

You can resolve that the mouth of a פרה כחצר הניזק דמי – cow is like the courtyard of the victim

OVERVIEW

The גמרא concluded that the reason the בעל הכלב is liable to pay for the חררה is because the כלב ate the חררה in the גדיש of the חררה, so it was a case of ובער. The גמרא continues and says. We can now resolve a query that the פי פרה is like the חצר הניזק and not like the חצר המזיק, for if the פי פ"פ is like the חצר המזיק, why is the בעל הכלב liable for the חררה,¹ he should say to the בעל החררה, 'what is your bread doing in the mouth of my dog'.² Tosfos finds this גמרא very puzzling³ and explains it accordingly.

Tosfos asks:

תימה דאמאי לא פשיט משאר בבי דמתניתין³ דתנן⁴ השן מועדת לאכול הראוי לה -
It is astounding! Why does not the גמרא resolve this query (whether פי פרה כחצר or חצר המזיק דמי) from the other cases of our משנה, for we learnt, 'the 'tooth' is מועדת to eat that which is appropriate for her' to eat; indicating that פי פרה
- כחצר הניזק דמי

ומההיא דאכלה מצידי הרחבה ומתוך החנות -

And from that same משנה which discusses when the animal ate from the sides of the plaza or from within the store, where she is חייב for שן; proving again that פי פרה כחצר
הניזק דמי.

Tosfos has an additional question:

ועוד אותם שהיו מדקדקין⁵ משיסה בו את הכלב -
And additionally those who wanted to infer from the משנה, which states if he incited a dog against him, to prove that פי פרה כחצר הניזק דמי -
למה לא הביאו מתניתין כלב שנטל חררה דדייק מינה השתא -
Why did they not cite our גמרא of חררה שנטל כלב, from where the גמרא infers

¹ See רש"י ד"ה תפשוט, where it appears that the proof (of פ"פ כחצר הניזק דמי) is from the משנה, which obligates the בעל הכלב to pay (א"ש) for the חררה.

² It appears from the discourse in the גמרא (especially from the question היכא רחמנא היכא דמי שן דחייב רחמנא היכא), that if we assume that פי פרה כחצר המזיק דמי, there is no חוב for eating in someone's field. This is contrary to many משניות that we learnt. How could there even be such a thought?!

³ See footnote # 1. The proof that פ"פ כחצר הניזק דמי can be brought from any of the משניות, which state that שן בחצר חררה is חייב; why choose the משנה of חררה.

⁴ יטב.

⁵ כגב. The משנה is in עו, ב, סנהדרין.

⁶פ"פ כחצר הניזק דמי now that

Tosfos has one more question:

ועוד מאי קאמר⁷ מאי בעי ריפתך בפומא דכלבאי כיון שהכלב לקחה -

And furthermore, what is the meaning of that which the claims; ‘what is your bread doing in the mouth of my dog’, what defense is that; since the dog took the bread, how can the הכלב ask what is your bread doing in my dog’s mouth?!

In summation; we are now assuming that if פ"פ כחצר המזיק דמי there is no חיוב שן by eating (only by טנפה פירות להנאתה וכו' therefore has three questions. 1) There are many משניות which state clearly that פ"פ כחצר הניזק שן is חייב (so how could we even entertain the thought that פ"פ כחצר דמי 2) why did not the גמרא bring proof from the משנה of חררה 3) How can the הכלב שנטל חררה defend himself by claiming בפומא דכלבאי רפתך מאי בעי רפתך, when the dog took the חררה?!

Tosfos answers:

ונראה לרבינו יצחק דמכל הנהו דמתניתין לא מצי למפשט ולא מההיא דנטל חררה -
And it is the view of the ר"י that we cannot resolve this query from all these cases in our משנה and also not from that case of the dog taking the חררה -

משום דסלקא דעתין דאם לקחה הבהמה פירות בחצר הניזק ואכלה ברשות הרבים -
Because at this point the גמרא assumed that if an animal took food from the חצר הניזק and ate it in the רה"ר -

[או בחצר המזיק] חייב דמחייבין בלקיחה לחודא⁸ -
[or (even) in the חצר המזיק] he has to pay, for we consider him liable for the taking alone (even without eating), therefore it does not matter where he ate it -

וכן הסברא נוטה דכיון דפשע בלקיחה מה לנו באכילה -
And logic also dictates so, for since there is negligence by taking something from the חצר הניזק, why should we care where he eats it –

⁹Tosfos responds to an anticipated difficulty:

⁶ The actual query and the attempts to resolve it are presented on כג, (including the attempted resolution from the שיסה בו את הכלב [and others]). In the entire discussion there, no one attempted to prove anything from our משנה of חררה. It is only here where we are discussing the משנה (and not the query) that the גמרא claims that we can resolve the query from this משנה. [Seemingly this question can be broadened to ask why they were not פושט from the other משניות as well (see footnote # 3); however Tosfos asks from חררה because the גמרא (here) actually attempted to prove פ"פ כחצר הניזק דמי from this משנה.]

⁷ This claim of the מזיק can be made if we assume that פ"פ כחצר המזיק דמי.

⁸ There was never any doubt that if the animal took the food from the חצר הניזק and ate it (wherever) that he is חייב. Therefore we cannot cite any of our משניות as proof since in all those cases the animal took the food from the חצר הניזק. Tosfos will shortly tell us what the query was.

⁹ How can we say that (the גמרא initially assumed that) he is חייב no matter where he ate it (as long as he took it from

והא דממעטינן משדה אחר רשות הרבים היינו לקיחה -

And that which we exclude from the פסוק of פסוק אחר and that he is not liable if it was in the פרה"ר; **that is referring to the taking.** The animal must take it from the חצר הניזק in order to be liable. However it makes no difference where it eats it.

¹⁰ continues on with explaining the query:

וקמבעיא ליה כגון אם הושיט פירות בפי פרה חרש שוטה וקטן ועובדי כוכבים ומזלות -

And his query was in case where for instance a חש"ו or a gentile placed food in the mouth of the פרה -

דלאו בני תשלומין נינהו¹¹ וכגון שהבהמה לא היתה יכולה ליקח אם לא שהושיט לה¹² -

Where they (the חש"ו) are not responsible for paying, and where for instance the animal could not have taken the food if the חש"ו would not serve it to her -

ואי כחצר הניזק דמי חייב בעל הפרה ואי כחצר המזיק דמי פטור כיון שנתנו אחר לתוך פיה -
So if the פרה is like the חצר הניזק the owner of the פרה is liable;¹³ however if the פרה is like the חצר המזיק the פרה is פטור, since someone else placed it in her mouth.¹⁴

In summation: The assumption is that if the פרה took the food from the חצר הניזק he is always חייב (regardless where he ate it). The query is in a case where a חש"ו (who cannot be held responsible) fed it to the cow. If פ"פ כחצר הניזק it is considered חצר אחר (for his mouth is אחר חצר – שדה אחר) and he will be פטור. This query cannot be resolved by any of the משניות, which are discussing cases where the animal took the food from the חצר הניזק.

continues on to explain how the גמרא attempted to resolve this query:

והא דקאמר תפשוט לאו ממתניתין¹⁵ -

בחצר (חצר הניזק), when the תורה writes (משפטים [כב, ד]) that ובער בשדה אחר; indicating that it must be consumed בחצר (חצר הניזק); תוספות responds.

¹⁰ Seemingly if he is חייב when the animal took it from the חצר הניזק (regardless where he ate it, what difference does it make if פרה כחצר הניזק דמי or פרה כחצר המזיק דמי, since he is always liable for taking it from the חצר הניזק). תוספות explains.

¹¹ See 'Thinking it over'.

¹² If the animal was capable of eating the food on its own (without the assistance of the חש"ו), the בעל הפרה would be חייב for allowing his פרה to access someone else's פירות. It would be a case of באונס וסופו בפשיעה which is חייב.

¹³ Since פ"פ כחצר הניזק, the animal took or destroyed the פירות in the חצר הניזק.

¹⁴ The animal did not take it from the חצר הניזק but destroyed it in the חצר המזיק; there can be no חיוב in this case.

¹⁵ [See footnote # 1.] We are now assuming that the חיוב of שן is for the taking the food אחר משדה, therefore all the mentioned above cannot resolve the query since they all are discussing cases where the animal took the food from the חצר הניזק; however the query is where the animal did not take the food at all, but it was served to her, and then she ate it. The query is whether her mouth is considered as a חצר הניזק, so by eating it we consider it as if (when she swallows it) she removes it from the חצר הניזק. Or whether the פ"פ is כחצר המזיק דמי, so the פרה never removed it from the חצר הניזק.

And this which the גמרא states 'let us resolve'; it did not mean to resolve the query from our משנה of חררה -

אלא מסוגיא דשמעתין דאוקמה אכלה בגדיש דבעל החררה¹⁶ -

But rather the גמרא wanted to resolve the query from the discussion in our גמרא, where the גמרא established the משנה in a situation where the dog ate the חררה in the גדיש of the החררה - בעל החררה -

שמע מינה דבעו לקיחה ואכילה בחצר [הניזק] -

We can derive from this that there is a requirement that both the taking and the eating must be in the חצר הניזק -

אף על פי שאין טעם בדבר זה מה צורך באכילה אלא דגזירת הכתוב הוא -

Even though there is no logic to this, why there is a necessity to eat it in the חצר - בחצר הניזק that it must be eaten תורה; but rather it is a decree of the תורה -

ותפשוט כשנתן אחר לתוך פיה דחייב דכחצר הניזק דמיא -

So now we can resolve the query that when someone else places the food into her mouth that the בעל הפרה is חייב, for the פ"פ is like the חצר הניזק and it ate it in the חצר הניזק as the requirement of אחר שדה demands -

דאי כחצר המזיק דמיא ומצי אמר ליה מאי בעי ריפתך בפומא דחיותאי -

For if the פ"פ is like the חצר המזיק and the בעל הפרה can say to the ניזק, in order to exempt himself from payment (in this case where someone else placed the food into her mouth), 'what is your bread doing in the mouth of my animal' -

הכא נמי מצי אמר ליה מאי בעי ריפתך בפומא דכלבאי¹⁷ -

So here too (by the חררה (כלב שנטל חררה) the owner of the dog can say to the החררה, 'what is your bread doing in the mouth of my dog' –

תוספות responds to an anticipates a difficulty:

וזה הלשון לאו דוקא דהכא לא שייך לשון זה שהכלב לקח מעצמו¹⁸ -

However this expression (מאי בעי רפתך בפומא דכלבאי) is not precise, because this expression is not appropriate here, since the dog took the חררה by himself -

¹⁶ The גמרא asked if he ate the חררה in a third person's גדיש, why is he חייב it is not אחר. The גמרא replied that he ate it in the גדיש of the חררה. בעל החררה. This proves that the original assumption of the גמרא (that it does not matter where the animal ate it; it only matters that he took it from the חצר הניזק) is incorrect, for why did the גמרא (ask where he ate it and why did the גמרא) answer that he ate it בעל החררה; בגדיש דבעל החררה; what difference does it make where he ate it?! This proves that the requirement of אחר שדה is that the animal must eat it בחצר הניזק.

¹⁷ Once we know (from the discussion in our גמרא) that it must be eaten בחצר הניזק, we can derive that פ"פ כחצר הניזק (otherwise it is not eaten בחצר הניזק), thereby resolving the query that if a חש"ו fed the פרה the בעל הפרה is חייב, since the פרה ate the food בחצר הניזק.

¹⁸ The כלב has no adequate defense by claiming מאי בעי רפתך וכו', since his dog took the חררה, so why is he claiming an exemption from payment (not like in the query where the פרה was fed, but did not take it herself).

אלא כלומר כיון דגזירת הכתוב דבעינן אכילה בחצר הניזק -

But rather the גמרא means to say, since it is a גזירה כ"כ that eating in the חצר הניזק is a requirement to be liable for שן -

ואי פי פרה כחצר המזיק אפילו כי אכלה בגדיש דבעל החררה הוי אכילה בחצר המזיק - בעל החררה in the גדיש of the בעל המזיק, even if the dog ate the פ"פ is the כחצר המזיק, it is still considered eating בחצר המזיק (פ"פ כחצר המזיק דמי since) and therefore he should be פטור; this is what the גמרא meant to say. The reason it said 'וכו' מאי בעי רפתך וכו' is -

ואגב דשייך לשון זה בנתן אחר לתוך פיה נקט ליה -

That since this expression (of 'באי בעי רפתך וכו') **is appropriate when someone else placed the food into her mouth,** therefore the גמרא mentioned it here as well regarding the כלב שנמל חררה.

תוספות continues on to explain the attempts of the גמרא to resolve this query:

ומייתי משיסה בו את הכלב דשסוי¹⁹ מיקרי אפילו הכניס יד חבירו בפי הכלב או הנחש -
 And the גמרא cited from the משנה of הכלב בו את שיסה (he incited a dog against
 him); where the גמרא assumed that even if he placed his friend's hand into the
 mouth of the dog or the snake it is called שסוי (inciting) –

תוספות continues with the next proof the גמרא brings:

והשיך²⁰ היינו דתתב ודחק שיני הכלב ונחש בבשר חבירו -

And השיך (he made bite) means that he stuck and pressed the teeth of the dog or the snake into the flesh of his friend, where the rule in both cases is that the בעל הכלב - חייב is והנחש

ואם כן אמאי חייב בעל הכלב והלא ידו בחצר המזיק הוא -

But if it is so (that פ"פ כחצר המזיק דמי), why is the בעל הכלב liable, for is not his hand (of the person who was bitten) in the חצר of the מזיק -

וְלִימָא לִיה מַאי בְּעֵי יַדְךָ בְּפֹמָא דְכֻלְבָּאֵי -

So let the בעל הכלב say to the גויזק, ‘what is your hand doing in the mouth of my dog’.

תוספות anticipates a difficulty:

והא דקאמר שן דחייב רחמנא היכי משכחת לה -

And that which the גמרא asks; how is the case of שן, in which the תורה holds the owner of the animal liable, possible; if we assume פ"פ כחצר המזיק דמי

¹⁹ The simple meaning of שיסיו is that the man ‘merely’ incited the dog. תוספות interprets it to (also) mean that he placed his friends hand in the dog’s mouth. If שיסה would merely mean incited; how can the בעל הכלב claim מאי בעי שיסיו? תוספות expands the meaning of שיסיו to mean that the man placed his hand in the dog’s mouth (after being incited). Therefore תוספות expands the meaning of שיסיו to mean that the man placed his hand in the dog’s mouth (after being incited).

²⁰ The simple meaning of *השיץ* is that he brought the snake close to the person so the snake could bite him. תוספות interprets it to (also) mean that clamped down the teeth of the snake. See previous footnote # 19.

אף על גב דמשכחת לה שפיר כגון שהלקיחה היתה בחצר הניזק²¹ -

Even though it is verily possible, to have a case of שן; where for instance the taking of the food was in חצר הניזק; so what is the question?!

replies: תוספות

אלא משום דפשטיה דקרא משמע שהביעור היתה בחצר הניזק קבעי היכי משכחת לה²² -

But since the simple meaning of the verse is that the eating was in the חצר הניזק, therefore the גמרא inquires how is it possible if פ"פ is כחצר הניזק.

responds to an anticipated difficulty:²³ תוספות

ובריש מסכת שבת (דף ג,ב) איכא נמי תפשוט מסוגיא דשמעתין -

And in the beginning of מסכת שבת there is also a resolution from the discussion of the גמרא -

דקאמר תפשוט²⁴ מדבעי²⁵ רב ביבי בר אבוי:

Where the גמרא says we can resolve the query of רב ביבי בר אבוי.

SUMMARY

The query regarding פ"פ was in a case where a non-responsible person fed the פרה. The גמרא initially assumed that only the taking needs to be from the חצר הניזק (not the eating). The query was resolved since the גמרא establishes that the eating (of the חררה) must also be in the חצר הניזק; proving thereby that פ"פ כחצר הניזק דמי.

THINKING IT OVER

explains that the query is in a case where a חש"ו fed the בהמה;²⁶ indicating if it was a פקה that fed the בהמה the פקה would be חייב. How then does the גמרא attempt to resolve the query from את הכלב שיסה בו, which according to תוספות means that he placed his friend's hand in the dog's mouth,²⁷ since in this case the בעל הכלב is surely פטור, since a פקה placed the hand into his mouth?²⁸

²¹ We are now assuming the ס"ד of the גמרא that the (only) limitation of שדה אחר is that it be taken from the חצר הניזק (but not (necessarily) eaten in the חצר הניזק)

²² We understand that there can be 'regular' שן, if it was taken מחצר הניזק; however it appears from the פסוק that שן is where it was destroyed (eaten) בחצר הניזק; how can that be if פ"פ כחצר המזיק דמי. The answer is by טנפה פירות וכו'.

²³ The basis of this תוספות is that the גמרא is not deriving proof from our משנה, but rather from a discussion in the גמרא. This seems highly unusual that we resolve a query from a discussion of the גמרא.

²⁴ The גמרא there chose not to respond in a specific manner, which gave us a (possible) resolution in the query of רב ביבי בר אבוי.

²⁵ Others amend this to read דבעי (instead of מדבעי). The גמרא there states דבעי רב ביבי וכו'.

²⁶ See footnote # 11.

²⁷ See footnote # 19.

²⁸ See # 123. אוצר מפרשי התלמוד and נח"מ.