

Four primary categories of damages ארבעה אבות נזיקין –

Overview

The literal translation of 'ארבעה אבות נזיקין השור וכו' is: 'four אבות נזיקין, the שור, etc.' (which makes for slightly awkward reading). The משנה should have inserted the word 'הן' (after the word נזיקין), which would then be translated as: 'There are four אבות נזיקין [הן]; the שור, etc.' (which reads easier). Our תוספות will be discussing the omission of the word הן.

אית דוכתא דלא תני הן כמו הכא ובגמרא¹ גבי שלש עשרה אבות נזיקין -

There are places where the משנה does not state the word 'הן' – 'there are'; as here in our משנה. The משנה does not state, 'there are four אבות נזיקין', but rather 'four אבות נזיקין'. **And we find this also later in the גמרא concerning 'thirteen אבות נזיקין'²** where the גמרא does not state הן שלש עשרה אבות נזיקין.

ובארבעה מחוסרי כפרה (כריתות דף ח,ב) –

And similarly in the משנה of ארבעה מחוסרי כפרה; it does not state 'הן'.

ואית דוכתא דקתני הן כדקתני ארבעה שומריין הן (שבועות דף מט,א) –

And there are places where the תנא does state 'הן'; as it is written in the משנה 'there are four אבות נזיקין'.

וארבעה ראשי שנים הן (ר"ה דף ב,א ושם) –

And similarly in another משנה it states 'there are four ראשי שנים'. תוספות is seemingly stating that we cannot ask why certain times the תנא inserts the word 'הן' and omits them in other instances. It is a matter of individual choice of expression, as the תנא feels appropriate. This concludes תוספות proper.

(A marginal addendum³ גליון.)

The גליון asks:

– ואם תאמר אמאי לא קאמר ארבעה אבות נזיקין הן כדקתני ד' ראשי שנים הן –

And if you say; Why did not the משנה state 'There are אבות נזיקין' as it states in a משנה elsewhere 'there are שנים ד'; why does our משנה omit the word הן?

The גליון answers:

– ויש לומר שלא בא אלא להגיד ארבע אבות הללו לא ראי זה כראי זה –

And one can say that the משנה is only coming to teach us that concerning these four אבות, the characteristic of one is not similar to the characteristic of the other. The משנה is not coming to teach us that there are אבות ד' (in which case the term 'הן' should have been inserted). Rather the משנה assumes that we

¹ לקמן ד,ב. See: 'Thinking it over'.

² The גמרא mentions that אישעיא ר' enumerated thirteen אבות נזיקין (including the four of our משנה).

³ It seems that when they copied from the manuscripts of תוספות for printing, this addendum was found in the margins of a manuscript and the printer indicated it as thus. It is not known who the author is.

are aware of the **ד' אבות נזיקין** (for they are written explicitly in the תורה). The משנה is (merely) teaching us that the characteristics of these **ד' אבות נזיקין** (which we are already aware of) are not similar to each other. Therefore the word 'הן' is omitted. The משנה should be read as follows: 'הבער (the שור בור מבעה of ד' אבות נזיקין) (concerning) the שור is not similar to מבעה, etc'.

The גליון has a difficulty with this reading of the משנה:

וקצת קשה דבגמרא⁴ מוכח דנחית תנא למניינא –

And there is a slight difficulty, for it is evident in the גמרא that the תנא of **אבות נזיקין** **is specifically interested in enumerating the number** **of אבות נזיקין** **מדפריך ותנא דידן מאי טעמא לא תני הני –**

Since the גמרא there asks 'and why does not the תנא of our משנה teach us these אבות **of אשעיא ר' א'.** The thrust of the question indicates that the משנה should merely mention them, but not to explain how those thirteen are זה כראי זה. [Alternately, concerning the אבות of אשעיא ר' א' we cannot state זה כראי זה, by all of them.] If the intent of our משנה is (only) to state that the אבות נזיקין are זה כראי זה, it is obvious why he does not enumerate the אבות of אשעיא ר' א' [where they are זה כראי זה (by many of them)]. This proves that the intent of the תנא was to teach us the number of אבות נזיקין⁵; therefore the question remains why the תנא did not state 'הן'!

The גליון concludes:

לכך יש לומר דיש מקומות דלא תני הן כדאשכחן בארבעה מחוסרי כפרה –

Therefore we may (have to) say that there are places where the תנא does not state 'הן' (even when it is appropriate) as we find concerning the משנה of ארבעה מחוסרי כפרה where it does not state 'הן'.

עד כאן) -

The preceding was taken from a גליון **up to this point.**)

Summary

The use of the word 'הן' is arbitrary.

Thinking it over

All the sources תוספות cites are from משניות⁶, except for the [ברייתא] of גמרא. Why does תוספות cite a ברייתא for support, and even to the extent that he mentions it before the supporting משנה (of ארבעה מחוסרי כפרה)?

⁴ לקמן ד,ב.

⁵ This explains why the גמרא there asks (since the תנא is enumerating אבות) why did he not also include the thirteen אבות of אשעיא ר' א'.

⁶ It is more appropriate to cite other משניות in support of, or in opposition to, the syntax of the משנה; than citing ברייתות, which may have a different syntax.