

Liability for Damages, Lesson 3

Discovering Talmudic Principles

Bava Kama: Chapter 3, 27b

It has indeed been stated: Rav Yehudah said: No man may take the law into his own hands for the protection of his interests, whereas R. Nachman said: A man may take the law into his own hands for the protection of his interests.

In a case where an irreparable loss is pending, no two opinions exist that he may take the law into his own hands for the protection of his interests: the difference of opinion is only where no irreparable loss is pending. Rav Yehudah maintains that no man may take the law into his own hands for the [alleged] protection of his interests, for since no irreparable loss is pending let him resort to the judge; whereas R. Nachman says that a man may take the law into his own hands for the protection of his interests, for since he acts in accordance with [the prescriptions of the] law, why [need he] take the trouble [to go to Court]?

R. Kahana [however] raised an objection; Ben-Bag-Bag said; Do not enter [stealthily] into your neighbor's premises for the purpose of appropriating without his knowledge anything that even belongs to you, lest you will appear to him as a thief. You may, however, 'break his teeth' and tell him, 'I am taking possession of what is mine.' [Does this not prove that a man may take the law into his own hands for the protection of his rights?] —

He thereupon said: It is true that Ben-Bag-Bag supports your view; but he is only one against the Rabbis who differ from him. R. Yannai [even] suggested that 'break his teeth' may also mean to bring him before a court of justice. But if so, why 'and you may tell him?' Should it not read 'and they will tell him'? Again, 'I am taking possession of what is mine'; should it not be 'he is taking possession of what is his'? — This is indeed a difficulty.

מסכת בבא קמא פרק ג דף כז, ב

דאתמר רב יהודה אמר לא עביד איניש דינא לנפשיה רב נחמן אמר עביד איניש דינא לנפשיה

היכא דאיכא פסידא כ"ע לא פליגי דעביד איניש דינא לנפשיה כי פליגי היכא דליכא פסידא רב יהודה אמר לא עביד איניש דינא לנפשיה דכיון דליכא פסידא ליזיל קמיה דיינא ר"נ אמר עביד איניש דינא לנפשיה דכיון דבדין עביד לא טרח

מתיב רב כהנא בן בג בג אומר אל תיכנס לחצר חברך ליטול את שלך שלא ברשות שמא תראה עליו כגנב אלא שבור את שיניו ואמור לו שלי אני נוטל

א"ל עמך בן בג בג יחידאה הוא ופליגי רבן עליה רבי ינאי אמר מאי שבור את שיניו בדין אי הכי ואמור לו ואומרים לו מיבעי ליה שלי אני נוטל שלו הוא נוטל מיבעי ליה קשיא