

בור This is

היינו¹ בור –

OVERVIEW

The גמרא states that the צד השוה of our משנה teaches us to include the case (mentioned in a different משנה) of שפלו (where they are חייב if בי"ד warned them לקוץ ולסתור). The גמרא asks that seemingly no צד השוה is necessary for it is similar to בור (if he was מפקיר the כותל ואילן then it is similar to בור according to everyone, and in a case of לא אפקרינהו according to שמואל). Our תוספות will discuss when the כותל ואילן actually did the damage; while they were falling (where it is seemingly similar to אש), or after they came to a rest (where it is similar to בור).

לכאורה נראה דמיירי כשהזיקו כותל ואילן בשעת נפילה גופה ואפילו הכי מדמה ליה לבור -
It seemingly appears that the גמרא is discussing a case where the wall and the tree caused damage while they were actually falling (not after they fell) and nevertheless² the גמרא compares the case of שפלו and the case of בור.

בור will now prove that (even) if the כותל ואילן damaged while in motion, it is similar to בור (and not to אש)

מדלא קאמר הכא אי בהדי דקאזלי קמזקי היינו אש -
Since the גמרא does not say here (as it said in previous cases) 'if it damaged while moving then it is the same as אש'. The reason the גמרא does not say this, is because (even) if the כותל ואילן damaged while in motion, the גמרא would rather compare it to בור (and not to אש).

תוספות offers another reason that we must assume that the case of הכותל והאילן is in a situation where it damaged while moving and not after it came to rest.

ועוד דאי בהיזק דלאחר נפילה מיירי אמאי פטור מלשלם -
And in addition if הכותל והאילן is in a situation where the damage was done after it fell and came to a rest,³ then why is he exempt from paying for the damages he caused (when בי"ד did not order him לקוץ ולסתור); for even though the כותל ואילן fell באונס, nevertheless –
הלא כיון שנפלו מיד היה לו לסלקן⁴ -

¹ This תוספות is referencing the גמרא on the ב' עמוד.

² A בור damages in its place without moving, while the כותל ואילן damaged while moving (like אש), and nevertheless the גמרא considers שפלו to be similar to בור (as תוספות will shortly explain).

³ At this point תוספות is assuming, that is why it is compared to בור. However if it damaged נפילה it would be similar to אש.

⁴ See שי"ף who explains that תוספות is referring to the case where לא אפקרינהו; for if אפקרינהו then it is a case of ד"ה אי תוספות just mentioned in the previous פטור, where he is המפקיר נזקיו לאחר נפילה אונס

Once they fell, he should have removed it immediately. He is a פושע for not removing the כותל ואילן, and should be held liable for all damages caused by them after they came to rest and he was able to remove them.

תוספות offers an additional proof that the כותל ואילן cannot be discussing a case where it damaged לאחר נפילה:

ועוד⁵ דאם כן לא הוה ליה למיתני לקוץ ולסתור -

And furthermore if it was so (that it damaged לאחר נפילה), **then the משנה should not have stated** ‘if they gave him time to **chop down** (the tree) and **dismantle** (the wall)’, then he is חייב; for the damage did not occur on account of a falling tree and wall; it happened after it came to rest -

אלא נתנו לו זמן לפנותו ולסלקו כיון דבהיזק דלאחר נפילה איירי -

But rather the משנה should have stated; ‘**they gave him time to clear and remove** the fallen כותל ואילן’, **since we are discussing a damage that occurred after it fell.** The reason he is liable is because he neglected to remove the debris; not because he failed to chop down or disassemble the tree and the wall.⁶

גמרא concluded that the case of הכותל והאילן is when they damaged בפילה בשעת נפילה and the תוספות compares it to בור. תוספות anticipates the obvious question (which was mentioned previously):

אף על גב דבור אין הולך להזיק ואלו הולכים ומזיקין יש לנו ללמד מבור -

Even though בור does not move to cause damage (but rather it damages in its place), **and these** (the כותל ואילן שנפלו) **are moving and damaging;** how can we derive them from בור since they are different?! תוספות responds that nevertheless **We can derive from בור that they** are חייב -

דעדיף היזק דידהו שהולכים ומזיקין מבור שאינו הולך ומזיק אלא מזיק במקומו -

For their manner of damaging (by כותל ואילן), **where they move and damage, is a greater cause for liability than בור is, since בור does not move and damage, but rather it damages in its place.**⁷

תוספות concluded that the case of הכותל והאילן of משנה is in a case where they were בפילה בשעת נפילה. Now תוספות directs his attention to a case where they were לאחר נפילה:

⁵ Perhaps תוספות means that even if we refute the previous proof and argue that the reason he is פטור (when ב"ד did not allot him time) is because we are discussing a case when the damage was done (לאחר נפילה) before the owner was able to remove the debris; nevertheless there is this additional proof (that we discussing בפילה בשעת נפילה).

⁶ If he had time לפנותו then he will be חייב even if it damaged during the allotted time of ולסתור ולקוץ.

⁷ There is more reason to hold the כותל ואילן (בעל ה) liable than a בור. The fact that כותל ואילן is מזיק does not prevent us from deriving them from בור. On the contrary they are more חמור than בור. If בור is חייב then כותל ואילן are certainly חייב. תוספות, however did not explain (yet) why כותל ואילן that damaged בפילה בשעת נפילה, should not be derived from אש. See ‘Thinking it over’ # 1.

ונראה דבהיזק דלאחר נפילה נמי מצי איירי ופטור מלשלם -

And it seems that the משנה may also be discussing a case where the כותל ואילן damaged לאחר נפילה and yet they are exempt from paying (when ב"ד did not order them [לקוץ ולסתור] ולפנות).

will now reconcile this last statement with that which תוספות previously argued that if it damaged לאחר נפילה then he should be חייב (even if ב"ד did not warn him), for he neglected to remove the damaging article; תוספות responds:

וכגון שלא נודע לבעליו שנפלו או ידעו ולא יכלו לסלקו כל כך מהר -

And for instance that the owner was not aware that the כותל ואילן fell, or (even) if they knew that it fell, however they were not able to remove it that quickly and it caused damage before the owner could prevent it, therefore they are פטור.

will now respond to an additional earlier proof that we cannot be discussing a נפילה:

והא דלא קתני נתנו לו זמן לסלקו ולפנותו משום דבהיזק נפילה גופה נמי מיירי -

And the reason the משנה did not state, 'they gave him time to remove and clear away the obstacle', which is the appropriate warning if we are discussing a היזק the משנה is also discussing a case where it damaged while it actually was falling; the משנה is including both cases: where it damaged נפילה בשעה and also לאחר נפילה. Therefore it was necessary to mention that לקוץ ולסתור which applies to a נפילה בשעת -

ונתנו לו זמן לקוץ ולסתור ולפנותו קאמר⁸ -

And indeed the משנה means that 'they gave him time to (either) chop or disassemble (in the case of היזק בשעת נפילה) or to clear the debris (in the case of לאחר נפילה).

deals now with his original argument; if we are (also) discussing a נפילה בשעת why did not the גמרא compare it to אש as opposed to בור:

והשתא אתי שפיר דמזמה ליה לבור לבור טפי מלאש -

And now (that the משנה is discussing both cases, בשעת נפילה and לאחר נפילה) it is properly understood that the גמרא compares כותל ואילן to בור rather than to אש (אי בהדי דקאזלי קמזקי היינו אש the גמרא does not say).

ואף על גב דבשעת נפילה יש לדמותו לאש כמו לבור -

And even though that in a case of נפילה בשעת, the כותל ואילן can be equally compared to אש as well as to בור -

⁸ When ב"ד ordered him to remove the crumbling wall or the rotting tree, they allotted him the necessary time to both dismantle and remove it. The משנה did not deem it necessary to enumerate all the types of warnings that are given to him for the different types of damages that can occur. It was sufficient to give the warning for one type of damage נפילה בשעת (which is לקוץ ולסתור) and it would be understood the type of warning necessary for a damage לאחר נפילה (which is ולפנות).

כותל ואילן are equally similar to אש ובור will explain why תוספות

דמאש חלוק במה שאין כח אחר מעורב בו ומבור חלוק במה שאין תחילת עשייתו לנזק -
For כותל ואילן **are different from אש** by the fact **that there is no other force intermingled in it;**⁹ **and** כותל ואילן **are different from בור** by the fact **that they were not initially created to cause damage;**¹⁰ so since כותל ואילן are equally similar (or dissimilar) to אש ובור, why does the גמרא compare then only to בור?!

תוספות explains:

אלא לכך דימה אותו לבור משום דבהיזק דלאחר נפילה אין לדמותו כלל לאש אלא לבור:
Rather the גמרא **compares them to בור** because in the case of a נפילה (where they damaged in their place), **they cannot be compared at all to אש** (which causes damage when it moves) **but only to בור** (which damages only in its place).¹¹

SUMMARY

בשעת משנה of הכותל והאילן שנפלו is discussing both cases whether they damaged נפילה or לאחר נפילה.

THINKING IT OVER

1. mentioned¹² that כותל ואילן are damaged בשעה נפילה since they are עדיף מבור because they have no מעורב בו מאש כותל ואילן are different from אש by the fact that there is no other force intermingled in it;⁹ and כותל ואילן are different from בור by the fact that they were not initially created to cause damage;¹⁰ so since כותל ואילן are equally similar (or dissimilar) to אש ובור, why does the גמרא compare then only to בור?!

2. mentions that כותל ואילן are damaged מאש since they have no מעורב בו מאש כותל ואילן are different from אש by the fact that there is no other force intermingled in it;⁹ and כותל ואילן are different from בור by the fact that they were not initially created to cause damage;¹⁰ so since כותל ואילן are equally similar (or dissimilar) to אש ובור, why does the גמרא compare then only to בור?!

⁹ The כותל ואילן fell because of their deterioration (and their own weight), as opposed to אש which damages because of the (external) wind. See 'רא"ש סוף סי' א'. See 'Thinking it over' # 2.

¹⁰ does not say that כותל ואילן are different from בור, for בור is אינו הולך ומזיק and they are הולך ומזיק (see 'מהרש"א'; for as תוספות previously said that this is all the more reason to derive כותל ואילן from בור.

¹¹ If we were discussing only a case of נפילה, then we could have compared כותל ואילן to either אש or בור; however now that we are discussing לאחר נפילה also, which is different than אש, therefore we compare it to בור, which is applicable in both cases of בשעת נפילה and לאחר נפילה.

¹² See footnote # 7.

¹³ See 'מהרש"א מהוד"ב'.

¹⁴ See footnote # 9.

¹⁵ See (TIE by footnote # 4) and ד"ה כי (TIE footnote # 8).

¹⁶ See 'תפארת שמואל', נח"מ, בל"י וכו'.