

רישא בעל גמל חייב וכולי –

In the **רישא**, the owner of the camel is liable, etc.

OVERVIEW

The גמרא explains the משנה of the גמל וכו' (according to ר"ל who maintains אשו משום מסכסכת in the following manner. We are discussing a case where the גמל was בעל (חנויות), the רישא (where the lamp of the חנווני was inside the חנויות), the בעל הגמל is חייב; however in the סיפא (where the lamp was outside) the חנווני is חייב and the בעל הגמל is פטור; since she stood להטיל מימיה, the בעל הגמל is considered an אנוס. The גמרא then concludes that in the רישא the בעל הגמל is חייב for he should not have laden his camel with so much flax (so that it entered into the store and caught fire). In the סיפא the חנווני is חייב for he should not have placed his lamp outside the store. ר"ל explains what the גמרא is adding (in its explanation according to ר"ל) to our initial understanding of the משנה (according to ר"י).

anticipates a difficulty:

אף על גב דמעיקרא נמי הוי טעמא דרישא וסיפא הכי² -

Even though that initially the reason of the רישא and סיפא of the משנה was also like we are explaining it now, so why mention it again?

responds:

אלא דמעיקרא היה הטעם פשוט יותר למאן דאמר אשו משום חציו -

Nonetheless the גמרא felt the need to reiterate this difference, for initially, when we followed the view of the one who maintains אשו משום חציו (that is ר"י), the logic to be מחייב the בעל הגמל in the רישא was much simpler -

דמתחייב בעל הגמל על תחלת הדלקת הפשתון³ -

¹ Therefore there is a חיוב (for the בעל הגמל) even though אשו is not חציו משום, but since it is a case of מסכסכת therefore the entire בירה is considered as the מקום הגחלת and it is considered that the גמל directly burnt down the בירה (there was no חציו; the fire did not spread). See במסכסכת ד"ה ותוס' ד"ה במסכסכת.

² Initially the גמרא assumed that the משנה follows the view of ר"י (אשו משום חציו), and the understanding was that in the רישא the בעל הגמל is חייב because his flax (which was abundant) went into the store, and in the סיפא the חנווני is חייב for placing his lamp outside. The exact same way we are explaining it according to ר"ל; why therefore repeat the concept again. [Seemingly the only difference in the understanding of the משנה (between ר"י ור"ל) is whether there is a חיוב even when it is not מסכסכת (the view of ר"י, since אשו משום חציו) or only if it is מסכסכת (the view of ר"ל, since אשו is not חציו). However the understanding why in the רישא the בעל הגמל is חייב and in the סיפא the חנווני is חייב is (seemingly) the same both according to ר"י and ר"ל.]

³ According to ר"י that אשו משום חציו as soon as the בעל הגמל was negligent and allowed the flax to ignite, it became the חציו of the גמל and the בעל הגמל is liable for the consequence. It is very obvious that the בעל הגמל is responsible for

For the בעל הגמל is liable for the initial lighting of the flax, which was certainly his fault since he placed so much flax on the camel that inevitable it would enter into the store; therefore the בעל הגמל is חייב for the burning of the בירה -

ואף על פי שהאש הולכת מעצמה על ידי רוח מצויה -

Even though the fire spread on its own through a רוח מצויה and the בעל הגמל [בעל] did not assist in the actual burning of the בירה, nevertheless he is חייב since אש חציו משום חציו. This explains the original view if אש חציו משום חציו.

אבל למאן דאמר משום ממונו דלא מחייב אלא על שמסכסכת הבירה -

However according to the one who maintains משום ממונו where the בעל הגמל cannot be held liable for burning down the בירה on account the he caused the flax to ignite (since it is not ממונו and not חציו), but rather **he is liable only because the בירה was מסכסכת** -

ובזה לא פשע כל כך⁴ שלא ראה הדליקה עד שעמדה סמוך לבירה -

And in this aspect the בעל הגמל is not so negligent, for he did not notice the fire until the camel stood close to the בירה -

ואז לא היה יכול לסלקה לפי שעמדה להטיל מימיה -

And at that point in time he could not remove her from the בירה since she was standing there to urinate; therefore it is not that obvious that the בעל הגמל should be liable -

ולכך הוצרך לפרש דאפילו הכי חייב דלא איבעי ליה לאפוש בטעיניה -

So therefore it was necessary for the גמרא to explain that nevertheless the בעל הגמל is חייב, for he should not have increased the load to this extent -

דהוה ליה לאסוקי אדעתיה כשיכנס פשתנו לתוך החנות ותדליק בנר ותעמוד להטיל מימיה -

For he should have anticipated that when his flax will go into the store (because he loaded so much flax on the camel), and it will be ignited by the lamp in the store, and the camel may stand by the בירה to be מטיל מימיה; in that case -

לא יוכל לסלקה⁵ משם:

He (the בעל הגמל) will not be able to remove her from the בירה. He is liable because

igniting his flax, since he put such a large load on his camel.

⁴ According to ר"י he is liable from the moment the flax caught on fire (due to his negligence) since it is חציו של הגמל. His negligence in causing the flax to ignite is very obvious. However, according to ר"ל even though he was negligent in igniting the flax, nevertheless that would (seemingly) not make him liable for burning the בירה (since it is not חציו דגמל). The only reason he is חייב is because the גמל was מסכסכת. The בעל הגמל is not that negligent for allowing her to be מסכסכת since she was עומדה להטיל מים, so why should the בעל הגמל be חייב?! [תוספות may be assuming that one can argue that even though the בעל הגמל was negligent in allowing his flax to ignite, nonetheless the בעל הגמל assumed that even if it will ignite it will not cause harm to others, since the בעל הגמל is accompanying the גמל, he will see to it that it causes no further damage to the property of others. (See 'Thinking it over' # 2&3.)]

⁵ In any case of שן ורגל the owner is helpless at the time of the damage, nevertheless he is liable because he allowed the animal to go out and trample or eat. Here too the בעל הגמל should have anticipated that his overloading can cause a damaging situation which he will then not be able to control.

of his negligence that he should have anticipated all this.

SUMMARY

The negligence in overloading the camel, enabling the flax to ignite, is greater than the negligence of not allowing the camel to be מסכסכת.

THINKING IT OVER

1. Is there any חידוש regarding the סיפא that the חנווני is חייב since he placed his lamp outside?⁶
2. If we assume that the חידוש of the גמרא is that (contrary to what one may assume⁷) the בעל הגמל should have anticipated the entire process mentioned in תוספות, why does the גמרא merely state that the בעל הגמל is liable for overloading the camel (which is what we already assumed according to ר"י), when the גמרא should have stated that the בעל הגמל is חייב because he should have anticipated the inevitable chain of events which may follow the igniting of the flax?!
3. When תוספות argued that the בעל הגמל should not be liable since 'לא פשע כ"כ'⁸; is this connected in any way to the discussion of וסופו באונס?⁹

⁶ See חי' ר' נחום אור קסג.

⁷ See [the bracketed area in] footnote # 4.

⁸ See footnote # 4.

⁹ See נחלת משה.