

## לא נצרכא אלא לפחת נבילה –

### It was not necessary; except for the devaluation of the carcass

#### OVERVIEW

בעלים מטפלים which teaches us that asserted that the פסוק לו רב כהנא is necessary only for the case of נבילה. <sup>1</sup> The ניזק is responsible for any deterioration of the value of the נבילה from the moment of death until העמדה בדין. The ניזק pays him based on the value of the נבילה at the time of death, not at the time of העמדה בדין. <sup>2</sup> Our תוספות will resolve an apparent contradiction to our ruling here.

anticipate a difficulty: תוספות

אף על גב דבפרק המניח (לקמן לד, א) אמרינן כיחשה כשעת העמדה בדין -

**Even though that in פרק המניח** the rules that if the animal became weaker after the goring, we view the value of the gored animal as it is **at the time when the case is adjudicated**. The ניזק must pay the difference between the value of the animal immediately preceding the goring and its value now בדין. <sup>3</sup> בשעת העמדה בדין. The reason for this explains רב אשי is -

משום דקרנא דתורא קבירא ביה -

**because the horn of the goring ox is imbedded in** the gored ox. <sup>4</sup> It is evident from that גמרא that the decreased value of the ox after the goring is the loss of the ניזק. Our גמרא states that the פחת נבילה is the loss of the ניזק.

responds and explains the difference between the two cases: תוספות

התם משום דלא מתה ויש לו להמתין עד שתתרפא אבל הכא מיד היה לו למוכרה:

**There** in פרק המניח, the ניזק does not suffer the פחת **since** the animal **did not die**, **and therefore it is proper for** the ניזק **to wait** (and not sell the animal immediately) **until** it can be determined whether **she will heal**. <sup>5</sup> **However here** where the animal died (we are discussing נבילה), the ניזק **should have sold** the animal **immediately** (for ordinarily the value of the carcass will continue to decrease with time).

<sup>1</sup> The rule of בעלים מטפלים בנבילה could be derived from אפילו סובין ישיב לרבות.

<sup>2</sup> If the live animal was worth \$100 immediately before the goring, and the carcass was worth \$40 immediately after the goring, and it was worth \$30 at the העמדה בדין (it lost \$10 in value), the ניזק pays him \$60 (100- 40); not \$70 (100-30).

<sup>3</sup> The ניזק must suffer the loss of the decreased value of the gored ox from the time it was gored until העמדה בדין.

<sup>4</sup> It is the initial goring by the ox that is causing the ניזק to deteriorate (it is as if he is constantly goring).

<sup>5</sup> The ניזק was within his rights not to sell the animal. The decrease in its value is due to the קרנא דתורא of the ניזק which was קבירא ביה. See 'Thinking it over' # 1.

Therefore the פחת נבילה suffers the גזק.

### **SUMMARY**

By גזק the פחת הגזק is the liability of the מזיק; by פחת נבילה it is the liability of the גזק.

### **THINKING IT OVER**

1. If we assume that קרנא דתורא קבירא ביה<sup>6</sup> obligates the מזיק for the פחת of the גזק, then it should obligate him for the פחת נבילה as well, even though the גזק was also negligent.<sup>7</sup>

2. If the גזק was not immediately aware that his ox was killed; who is responsible for the פחת נבילה from the time it was killed till the time that the גזק became aware of the death of his ox?<sup>8</sup>

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<sup>6</sup> See footnote # 5.

<sup>7</sup> See חי' ר"נ אות שצח.

<sup>8</sup> See רא"ש אות יא.