## And if she scorched, why is he liable

- ואי במסכסכת אמאי חייב

## **OVERVIEW**

The רישא משנה taught that if the flax on the camel caught fire from the candle in the store and burnt the בירה, the owner of the camel is liable. The גמרא explained that according to "ר"ל (who maintains אשום ממונו) we are discussing a case where the camel was סיפא asks, but in the גמרא asks, but in the הנוני it states that if the הנוני had his candle outside the store (and the flax on the camel caught fire, etc.); the storekeeper is liable for the damage to the בירה. The question is if the camel was מסכסכת כל הבירה clarifies the question and the continuation of the גמרא.

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The question of אמאי הייב is why -

רנווני הכל גם בעל הגמל יתחייב עמו כיון שגם הוא פושע בסכסוך - should be liable for everything; the owner of the camel should also be liable together with the בעל הגמל was negligent regarding the סכסוך –

תוספות continues to explain that the question (why the הנווני is totally liable) is valid only when we are discussing a case of מסכסכת: $^2$ 

- אבל אי בלא מסכסכת ניחא ליה ליה לאסוקי אדעתיה שיהא נר מבחוץ However if the case is without מסכסכת, it is understood why the בעל הגמל is exempt, since it should not have entered his mind that there will be a candle outside the store; therefore there would be no liability at all for the בעל הגמל -

אבל כיון דאוקמיה במסכסכת אי אפשר שלא יראה הדליקה -However since we established the משנה in a case of מסכסכת; it would be impossible that the בעל הגמל should not see the fire -

כיון שדולקת כל כך שמסכסכת כל הבירה דרך הילוכה -

Since it is burning so much that the camel is מסכסכת כל הבירה as it is walking -

והיה לו להרחיק ולמונעה מלהיות הולכת ומסכסכת -

So the בעל הגמל should have removed the camel and prevented her from walking and scorching the בירה. The owner was aware that his camel is continually burning the בירה; he should have stopped her.

 $<sup>^{1}</sup>$  See previous תוספות ד"ה במסכסכת.

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 $<sup>^2</sup>$  Seemingly even if it is not בעל הגמל should also be (partially) liable for allowing his camel to go so close to the wall that the flax caught fire from the candle outside the store

<sup>&</sup>lt;sup>3</sup> See 'Thinking it over' # 1.

תוספות (offers and) rejects an alternate explanation of the גמרא:

אבל אין לפרש אמאי חייב חנווני⁴ בעל הגמל יתחייב הכל -However we cannot explain the גמרא to mean why is the בעל at all; the בעל should be liable for everything –

תוספות explains why he rejects this explanation:

דהא לקמו (דף כג.א) פריד וליחייב בעל הגחלת 6-

For later the גמרא asks, 'and let the owner of the coal [also] be liable'; the meaning of that question is -

 $^{-1}$ ואף על פי שבעל הכלב פשע גם בעל הגחלת יש לו להתחייב שלא שמר גחלתו that even though the owner of the dog was negligent (in that he did not prevent his dog from causing a fire with the גחלת), nevertheless the בעל הגחלת should also be liable since he did not guard his גחלת.

תוספות continues to explain the answer of the גמרא:

ימשני כשעמדה<sup>8</sup> כלומר לאו במסכסכת דרך הילוכה אלא בעמדה במקום אחד -And the גמרא answered; 'that the גמל stood'; meaning the מסכסכת was not מסכסכת while it was walking across the facade of the בירה, but rather while it was standing in one place it burnt the entire בירה -

והרבה כל כך במשאוי שמסכסכת כל הבירה בעמידה since it was so laden with the flax that it was מסכסכת the entire בירה while it was **standing** in one place. This answer was to explain why the הייב is - הייב

ופריד דכל שכן חנווני<sup>9</sup> פטור לאו פטור לגמרי<sup>10</sup> -

So the גמרא challenged; in that case 'the הנווני should certainly be גמרא ; the גמרא did not mean that the הנווני should be completely - פטור

אלא כלומר פטור מחלקו של בעל הגמל<sup>11</sup>

<sup>&</sup>lt;sup>4</sup> The advantage of this אין לפרש is that it fits better in the words of the גמרא which states 'ואי במסכסכת אמאי חייב', indicating that the הנווני should not be הייב at all.

<sup>&</sup>lt;sup>5</sup> In our text it reads הוספות; which makes חוספות point that much clearer.

<sup>&</sup>lt;sup>6</sup> This is regarding the ruling in our משנה that the בעל הכלב is liable for burning the גדיש. See 'Thinking it over' # 2.

 $<sup>^{7}</sup>$  The בעל הגחלת and the בעל הכלב are in the same respective positions as the בעל הגחלת (the בעל הגחלת) and the בעל הגמל (the בעל הכלב). Just like there the גמרא requires that the בעל הגחלת be partially liable (even though the בעל הכלב was פשע, similarly here too, even though the בעל הגמל was nevertheless the הנווני should share in the liability.

<sup>&</sup>lt;sup>8</sup> See footnote # 12.

<sup>&</sup>lt;sup>9</sup> In our text it reads דחנווני (instead of חנווני).

<sup>&</sup>lt;sup>10</sup> After all (even if she was מסכסכת בעמידה), nevertheless the הנווני should still also be חייב for placing his candle outside.

<sup>&</sup>lt;sup>11</sup> The משנה states that the בעל הגמל is liable for everything. The גמרא asked that the בעל הגמל should pay half and the האוני half. The גמרא answered that the הנווני stood in one place. The גמרא asked if so then for sure the הנווני pay the second half since the בעל הגמל is now even more negligent.

But rather the גמרא meant to ask that the פטור should be פטור from paying for the share of the בעל הגמל is more liable is -

דיותר מסכסכת בעמידה משאילו היתה הולכת ועוברת בלי עיכוב -For the גמל scorches and damages more while standing in one place than what she would have damaged had she walked and passed by the בירה without stopping.

ומשני בשעמדה להטיל מימיה דאנוס הוא בעמידה זו:

And the גמרא answered, that the camel stopped to urinate, so the בעל הגמל is considered an אנוס regarding this stopping. We cannot fault him for this; he could not move her, therefore the חנווני must pay for everything.

## **SUMMARY**

When the גמרא asked הנווני אמאי חייב it meant that he should be only partially liable (not completely liable), and when the גמרא asked פטור it meant כ"ש דחנווני פטור it meant ממלקו של בעל הגמל (but not completely).

## THINKING IT OVER

תוספות explains that the גמרא' מסכסכת אמאי הייב is only if it was חנו מסכסכת, however if it was not מסכסכת it would be understood why the הייב (for everything). Is this explanation valid no matter how we interpret the question ואי מסכסכת אמאי הייב, or is it a valid explanation only if we understand the question of בעל הגמל he way תוספות explains it namely that the בעל הגמל share liability with the חנוני (but not according to the 'אין לפרש')?  $^{14}$ 

2. Is there a way in which we can distinguish<sup>15</sup> between the case of the כלב (where the בעל הגחלת should [also] be בעל הגחלח, and the case of מסכסכת (where only the בעל should be הגמל and not the הגמל)?<sup>16</sup>

 $^{14}$  See אוצר מפרשי אוצר # 114.

 $<sup>^{12}</sup>$  This is the answer the גמרא initially meant when it stated כשעמדה (see בשעמדה). The אנוס is an אנוס and the בעל הגמל is a בעל הגמל הנוני, therefore the הנווני pays everything if he left the candle outside his store.

<sup>&</sup>lt;sup>13</sup> See footnote # 3.

<sup>&</sup>lt;sup>15</sup> See footnote # 6.

<sup>&</sup>lt;sup>16</sup> See (בד"ה אכו) בית לחם יהודה אות קמד (בד"ה אכו).