

כולה רבי טרפון היא – רבי טרפון It is entirely according to

Overview

The **גמרא** previously¹ cited a מחלוקת between ר' אלעזר and ר' חסדא whether there is a חיוב שן בחצר השותפין (ר"ח), or not (ר"א).

חייב בחצר השותפין שן is previously² cited a ברייתא which states that ר' יוסף established this ברייתא in a case where both partners had רשות and neither had רשות לשוורים.

ר' זירא asked (on this אוקימתא) how can there be a חיוב of שן; since both partners have רשות לפירות, it is not אחר. To which אב"י replied that since there is no רשות לשוורים it is considered a אחר (to the השור בעל).

The **גמרא** there discusses the options whether we can reconcile the differences between ר"ח and ר"א (that they do not disagree, but rather are discussing two different cases),³ or that they argue in the same case as the ברייתא where ר"א follows the view of (the קשיא of) ר"ז [it is not a אחר and therefore שן is פטור], and ר' חסדא follows (the פירוקא of) אב"י [that since there is no רשות לשוורים it is a אחר]. There is no conclusion there in the **גמרא**.

ר"ט in our **גמרא** maintains that the entire משנה is according to ר"ט and we are discussing a specific case (where it is מיוחד לאחד לפירות וכו'). תוספות will argue that according to the understanding of the case of ר"ט we will be able to resolve whether ר"ח and ר"א are arguing or not.

הכא נמי גרסינן במיוחדת לאחד מהן לפירות ולא לזה ולזה לשוורים –

Here too⁴ our text reads; it is specified for (the use of) one of them for produce but for (the use of) neither of them concerning oxen. One of the partners has permission to place his produce there. Neither of them has רשות for their oxen to be there. Therefore if one of the oxen ate the פירות of the partner who had permission to keep his פירות in the חצר, it is ברשות הניזק and he is חייב. Similarly if either ox gored the other in the חצר it is as if it was gored ברה"ר (since neither has רשות to be there) and is חייב ח"נ.⁵

Tosfos has a difficulty:

תימה דמשמע הא לשניהם לפירות פטור⁶ –

¹ יג, ב.

² יד, א.

³ ר"ח is discussing where it is מיוחדת לשוורים ואינה מיוחדת לשוורים (חייב שן is) and ר"א is discussing where it is מיוחדת אף לשוורים (שן is פטור since it is not אחר). See אמוראי ד"ה אגריסא.

⁴ See גירסא ד"ה לא where תוספות גורס that he is here (different than our גירסא).

⁵ However if the case would be like our גירסא that לשוורים, לזה ולזה, then why is there a חיוב on the פירות since it is not חצר הניזק, for the חצר has רשות that his ox should be there. See תוספות there.

⁶ If the rule would be that (even) by שניהם לפירות the חצר would be חייב, then the **גמרא** should have established the משנה in a case where לשוורים ולא לזה ולזה (for it is a greater חידוש).

It is astounding! For it seems from our גמרא that if both had permission to place their produce in the חצר, the פטור would be -

ואם כן תיפשוט מהכא דפליגי בקושיא דרבי זירא ובפירוקא דאבבי –

And if this is so (that ר"א maintains שן is פטור by a חצר which is מיוחדת רב חסדא and not לשוורים), then we can resolve from here that אבבי⁷ -

ולעיל (דף יד,א) הש"ס מסופק –

And previously the גמרא was doubtful whether there is a מחלוקת between ר"ח (קושיא דר"ז ופירוקא דאבבי based on the ור"א), or not.⁸ There should be no doubt; for there definitely is a מחלוקת.

continues with this difficulty according to the other גירסא as well:

ולהספרים דגרסי לזה ולזה לשוורים קשיא איפכא –

And according to those text that read ‘both of them have permission for their oxen’ to be in the חצר, the difficulty is in the opposite manner -

דתיפשוט דלא פליגי במיוחדת לשניהם לפירות -

That we can resolve from here that ר"ח ור"א do not disagree where it is - חייב שן and they both maintain that מיוחדת לשניהם לפירות

דחשיב ליה חצר הניזק אף על פי שיש רשות למזיק להניח שם שורו –

For if ר"א considers it a חצר הניזק even when the מזיק has permission to leave his ox there⁹ (which is the case of ר"ט [as long as only one has רשות לפירות]), then -

כל שכן היכא דאין מיוחדת לשוורים כלל חשיב חצר הניזק –

Where it is not set aside for oxen at all, it is certainly considered a חצר הניזק -

ואף על פי שמיוחדת לשניהם לפירות:

even though they both have permission for פירות.¹⁰ Again the question is, there should be no ספק; for ר"ח ור"א do not argue (according to this גירסא). Tosfos does not answer these questions.¹¹

Summary

⁷ See [Overview, and] the סוגיא previously on ויד,א.

⁸ See footnote # 3. The question there was whether ר"א says his דין (that שן is השותפין) only in a case where it is מיוחדת לפירות ולא לשוורים (and if it is only לשוורים he agrees with ר"ח שן) or does he maintain (כקושיא דר"ז) that even if it is לשוורים nevertheless שן is מיוחדת לפירות ולא לשוורים (as חייב שן). Here however the same ר"א maintains that if it is לשוורים there is no שן (as מיוחדת לפירות ולא לשוורים). It is therefore evident that ר"ח argues with ר"א in a case of לשוורים (as חייב שן just proved). We are now following the opinion of גירסא of לשוורים; לזה ולזה לשוורים they both have permission for their oxen to be there.

⁹ We are now following the opinion of גירסא of לשוורים; לזה ולזה לשוורים they both have permission for their oxen to be there.

¹⁰ דבר is of the opinion that the status of being considered a חצר הניזק depends more on whether the חצר has no רשות to be there, than whether the מזיק has permission to place his פירות there. Therefore if when the מזיק has רשות for his שור to be there, and nevertheless it is considered חצר הניזק, then certainly if the שור had no permission to be there, that it is considered חצר הניזק even though the מזיק can keep his פירות there. See מהרש"א. See ‘Thinking it over’.

¹¹ See רב who answers that (perhaps) ר"א said this (only) in the name of ר"פ.

It would seem that according to the גמרא here we should be able to resolve the doubt mentioned previously whether ר"ח ור"א disagree concerning חצר דבר המזיק. The criterion of חצר הניזק depends primarily whether the דבר המזיק had permission to be there (but not whether the מזיק has permission to utilize it).

Thinking it over

¹² maintains that a חצר which is לשניהם לפירות and not לשוורים is considered more a חצר הניזק than a חצר לשוורים ולשניהם לפירות. Seemingly we can argue the opposite; that a חצר המיוחד לחד לפירות is the exclusive domain of the ניזק (בעל הפירות) for the דבר הניזק. However by it is not חצר הניזק exclusively (for the פירות which were damaged). What is the underlying logic of תוספות view?¹³

¹² See footnote # 10.

¹³ ח"י ר"נ אות תקנח בד"ה והנראה