

לא¹ ראי הקרן שאין הנאה להזיקו –

Keren, which derives no pleasure from its damage, is not similar, etc.

OVERVIEW

The גמרא is explaining (according to the מ"ד that the לא (תנא שור לקרנו ומבעה לשינו) is that if only שור (read קרן) would be written in the תורה we could not derive מבעה (read שן) from it. The nature of קרן and שן are dissimilar, so one cannot be derived from the other. However, it seems from the characteristics which the גמרא ascribes to קרן and שן respectively,² that they can be derived from each other (with a וחומר [as the גמרא will shortly ask]). תוספות will explain how (at least in the ה"א) the ascribed characteristics mentioned would prevent us from deriving קרן and שן from each other.

תוספות explains that we cannot derive שן from קרן, since by קרן it is אין הנאה להזיקה -

ופשיעה פשע שהיה לו לשמור שורו שבקל היה יכול לשומרו -

So therefore it was gross negligence on the part of the owner (in the case of קרן), for he should have guarded his ox, since it was easy for the owner to guard the ox -

שאינ דחוקה להזיק כיון שאין הנאה להזיקה -

Since by קרן there is no urgency (on the part of the שור) to do damage, for the שור receives no benefit from this damage of קרן -

אבל שן שיש הנאה להזיקה הוי כעין אונס שלא היה יכול לשומרה כל כך -

However by שן, where she receives pleasure from her damage, it (the damage) could be considered somewhat of an unavoidable accident, for he could not have guarded her so well to prevent her from eating, so the owner should be פטור -

כיון שהשן דחוק לאכול להנאתו -

Since by שן there is this urgency to eat for its pleasure, which is difficult for the owner to contain. Therefore we cannot derive a חיוב by שן from קרן.

תוספות now explains the second ראי; we cannot derive קרן from שן -

ולא ראי השן שאין כוונתו להזיק ואין יצרה תקפה ובקל יכול לשומרה -

For the nature of שן - which has no intent to damage and its destructive inclination is not aroused; it can easily be guarded – (so שן) is not similar -

כראי הקרן דכוונתו להזיק ויצרה תקפה ואין יכול לשומרה כל כך יפה:

¹ See ד"ה לא that the intention of המבעה כהרי השור לא הרי השור (read קרן) would be written in the תורה we could not derive מבעה (read שן) from it.

² The גמרא now states that קרן is אין הנאה להזיקה and שן is אין כוונתו להזיק. These seem to be characteristics which would exempt the owner from payment (and would allow us to derive one from the other [with a "ק"י]).

To the nature of קרן, which has intent to damage, and her destructive inclination is aroused, so it is not that easy for the owner to guard it properly; therefore we could not derive a חיוב by קרן from שן.³

SUMMARY

The גמרא maintained (in the הו"א) that the more difficult it is to contain an animal, the less liable the owner should be (for he should be considered אונס). Therefore the characteristics of כוונתו להזיק and יש הנאה להזיקה are reasons to exempt the owner from payment.

THINKING IT OVER

How can we understand the opposite approaches of the הו"א (which maintains that לפטור (יש הנאה להזיק and/or כוונתו להזיק is a reason) and the subsequent מקשן (who maintains that לחיוב (יש הנאה להזיק and כוונתו להזיק is a reason)?⁴

³ The גמרא, however, negates this entire line of reasoning, and maintains on the contrary that the more the animal is prone to damage (יש הנאה להזיקה or כוונתו להזיק) the more liable the owner should be. See 'Thinking it over'.

⁴ See אמ"ה.