

These goats of the market, etc.

הנהו עיזי דשוקא כולי –

OVERVIEW

ר' יוסף (or רבה) announced that regarding the goats which are (to be slaughtered) in the market (which do damage), we warn their owners a few times and if they continue to damage, one may slaughter them and have the owners (sell the meat and) keep the money from the sale. תוספות qualifies this ruling.

דוקא בהנהו דקיימי לשחיטה¹ -

This ruling is **specifically** regarding **these sheep that are kept to be slaughtered** for their meat; only then one may slaughter them if the owners do not prevent them from damaging -

ואף על גב שישלמו מה שהזיקו לא בעי למיקם בהדיהו לדינא וזימנין נמי דליכא סהדי -

And this ruling applies even though the goats' owners are prepared to pay for **what they damage**, nevertheless that is not a valid reason to allow them to keep the goats, for the victims **may not want to deal with them in court**, and additionally **sometimes there are no witnesses** who will testify that the goats damaged, therefore they may be slaughtered if the owners are not guarding them -

אבל עז לחלבה ורחל לגיזתה יכול לומר כשיזיק ישלם² -

However regarding a goat that is being kept for its milk or a sheep that is being kept for its shearing, the owners **can claim that when they will damage, we will pay**, and one is not permitted to slaughter them even if they damage -

כדאשכחן גבי עיזי דבי תרבו³ דאמר ליה זיל אצנעינהו ולא אמר ליה זיל שחינהו:

As we found previously regarding the goats of בי תרבו, where ר' יוסף told them, **'go and watch them'**, but he did not say to אביי, **'go and slaughter them'**, for those goats were not kept for their meat but rather for their milk.

¹ See רש"י ד"ה עיזי. These goats will be slaughtered anyway, that is why he is keeping them, and therefore since they are causing damage we can slaughter them now (even though it will cause a [minor] loss for the owners).

² The difference whether they are עומדות לשחיטה or עומדות לחליבה may be explained as follows. The unattended goats cause a public hazard for they damage property, and even if they pay there is still the problem of going to court and collecting and in addition there may be no witnesses so the loss to the public may be substantial. Therefore if the goats are עומדות לשחיטה, so the loss by slaughtering them now (before the market day) is minimal (since they will be slaughtered anyways shortly), we assume that the loss to the owners is less than the loss to the public and allow them to be slaughtered (after a proper warning). However if they are עומדות לחליבה, where the loss to the owners will be quite substantial (for they will not be able to ever milk them again), and the loss to the public is minimal (relative to the loss of the owners), therefore they may not be slaughtered.

³ Those goats damaged already as the גמרא states, 'דהוו מפסדי ליה לרב יוסף', and nevertheless he only told אביי that they should guard them but not that אביי should slaughter them. See 'Thinking it over'.

SUMMARY

One may only slaughter goats that are kept for their meat but not goats which are kept for their milk (even when they damage).

THINKING IT OVER

תוספות proves from the עיזי דבי תרבו that one is not always permitted to slaughter the animals if they cause damage.⁴ However, our גמרא states that one may slaughter them, only after they were warned and they continued to damage; what proof is there for עיזי דבי תרבו, where (seemingly) they were not warned yet?!

⁴ See footnote # 3

⁵ See # 32-36. אוצר מפרשי התלמוד