

דאפקיה לניביה וסרטיה – For he stuck out his teeth and scratched him

OVERVIEW

The גמרא explains that we can maintain the פ"פ כחצר המזיק דמי, and nevertheless the בעל הכלב is liable and we do not say מאי בעי ידך בפומא דכלבאי, since the victim's hand was never within the dog's mouth but rather the dog stuck out his teeth and bit the man outside his mouth. תוספות explains why the גמרא did not offer an alternate solution.

תוספות anticipates a difficulty:

הוה מצי לשנויי כגון שלא הכניס יד חבירו אלא הכלב עצמו לקחה כשיסהו¹ -

The גמרא **could have answered** that there is no proof for we are discussing a case where **for instance** the משסה **did not bring in his friend's hand** into the mouth of the dog, **but rather the dog himself grabbed** his hand **when he was incited** –

תוספות responds why the גמרא did not offer this refutation:

אלא דמשני לפי מה שסבור² דמיירי כשהושיט לו ידו:

Rather the גמרא chose to **answer according to** what the one who brought the proof **assumed**, namely **that we are discussing** a case **where** the משסה **extended** the **hand** of his friend **into** the mouth of the dog.

SUMMARY

A מקשן prefers to change as little as possible from the understanding of the מקשן.

THINKING IT OVER

The מקשן assumed two things; that the משסה (a) placed the hand of his friend, (b) into the mouth of the dog. There are two possible refutations to this assumption; either (a) the משסה did not take his hand; the dog did (תוספות proposed answer), or (b) the משסה did take the hand but the dog bit it outside his mouth (the actual answer). Why is option (b) more in accordance with the מקשן than option (a)?!

¹ See תוספות ד"ה תפשוט (on the עמוד א [TIE footnote # 8]) that even if we assume פ"פ כחצר המזיק דמי, nevertheless there is a חיוב for the taking. Here too the בעל הכלב is liable since the dog took his friend's hand.

² See תוספות ד"ה תפשוט [TIE footnote # 19]; the proof from שיסה is only if we assume that the משסה placed his friend's hand inside the dog's mouth.