

A בס"ד
Intro

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

הדר בחצר חבירו שלא מדעתו
If someone lives in a house without the owner's knowledge, and
עביד למיגר ולא קיימא לאגרא
Which is a case of
זה נהנה וזה לא חסר
He would have rented a different house, and so he benefited, while the house was not ordinarily rented, and so the owner did not incur a loss;
It is a מחלוקת if he must pay rent.

משלמת מה שנהנית
Although one is exempt for damages of ר"ה, he must pay the benefit of the animal's meal. However,
צדי רחבה
If the animal ate from the sides of the ר"ה, this is considered ברשות הניזק and he is liable for damages. The Gemara debates if this also applies if
מחזרת
The animal remained in the ר"ה and merely turned its head to eat from the side.

A

הדר בחצר חבירו
שלא מדעתו
זה נהנה וזה לא חסר

משלמת
מה שנהנית

B בור ברשותו
It is a מחלוקת if one is liable for בור in his own property.

תחלתו בפשיעה וסופו באונס
It is a מחלוקת if one is exempt for damages that occurred in a manner beyond his control, if he was originally negligent in not taking steps to preclude a more common and avoidable scenario.

B

בור ברשותו

תחלתו בפשיעה
וסופו באונס

1 So let's review...

The Gemara earlier debated whether

הדר בחצר חבירו שלא מדעתו
צריך להעלות לו שכר או לא

Whether one who lives in someone else's house without his knowledge has to pay rent?

The Gemara explained that this שאלה is in a case of עביד למיגר ולא קיימא לאגרא

Which is a situation of זה נהנה וזה לא חסר

The squatter benefited, because he would have otherwise rented another house; and the owner did not lose, because the house is not ordinarily rented. And as the Gemara in the previous Daf framed the question;

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?

1

The Gemara earlier debated...

הדר בחצר חבירו שלא מדעתו
צריך להעלות לו שכר או לא?

Whether one who lives in someone else's house without his knowledge has to pay rent?

This שאלה is in a case of

עביד למיגר ולא קיימא לאגרא

זה נהנה וזה לא חסר

Because the house is not ordinarily rented

אין צריך
להעלות לו
שכר

Because
מאי חסרתין



צריך
להעלות לו
שכר

Because
הא איתהנית

2 The Gemara brings two versions of how ר' יוחנן ruled in this matter:
 רב כהנא reported that he ruled
 אינו צריך להעלות לו שכר
 However, ר' אבהו erroneously inferred that ר' יוחנן ruled
 צריך להעלות לו שכר
 And the Gemara concludes that רב כהנא's version is the correct one.
 And רב הונא likewise ruled
 אין צריך להעלות לו שכר

The Gemara offers two reasons:

1. The Pasuk says
 ושאייה יוכת שער
 Demons frequent an unoccupied home. Therefore, the owner is actually benefitting from his use.
2. ביתא מיתבא יתיב
 An occupied house is well maintained and lasts longer. Therefore, even if
 קא משתמש ביה בציבי ותיבנא
 Even if the owner had previously used it for storage which is sufficient to keep the demons away, the owner still benefits from the squatter's living there which is required for proper maintenance.

=====

2 The Gemara brings 2 versions of how ר' יוחנן ruled in this matter

רב כהנא reported ר' יוחנן ruled

צריך להעלות לו שכר

The Gemara concludes רב כהנא's version is the correct one

רב אבהו reported ר' יוחנן ruled

אין צריך להעלות לו שכר

likewise ruled רב הונא

אין צריך להעלות לו שכר

The Gemara offers two reasons:

2

ביתא מיתבא יתיב
An occupied house is well maintained and lasts longer

Even if קא משתמש ביה בציבי ותיבנא the owner used it for storage which is sufficient to keep the demons away the owner benefits from the squatter's living there which is required for proper maintenance

1

ושאייה יוכת שער
Demons frequent an unoccupied home

Therefore, the owner is actually benefitting from his use

3 The Gemara returns to the previous Mishnah which concludes
 כיצד משלמות מזה שנהנית
 And explains; when one pays for damages, and when he pays for benefits:
 אכלה מתוך הרחבה משלמות מזה שנהנית
 מצדי הרחבה משלמות מזה שהזיקה
 If the animal ate from produce it encountered in the ר"ה itself, he only pays for his benefit, because it's ברשות שן הרבים; but if it ate from the side of the ר"ה, he is liable for full damages, because it's ברשות הניזק, since people have the right to store their produce there.

Similarly,
 מפתח החנות משלמות מזה שנהנית
 מתוך החנות משלמות מזה שהזיקה
 If it eats from a display in front of a store, he only pays the benefit, because it's ברשות הרבים; but if it eats from within the store, he's liable for full damages, because it's ברשות הניזק.

3 The previous Mishnah concludes...

כיצד משלמת מה שנהנית?

<p>מצדי הרחבה משלמת מה שהזיקה</p> <p><i>The side of the ר"ה, he is liable for full damages</i></p> <p><i>Because it's</i> שן ברשות הניזק <i>since people have the right to store their produce there</i></p>	<p>אכלה מתוך הרחבה משלמת מה שנהנית</p> <p><i>In the ר"ה itself, he only pays for his benefit</i></p> <p><i>Because it's</i> שן ברשות הרבים</p>
<p><i>Similarly,</i></p>	
<p>מתוך החנות משלמת מה שהזיקה</p> <p><i>From within the store, he's liable for full damages</i></p> <p><i>Because it's</i> שן ברשות הניזק</p>	<p>מפתח החנות משלמת מה שנהנית</p> <p><i>From a display in front of a store, he only pays the benefit</i></p> <p><i>Because it's</i> שן ברשות הרבים</p>

4 The Gemara debates the meaning of צדי רחבה in which he's חייב, and offers two versions of a מחלוקת רב ושמואל:

1.
דשבקתה לרחבה ואזלה
וקמה בצידי רחבה
The animal actually went to the side of the street to eat the produce.
He's חייב, because this is considered שן ברשות הניזק because people keep their produce there since animals, usually, don't go there.

However,
במחזרת פטור
If it remained in the רה"ר and merely turned its head and ate from the side, he's פטור, because, as Tosfos explains, מקום שיכולה לאכול בחזרה חשיב לה כרה"ר
This is considered שן ברשות הרבים because people do not keep their produce there since animals can eat it by merely turning their heads.

4 The meaning of צדי רחבה
מחלוקת רב ושמואל

1

FIRST VERSION:

שמואל:

He's חייב only where
דשבקתה לרחבה ואזלה
וקמה בצידי רחבה
The animal actually went to the side of the street to eat the produce

Considered
שן ברשות הניזק
because
people keep produce there since animals, usually, don't go there

However,
במחזרת פטור

If it remained in the רה"ר and merely turned its head and ate from the side

Considered
שן ברשות הרבים
because
people don't keep produce there since animals can eat it by turning their heads

5 However, רב maintains that even במחזרת חייב This is also considered שן ברשות הניזק because people keep their produce there since animals usually don't turn to the side.

The Gemara points out that according to רב, אכלה מפתח החנות, in which he's פטור, must refer to דקיימא בקרן זוית The store was in a corner where the animal encounters the food without turning its head, and so it is considered שן ברה"ר, while according to שמואל the Mishnah can refer to a store in any location, במחזרת And the animal turned its head and ate.

5

רב:

Even

במחזרת חייב

If it remained in the רה"ר and merely turned its head and ate from the side

Considered

שן ברשות הניזק

Because people keep produce there since animals usually don't turn to the side

The Gemara points out

<p>According to רב must refer to</p> <p>דקיימא בקרן זוית</p> <p><i>The store was in a corner where the animal encounters the food without turning its head</i></p>	<p>מפתח החנות משלמת מה שנהנית</p>	<p>According to שמואל can refer to</p> <p>במחזרת</p> <p><i>And the animal turned its head and ate</i></p>
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2. The second version;
 מחזרת כולי עלמא לא פליגי דחייבת
 Everyone agrees that if the animal turned its head it is considered שן ברשות הניזק and he is fully liable;
 כי פליגי
 במקצה מקום מרשותו לרשות הרבים
 They disagree regarding someone who left part of his property accessible to the רה"ר, and subsequently left his produce there; and the Gemara offers two explanations of this מחלוקת:
 1.
 רב אמר פטור
 קסבר בור ברשותו חייב
 רב says he's exempt from paying for the produce, because one is liable for damages of בור in his own property and this produce is considered a public hazard, and כל המקלקלין ברה"ר
 המחזיק בהן זכה
 They are declared ownerless, and so he may allow his animal to eat the produce.
 However,
 שמואל אמר חייב
 קסבר בור ברשותו פטור
 שמואל holds that he's liable to pay for the produce, because one is exempt for damages of בור in his own property; therefore, ברשות עשה
 The produce is still his, and the owner of the animal must pay for them; and as Rashi adds, this is שן ברשות הניזק because animal don't usually go there.

2.
 A second explanation;
 רב אמר פטור
 Because the animal's owner may argue לאו כל כמינך
 דמקרבת להו לפירותך לרה"ר ומחייבת להו לתוראי
 You caused the damage yourself by making your produce accessible to my animal; while שמואל אמר חייב
 Because the owner of the produce may respond מי איכא למימר לאו אדעתיה
 הא חזי להו
 I am allowed to leave clearly visible hazards in my own property.
 =====

6

2

SECOND VERSION:

מחזרת כולי עלמא לא פליגי דחייבת

If the animal turned its head it is considered שן ברשות הניזק and he is fully liable

כי פליגי

במקצה מקום מרשותו לרשות הרבים

Someone who left part of his property accessible to the רה"ר

שמואל אמר
חייב

1

קסבר
 בור ברשותו פטור
One is exempt for damages of בור in his own property
 Therefore,
 ברשות עשה

2

The owner of the produce may respond:
מי איכא למימר לאו אדעתיה הא חזי להו
I am allowed to leave clearly visible hazards in my own property.

רב אמר
פטור

1

קסבר
 בור ברשותו חייב
And this produce is considered a public hazard
 כל המקלקלין ברה"ר המחזיק בהן זכה

2

The animal's owner may argue:
לאו כל כמינך דמקרבת להו לפירותך לרה"ר ומחייבת להו לתוראי
You caused the damage yourself by making your produce accessible to my animal



7 We continue with the next Mishnah:

Zugt di Mishnah

הכלב והגדי שקפצו מראש הגג

ושברו את הכלים

If a person's dog or a goat jumped off his roof into the neighbor's property, and broke his utensils,

משלם נזק שלם

מפני שהן מועדין

Their owner is fully liable, because it is normal for them to jump, and so it is תולדה דרגל.

The Gemara infers, and a Braisa explicitly states;

הא נפלו פטור

But if the animal fell off the roof, he would be exempt, because

לאו הוה ליה לאסוקי אדעתיה

He was not required to anticipate that they might fall.

The Gemara offers two explanations:

1.

This is a case of

תחלתו בפשיעה וסופו באונס פטור

One is exempt for damages that occurred in a manner beyond his control, even though he was originally negligent in not taking steps to preclude a more common and avoidable scenario.

7

הכלב והגדי שקפצו מראש הגג
ושברו את הכלים

If a person's dog or a goat jumped off his roof into the neighbor's property, and broke his utensils

משלם נזק שלם

מפני שהן מועדין

It is normal for them to jump,
and so it is תולדה דרגל.

?

כריתתא:

הא נפלו פטור

Because

לאו הוה ליה לאסוקי אדעתיה

He was not required to anticipate that they might fall.

1

This is a case of

תחלתו בפשיעה

וסופו באונס פטור

One is exempt for damages that occurred in a manner beyond his control, even though he was originally negligent in not taking steps to preclude a more common and avoidable scenario

8 2. And according to the opinion of תחלתו בפשיעה וסופו באונס חייב One IS liable in such a case; Nevertheless, נפלו פטור, because we are discussing a case where מקרבי כלים לגבי כותל דכי קפצי בקפיצה לא נפלי עלייהו ואפילו תחלתו בפשיעה ליכא The utensils were close to the wall, and if the animal would have jumped it would not have landed on them. Therefore, there was no negligence regarding jumping, and the damage caused by the fall was completely accidental.

8

According to the opinion of תחלתו בפשיעה וסופו באונס חייב

2

Nevertheless, נפלו פטור because we are discussing a case where **מקרבי כלים לגבי כותל דכי קפצי בקפיצה לא נפלי עלייהו ואפילו תחלתו בפשיעה ליכא**

The utensils were close to the wall, and if the animal would have jumped it would not have landed on them

Therefore, there was no negligence regarding jumping, and the damage caused by the fall was completely accidental

9 However, the Gemara offers two possible scenarios where אפילו נפלו נמי חייב

According to the opinion of תחלתו בפשיעה וסופו באונס חייב It can be in a case of בכותל רעוע A weak wall on the roof; Which is a פשיעה regarding pieces of the wall falling down, and an אונס regarding the animal falling down; And according to the opinion of תחלתו בפשיעה וסופו באונס פטור It can be in a case of בכותל צר A very narrow wall; Which is a פשיעה even regarding the falling of the animal, because it's normal for the animal to jump up onto the wall, and since it's very narrow the animal is likely to fall; =====

9

The Gemara offers two possible scenarios where אפילו נפלו נמי חייב:

<i>According to the opinion תחלתו בפשיעה וסופו באונס חייב:</i>	<i>According to the opinion תחלתו בפשיעה וסופו באונס פטור:</i>
בכותל רעוע	בכותל צר
A weak wall on the roof Which is a פשיעה regarding the wall falling and an אונס regarding the animal falling down;	A very narrow wall Which is a פשיעה even regarding the falling of the animal because it's normal for it to jump up onto the wall, and since it's very narrow the animal is likely to fall;

10 The Mishnah continues:

הכלב שנטל חררה
והלך לגדיש ואכל החררה
והדליק את הגדיש

If a person's dog enters someone else's property, and
snatches a hot biscuit and eats it near a stack of grain, and
a coal which is stuck to the biscuit sets the stack on fire;

על החררה משלם נזק שלם
ועל הגדיש משלם חצי נזק

The dog's owner pays full damages for the biscuit,
because it's a case of שן, and only pays half-damages for
the stack of grain.

This is explained in the next Daf.

10

משנה

הכלב שנטל חררה
והלך לגדיש ואכל החררה
והדליק את הגדיש

If a person's dog enters someone else's property...

*...and snatches
a hot biscuit and eats it
near a stack of grain...*

*...and a coal which
is stuck to the biscuit
sets the stack on fire*



על החררה
משלם נזק שלם



ועל הגדיש
משלם חצי נזק