

It is the wind that brings it

זיקא הוא דקא ממטי לה -

Overview

The גמרא relates that when the family of בר מריון בריה דרבין would beat the flax, the chaff (of the flax) would fly away and damage people.¹ ר' יוסי ruled that one is liable for damage that is caused by גירי דיליה, only if it is from his force, however here the wind is carrying it,² so they are not liable, and may continue to beat the flax. reconciles this ruling of רבינא with other seemingly contradictory rulings.

תוספות asks:

קשיא לרבינו יצחק דליחייב משום אש³ -

The ר"י has a difficulty with the ruling of רבינא, for he should be liable on account of 'fire', for this case of chaff -

מידי דהוה אאבנו וסכיננו ומשאו שהניחן בראש גגו -

Is similar to the case where a one placed his stone, his knife, or his load on top of his roof -

ונפלו ברוח מצויה והזיקו דחייב משום אש⁴ כדאמר בפרק קמא דבבא קמא (דף ו,א) -

And they fell down on account of a common wind, and they damaged something while falling, the rule is that he is liable, because this is considered אש, as the גמרא states in the first פרק of מסכת ב"ק -

תוספות rejects a possible solution:⁵

והכא דאמטי ליה ברוח מצויה איירי -

And here we are discussing a case where the chaff was carried along by a רוח מצויה; we know that we are discussing a מצויה -

מדפריך עלה מזורה ורוח⁶ מסייעו⁷ דאיירי ברוח מצויה -

Since the גמרא challenges the ruling of רבינא from the case of one who is winnowing

¹ The chaff per se cannot damage anyone, except when it hits someone with the force of the wind behind it.

² גירי דיליה is only if it is like his arrows who fly by the force of the archer, however here he is merely separating the chaff, it is traveling elsewhere only because of the wind; it cannot be considered גירי דיליה.

³ אש (fire) is one of the four major categories of damagers (אבות נזיקין). Any damage which is inflicted in a manner similar to אש is חייב as a תולדה (a derivative) of אש, and one is liable for any damage it caused.

⁴ Here too he should (not only be prevented from continuing to do this, but he should also) be liable for the damages, for it is similar to the case of אבנו וסכיננו וכ'. The wind is carrying his chaff and damaging others.

⁵ Perhaps in the case of the chaff here, it was blown by a רוח שאינו מצויה (an uncommonly strong wind).

⁶ The גמרא asked on רבינא why is this case different from the case of winnowing on שבת, where the winnowing (separating the grain from the chaff) is accomplished only through the wind, and nevertheless he is חייב, the same should be here that he should be liable even though the wind is assisting in causing the damage.

⁷ The הגהות הב"ח amens this to read מסייעו (instead of מסייעו).

and the wind helps him winnow, which that case is by a רוח מצויה; we know that the case of זורה is where it was a רוח מצויה -

כדמשמע בהכונס (שם דף ס, א. ושם) **גבי⁸ ליבה וליבתו הרוח -**

As it seems in פרק הכונס regarding the case where he fanned the flames and the wind assisted him in fanning the flame -

An additional proof that the chaff case is by a רוח מצויה:

ומדפריך מגץ היוצא מתחת הפטיש דהיינו ברוח מצויה דחייב משום אש⁹ -

And also, since the גמרא asks on רבינא, why is his case different from the case of a spark that flies from a hammer, for which he is liable for damages. And that case is by a ר"מ, since he liable on account of אש

דגבי אש קתני לה בהכונס¹⁰ -

For the משנה in פרק הכונס teaches the rule of גץ by the cases of אש ! The question remains (since this is a case of ר"מ), why (in the case of רבינא) is he not חייב on account of אש?!

answers: תוספות

ואומר רבינו יצחק דלא דמי לאש דאין חייב משום אש אלא כשעשה האדם את האש לבדו -

And the ר"י answers that this case of the chaff is not similar to אש, for one is not חייב for אש, unless the person makes the fire by himself -

כדכתיב¹¹ המבעיר את הבערה¹² בלא סיוע הרוח ואחר כך הולכת על ידי רוח מצויה -

As it is written, 'the one who ignites the blaze'; meaning that he initially ignited the fire without the assistance of the wind, and afterwards the fire travels through a commonplace wind -

אבל הכא אין עושה לבדו כל עיקר אלא על ידי הרוח¹³ -

⁸ The בריתא there stated regarding the case of ליבה ולבתה הרוח that if his own fanning the flame is sufficient to cause the damage, he is liable, however if his fanning is insufficient and it caused damage only because of the wind, he is פטור. The גמרא there asked why is this different from זורע ורוח מסייעתו, where he is חייב (for מלאכת שבת), even though the winnowing is accomplished only through the wind. From this question it is apparent that זורה is only חייב by a רוח ליבה, for if one would be חייב by זורה even with a רוח שאינה מצויה, how can the גמרא compare and ask from זורה on זורה, since by זורה the תורה is so strict that he is חייב even by a רוח שא"מ, however by (אש) ליבה, one is never חייב for a רוח שא"מ. This proves that זורה is only by a רוח מצויה. Now since the גמרא ask from זורה on the flax, that means that the case of the flax is also by a רוח מצויה.

⁹ The חיוב of אש is only by a ר"מ.

¹⁰ See the משנה there סב, where it states, גמל שהיה טעון פשתן ועבר ברשות הרבים ונכנס פשתנו, All the cases are about אש. לתוך החנות ודלקו בנרו של חנוני והדליק את הבירה בעל גמל חייב, הניח חנוני נרו מבחוץ החנוני חייב.

¹¹ . כי תצא אש ומצאה קצים ונאכל גדיש או הקמה או השדה שלם ישלם המבעיר את הבערה (משפטים) כב,ה.

¹² The fire (which he made) is what damages, the wind merely moves the fire to a certain destination.

¹³ The Tosfos distinguishes between damage caused by fire and the damage caused by the chaff. Fire itself can damage; the wind merely extends the area when the fire can damage. This person made a fire, which is a דבר המזיק and it spread therefore he is חייב. However, the chaff is not a דבר המזיק; it can do no harm on its own (see footnote # 1). Without the wind there is no damage, therefore he is פטור, for he did not make a דבר המזיק (like אש) and need not distance either.

However here he is doing nothing by himself, only through the wind -

דאי לאו רוח לא הוה רקתא אזלא כל עיקר ודמי לליבה¹⁴ וליבתו הרוח דפטור -

For if not for the wind, the chaff would not go anywhere at all, so it is similar to the case of where he is פטור -

והיינו¹⁵ דמשני כי פריך בסמוך מאי שנא מגץ¹⁶ דהוה סלקא דעתך דדמי ממש לגץ¹⁷ -

And this is also what the גמרא answers when the גמרא asks shortly, 'why is the case of the chaff different from the case of a spark'; the גמרא asked this because it assumed that the case of chaff is exactly similar to the case of the spark -

ומשני התם ניחא ליה דליזל¹⁸ ומתכוין להכות בכח עד שיצא הגץ ומתרחק¹⁹ בלא שום זיקא -

And the גמרא answered, 'there by the גץ he is pleased that the spark should go forth' and so he bangs strongly so that the גץ should leave and distance itself, all this is accomplished without a wind

וחייב משום אש על מה שגומר והולך על ידי רוח מצויה -

So therefore, he is liable because of אש, for the damage which is completed and travels through a ר"מ -

אבל הכא לא ניחא ליה דתיזל כלומר ואינו מכה בכח ואי לאו רוח²⁰ אין הרקתא הולכת כלל²¹ -

However here by the chaff, he is not interested at all that the chaff should travel, meaning that he is not banging it hard so it should go away, and if not for the ר"מ²² the chaff will not travel at all.

¹⁴ See footnote # 8. By ליבה וליבתו הרוח if his fanning the coals is insufficient to start a fire without the wind, he is פטור since he did not create a מזיק by himself, only together with the wind. The same applies here by the chaff that he did not create a מזיק; it became a מזיק only because of the wind.

¹⁵ מ"ש מאש אש מ"ש מגץ גמרא later asks how come the גמרא explains how come the גמרא later asks מ"ש מאש אש מ"ש מגץ גמרא but it does not ask מ"ש מאש אש. The answer is that the גמרא understood that chaff is different from אש, as 'תוס' just explained. The question is מ"ש מגץ.

¹⁶ See (text by) footnote # 9.

¹⁷ perhaps means to say that just as chaff is not a מזיק (see footnote # 1 & 13), similarly the גץ (itself) is also not a מזיק. Therefore, the גמרא asks why is he חייב by גץ, and פטור by the chaff.

¹⁸ This may mean that he wants the spark to leave his smithy.

¹⁹ The הגהות הב"ה amens this to read ויתרחק (instead of מתרחק). This may also mean that for his work as a smith he needs to bang hard so that sparks will fly So he intends to make sparks.

²⁰ The הגהות הב"ה amens this to read הרוח (instead of רוח).

²¹ distinguishes between גץ and chaff; by גץ he is hitting it hard for he wants it to go away (or he needs to hit it hard), so that his intent is that the גץ should fly away; that is creating a מזיק and the wind merely extends its distance; however by chaff he has no intent that it should go away, he does not mind if it remained here, therefore he is not creating a מזיק.

²² however did not offer a distinction between chaff (where he is פטור) and אבנו סכיני ומשאו which damaged דלא דמי לאבנו סכיני וכו' כיון דבכוונה נשלן ממקום אחר והניחן בראש הגה"ל (where he is חייב). See מהרש"א who writes, (חייב) ברו"מ נעשה האש ע"י האדם לבדו ואח"כ הולכת ע"י ר"מ, אבל הכא אין כוונתו על הרקתא להניחו שם דכל דעתו אינו אלא לנפץ הכתנא ממנו ואין The מהרש"א seems to be saying that by אס"מ he is placing something with intent where it can damage. However, by chaff he is merely preparing the flax; he has no intent at all regarding the chaff. Alternately, damage on account of their weight or sharpness, however chaff can only damage because of the wind. See נחלת משה.

asks: תוספות

ואם תאמר מכל מקום יהא חייב להרחיק מידי דהוה אגורן דמתניתין²³ דחייב להרחיק -
And if you will say; nonetheless (even if he is not liable for the damages), he should be required to distance himself, for it is similar to the גורן in our משנה where he is obligated to distance himself -

אף על גב דזיקא ממטי ליה -

Even though that in our משנה also it is the wind which carries the chaff?!

answers: תוספות

ויש לומר דמתניתין כרבנן²⁴ והכא איירי אליבא דרבי יוסי דלא מחייב אלא בגירי דיליה -
And one can say that our משנה of גורן is according to the רבנן and here (by the chaff) we are discussing the ruling according to ר"י, who only holds one liable by גירי דיליה, and here it is not גירי דיליה (since he made no מזיק) -

anticipates a difficulty: תוספות

והא דפריך מגץ ולא מצי לאוקמי ההיא דגץ כרבנן²⁵ -

And this which the גמרא challenged from רבינא גז' גז' היוצא וכו' so why did not the ר' יוסי who argue with רבנן according to the משנה of גז' establish that גמרא -

responds: תוספות

משום דלא פליגי רבי יוסי ורבנן לענין חיוב תשלומין אלא לענין הרחקה²⁶ -

Because ר"י and the רבנן do not argue regarding the obligation to pay, rather the argue only regarding distancing.

asks: תוספות

ואם תאמר מאי שנא מנמייה²⁷ דאפילו לר' יוסי מרחיקין -

And if you will say; why is the case of the chaff different from a נמייה, where even according to ר"י we require distancing -

אף על גב דהיא גופה ממטיא נפשה כמר²⁸ בר רב אשי -

²³ The משנה on כו,ב requires distancing a threshing floor (גורן) fifty אמות (in order not to damage his neighbors).

²⁴ See the משנה and the גמרא on כו,ב. See 'Thinking it over' # 1.

²⁵ The same answer which תוספות gave to reconcile the משנה of אילן with the ruling of רבינא (by chaff), the גמרא could have given concerning the difficulty from the משנה of גז'.

²⁶ The answer that the משנה of גז' is according to the חכמים is not satisfactory, for the argument between ר"י and רבנן is only regarding הרחקה, but even the רבנן agree with ר"י that there is no חיוב תשלומין; so why is he חייב by גז' and פטור by the chaff. Therefore, we must give the גמרא's answer.

²⁷ The משנה on כו,ב states, we must distance the ladder from the dovecote four אמות in order that the נמייה should not jump (from the ladder to the dovecote). נמייה is a weasel type animal (mongoose?).

²⁸ The נפשה ומיהו deletes the words בר רב אשי (and it reads ומיהו).

Even though that it is the נמייה who brings herself to the dovecote (like מר בר רב אשי who ruled in opposition to רבינא –

responds:

ומיהו התם משום דזימנין דבהדי דנח²⁹ כולי כדקאמר לעיל³⁰ -

However there he must distance, for it is considered גירי דיליה because occasionally as he puts down the ladder, etc. the נמייה will jump from the ladder to the שובך. as the רבינא stated, however here it is not גירי דיליה explained previously,

asks:

אבל קשה מעורבין לעיל³¹ (דף כג, א) דאמר רב יוסף אפיקו לי קורקור מהכא -

However, there is a difficulty from the previous case of ravens, where ר"י demanded remove the crowing ravens from here –

answers:

ויש לומר דגמרא לא סבר לה כרבינא דרבינו תם פוסק כמר בר רב אשי וכאמימר³² -

And one can say that the גמרא does not agree with רבינא, for the ר"ת ruled like זורה ורוח and אמימר, who maintain that the case of the flax is similar to (either) מר בר רב אשי (or to היוצא) that in the case of the flax he has to distance himself (and he may be liable).

offers an alternate answer (that we can agree with רבינא):

ועוד אומר רבינו יצחק דבעלי חיים שאני דחמירי טפי מרוח -

And additionally says the ר"י that we can reconcile the view of רבינא (who is more lenient by the flax) with the cases of נמייה and עורבין (where we are stricter), for animals are different, since we are stricter regarding animals (who assist in causing damage) more than regarding a wind (which assists in causing damage) -

דכח אחר מעורב בהן³³ כדאמרינן³⁴ בבבא קמא (דף ו, א):

²⁹ The הגהות הב"ה amens this to read דמנח (instead of דנח).

³⁰ See the מקובצת that this means that when he is placing the ladder the נמייה is already on the ladder, therefore it is as if he is bringing the נמייה closer to the שובך.

³¹ See there (also) תוד"ה אתו TIE footnote # 1.

³² According to this answer of תוספות (that we do not rule like רבינא), we do not need the explanations differentiating between the case of רבינא (flax) and the other cases (of אש, אבנו סכיננו, גץ), except according to רבינא. See 'Thinking it over' # 2.

³³ The אדם המזיק did not make the wind come; it is a כח אחר, however by the נמייה and the עורבין the אדם המזיק allowed the נמייה to come on his ladder and the עורבין came because of the bloodletting, therefore it is גירי דיליה.

³⁴ The גמרא there states that if the תורה would not have written the חיוב for אש המזיק, we could not derive it from the כח אחר, for by בור there is no כח אחר מעורב בו, therefore one is חייב, however by אש, since there is a כח אחר מעורב בו, we would assume that he is פטור. We see from there that כח אחר מעורב בו is a reason to be lenient.

Since regarding damage caused by wind (like the flax, winnowing and גץ) **there is another force mixed in with them, as the גמרא states in ב"ק**.

Summary

תוספות distinguishes between the case of רבינא and the cases of אש and גץ. We either do not rule like רבינא or we can differentiate between wind and animals.

Thinking it over

1. תוספות writes that the משנה regarding גורן follows the view of the רבנן, but not that of ר' יוסי.³⁵ Previously however תוספות stated³⁶ that all the משניות (except for אילן) are according to ר"י (for they are דיליה). How can we reconcile these two תוספות?³⁷

2. תוספות answers that there is no question from עורבין since the ר"ת rules like מר בר and מרימר.³⁸ How does that resolve the issue, can we compare the case of גץ to the case of זורה or עורבין?³⁹

³⁵ See footnote # 24.

³⁶ (TIE [by] footnote # 4). כב,ב ד"ה לימא.

³⁷ See מהרש"א.

³⁸ See footnote # 32.

³⁹ See נחלת משה.