תא שמע שיסה בו את הכלב –

Come and hear; he incited a dog against him

Overview

The גמרא attempted to prove the פ"פ is not כחצר המזיק from a משנה which stated that if he incited a dog he (the inciter) is פטור, seemingly indicating that the בעל הכלב is חייב; proving that פ"פ is not כחצר המזיק, for otherwise why would the בעל הכלב be חייב.[1] Our תוספות explains why the גמרא did not refute this proof in the same manner which the גמרא shortly rejects a similar proof.

תוספות asks:

ותימה דאמאי לא משני לענין קטלא לא אמרינן[2] כדאמרינן בסמוך -

And it is astounding! Why does not the גמרא **answer** that there is no proof, since **we do not say** מאי בעי וכו' בפומא דכלבאי **in regards to killing as** the גמרא **states shortly,** regarding השיך בו את הנחש -

דהך משנה היא רישא דהשיך בו את הנחש -

For this משנה of שיסה בו את הכלב **is the רישא** of **השיך בו את הנחש -**

דמייתי בתר הכי בפרק אלו הן הנשרפין (סנהדרין דף עו,ב ושם) -

Which the גמרא **cites afterwards;** this משנה is in **פרק אלו הנשרפין;** so just as regarding the סיפא of השיך בו את הנחש the גמרא rejects any proof since לענין קטלא לא אמרינן, the same refutation should have been giver regarding the רישא. Why did not the גמרא offer this refutation?!

תוספות responds:

ושמא משמע ליה[3] רישא בין לענין מיתה בין לענין נזקין -

And perhaps the גמרא **had** some **indication** that the **רישא** (of שיסה בו את הכלב) is discussing cases both **regarding killing and regarding damages** (as opposed to the סיפא [of השיך] which is discussing killing exclusively.

תוספות offers support that the assumption is that שיסה בו את הכלב is regarding נזיקין:

ולקמן נמי מייתי לה גבי בעיא משסה כלבו של חבירו:

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[1] See previous תוספות ד"ה תפשוט (TIE footnote # 19) for a (more) detailed explanation.

[2] Even if we maintain פ"פ כחצר המזיק דמי, and regarding נזיקין he will be פטור, since he can claim מאי בעי וכו' בפומא וכו'; however regarding the killing by an animal we do not say מאי בעי וכו', but rather the owner of the animal is liable. Therefore there is no proof from השיך, as the גמרא shortly states, since it involves killing. The case of שיסה בו את הכלב is (presumably also) discussing killing (as is the סיפא of השיך). Therefore there can be no proof from here. See 'Thinking it over'.

[3] See שטמ"ק that in the סיפא he mentions only נחש (which usually kills its victim), however in the רישא it mentions כלב (also), which usually only damages but does not kill.

And also later[4] the גמרא **cites this** משנה of שיסה וכו' **regarding the query** where **one incited his friend's dog**; indicating that the assumption is that the משנה of שיסה is regarding damaging (as well).

Summary

We may assume that the case of שיסה is regarding damages (also), as opposed to the סיפא of השיך which may be discussing killing (exclusively).

Thinking it over

The גמרא infers from the fact that the ברייתא states שיסה וכו' פטור, that the משסה is פטור, but the בעל הכלב is חייב (and therefore wants to prove the פ"פ כחצר הניזק דמי). תוספות asks that perhaps we are discussing a case where the dog killed and לענין קטלא לא אמרינן.[5] How can תוספות say that we are discussing killing by the dog; the בעל הכלב would certainly not be liable[6] (for חיוב מיתה) if his dog killed?![7]

[4] כד,ב. The query there is regarding one who incites his friend's dog to attack someone; is the owner of the dog liable. The query is only regarding damages which the dog caused; however there can be no thought that the dog's owner should face a capital crime if his dog killed (by someone inciting him). The גמרא cites this משנה of שיסה בו את הלכב to resolve this query

[5] See footnote # 2.

[6] See footnote # 4.

[7] See יד דוד.