

Liability for Damages, Lesson 4

Discovering Talmudic Principles

Bava Kama: Chapter 3, 28a

Come and hear: 'If a man places a pitcher on public domain and another one comes and stumbles over it and breaks it, he is exempt'. Now, is not this so only when the other one stumbled over it, whereas in the case of directly breaking it there is liability? —

R. Zevid thereupon said in the name of Rava: The same law applies even in the case of directly breaking it; for 'and stumbles' was inserted merely because of the subsequent clause which reads: 'If the other one was injured by it, the owner of the barrel is liable to compensate for the damage', and which, of course, applies only to stumbling but not to direct breaking, as then it is of course the pedestrian who is to blame for the damage he caused to himself. It was therefore on this account that 'stumbling' was inserted in the commencing clause.

מסכת בבא קמא פרק ג דף כח, א

ת"ש המניח את הכד ברה"ר ובא אחר ונתקל בה ושברה פטור טעמא דנתקל בה הא שברה חייב

אמר רב זביד משמיה דרבא הוא הדין אפי' שברה והאי דקתני נתקל איידי דקבעי למיתני סיפא אם הוזק בעל חבית חייב בנזקו דדוקא נתקל אבל שבר לא דהוא אזיק נפשיה קתני רישא נתקל