

And when she turns her head around

ובמחזרת –

OVERVIEW

Our משנה taught that if the animal ate מתוך הרחבה (which is a רה"ר) she pays מה מצדי (but not שהזיקה, since it is שן ברה"ר); however if it ate מצדי רחבה, she pays מה שהזיקה. This ruling qualified that it is only if she is מחזרת. There is a dispute between רש"י and תוספות how to explain this ruling.

פירש בקונטרס דדוקא במחזרת אבל אכלה בלא חיזור -

מצדי explained that only when the animal turned her head around to eat - חזרה without מצדי הרחבה, however if she ate הרחבה, ¹ does she pay מה שהזיקה, the הרחבה כגון שצידי הרחבה בולטין ואכלה מאותה בליטה משלמת מה שנהנית ² -

For instance that the sides of the רחבה protrude (into the רחבה) and she ate from that protrusion, she pays (only) for the benefit she derived but not מה שהזיקה.

בפירוש אחר של רש"י ³ פירש דמחזרת חייבת משום קרן ⁴ דמשונה הוא ⁵ -

In an alternate explanation of רש"י, elsewhere, he explained that מחזרת is liable (to pay מה שהזיקה) on account of קרן, since it is unusual for the בהמה to be מחזרת.

פירש"י asks on תוספות:

וקשה לפירושו דלעיל ⁶ אמרין כיון דאורחיה למיכל ליפתא אורחיה נמי לסרוכי ולמיסק -

And there is a difficulty with his interpretation; for previously the גמרא said, 'since it is usual for the goat to eat turnips it is also usual for the goat to scrape and climb up' -

הכא נמי ⁷ אורחיה לחזור ואפילו לעלות בצידי רחבה ⁸ -

Similarly here it is usual for the בהמה to turn her head around and even to ascend to the רחבה, if there is food there; why does רש"י say that it is משונה and is חייב

¹ הרחבה is the central plaza or marketplace of the city. The צדי הרחבה is a designated raised area on the sides of the הרחבה where the vendors display their wares.

² In this case it is שן ברה"ר.

³ See רש"י on the מצדי on ד,ה, משנה יט,ב, where רש"י writes, 'כדין קרן וכו'. Others refer to דקיימא on this עמוד.

⁴ See 'Thinking it over' # 1.

⁵ See however רש"י here וקמה ד"ה, which seems to indicate that the חיוב is on account of ברשות הגזיק.

⁶ כא, (on the top). The case there is where a goat climbed up on a barrel and ate a piece of לפת (which was on the barrel) while breaking the barrel. The owner is liable to pay for the לפת and the barrel.

⁷ We derive from the case of the ליפתא that even though it may not be usual for a goat to climb on a barrel; however if it does so to find food it is אורחיה, similarly even if מחזרת may be unusual, however it cannot be considered משונה if the בהמה was מחזרת in order to eat.

⁸ This is a question on רש"י's understanding of שמואל; if she went up to the צדי הרחבה he is חייב, presumably because it is קרן, since it is משונה (just as by מחזרת according to רב it is קרן). However תוספות maintains that it is not משונה.

קרן? since it is מה שהזיקה

פרש"י has an additional question on תוספות

ועוד דמשלמת מה שהזיקה משמע נזק שלם⁹ -

And additionally the words **משלמת מה שהזיקה** indicates that he pays a **נזק שלם** for eating הרחבה; however according to רש"י (in the משנה) that the חיוב is on account of קרן he will pay only a ח"נ, not a נ"ש.

One final question on פרש"י:

ועוד דמשמע בסמוך דחיובא דמקצה מקום לרשות הרבים¹⁰ כחיוב מחזרת¹¹ -

And furthermore, it seems from the גמרא **shortly**, that the obligation to pay where one **set aside his property for the רה"ר**, is like the obligation to pay for **מחזרת**, and by מקצה מקום there was no שינוי by the בהמה who ate from this place; it would therefore follow that by מחזרת also (which is similar to מקצה מקום) there is no שינוי, and both are considered (ברשות הניזק) שן.

In summation; רש"י maintains that מחזרת לצדי הרחבה pays a ח"נ (by a תם) since it is (considered and is) קרן. Tosfos asks three question; 1) it is not משונה, 2) משלמת מה שהזיקה indicates a נ"ש, (משונה and is) קרן, 3) it seems that מחזרת (like מקצה מקום) is not משונה.

Tosfos offers his explanation:

ונראה לרבינו יצחק דצידי רחבה חשיבי חצר הניזק -

And it is the view of the ר"י that צידי רחבה is considered as a חצר הניזק -

שכל אחד יש לו רשות להניח פירותיו כנגד פתח ביתו בצידי רחבה -

For everyone (the vendors) **has permission to place his פירות opposite the opening of his entryway into the רחבה**, therefore the צדי הרחבה is צדי הרחבה, and if the בהמה ascended to the צדי הרחבה it is considered הניזק and will be חייב according to everyone -

ולרב אפילו¹² במקום שיכול לאכול בחיזור חשיב חצר הניזק וחייבת נזק שלם מטעם שן -

⁹ The משנה begins by telling us that שן is מועדת בחצר הניזק (to pay a שלם); however ברה"ר it pays (only) מה שנהנית. The משנה continues that מחזרת it pays מה שנהנית and מצדי הרחבה (when it is מחזרת according to רב) it pays מה שהזיקה. It would seem that this contrast between מה שנהנית and מה שהזיקה regarding רחבה and צדי רחבה, parallels the initial difference between שן ברה"ר where it pays מה שנהנית and שן ברשות הניזק where it pays נ"ש (but not ח"נ).

¹⁰ The owner moved back (from) his property line adjoining the רה"ר, and left open some of his property for the רה"ר use. He left פירות there and an animal ate them.

¹¹ The גמרא cites an איכא דאמרי that by מחזרת all agree that he is חייב, they argue by מקצה מקום, where רב maintains that he is פטור and שמואל maintains he is חייב even by מקצה מקום; seemingly implying that (while רב does not compare מחזרת to מקצה שמואל, however) מחזרת compares מקצה שמואל.

¹² The word 'even' is to be understood that not only are the places in הרחבה, where the animal cannot reach it (even) with חיזור considered הניזק, but 'even' the places in the צדי הרחבה, where the animal can reach it through חיזור, are also considered הניזק. However those places in the צדי הרחבה, where the animal can reach it even

And according to רב even the place where the animal can eat through חיזור is considered חצר הניזק and is liable for נ"ש on account of שן -

ולשמואל מקום שיכולה לאכול בחזרה חשיב לה¹³ כרשות הרבים:

However according to שמואל any place in the צדי הרחבה where the animal (who is standing the רחבה, which is a רה"ר) can eat from there through חזרה, is considered a רה"ר and not חצר הניזק, therefore it will only pay שנהניית¹⁴.

SUMMARY

According to קרן (in the משנה) חיוב is מחזורת (according to רב) on account of שן. However according to תוספות the צדי הרחבה are treated like חצר הניזק (even if she reaches it through מחזורת [according to רב]) and is חיוב on account of שן.

THINKING IT OVER

1. When תוספות writes that קרן¹⁵ maintains that the חיוב for מחזורת is because of שן, does that apply to שמואל as well that וקמה בצדי רחבה is חיוב on account of שן?¹⁶

2. How do we interpret the word ובמחזורת, which רב states: Does he mean that he is חיוב only by מחזורת, or he is חיוב even by מחזורת?

מה שהזיקה חיוב to pay since it is easily accessible, and there would be no חיוב to pay without חיזור are not considered רשות הניזק, since it is easily accessible, and there would be no חיוב to pay in those places even if she ate it through חיזור.

¹³ Since the food is accessible while the בהמה is in the רה"ר (albeit through חזרה), it cannot be considered that the פירות are רשות הניזק, but rather they are ברה"ר.

¹⁴ In summation; the innermost part of the צדי הרחבה, which is not accessible even through חיזור is a רשות הניזק according to all; the protruding part of the צדי הרחבה which is accessible even without חיזור, is definitely a רה"ר, according to all; the dispute is regarding the middle area of the צדי הרחבה, which is accessible only through חיזור: according to רב it is רשות הניזק and according to שמואל it is רה"ר.

¹⁵ See footnote # 4.

¹⁶ See footnote # 8 and אמ"ה # 65.