

Whether one is liable for damages caused by his property which he left a public area lawfully?

אבן שהזיק

The Gemara discusses a stone that caused damage, and which of the many workers who were involved with it are liable.

B

רשות הרבים

כל מקום
שנתנו לו חכמים רשות
והזיק

אבן שהזיק

1 So let's review...

The Mishnah earlier discussed

הבית והעלייה של שנים

A house owned by two individuals;

The Mishnah now presents a similar case:

Zugt di Mishnah

וכן בית הבד שהוא בנוי בסלע

וגינה אחת על גביו

ונפחת

If one person owns an olive-press in an area hollowed out of a rock and another person owns a garden above it, and the roof collapsed;

הרי בעל הגינה יורד וזורע למטה

עד שיעשה לבית ברו כיפין

The owner of the garden may plant his crop on the floor of the lower space until the owner of the press rebuilds his roof.

The Gemara cites a מחלוקת whether

נפחתה ברובה

He can plant the entire lower area only if most of the roof collapsed;

אבל בארבע

אדם זורע חציו למטה וחציו למעלה

If only an area of four אמות collapsed, he is only entitled to an area of the same size in the lower space, because it is not unusual for a person to maintain a garden partly at a higher level and partly lower;

OR

בארבע

Even if only a small section collapses, he can plant the entire lower area, because

אין אדם זורע חציו למטה וחציו למעלה

He cannot be expected to maintain a garden on two levels.

1

Mishnah in the previous Daf

הבית והעלייה של שנים

A house owned by two individuals;

**וכן בית הבד שהוא בנוי בסלע
וגינה אחת על גביו
ונפחת**

If one person owns an olive-press in an area hollowed out of a rock and another person owns a garden above it, and the roof collapsed;

**הרי בעל הגינה יורד וזורע למטה
עד שיעשה לבית ברו כיפין**

The owner of the garden may plant his crop on the floor of the lower space until the owner of the press rebuilds his roof.

נפחתה ברובה

He can plant the entire lower area only if most of the roof collapsed...

?

בארבע

Even if only a small section collapses, he can plant the entire lower area, because

**אין אדם זורע
חציו למטה וחציו
למעלה**

He cannot be expected to maintain a garden on two levels.

אבל בארבע

**אדם זורע חציו
למטה וחציו למעלה**

If only four אמות collapsed, he is entitled to space in the lower level,

because it is not unusual for a person to maintain a garden partly at a higher level and partly lower;

?



2

The Mishnah continues

הכותל והאילן שנפלו לרשות הרבים והזיקו פטור מלשלם

If someone's wall or tree fell into a public area and caused damage, he is not liable, because it was a אונס. However, נתנו לו זמן לקוץ את האילן ולסתור את הכותל ונפלו

And the Gemara explains

זמן ב"ד שלשים יום

If בית דין gave him thirty days to remove the weakened tree or wall to prevent the potential hazard and it did eventually fall, it depends;

בתוך הזמן פטור

לאחר הזמן חייב

If they fell during this time, he is exempt, but if they fell after this time, he is liable.

2

The Mishnah continues...

הכותל והאילן שנפלו לרשות הרבים והזיקו פטור מלשלם

If someone's wall or tree fell into a public area and caused damage, he is not liable, because it was a אונס.

However,

נתנו לו זמן לקוץ את האילן ולסתור את הכותל ונפלו

The Gemara explains

זמן ב"ד שלשים יום

If בית דין gave him thirty days to remove the weakened tree or wall to prevent the potential hazard and it did eventually fall, it depends;

לאחר הזמן חייב

But if they fell after this time, he is liable.

בתוך הזמן פטור

If they fell during this time, he is exempt.



3

The Mishnah continues

מי שהיה כותלו סמוך לגינת חבירו ונפל

If someone's wall fell into his neighbor's garden;

ואמר לו פנה אבניך

ואמר לו הגיעוך

The neighbor asked him to remove the stones, and he told him, "You may keep them;"

אין שומעין לו

The neighbor does not acquire them against his will, and he must remove them.

However,

משקבל עליו

אמר לו הילך את יציאותיך

ואני אטול את שלי

If after the neighbor agreed to accept them, the owner of the wall then says, "I will reimburse your expenses and keep my stones;"

אין שומעין לו

He cannot reclaim the stones, because the neighbor already acquired them.

3

The Mishnah continues. . .

מי שהיה כותלו סמוך לגינת חבירו ונפל

If someone's wall fell into his neighbor's garden;

ואמר לו פנה אבניך

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אמר לו הילך את יציאותיך

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If after the neighbor agreed to accept them, the owner of the wall then says,

"I will reimburse your expenses and keep my stones;"

אין שומעין לו

He cannot reclaim the stones, because the neighbor already acquired them.

- 4 The Gemara points out
מדקתני סיפא
הילך יציאותיך
מכלל דפנינהו עסקינן
Since the Mishnah refers to paying his expenses, it must
be that the neighbor has already cleared the stones.
Therefore, the Gemara infers
הא לא פנינהו
לא
If he has not yet cleared the stones, the owner of the wall
can reclaim them. The Gemara asks
ותקנה ליה שדהו
As soon as the owner of the wall waived his rights, the
owner of the garden should have acquired the stones
through חצר קנין?
- The Gemara answers
אישתמוטי הוא דקא מישתמיט ליה
We assume that the owner of the wall was merely
avoiding clearing the stones, and did not sincerely intend
to give them away.
=====

- 4
- מדקתני סיפא
הילך יציאותיך
מכלל דפנינהו עסקינן**
*Since the Mishnah refers to paying his expenses,
it must be that the neighbor has already cleared the stones.*
- Therefore, the Gemara infers*
**הא לא פנינהו
לא**
*If he has not yet cleared the stones,
the owner of the wall can reclaim them.*
- ותקנה ליה שדהו**
The Gemara asks
*As soon as the owner of the wall waived his rights,
the owner of the garden should have acquired
the stones through חצר קנין?*
- אישתמוטי
הוא דקא מישתמיט ליה**
*We assume that the owner of the wall
was merely avoiding clearing the stones,
and did not sincerely intend to give them away.*

5 The Mishnah concludes:
 השוכר את הפועל לעשות עמו בתבן ובקש
 If someone hired a worker to collect straw;
 ואמר לו תן לי שכרי
 ואמר לו טול מה שעשית בשכרך
 When the worker demanded payment, the employer told
 him to keep the straw as payment;
 אין שומעין לו
 The worker does not need to accept it as payment, and the
 employer must pay him his wages in cash.

However,
 משקבל עליו
 ואמר לו הילך שכרך
 ואני אטול את שלי
 If the worker agreed to accept the straw, and the employer
 then retracts and says, "I will pay you in cash and keep the
 straw;"
 אין שומעין לו
 He cannot reclaim the straw, because the worker already
 acquired it.

The Gemara cites a contradictory ברייתא:
 Our Mishnah rules
 אמר לו טול מה שעשית בשכרך
 אין שומעין לו
 The worker does not need to accept the straw as payment,
 and the employer must pay him in cash.
 However, the Braisa rules;
 שומעין לו
 The employer does not have to pay him in cash.

5 *The Mishnah continues...*
**השוכר את הפועל
 לעשות עמו בתבן ובקש**
If someone hired a worker to collect straw;
**ואמר לו תן לי שכרי
 ואמר לו טול מה שעשית בשכרך**
*When the worker demanded payment,
 the employer told him to keep the straw as payment;*
אין שומעין לו
*The worker does not need to accept it as payment,
 and the employer must pay him his wages
 in cash.*

However,
**משקבל עליו
 ואמר לו הילך שכרך
 ואני אטול את שלי**
*If the worker agreed to accept the straw,
 and the employer then retracts and says,
 "I will pay you in cash and keep the straw;"*
אין שומעין לו
*He cannot reclaim the straw,
 because the worker already acquired it.*

בריתא
**אמר לו
 טול מה שעשית
 בשכרך
 שומעין לו**
*The employer
 does not have to pay him
 in cash.*

משנה
**אמר לו
 טול מה שעשית
 בשכרך
 אין שומעין לו**
*The employer
 must pay him
 in cash.*



6 The Gemara answers

כאן בהגבהה
כאן בהבטה

Our Mishnah refers to a worker hired to collect ownerless straw, in which he acquires the straw on behalf of his employer. Therefore, the employer owes him his wages, and he cannot tell him to take the straw as payment, because wages must be paid in cash.

However, the ברייתא refers to a worker hired to guard the straw, in which he does not acquire the straw on behalf of his employer, because the act of watching is not a valid קנין. Therefore, the employer does not owe him the wages, and he can tell him to keep the straw, but he does not have to pay him in cash.

The Gemara cites a related ברייתא:

שומרי ספיחי שביעית
נוטלין שכרן מתרומת הלשכה

The תנא קמא says that those who guard grain growing during שמיטה to be used for the עומר or הלחם שתי are paid from the communal fund of the collected Shekels, because if they were to guard for free,

אין באין משל צבור

The grain would be privately owned, and invalidated for use for these מנחות.

However, רבי יוסי says

הרוצה מתנדב הוא ושומר חנם

They can volunteer and guard free of charge.

6

כאן
בהבטה

The ברייתא refers to a worker hired to guard the straw, in which he does not acquire the straw on behalf of his employer, because the act of watching is not a valid קנין.

Therefore, the employer does not owe him the wages, and he can tell him to keep the straw, but he does not have to pay him in cash.

כאן
בהגבהה

Our Mishnah refers to a worker hired to collect ownerless straw, in which he acquires the straw on behalf of his employer.

Therefore, the employer owes him his wages, and he cannot tell him to take the straw as payment, because wages must be paid in cash.

ברייתא

שומרי ספיחי שביעית
נוטלין שכרן מתרומת הלשכה

Those who guard grain growing during שמיטה to be used for the עומר or הלחם שתי are paid from the communal fund of the collected Shekels,

because if they were to guard for free, אין באין משל צבור the grain would be privately owned, and invalidated for use for these מנחות.

רבי יוסי

הרוצה מתנדב הוא ושומר חנם
They can volunteer and guard free of charge.

7 The Gemara offers three interpretations of the מחלוקת:

1.
 תנא קמא סבר
 הבטה בהפקר קני
 רבי יוסי סבר
 הבטה בהפקר לא קני
 The תנא קמא holds that the act of watching is a valid קנין, and if they would not be paid they would acquire it and it would become privately owned grain, which may not be used for הלחם ושתי הלחם.
 While רבי יוסי holds that it is not a valid קנין, and they do not acquire it by guarding it, and הקדש can then acquire the ownerless grain to be used for the הלחם ושתי הלחם.

2.
 כ"ע הבטה בהפקר קני
 All agree that the act of watching is a valid קנין and the workers acquire it. However,
 רבנן סברי
 חיישינן שמא לא ימסרם יפה יפה
 ורבי יוסי סבר
 לא חיישינן שמא לא ימסרם יפה יפה
 The תנא קמא is concerned that they will not transfer the grain to הקדש sincerely, and so it is preferable for them to acquire it on behalf of הקדש in the first place.
 While רבי יוסי holds that we are not concerned, and they can guard the grain and then transfer ownership to הקדש.

3.
 כ"ע הבטה בהפקר לא קני
 All agree that the act of watching is a not valid קנין, and הקדש can later acquire it. However,
 ת"ק סבר
 דתקינן רבנן למיתב ליה ארבע זוזי
 כי היכי דלישמעי בעלי זרועות וליפרשו מינייהו
 ורבי יוסי סבר
 לא תקינן
 The רבנן instituted that they should be paid, so that it be known that this grain is for הקדש, and no one will take it by force.
 While רבי יוסי holds that the רבנן did not enact such a decree.
 =====

7 Three interpretations of this מחלוקת

1

רבי יוסי סבר
**הבטה בהפקר
 לא קני**

The act of watching is not a valid קנין, and they do not acquire it by guarding it, and הקדש can then acquire the ownerless grain to be used for the הלחם ושתי הלחם.

תנא קמא סבר
**הבטה בהפקר
 קני**

The act of watching is a valid קנין, and if they were not paid they would acquire it and it would become privately owned grain, which may not be used for הלחם ושתי הלחם.

2

כ"ע הבטה בהפקר קני

All agree that the act of watching is a valid קנין and the workers acquire it.

ורבי יוסי סבר
**לא חיישינן
 שמא לא ימסרם
 יפה יפה**

While רבי יוסי holds that we are not concerned, and they can guard the grain and then transfer ownership to הקדש.

רבנן סברי
**חיישינן
 שמא לא ימסרם
 יפה יפה**

They will not transfer the grain to הקדש sincerely, and so it is preferable for them to acquire it on behalf of הקדש in the first place.

3

כ"ע הבטה בהפקר לא קני

All agree that the act of watching is a not valid קנין, and הקדש can later acquire it. However...

ורבי יוסי סבר
לא תקינן

While רבי יוסי holds that the רבנן did not enact such a decree.

ת"ק סבר
**דתקינן רבנן למיתב
 ליה ארבע זוזי
 כי היכי דלישמעי
 בעלי זרועות
 וליפרשו מינייהו**

The רבנן instituted that they should be paid, so that it be known that this grain is for הקדש, and no one will take it by force.



8 Zugt di Mishnah;
המוציא זבל לרשות הרבים
המוציא מוציא
והמזבל מזבל

One may place his manure in a public area, as long as it is immediately transferred to the fields and it does not stay there for an extended period of time.

However,
אין שורין טיט ברשות הרבים
ואין לובנים לבנים

One may not soak clay or make bricks in a public area, because these activities extend over a period of time.

אבל גובלין טיט ברשות הרבים
אבל לא לבנים

However, he may knead clay in a public area for immediate use, but not for forming bricks, because it takes longer.

The Mishnah continues

הבונה ברשות הרבים
המביא אבנים מביא והבונה בונה

One may use a public area for his private building needs, as long as the materials are immediately transferred to the building site which is on private property. However, ואם הזיק משלם מה שהזיק

He is liable for damage caused by these items.

The Mishnah concludes

רבן שמעון בן גמליאל אומר
אף מתקן הוא את מלאכתו
לפני שלשים יום

One may store materials in the public area for up to thirty days, and as Rashi adds, based on the Gemara,

ואינו חייב בנזקין

He is not liable for their damages.

8

מלאך

המוציא זבל לרשות הרבים
המוציא מוציא
והמזבל מזבל

One may place his manure in a public area, as long as it is immediately transferred to the fields and it does not stay there for an extended time.

However,

אין שורין טיט ברשות הרבים
ואין לובנים לבנים

One may not soak clay or make bricks in a public area, because these activities extend over a period of time.

אבל גובלין טיט ברשות הרבים
אבל לא לבנים

However, he may knead clay in a public area for immediate use, but not for forming bricks, because it takes longer.

הבונה ברשות הרבים

המביא אבנים מביא והבונה בונה

One may use a public area for his private building needs, as long as the materials are immediately transferred to the building site which is on private property.

However,

ואם הזיק משלם מה שהזיק

He is liable for damage caused by these items.

רבן שמעון בן גמליאל אומר
אף מתקן הוא את מלאכתו
לפני שלשים יום

One may store materials in the public area up to thirty days,

And as Rashi adds

ואינו חייב בנזקין

He is not liable for their damages.

9 The Gemara cites a ברייתא where רבי יהודה disagrees with our Mishnah:
 כל אלו שאמרו מותרין לקלקל ברה"ר
 אם הזיק חייב לשלם
 Even those who may use public property for their private benefit are liable for any damages caused by these items.
 ורבי יהודה פוטר
 He is not liable, because
 כל מקום שנתנו לו חכמים רשות והזיק
 פטור
 One is not liable for damages resulting from Halachically permitted activities.
 And the Gemara cites several other rulings that agree with this principle.
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9 **ברייתא**
 The Gemara cites a ברייתא where רבי יהודה disagrees with our Mishnah:
כל אלו שאמרו מותרין לקלקל ברה"ר אם הזיק חייב לשלם
 Even those who may use public property for their private benefit are liable for any damages caused by these items.
ורבי יהודה פוטר
 He is not liable, because
 כל מקום שנתנו לו חכמים רשות והזיק פטור
 One is not liable for damages resulting from Halachically permitted activities.

10 The Gemara cites a related ברייתא:
 החצב שמסר לסתת
 הסתת חייב
 Once a stone is hewn from the quarry and given to the stonecutter for shaping, the stonecutter is liable for any damages caused by the stone.
 הסתת שמסר לחמור
 החמור חייב
 The donkey driver is then responsible once he receives the stone.
 החמור שמסר לכתף
 הכתף חייב
 The porter, who carries it from the wagon to the building site, is responsible once he receives it.

10 **ברייתא**
החצב שמסר לסתת הסתת חייב
 Once a stone is hewn from the quarry and given to the stonecutter for shaping, the stonecutter is liable for any damages caused by the stone.
הסתת שמסר לחמור החמור חייב
 The donkey driver is then responsible once he receives the stone.
החמור שמסר לכתף הכתף חייב
 The porter, who carries it from the wagon to the building site, is responsible once he receives it.

11 הכתף שמסר לבנאי
הבנאי חייב
The builder, who places the stone onto the structure, is responsible once he receives it.
הבנאי שמסר לאדריכל
אדריכל חייב
The expert bricklayer, who ensures that the stone is placed properly, assumes responsibility once he begins his work; and
אם הניח אבן על הדימוס והזיקה
כולן חייבין לשלם
If the stone damages after it is placed properly, they are all equally liable.

11

**הכתף שמסר לבנאי
הבנאי חייב**
*The builder,
who places the stone onto the structure,
is responsible once he receives it.*

**הבנאי שמסר לאדריכל
אדריכל חייב**
*The expert bricklayer,
who ensures that the stone is placed properly,
assumes responsibility once he begins his work;
and*

**אם הניח אבן על הדימוס והזיקה
כולן חייבין לשלם**
*If the stone damages after it is placed properly,
they are all equally liable.*

12 The Gemara cites a contradictory ruling:
אחרון חייב וכולן פטורים
The last worker is liable and the rest are exempt.?

The Gemara answers
כאן בשכירות
כאן בקבלנות
If each worker was hired individually, he is only responsible while actually handling the stone. If they were all contracted for the job, they are responsible collectively for any damage not caused directly by a single member of the team.

12

The Gemara cites a contradictory ruling:

אחרון חייב וכולן פטורים
*The last worker is liable
and the rest are exempt.*

כאן בשכירות – כאן בקבלנות
*If each worker was hired individually,
he is only responsible while actually handling the stone.
If they were all contracted for the job,
they are responsible collectively for any damage not
caused directly by a single member of the team.*