

For instance if the choicest – כגון שהיתה עידית דניזק זיבורית דמזיק – fields of the מזיק were equivalent to the poorest fields of the

Overview

The גמרא explains that the difference between ר"י (who maintains בדניזק (שיימינן (who maintains that ר"ע (בדמזיק שיימינן) is in a case where the מזיק pays (only) with his עידית דניזק. According to ר"י the (which are עידית must pay with his ר"י the (עידית דניזק superior to the דניזק). Our תוספות will discuss alternate cases¹ where there would be a difference between ר"י ור"ע.

anticipates and negates a different case where ר"י would argue:

ואיפכא לא מצי למימר דכולי עלמא מודו דאין משלם אלא עידית שיש לו –

And the גמרא could not have offered an opposite case and say that ר"י ור"ע are arguing where the זיבורית דניזק was like דמזיק²; for all agree (even ר"י) that in this case the מזיק pays only with the עידית that he possesses (even though it is דניזק (זיבורית דניזק) -

ואין צריך לקנות כדאמרינן לקמן (ד' ז:) אין לו אלא זיבורית כולם גובין מן הזיבורית –

And the מזיק is not required to purchase fields which are the equivalent of the עידית דניזק and pay him with these fields; as the גמרא states later that if the debtor (who is also a מזיק and is divorcing his wife) possesses only (כתובה³ for her אשה and the מלוה and the ניזק, then they all זיבורית collect from the זיבורית. There is no obligation for the מזיק to purchase עידית to satisfy the ניזק. Therefore the גמרא could not have cited this example.

continues to offer other cases which the גמרא could have mentioned:

ומיהו אי בשל עולם הן שמין⁴ הוה מצי למימר כגון זיבורית דמזיק כעידית דעלמא –

However if we assume that the values of properties are assessed 'at large' (and not the עידית of the מזיק's fields), the גמרא could have offered an alternate case; if for instance the זיבורית of the מזיק was like the עידית at large (the מזיק owned very high quality fields, and his worse fields were equivalent to what is generally considered עידית) -

דלרבי עקיבא גובין מן הזיבורית ולרבי ישמעאל יהיב ליה מעידית דניזק –

¹ The difficulty with the case the גמרא mentions is that ר"ע is מחמיר and ר"י is מיקל. This would seem to contradict what תוספות mentioned in the previous ד"ה ור"י that the expression of אלא indicates that ר"ע is מיקל. In the (three) cases that תוספות suggests ר"י is the מיקל.

² ר"י would maintain that the מזיק pays his עידית דניזק (which is זיבורית דניזק) and ר"י would maintain that the מזיק must obtain the equivalent of עידית דניזק and pay off the ניזק with it (we cannot say this because ...).

³ The מלוה generally collects from בינונית אשה and כתובת אשה collects from זיבורית.

⁴ The גמרא later has an איבעיא according to ר"ע (who maintains דמזיק), whether the מזיק need (only) pay with fields that are generally considered עידית (even though the מזיק owns better quality fields), this is called בשל עולם הן שמין; or is the מזיק obligated to pay the best of his fields (בשלו הן שמין) even if they are superior to עידית דעלמא.

Then according to ר"ע we collect from the זיבורית (of the מזיק), since it is כעידית דעלמא; **however according to ר"י the מזיק would be required to pay** an equivalent of עידית דניזק (even if they are better than זיבורית דמזיק [which are equivalent to עידית דעלמא], and are the equivalent of מזיק).

Tosfos presents an additional case the גמרא could have mentioned:

ואפילו למאן דאמר בשלו הן שמין הוה מצי למימר דלית ליה למזיק כעידית דניזק –
And even according to the one who maintains that we assess according to his field (of the מזיק) not in the general market, the גמרא still **could have said** that there is a difference (between ר"ע ור"י) in a case where **the מזיק does not have** the equivalent of **the עידית דניזק** (only lesser quality fields), then -
דלמאן דאמר⁵ כסף או מיטב ישלם כסף לרבי ישמעאל –

According to the one who maintains that the מזיק is required to pay **either money or מיטב**, then **according to ר"י** the מזיק will be required to **pay כסף**, since מיטב דניזק refers to מיטב דניזק and the מזיק does not possess the מיטב דניזק -

ולר' עקיבא לא ישלם אלא ממיטב שלו:

However, according to ר"ע, the מזיק **is only required to pay with his מיטב** (and not with כסף); since בדמזיק שיימינן.

Summary

The גמרא could have mentioned a case where זיבורית דמזיק כעידית דעלמא, if we maintain עידית דעלמא ר"ע he pays (according to ר"ע) בשל עולם הן שמין (עידית דניזק ר"י it is); or where the מזיק does not have עידית דניזק and we maintain או כסף או מיטב (according to ר"ע he pays) and according to ר"י he pays (כסף).

The מלוה is never obligated to purchase fields in order to pay מעידית.

Thinking it over

1. Tosfos proves that (according to ר"י) the מזיק is not required to buy the equivalent of עידית דניזק and pay him, from the fact that the ברייתא states אין בריתא. However it seems that the ברייתא there is following the opinion that בדמזיק שיימינן (hence the discussion whether בשל עולם הן שמין or ר"ע), which is the view of ר"ע; however here that we are discussing the view of ר"י who maintains בדניזק שיימינן, perhaps the מזיק is required to buy עידית דניזק⁶?

2. Why indeed did the גמרא not mention the cases which Tosfos suggests?⁷

⁵ רב הונא לקמן ט"א. He maintains that the מזיק cannot pay with מטלטלין; only with עידית or כסף.

⁶ אמ"ה.

⁷ See סוכ"ד אות מה.