

**And is there no more?!**

**ותו ליכא –**

## OVERVIEW

The **ברייתא** gives an example of **הכשרתי במקצת נזקו וכו'** in a case where two people dug a **בור** and the last one completed it to depth of ten **טפחים**. The **גמרא** then presented some difficulty with this example and resolved it.<sup>1</sup> Then **רבי זירא** (and others) asked, are there no other examples of **הכשרתי במקצת נזקו**. Our **תוספות** will discuss the reason **ר' זירא** requires other examples.

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**תוספות** asks:

**ואם תאמר נהי נמי דאיכא טובא אטו כי רוכלא ליחשיב וליזיל<sup>2</sup> -**

**And if you will say; granted even that there are many more examples of הכשרתי** **is then** the **תנא** obligated **to continue and count** them all, **as a peddler** is wont to do? One example of **הכשרתי במקצת נזקו** (by **בור ט' וי'**) is sufficient. Why is **ר' זירא** mentioning that there may be additional cases?!

**תוספות** answers:

**ויש לומר משום דדחיק לאוקמי מתניתין דלא כרבי<sup>3</sup> או כרב פפא ולמיתה<sup>4</sup> -**

**And one can say;** the reason we wish to mention additional cases is **because** it is **an awkward** interpretation **to establish our משנה not according to רבי** or to assume that we are discussing **מיתה** **as רב פפא** maintains. Either of these two options is not easily acceptable, when -

**והיה יכול להעמיד בניזקין -**

**It was possible to establish** the rule of **הכשרתי במקצת נזקו** by cases of **damages** (and [even] according to **רבי** [and **לכו"ע**]) as the **גמרא** attempts to point out.

**תוספות** asks an additional question:

**ואם תאמר ולוקמא<sup>5</sup> כגון שלא היה בו הבל למיתה ולא הבל לניזקין -**

**And if you will say; let us establish** the rule of **הכשרתי במקצת נזקו וכו'** in a situation

<sup>1</sup> If an animal was damaged in the pit then according to the **רבנן** only the last one is **חייב** (according to **רבי** both are **חייב**). If the animal was killed then everyone agrees that only the last one is **חייב**.

<sup>2</sup> A peddler mentions all the wares he has to sell (and keeps repeating them).

<sup>3</sup> **רבי** maintains that both diggers are **חייב** by **בור**. We do not apply the rule of **הכשרתי במקצת נזקו** by **ניזקין** of **בור**. It is difficult to accept that **רבי** who was **מסדר** the **משנה** should argue on the **משנה**. Alternately The **גמרא** would prefer that this rule of **הכשרתי במקצת נזקו** should be **דכו"ע** **אליבא דכו"ע**.

<sup>4</sup> The expression **הכשרתי במקצת נזקו וכו'** **הכשר** **כל נזקו** does not lend itself easily to **מיתה** but rather to **ניזקין** (as the **גמרא** states later [on the **ע"ב**] that **לא קמיירי**).

<sup>5</sup> **תוספות** asks this question, because the **גמרא's** attempt to establish other cases of **הכשרתי במקצת נזקו** (by **ניזקין** and according to everyone) failed..

where, for instance, the pit **did not have** sufficient foul **air** that is capable of **killing, and** it did not have sufficient foul **air to cause damage**. The בור in its present situation could do no harm. This is the case where -

שהיה רוחבו יתר על עומקו<sup>6</sup> ובא אחר וסייד וכייד דמודה רבי דהאחרון חייב -

**The width (of the pit) was greater than its depth; and another person came and plastered and painted** the pit, thereby reducing its width (making it less than its depth) and making it harmful; in which case **רבי admits that the last person who was סייד וכייד, is liable -**

**בין למיתה בין לניזקין כדאמר רב פפא בפרק הפרה (לקמן דף נא, א) -**

**Whether** the pit caused **death** or **whether** it caused **damage** as **רב פפא** states in **פרק הפרה**. We can have a case by בור which is discussing נזיקין and not (necessarily) מיתה and it is in agreement with רבי.

answers: תוספות

**ויש לומר דאין זה מקצת נזקו דאחרון עבד הכל:**

**And one can say; that this is not** a case of **מקצת נזקו** **for the last one did everything**. Before the last one was סייד וכייד there was no בור המזיק since it was רחבו יותר על עמקו. It became a בור המזיק only through the סייד וכייד of the אחרון; therefore the אחרון did the entire damage.

## SUMMARY

The גמרא is not satisfied with the example of 'והשלימו לי' ובא אחר והשלימו לי' for either it is not according to רבי or it is discussing מיתה and not נזיקין.

## THINKING IT OVER

1. Is the question 'ותו ליכא' (only) on the ברייתא (that the ברייתא should have given other examples) or is the question concerning our משנה (as well); is the משנה only referring to this case of 'ט' וי', or are there other cases as well?

2. תוספות explained that the question of 'ותו ליכא' means that we would rather have an example which is discussing נזיקין (instead of מיתה) and follow the view of רבי (or ר"א). Seemingly the case of 'בנ"א וכו' (אליבא דכ"ע) which the גמרא suggests as an example for **מקצת נזקו** is concerning מיתה (not נזיקין) and it is not אליבא דרבי.

<sup>6</sup> This is following the view of רב who maintains that the בור is for the foul air – להבלו (only). In a case where the width is greater than the depth there is no הבל; and the בעל הבור is פטור even for נזיקין.

<sup>7</sup>!דכו"ע

3. How can we explain that in the קשיא the assumption of תוספות was that סייד וכייד is considered נזקן במקצת, however according to the תירוצ' it is considered כל נזקן?!<sup>8</sup>

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<sup>7</sup> See מהרש"א.

<sup>8</sup> See סוכ"ד אות יט.