

Liability for Damages, Lesson 1

Discovering Talmudic Principles

Bava Kama: Chapter 3, 27a

Mishnah. If a man places a pitcher [*kad*] in a public domain and another one comes and stumbles over it and breaks it, he is exempt. If the other one was injured by it, the owner of the barrel [*chavit*] is liable to compensate for the damage.

Gemara. To commence with pitcher and conclude with barrel! And we have likewise learnt also elsewhere: If one man comes with his barrel [*chavit*] and another comes with his beam and [it so happened that] the pitcher [*kad*] of this one breaks by [collision with] the beam of that one, he is exempt. Here [on the other hand] the commencement is with barrel and the conclusion with pitcher!

We have again likewise learnt elsewhere: In the case of this man coming with a barrel [*chavit*] of wine and that one proceeding with a pitcher [*kad*] of honey, and as the barrel [*chavit*] of honey cracked, the owner of the wine poured out his wine and saved the honey into his barrel, he is entitled to no more than his service. Here again the commencement is with pitcher and the conclusion with barrel!

R. Papa thereupon said: Both *kad* and *chavit* may denote one and the same receptacle. But what is the purpose in this observation? — Regarding buying and selling. But under what circumstances? It could hardly be thought to refer to a locality where neither *kad* is termed *chavit*, nor *chavit* designated *kad*, for are not these two terms then kept there distinct? — No, it may have application in a locality where, though the majority of people refer to *kad* by the term *kad* and to *chavit* by the term *chavit*, yet there are some who refer to *chavit* by the term *kad* and to *kad* by the term *chavit*. You might perhaps have thought that the law follows the majority. It is therefore made known to us that we do not follow the majority in [disputes on] matters of money.

מסכת בבא קמא פרק ג דף כז, א

משנה המניח את הכד ברה"ר ובא אחר ונתקל בה ושברה פטור ואם הוזק בה בעל החבית חייב בנזקו:

גמרא פתח בכד וסיים בחבית ותנן נמי זה בא בחביתו וזה בא בקורתו נשברה כדו של זה בקורתו של זה פטור פתח בחבית וסיים בכד

ותנן נמי זה בא בחביתו של יין וזה בא בכדו של דבש נסדקה חבית של דבש ושפך זה יינו והציל את הדבש לתוכו אין לו אלא שכרו פתח בכד וסיים בחבית

אמר רב פפא היינו כד היינו חבית למאי נפקא מינה למקח וממכר היכי דמי אילימא באתרא דכדא לא קרו חבית וחבית לא קרו כדא הא לא קרו לה לא צריכא דרובא קרו לה לכדא כדא ולחביתא חביתא ואיכא נמי דקרו לחביתא כדא ולכדא חביתא מהו דתימא זיל בתר רובא קמ"ל דאין הולכין בממון אחר הרוב