

סיפא נמי בגזל כולי - The סיפא is also regarding a thief, etc.

OVERVIEW

can לוקח מגזלן (שמואל) who ruled that (according to ר"נ who challenged רבא never collect the שבה from the מוכר, since it is כרביית. We can infer from a משנה that one collects שבה קרקעות from בני חורין. It cannot mean in the case of a בע"ח for this rule is cited in the רישא concerning פירות (which a בע"ח cannot collect [according to שמואל]), therefore just as the רישא discusses a גזלן so too the סיפא of שבה is also discussing a גזלן. Our תוספות questions and explains the necessity for inferring the case of the סיפא, when there is already a difficulty from the רישא on ר"נ.

responds to an anticipated question:¹

מרישא עצמה היה יכול להקשות כדמקשה בסמוך² –

גמרא **could have asked** רב נחמן his question **from the רישא itself** as the **shortly asks**. Why was it necessary to say that since the רישא of פירות is discussing a גזלן so therefore we must assume that the סיפא of שבה קרקעות is also discussing a גזלן; from the mere fact that the לוקח collects the פירות from the בני חורין of the מוכר proves that³ יש לו שבה and there is a קשיא on ר"נ.

replies that the reason he chose to ask from the סיפא is not because there is no question from the רישא -

אלא כמה שיכול להקשות משבח גופיה פריך:

But rather as long as he can ask from a case of actual שבה he would rather **ask** from שבה than from פירות.

SUMMARY

There is a preference in posing a contradiction from two exact cases as opposed to similar cases with the same ramifications.

THINKING IT OVER

How can תוספות say that we could have asked from the רישא, when רבא later explains that the רישא of פירות is not discussing a לוקח?⁴

¹ See רש"י ד"ה הא.

² See the גמרא on this עמוד which begins ת"ש לאכילת פירות כיצד.

³ There is no difference in the discussion if the לוקח collects שבה whether it is regarding פירות or שבה. The rule is the same by both of them. If the לוקח cannot collect the שבה according to ר"נ since it is כרביית, the same logic applies to פירות, that it too is כרביית.

⁴ See מהרש"א, מהרש"א, מהר"ם וכו'.