

A גס"ד

Intro

Today we will Be"H learn כ דף of בבא קמא.
Some of the topics we will learn about include:

שן מועדת לאכול הראוי לה

One is fully liable if his animal eats food that is suitable for its diet; and even for אכילה ע"י הדחק

Foods that it only eats out of necessity;

שן ברשות הרבים

One is not liable for שן ברה"ר. The Gemara discusses several related scenarios, and debates whether they are considered רשות הניזק or רה"ר, including:

על גבי חבירתה, food on an animal's back, and מתגלגל ואתי, food that the animal takes from the רשות הניזק but eats in the רה"ר.

However, although one does not pay damages for שן ברה"ר,

משלמת מה שנהנית

He DOES have to pay for the benefit he derives from saving himself the need to feed his animal. The Gemara discusses how to evaluate this cost.

A

שן מועדת
לאכול הראוי לה

שן ברשות הרבים
על גבי חבירתה
מתגלגל ואתי

משלמת מה שנהנית

B The Gemara also discusses other examples of paying for הנאה, such as

הדר בחצר חבירו שלא מדעתו

If someone lives in another's house without his knowledge, the Gemara debates whether he is obligated to pay rent. This may depend whether:

ביתא קיימא לאגר, the house is ordinarily rented out, and so זה חסר, he incurs a loss, and

גברא עביד למיגר, if the fellow would otherwise rent a different house, and so זה נהנה, he benefits.

המשנה ובא אחר ושינה בה

The Gemara debates whether one is exempt for damaging objects that were left accessible for damage in an unusual manner.

B

הנאה
Paying for
such as

הדר בחצר חבירו
שלא מדעתו

המשנה
ובא אחר ושינה בה

1 So let's review...

Zugt di Mishnah

כיצד השן מועדת
לאכול את הראוי לה

One's liability to pay full compensation for food eaten by his animal is limited to food which is suitable for its needs. Similarly,

כיצד הבהמה מועדת
לאכול פירות וירקות

An animal is fully liable for eating fruits and vegetables.

However,

אכלה כסות או כלים

משלם חצי נזק

If the animal eats unusual items, such as clothing, it is classified as קרן, and the owner pays half-damages.

The Mishnah continues;

במה דברם אמורים

ברשות הניזק

אבל ברשות הרבים פטור

One is liable for שן only in the victim's property, but not in the public domain.

As the Gemara on דף י"ז explains; although the Pasuk says

ושלח את בעירה

Referring to

שן דבהמה, a domesticated animal;

The Mishnah's repetition includes

שן דחיה, a wild animal, because

חיה בכלל בהמה

The term בהמה can refer to a חיה as well.

1

משנה

כיצד השן מועדת
לאכול את הראוי לה

One's liability to pay full compensation for food eaten by his animal is limited to food suitable for its needs

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An animal is fully liable for eating fruits and vegetables.

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If the animal eats unusual items, such as clothing, it is classified as קרן, and the owner pays half-damages.

במה דברם אמורים
ברשות הניזק

אבל ברשות הרבים פטור

One is liable for שן only in the victim's property, but not in the public domain.

שן דבהמה - ושן דחיה
חיה בכלל בהמה

The term בהמה can refer to
a חיה as well.

2 The Gemara cites examples of normal eating:

חיה שנכנסה לחצר הניזק
וטרפה בהמה ואכלה בשר
משלם נזק שלם

If someone's wild animal went into someone else's property and tore apart an animal and ate it, he pays full damages. Furthermore,

כל מידי דלאו אורחיה
ואכלה ליה ע"י הדחק
שמיה אכילה

If the animal eats food that is not part of its regular diet, out of necessity, for example, because it was exceptionally hungry, it is still considered שן, and not קרן. For example,

פרה שאכלה שעורין
וחמור שאכל כרשינן

If a cow ate food intended for donkeys, or vice versa, משלמין נזק שלם

The owner is fully liable, since they eat these foods when necessary.

2

Examples of normal eating. . .

**חיה שנכנסה לחצר הניזק
וטרפה בהמה ואכלה בשר
משלם נזק שלם**

If someone's wild animal went into another's property and tore apart an animal and ate it, he pays full damages

**כל מידי דלאו אורחיה
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If the animal eats food that is not part of its regular diet, because it was exceptionally hungry, it is still considered שן

For example,

**פרה שאכלה שעורין
וחמור שאכל כרשינן**

If a cow ate food intended for donkeys, or vice versa,

משלמין נזק שלם

3 The Mishnah established
 שן
 חייב ברשות הניזק
 ופטור ברשות הרבים
 One is only liable for שן if the animal unlawfully wanders into the victim's property; but is exempt for שן in a public area.

The Gemara now elaborates

בהמה ברה"ר
 ופשטה צוארה
 ואכלה מעל גבי חברתה
 חייבת

One is liable for food that his animal eats off the back of another's animal while walking in the רה"ר, because גבי חברתה כחצר הניזק דמי
 The animal's back is considered the victim's domain.

The Gemara cites a ברייתא in support of this Halachah:

היתה קופתו מופשלת לאחוריו
 ופשטה צוארה ואכלה ממנו
 חייבת

One is liable if his animal ate from a sack of food that was hanging on someone's back, because כחצר הניזק דמי

However, the Gemara rejoins that we can say that a basket or sack on the back of a person or animal is considered ברשות הרבים, and he's פטור based on שן.

However, the Braisa rules that he's חייב based on קרן for which one is liable ברשות הרבים, because it's a case of בקופצת

The animal jumped up to reach the food, which is unusual.

=====

3

שן

פטור
ברשות הרבים



היתה קופתו מופשלת לאחוריו ופשטה צוארה ואכלה ממנו חייבת
His animal ate from a sack off someone's back כחצר הניזק דמי

חייב
ברשות הניזק



בהמה ברה"ר ופשטה צוארה ואכלה מעל גבי חברתה חייבת
His animal ate off the back of another's animal in רה"ר גבי חברתה כחצר הניזק דמי

בקופצת
The animal jumped up to reach the food which is unusual.
He is חייב based on קרן

4 A related inquiry:
 בעי ר' זירא
 קיימא עמיר ברה"ר
 וקא מתגלגל ואתי מרה"ר לרה"ר
 If an animal moves food from the רה"ר to the רה"ר and eats it there;
 What is the determining factor?
 בתר אכילה אולנין ופטורה
 The place where it eats the food; and so it's considered שן ברשות הרבים and he is exempt?
 OR
 בתר דשקלה אולנין וחייבת
 The place from where it took the food; and so it's considered שן ברשות הניזק and he is liable?

4

בעי ר' זירא
קיימא עמיר ברה"ר
וקא מתגלגל ואתי מרה"ר לרה"ר
If an animal moves food from the רה"ר to the רה"ר and eats it there;

בתר דשקלה אולנין וחייבת
Where it took the food; and if so it's considered שן ברשות הניזק and he is liable?

בתר אכילה אולנין ופטורה
Where it eats the food; and if so it's considered שן ברה"ר and he is exempt?

5 The Gemara cites the following ברייתא as possible proof:
 תני רבי חייא
 משוי מקצתו בפנים ומקצתו בחוץ
 If a sack of food is partly in the רה"י and partly in the רה"ר;
 אכלה בפנים חייבת
 אכלה בחוץ פטורה
 He is liable for what it eats inside, but exempt for what it
 eats outside. Apparently, because בתר אכילה אזלינן

However, the Gemara offers two alternative interpreta-
 tions:

1.
 אכלה על מה שבפנים חייבת
 על מה שבחוץ פטורה
 The animal ate the food without moving it. Therefore, he
 is liable for the food that was in the רה"י and exempt for the
 food in the רה"ר.

2.
 בפתילה דאספסתא
 The ברייתא refers to a long stalk of grain. Since
 כי גריר ליה
 אזיל אידך בתריה
 The entire stalk naturally gets dragged into the area where
 the animal begins to eat it,
 אזלינן בתר בהמה
 The animal's location decides its status.
 =====

5

תני רבי חייא
משוי מקצתו בפנים ומקצתו בחוץ
 If a sack of food is partly in the רה"י and partly in the רה"ר;

אכלה בפנים חייבת
אכלה בחוץ פטורה

He is liable for what it eats inside,
 but exempt for what it eats outside.

בתר אכילה אזלינן - Apparently, because

~~Two alternative interpretations~~

2 **בפתילה**

דאספסתא

The ברייתא refers to
 a long stalk of grain.

כי גריר ליה

אזיל אידך בתריה

The entire stalk gets dragged
 into the area where the
 animal begins to eat it,

אזלינן בתר בהמה

The animal's location.

1

אכלה על מה

שבפנים חייבת

על מה שבחוץ

פטורה

The animal ate the food
 without moving it.

Therefore, he is liable for food
 that was in the רה"י
 and exempt for food in רה"ר.

6 The Gemara continues explaining the Mishnah which stated as follows:

כיצד השן מועדת לאכול את הראוי לה
כיצד הבהמה מועדת לאכול פירות וירקות
אכלה כסות או כלים
משלם חצי נזק

במה דברם אמורים

ברשות הניזק

אבל ברשות הרבים פטור

This exemption certainly refers to the first clause of the Mishnah in that one is liable for שן only in the victim's property, but not in the public domain.

The Gemara debates however, whether this exemption of ר"ה also refers to eating clothing as well.

Perhaps he's פטור?

Even though generally חייב ברה"ר חייב, in this case he's פטור, because

כל המשנה ובא אחר ושינה בו פטור

Since the owner of the clothing treated his objects unusually by leaving them in the ר"ה, one who damages them is exempt;

OR

Even in this case

אכסות וכלים חייב

One IS liable for the clothing, because

עבדי אינשי דמנחי גלימי ומתפחי

It IS normal for a person to place his objects in the ר"ה, and rest.

=====

7 The Mishnah continues

ואם נהנית

משלמת מה שנהנית

Even when one does not pay damages for שן, he IS liable for the benefit he derives from saving himself the need to feed his animal.

The Gemara debates how to evaluate this benefit:

רבה says

דמי עמיר

He pays the value of the animal's usual meal of straw, even though it ate more expensive barley.

While רבא maintains

דמי שעורים בזול

He pays a discounted price for the actual food it ate; specifically,

אומדים כמה אדם רוצה

להאכיל לבהמתו דבר הראוי לה

אע"פ שאינו רגיל

By evaluating the amount he would pay to feed his animal better food; Rashi explains that this is 2/3 of the usual price.

However, the ברייתא adds,

אכלה חטין או דבר הרע לה

פטורה

If it ate something harmful, he has not benefited, and so he is not liable at all.

=====

6

כיצד השן מועדת
לאכול את הראוי לה
כיצד הבהמה מועדת
לאכול פירות וירקות
אכלה כסות או כלים
משלם חצי נזק

במה דברם אמורים

ברשות הניזק

אבל ברשות הרבים פטור

Even in this case is חייב
אכסות וכלים חייב

One is liable for the
clothing, because

עבדי אינשי דמנחי גלימי
ומתפחי

It is normal for a person
to place his objects in the ר"ה,
and rest.

Perhaps he is פטור

Even though generally

קן ברה"ר חייב

in this case he is פטור, because

כל המשנה ובא אחר ושינה בו
פטור

Since the owner treated his
objects unusually
by leaving them in the ר"ה,
one who damages them
is exempt;

7

ואם נהנית - משלמת מה שנהנית

Even when one does not pay damages for שן,
he is liable for the benefit he derives
from saving himself the need to feed his animal.

רבא

דמי שעורים בזול

He pays a discounted price
for the actual food it ate;

אומדים כמה אדם רוצה
להאכיל לבהמתו דבר הראוי לה
אע"פ שאינו רגיל

By evaluating the amount
he would pay to feed his
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He pays the value
of the animal's usual
meal of straw,
even though it ate
more expensive barley.

ברייתא

אכלה חטין או דבר הרע לה
פטורה

If it ate something harmful, he has not benefited,
and so he is not liable at all.

8 The Gemara proceeds to discuss other examples of payment for mere benefit:
הדר בחצר חבירו שלא מדעתו
If one lives in another's house without permission, it depends on the circumstances:

1. בחצר דלא קיימא לאגרא וגברא דלא עביד למיגר
If the house was not ordinarily rented, and this fellow would not otherwise rent elsewhere;
זה לא נהנה וזה לא חסר
There is definitely no basis for reimbursement, because the owner did not incur a loss and the one who lived there did not derive any monetary benefit;
2. בחצר דקיימא לאגרא וגברא דעביד למיגר
If the house WAS ordinarily rented, and the fellow WOULD rent a different home elsewhere, זה נהנה וזה חסר
He is certainly obligated to pay rent, because the owner incurred a loss and he derived benefit;
3. בחצר דלא קיימא לאגרא וגברא דעביד למיגר
If the house was NOT ordinarily rented, but the fellow WOULD have rented elsewhere, this is a case of זה נהנה וזה לא חסר
One derives benefit, while the other one does not lose. And the Gemara asks:
צריך להעלות לו שכר
Is he obligated to pay rent? Because
הא איתהנית
He benefited;
OR
אין צריך להעלות לו שכר
He does NOT need to pay, because
מאי חסרתין
He did not cause him any loss?

9 Now, רמי בר חמא compares this case to our Mishnah
אם נהנית משלמת מה שנהנית
One must pay for benefit;
However, the Gemara differentiates:
האי זה נהנה וזה חסר
והאי זה נהנה וזה לא חסר
In the Mishnah's case he certainly pays for his benefit, because the owner of the food suffered a loss, but in our case, perhaps he is exempt, because the owner of the house did not suffer a loss?

However, רמי בר חמא compared it to the Mishnah, because he understood
סתם פירות ברה"ר
אפקורי מפקד להו
One who leaves produce in the רה"ר is resigned to them becoming partially ruined, and does not expect to collect even the value of their benefit. Therefore, in the Mishnah's case he is not considered to have suffered a loss either.
=====

8 *Other examples of payment for mere benefit*

הדר בחצר חבירו שלא מדעתו
If one lives in another's house without permission

<p>בחצר דקיימא לאגרא וגברא דעביד למיגר <i>If the house was ordinarily rented, and the fellow would rent a different home elsewhere,</i></p> <p>זה נהנה וזה חסר <i>He is certainly obligated to pay rent, because the owner incurred a loss and he derived benefit</i></p>	<p>בחצר דלא קיימא לאגרא וגברא דלא עביד למיגר <i>If the house was not ordinarily rented, and he would not otherwise rent elsewhere;</i></p> <p>זה לא נהנה וזה לא חסר <i>There is no basis for payment. The owner did not incur a loss and the one who lived there didn't derive a monetary benefit</i></p>
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בחצר דלא קיימא לאגרא וגברא דעביד למיגר
If the house was not ordinarily rented, but the fellow would have rented elsewhere, this is a case of זה נהנה וזה לא חסר
One derives benefit, while the other one does not lose.

?

<p>אין צריך להעלות לו שכר <i>He does NOT need to pay, because - מאי חסרתין - He did not cause him any loss?</i></p>	<p>צריך להעלות לו שכר <i>Is he obligated to pay rent? Because - הא איתהנית - He benefited</i></p>
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9 *חמ"ב חמ"א*
Compares this case to our Mishnah

ואם נהנית משלמת מה שנהנית

However, the Gemara differentiates...

<p>והאי זה נהנה וזה לא חסר <i>In our case, perhaps he is exempt, because the owner of the house did not suffer a loss?</i></p>	<p>האי זה נהנה וזה חסר <i>In the Mishnah's case he certainly pays for his benefit, because the owner of the food suffered a loss,</i></p>
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10 The Gemara cites two other examples of

זה נהנה וזה לא חסר

1.

המקיף חבירו משלש רוחותיו

If someone's fields surround another's field from all four sides and he erects walls between their fields, it is a מחלוקת whether he can demand that the inner owner reimburse him for part of his expenses.

Now, the inner person also benefits from these walls, while the outer person does not lose because he had to build the wall anyway.

However, the Gemara differentiates:

He may be liable, because the owner of the walls can argue

את גרמת לי הקיפא יתירא

I only need to build the walls because of your field; therefore, I am incurring a loss;

On the other hand, he may be exempt, because he can reply

לדידי סגי לי בנטירא בר זוזא

I would be satisfied with a cheap fence, and so I am not benefiting.

10

Two other examples of
זה נהנה וזה לא חסר

1

המקיף חבירו משלש רוחותיו

If someone's fields surround another's field on all four sides and he erects walls between their fields,

it is a מחלוקת whether he can demand that the inner owner reimburse him for part of his expenses.

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I only need the walls because of your field; therefore, I am incurring a loss;

He may be exempt, because he can reply

לדידי סגי לי בנטירא בר זוזא

I would be satisfied with a cheap fence, and so I am not benefiting.

11

2.

Another example;

הבית והעלייה של שנים

If a house collapses, and the owner of the second floor wishes to rebuild it, while the owner of the ground floor is unwilling to contribute; he may build one floor himself, and reside there until he is reimbursed. However, it is a מחלוקת whether he must then pay rent, since he benefited.

Here, too, the Gemara differentiates:

He may be exempt, because

ביתא לעלייה משתעבד

The bottom floor is indebted to serve as the foundation of the upper floor, and so he was entitled to live there, and is not considered to have benefited.

On the other hand, he may be liable, because of

שחרוריתא דאשייתא

A new house depreciates as soon as it is lived in; therefore, the other fellow did incur a loss.

This discussion continues in the next Daf.

11

2

הבית והעלייה של שנים

If a house collapses, and the owner of the second floor wishes to rebuild it, while the owner of the ground floor is not willing to contribute;

he may build one floor himself,

and reside there until he is reimbursed.

However, it is a מחלוקת whether he must then pay rent, since he benefited.

He may be exempt, ביתא לעלייה משתעבד

The bottom floor is indebted to serve as the foundation of the upper floor, and so he was entitled to live there, and is not considered to have benefited.

On the other hand, he may be liable, because of

שחרוריתא דאשייתא

A new house depreciates as soon as it is lived in; therefore, the other fellow did incur a loss.