Do we go according to the beginning, etc. - בתר מעיקרא אזלינן כולי

OVERVIEW

רבא posed a query; what is the rule if an animal trod on a vessel and it did not break immediately, but rolled away and then it broke elsewhere? Do we look at the initial cause of breaking (when the animal stepped on it), so it is רגל and is liable to pay a נזק שלם, or do we look at the final cause that it broke later when it was not in direct contact with the animal, so it is צרורות and is liable for only a ח"נ. Our תוספות explains why we cannot resolve this query from our משנה.

תוספות anticipates a possible difficulty:

ומדתנן דרסה על הכלי ושברתו -

And (we cannot infer) **from** what **we learnt in** our **משנה;** if the animal **trod on a vessel and broke it** (and the shards of this vessel landed on a second vessel and broke it)**,** he is liable to pay a נ"ש for the first vessel (and a ח"נ for the second vessel) –

דמשמע[1] הא נתגלגל למקום אחר ונשבר שם חייב חצי נזק ליכא למידק -

Which indicates that he is only liable for a נ"ש on the first vessel if it broke immediately, **however if rolled elsewhere and broke there, he is liable** for only **a ח"נ;** nonetheless this **is no inference** that בתר תבר מנא אזלינן –

תוספות explains why this inference is inconclusive:

דאדרבה מדמפליג בין ראשון לשני ולא מפליג בראשון גופיה איכא למידק איפכא:

For on the contrary, since the תנא **distinguishes between the first** כלי (where he pays a נ"ש) **and the second** כלי (where he pays a ח"נ), **and does not distinguish in the first כלי itself** (whether it broke immediately [where he is חייב a נ"ש], or where it broke elsewhere [where he is חייב a ח"נ]), **we can infer the opposite,** that only by a כלי שני is he חייב a ח"נ, but by a כלי ראשון he is always חייב a נ"ש (even if it broke elsewhere), since בתר מעיקרא אזלינן.[2]

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[1] The assumed inference (which תוספות rejects) is that if we assume בתר מעיקרא אזלינן and he is required to pay a נ"ש even if the initial כלי broke elsewhere later; why does the משנה state he is liable for the first כלי a נ"ש (only) when it broke immediately, if we maintain בתר מעיקרא he should be חייב a נ"ש on the first כלי even if it broke elsewhere later. The משנה should have written דרסה על הכלי ונתגלגלה ונשברה ונפל על כלי שני וכו' על הראשון משלם נזק שלם ועל השני משלם חצי נזק. The fact that the משנה did not write this 'proves' that by נתגלגל we go בתר תבר מנא and he is liable for a ח"נ only.

[2] The משנה is written in such a manner that we can infer two opposite rulings. From the fact that it initially states that one is חייב a נ"ש for the first כלי (only) if it breaks immediately, indicates that בתר תבר מנא אזלינן; and from the fact that it states that one is a חייב a ח"נ (only) for the second כלי, indicates that בתר מעיקרא אזלינן. Therefore we will say that the משנה did not intend to teach us anything regarding this query of בתר מעיקרא or בתר תבר מנה, but rather the משנה is teaching us what תוספות taught us previously (יז,א ד"ה דרסה) that (even though the animal trod with such

Summary

We cannot infer conclusively from our משנה whether בתר מעיקרא אזלינן or בתר תבר מנא אזלינן.

Thinking it over

According to תוספות,[3] the משנה teaches us that even though it trod with such force that it broke another כלי, nevertheless it is still considered רגל (and not קרן).[4] If we assume בתר תבר מנא אזלינן (and if it breaks elsewhere he is liable for a ח"נ only) it is understood why the משנה did not distinguish in the כלי ראשון גופיה (whether it broke immediately [נ"ש] or it broke later [ח"נ]), for it wanted to teach us the aforementioned חידוש of תוספות (which it could not do in the aforementioned case of כלי ראשון גופיה). However if we maintain בתר מעיקרא אזלינן, why did not the משנה teach us the case (instead) where דרס על הכלי (א') ונתגלגלה ונשבר ונפל על כלי (ב') ונשבר, whereby we would know both חידושים, the חידוש of תוספות that even though it was so strong it is still considered רגל, and we would also resolve the query that בתר מעיקרא אזלינן?![5]

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force, nevertheless) it is not considered כוונתו להזיק (see מהר"ם). See 'Thinking it over'.

[3] יז,א ד"ה דרסה.

[4] See footnote # 2.

[5] See מהר"ם, מוהד"ב למהרש"א and חי' רבי שמואל סי' יז, אות ו.