

כי תניא מתניתא בארי תרבות ואליבא דרבי אלעזר – This ברייתא was taught in a case of a domesticated lion and according to ר"א

OVERVIEW

רבינא claimed (according to the גמרא of the מסקנא) that the ברייתא, which states that a חיה pays a נ"ש, is discussing a domesticated lion¹ according to ר"א. Our תוספות will offer two differing viewpoints whether this means that the ברייתא can also follow the view of ר"א (and certainly that of the רבנן), or it means that the ברייתא follows the view of ר"א exclusively.

- רבינא explains that תוספות

לא נקט רבי אלעזר לאפוקי רבנן אלא לרבותא נקטיה -

Did not mention (that the ברייתא is according to) ר"א, in order to **exclude the רבנן** (that the ברייתא cannot agree with the רבנן), **but rather ר"א is mentioned for the novelty** (that we may have thought that the ברייתא is not according to ר"א) -

והכי קאמר דלא תימא משום דאורחיה לטרוף משלמת נזק שלם² -

And this is what רבינא meant to say; that you should not assume that the חיה **pays a נ"ש because it is usual** for the animal to be טורף; it is not so -

דאפילו בארי תרבות אליבא דרבי אלעזר דודאי לאו אורחיה הוא³ איכא לאוקמי -

For the ברייתא can be discussing even a domesticated lion according to ר"א, where it is certainly not its manner to be טורף, and nevertheless he will be חייב a נ"ש as the ברייתא states. The reason is -

דהיינו בדאייעד כדמפרש ואזיל -

As the גמרא continues to explain because it is in a case **where he was warned** and he became a מועד, and a מועד pays a נ"ש -

ומאותו הטעם שיתחייב לרבי אלעזר יתחייב לרבנן⁴ -

And for the very same reason that he is obligated to pay a נ"ש according to ר"א, **he will be obligated** to pay a נ"ש according to the רבנן.

¹ It is assumable that we are discussing domesticated animals; for otherwise presumably there is no owner to be held liable.

² The ברייתא would then follow the ruling of the רבנן to the exclusion of ר"א (who will require only a ח"נ since it is not אורחיה for בני תרבות to damage) and also (perhaps) reject the view of שמואל that it is משונה for an ארי to be טורף. This is what רבינא is negating.

³ תוספות may be emphasizing that it is unusual for an ארי תרבות to be טורף according to ר"א (for בני תרבות do not damage) and especially so if we agree with שמואל that any ארי is not טורף.

⁴ It can also follow the view of שמואל; since it became a מועד, the lion's owner must pay a נ"ש even for טרף. It would seem however that (according to this interpretation) the ברייתא is limited to a case of ארי (for by a זאב there would be no need to be אייעד according to the רבנן).

Tosfos offers a differing interpretation:

ועוד יש לומר דדוקא מוקי לה כרבי אלעזר -

And furthermore one can say that ר"א establishes the ברייתא according to ר"א exclusively -

משום דחיה סתם קתני בין בארי בין בזאב -

Because the ברייתא states an unspecified חיה including both a lion and a wolf -

ולרבי אלעזר כיון דהווינו בני תרבות לאו אורחיהו לטרוף ומיירי תרוייהו בדאייעד⁵ -

And therefore the ברייתא is understood (only) according to ר"א; since the lion and the wolf are both domesticated, it is not their manner to be טורף, and we are discussing a case where both the lion and the wolf were warned and became מועדים⁶.

Therefore they pay a נ"ש -

אבל לרבנן דלאו בני תרבות נינהו ואורחיה דזאב לטרוף -

However according to the רבנן who maintain that wild animals cannot be domesticated and it is the custom of a wolf to be טורף, then -

כי לא אייעד נמי משלם נזק שלם -

Even if he was not forewarned he also has to pay a נ"ש. The difficulty of establishing the ברייתא according to the רבנן will be either why the lion should pay a נ"ש for טריפה (if it is not a מועד), since it is not אורחיה, or (if the lion is a מועד) why is it necessary for the זאב to be a מועד (since it is אורחיה לטרוף).

Tosfos rejects a possible explanation:

וזהו דוחק להעמיד הברייתא לצדדים זאב בלא אייעד וארי באייעד -

And it is unwieldly to establish the ברייתא in different situations; the wolf pays a נ"ש without a warning (for it is אורחיה) and the lion pays a נ"ש only when he was forewarned and became a מועד (since it is אורחיה לטרוף). The difficulty inherent in this suggestion is self evident.

Tosfos asks a different question:

ואם תאמר ולמאי דסלקא דעתין השתא דהוי תולדה דקרן -

And if you will say; according to the current view that this טריפה is a תולדה of קרן (and he is חייב a נ"ש since it was דאייעד), then -

אמאי נקט בברייתא שנכנסו בחצר הניזק -

Why does the ברייתא mention that the animals entered into the חצר הניזק? If they are תולדה דקרן they are always חייב (א נ"ש if דאייעד) wherever they are! Only שן has a requirement that it take place in the חצר הניזק.

⁵ See 'Thinking it over' # 1.

⁶ According to this interpretation the term חיה is all inclusive; however the ברייתא follows only the view of ר"א.

answers: תוספות

ויש לומר משום זאב נקט דכיון דאייעד חוזר לקדמותו⁷ והוי שן דפטור ברשות הרבים:
And one can say; the mentions **on account of the** (domesticated) **wolf. For since he became a** לטרוף **מועד** (after he was domesticated and lost his status as a לטרוף), the זאב then **reverts to his original** status (before he was domesticated) when it was לטרוף, so if he is טורף now (after דאייעד) it will be considered שן **which is** **פטור ברה"ר**. Therefore the ברייתא has to state בחצר הניזק where שן is ⁸.חייב.

SUMMARY

The ברייתא may follow the view of ר"א ורבנן (and we are discussing only a lion) and he is חייב a נ"ש since אייעד; or the ברייתא follows only the view of ר"א (and we are discussing all animals); however according to the רבנן there is no need for אייעד. A domesticated זאב who was לטרוף אייעד reverts to his original status, and if he was טורף it is considered שן (and not a דאייעד קרן).

THINKING IT OVER

1. Why is it necessary to establish the ברייתא in a case where it was אייעד (and have the difficulty why only בחצר הניזק⁹, when רבינא could have said that it was not אייעד and the ברייתא follows the view of ר"ט that קרן¹⁰ pays a בחצר הניזק?!¹¹

2. תוספות explains that the ברייתא mentions חצר הניזק on account of זאב who reverts back to שן.¹² If this is so, why does the גמרא ask that the ברייתא should not be explaining תולדה דשן (but rather דקרן תולדה)? It is explaining תולדה דשן by a זאב!¹³

⁷ It is evident (from his becoming a מועד) that his (attempted) domestication was in vain.

⁸ See 'Thinking it over' # 2.

⁹ See footnote # 5.

¹⁰ We are now assuming (anyway) that the ברייתא is discussing קרן.

¹¹ See תוספות ד"ה והתניא (בא"ד) on the previous (למהרש"א).

¹² See footnote # 8.

¹³ See מהרש"א.