

לאו משום דסבר לה כרבי יוסי הגלילי –

Is it not because he agrees with *Rabi Yossi Haglili*

OVERVIEW

The *גמרא* cites a *ברייתא* in which *ר' טרפון* maintains that if an ox killed a person *בחצר*, the owner must pay *כופר* whether the ox is a *תם* or a *מועד*. The *גמרא* continues that the way to understand this ruling of *ר"ט* is if he agrees with *ריה"ג* who maintains that a *תם* pays a *חצי כופר* in the *רה"ר*.¹ Our *תוספות* explains the need for *כופר שלם* *בחצר* *הניזק* to pay *תם* a *מחייב* in order to be *חייב* *ריה"ג* to agree to *ר"ט*.

תוספות asks:

ואם תאמר אפילו בלא רבי יוסי הגלילי² מקל וחומר גמר -

And if you will say; *ר"ט* can derive from a *ק"ו* that a *תם* pays a *שלם* in the *כופר שלם* in the *חצר*, *even without* agreeing to *ריה"ג*, the *ק"ו* can be made even if a *תם* does not pay *חצי כופר*, as follows -

ומה שן ורגל דפטורין ברשות הרבים חייבין בחצר הניזק כופר שלם קרן לא כל שכן³ -

And what if by *רה"ר* who are exempt from paying in *רה"ר*, nevertheless pay a *כופר שלם* in the *חצר*, so *קרן* which is *חייב ברה"ר* is *certainly* a *חייב בחצר* *הניזק*!

תוספות answers:

ויש לומר דאם היה כופר חלוק מדין נזק מדפטר ברשות הרבים לא הוה שייך למיזן קל וחומר:
And one can say; if *כופר* was different from the laws of other damages, since the *תם* is completely exempt from *כופר* in the *רה"ר*,⁴ it would not be possible to maintain such a *ק"ו*.⁵

¹ *פסוק* (יש *כופר* ברגל *בחצר* *הניזק*); if *רגל* which is *פטור* (even from *כופר*), nevertheless pays *כופר שלם* *בחצר* *הניזק*, so *קרן* which pays *כופר ברה"ר* (like *ריה"ג*), should certainly pay *כופר שלם* in the *חצר* *הניזק*.

² See 'Thinking it over' # 1.

³ See 'Thinking it over' # 2.

⁴ We are now assuming that *ר"ט* disagrees with *ריה"ג* and there is no rule of *חצי כופר* by *תם* (in the *רה"ר*). This places *כופר* into a separate category of damages, since there is no *חצי כופר ברה"ר* by *קרן*, but there is *חצי נזק* by *קרן* in the *רה"ר*. See 'Thinking it over' # 3.

⁵ We will argue that the fact that *קרן* is more *חמור* than *שו"ר* only allows it to have those *חומרות* of *שו"ר* that are in the category of *קרן ברה"ר*, which are regular damages, but we cannot derive that *קרן* should have those *חומרות* of *שו"ר* (such as *כופר*) which *קרן* does not have at all in the *רה"ר* (since we are now disagreeing with *ריה"ג*). The fact that there is no *חצי כופר* in *רה"ר*, as opposed to *חצי נזק*, proves that the laws of *כופר* have no connection to the laws of *נזקין*. However once we agree with *ריה"ג* that *תם* pays *כופר ברה"ר* we can make the *ק"ו* that it should pay *כופר שלם* *בחצר* *הניזק*, since *קרן* has this category of damages in the *רה"ר* as well.

SUMMARY

We could not make the ק"ו if there was no ברה"ר כופר.

THINKING IT OVER

1. According to תוספות question (that there is no ברה"ר כופר),⁶ we can argue דיו; that בחצר הניזק there will only be חצי כופר, for this is a case where it will not be חצי כופר בחצר if we say דיו (since without the ק"ו there would not even be חצי כופר בחצר)!⁷

2. כופר בחצר makes the ק"ו that if קרן pays ברה"ר it should certainly pay בחצר. However we can refute this ק"ו by saying אדם יוכיח that he is ברה"ר and nevertheless does not pay בחצר הניזק!⁸

2. Seemingly even if ר"ה"ג does not agree with ר"ט,¹⁰ there still can be a ק"ו for קרן to pay בחצר הניזק, as follows; if by שו"ר there is never any ברה"ר (under any circumstances), nevertheless they pay בחצר הניזק for even the first offense, so by קרן where there is ברה"ר (if the שור is a מועד), it should certainly pay בחצר הניזק (even) by the first offense (when he is still a תם)!¹¹

⁶ See footnote # 2.

⁷ See אוצר מפרשי התלמוד # 88.

⁸ See footnote # 3.

⁹ See מהרש"א הארוך.

¹⁰ See footnote # 4.

¹¹ See מהודורא בתרא למהרש"א.