

If so; why four, there are only three

אי הכי ארבעה שלשה הוה –

OVERVIEW

There is a dispute how to interpret the phrase **לא לזה ולא לזה** in the **ברייטא** (where the ruling is **ניזק** is **קרן ח"נ** and **חייב על שו"ר**). According to **שמואל** it means that only the **ר"ט** [not **ר"ט**]. However **רבינא** maintains that the **סיפא** (follows the view of **ר"ט** and) is discussing a case where it was **פירות דחד** and **לא לזה ולא לזה** לשוורים.¹ The **גמרא** asks that according to **רבינא** there are only three cases in the **ברייטא**; not four. **תוספות** will explain why this question is only on **רבינא** and not on **שמואל**.²

בשלמא לשמואל דמוקי רישא רבי טרפון וסיפא רבנן -

It is fitting according to **שמואל**, who establishes the **רישא** of the **ברייטא** according to **ר"ט** and the **סיפא** according to the **רבנן**; it is therefore fitting to mention in the **ברייטא** all four cases, for -

אצטריך סיפא לאשמועינן לאפוקי מדברי טרפון -

The **סיפא** (of **לא לזה ולא לזה**)³ is necessary to teach us an alternate view; to exclude from the view of **ר"ט**;⁴ that is why there is no difficulty according to **שמואל**.

אלא לרבינא לא צריכא כלל -

However according to **רבינא** who maintains that the entire **ברייטא** follows the opinion of **ר"ט**, the fourth case was not at all necessary -

דלגבי שן הוי חצר הניזק שמעינן מכל שהוא רשות לניזק -

For concerning **שן** (where only the **ניזק** has **רשות לפירות**) that it is a **חצר הניזק** (and the **מזיק** pays a **נ"ש**) we know that from the first case in the **ברייטא** where it states that **כל שהוא רשות לניזק** and **לא למזיק** he is **חייב בכל** -⁵

וקרן ברשות הרבים⁶ שמעינן מחצר השותפין והבקעה:

And concerning **קרן** (where both **שוורים** have no permission to be in the **חצר**),⁷ that

¹ See previous **תוספות ד"ה לא**.

² Seemingly the **ברייטא** is even more difficult according to **שמואל**; for in **שמואל's** interpretation, the last case (**לא לזה ולא**) is the exact duplicate of the first case (**כל שהוא רשות לניזק ולא למזיק**). However, according to **רבינא**, the last case is different from the previous three cases (for neither have **רשות לשוורים** and only the **ניזק** has **רשות לפירות**).

³ According to **שמואל** this is referring where only the **ניזק** had permission to be there, and not the **מזיק**.

⁴ The **ברייטא** is stating that there are four rules; (the middle) two according to everyone the first according to **ר"ט** and the last according to the **רבנן**. Rule # 1 and # 4 are discussing the same case; # 1 is according to **ר"ט** and # 4 according to the **רבנן**.

⁵ The fact that the **ניזק** has no **רשות לשוורים** in the **חצר** does not diminish its status as a **חצר**.

⁶ See previous **תוספות ד"ה לא** footnote # 2.

⁷ See 'Thinking it over'.

it is considered as if he damaged him **in the רה"ר** (and pays only a ח"נ), this **we know from** the third case of **חצר השותפין והבקעה** where it states that a ח"נ pays a ח"נ. Therefore the גמרא asks that there are only three cases, not four.

SUMMARY

It is necessary to cite the fourth case according to שמואל to reject the opinion of ר"ט; however (according to רבינא) the rules of the fourth case can be derived from the previous cases.

THINKING IT OVER

Tosfos claims that we can derive the fourth case (according to רבינא) concerning חצר from the (third) case of השותפין.⁸ Seemingly they are not the same.⁹ Tosfos taught us that the case of רבינא is in a situation where לא לזה ולא לזה לשוורים; how is that similar to a חצר השותפין והבקעה, where both have רשות?! Perhaps only חצר is considered רה"ר because they both have רשות, however by לא לזה ולא לזה where neither have רשות it is not considered רה"ר!¹⁰

⁸ See footnote # 7.

⁹ According to our גירסא (the גירסא of רש"י) that we are discussing לזה ולזה לשוורים, the question is readily understood; however it is difficult according to גירסת תוספות.

¹⁰ See מהרש"א בתוס' ד"ה מי, חידושי ר"נ אות תקיא, נח"מ, סוכ"ד, כו'.