

וכי תימא ראשון להתזה – And if you will say; the first following the fling

OVERVIEW

The משנה cited our גמרא to prove that it cannot follow the view of סומכוס. Our משנה states that if the animal broke a vessel and the flying shards broke another vessel, he is liable to pay a נ"ש for the first vessel (presumably the one the animal stepped on, for it is רגל) and a ח"נ for the second vessel (which was broken by the flying shards, for it is צרורות); proving that we pay a ח"נ for צרורות in opposition to סומכוס. The גמרא anticipated a response that it may even go according to סומכוס, for the first does not mean the vessel the animal stepped on, but rather the first כלי which was broken by shards from the stepped on כלי (which is צרורות),¹ and the second כלי is the one broken from shards from the previous כלי (which was destroyed by צרורות).² Our תוספות comments on this possible explanation.

anticipates a difficulty:

ואף על גב דלא שייך לפרש הכי ברייתא דלקמן³ דתני עלה⁴ -

And even though it is not possible to explain in this manner, the ברייתא which is cited later, which qualifies our משנה; the ברייתא states –

במה דברים אמורים ברשות הניזק אבל ברשות הרבים על הראשון פטור ועל האחרון חייב -
When is the ruling of the משנה valid (that he pays a נ"ש for the ראשון and a ח"נ for the אחרון), if the incident (of stepping on the כלי) occurred in the domain of the הניזק; however if it occurred in the רה"ר, the rule is that he is exempt from payment for the first כלי, and liable for the last כלי -

ואי⁵ ראשון להתזה -

And if ראשון means the first כלי that was broken after the fling, as the גמרא is suggesting here, the ברייתא will not be understood -

כך יכול להיות ראשון להתזה או ברשות הניזק⁶ או ברשות הרבים⁷ כמו שני להתזה –

¹ According to סומכוס, there is נ"ש payment for (direct) כחור.

² This would be כחור (indirect), which סומכוס may agree that he pays only a ח"נ.

³ Later on this עמוד.

⁴ We must bear in mind that this ברייתא is qualifying the משנה. It is therefore assumed that the terms ראשון and אחרון in the ברייתא correspond to ראשון ואחרון in the משנה.

⁵ If we assume that ראשון means the כלי the animal stepped on (רגל), it is understood that if it was stepped on in the רה"ר one is פטור for the ראשון, and the אחרון (which is צרורות) you are חייב (because we can establish that the shards broke the אחרון in the הניזק [and the ברייתא teaches us that "הזיקה ברה"ר והזיקה ברה"י" (for the צרורות), since the damage took place in the הניזק]). However if ראשון and אחרון are both צרורות (post fling), why is there a difference between them?!

⁶ They (the ראשון and the אחרון) will both be חייב because it is בחצר הניזק.

The רה"ר can be just as easily either in the רשות הניזק or in the ראשון להתזה as the שני להתזה;⁸ they are both צרורות; what applies to one applies to the other. How can the בעל הראשון פטור ועל האחרון חייב the rule is that the התיזה ברה"ר if רייתא differentiate and say that if⁹

תוספות responds:

מכל מקום מתניתין מצי שפיר מיפרשא הכי:

Nonetheless, we can rightfully interpret the משנה in this manner (and disregard the ברייתא).

SUMMARY

We can interpret a משנה (in a הו"א) in a manner which may not be consistent with the s'ברייתא understanding of the משנה.

THINKING IT OVER

1. Must we say that the proposed interpretation of the משנה (ראשון להתזה) argues with the ברייתא, or can we reconcile the proposed interpretation with the ברייתא?¹⁰

2. תוספות (seemingly) asks, why differentiate between ראשון and אחרון when we should differentiate between רשות הניזק and רה"ר.¹¹ However we can possibly argue that it is more likely that the ראשון was in the רה"ר, since that is where the כלי which was stepped on was, and the כלי אחרון was further away in the רה"י. The ברייתא is teaching us a novelty even though the כלי אחרון was destroyed on account of the first כלי; nevertheless he is פטור on the first and חייב on the second. We may not have known this had the ברייתא just distinguished between הזיקה ברה"ר and הזיקה ברה"י!

⁷ They will both be פטור, for it is צרורות ברה"ר.

⁸ The חייב is התייה ברה"ר והזיקה ברה"י (to teach us שני and ראשון), but rather it should distinguish where the הזיקה took place; in the רה"ר it is פטור and ברשות הנזק it is חייב (regardless if it is כלי or אחרון). See 'Thinking it over' # 2.

⁹ It is therefore obvious that in the *ברייטא* we cannot interpret *ראשון להתזה*, and since the *ברייטא* is defining the *משנה*, it would seem that the *משנה* can also not be interpreted to mean *ראשון להתזה*. How does the *גמרא* entertain the thought that *ראשון להתזה* means *ראשון*.

¹⁰ See # 103. אוצר מפרשי התלמוד and מהר"ם (בל"י אות מה).

¹¹ See footnote # 8.