

הא מדסיפא על גבה רישא במלאכה אחרת –

Since the סיפא is on top of her, the רישא is by different work

OVERVIEW

The ברייתא [in the רישא] states that if there was שאלה בבעלים then even though בשעת מיתה, the בעלים were working במקום אחר, nevertheless the שואל is פטור. In the סיפא the ברייתא states that if he borrowed the בעלים after he borrowed the פרה, even if the בעלים were מיתה בשעת מיתה על גבה חורשים, nevertheless the שואל is חייב. Initially (in order not to refute the רב המנונא)¹ the גמרא interpreted במקום אחר in the רישא to mean באותה (במקום אחר), for since the סיפא states על גבה, we must assume that the רישא is אחרת.³ Our תוספות discusses the need to ask the question from the סיפא.

דאי במרפי ואזיל היינו ממש על גבה⁴ –

For if the רישא is in a case of מרפי ואזיל that is the exact equivalent of ע"ג.

תוספות asks (based on the above):

ותימה דמאי צריך לדקדק מכח סיפא בלא סיפא תיקשי ליה רישא -

And it is astounding! Why is it necessary to infer from the סיפא, that במקום אחר cannot mean מרפי ואזיל, the רישא is difficult even without the סיפא -

דאי במרפי ואזיל היינו על גבה ממש ומאי אפילו⁵ -

For if the רישא, when it states במקום אחר, it means מרפי ואזיל; that is the exact equivalent of ע"ג, so what is the meaning of אפילו (even) if it was במקום אחר –

תוספות anticipates a possible resolution to his question:

¹ רב המנונא maintains that in order there should be a פטור of שמירה בבעלים, it requires that the בעלים work with the borrowed cow מיתה עד שעת שאילה.

² See דקמרפי רש"י ד"ה דקמרפי that the owner is continually loosening the ground in front of the plowing cow with a shovel, for the land is very hard to plow.

³ Presumably we could derive the rule of the סיפא (by עמה במלאכה) that he is חייב, by inference from the רישא (where he is פטור [only] by עמה במלאכה) and vice versa. The (only) justification of having two cases is because each case teaches a חידוש with the case of 'אפילו' (even אחרת פטור, and even חייב). However, if the 'אפילו' in both cases are similar (מרפי ואזיל and ע"ג), why the need for two cases? This is the גמרא question.

⁴ We must assume that the גמרא equated מרפי ואזיל with ע"ג; otherwise what is the גמרא question; the סיפא is ע"ג (which is עמה במלאכה) and the רישא is מרפי ואזיל (which is less במלאכה). Therefore we must conclude that they are both considered the same thing (עמה במלאכה).

⁵ The ברייתא teaches that if the פרה and the בעלים were hired together, then even if the בעלים was working with the פרה the שואל is פטור. However if במקום אחר means מרפי ואזיל which is the equivalent of ע"ג (see footnote # 4), what is the חידוש that even if it is ע"ג he is פטור; obviously he is פטור since the בעלים are with the cow!

וכי תימא דמרישא גופא לא מצי למיפרך דאיכא למימר דהיא גופא אתא לאשמועין -

And if you will say; that the גמרא could not have asked only from the רישא (without the inference of the סיפא), for one can say, that the ברייתא is coming to teach us this very concept -

דמרפי ואזיל הוי כעל גבה⁶ -

That ע"ג is the same as מרפי ואזיל -

אבל מסיפא פריך שפיר דאמאי נקט אפילו על גבה אף על גב דלא מרפי ואזיל⁷ -

However there is a proper question from the סיפא, for why does the ברייתא mention מרפי ואזיל in the סיפא, meaning even though he is not just מרפי ואזיל על גבה -

הא מרישא שמעינן לה⁸ -

But we know this from the רישא! This would seemingly answer תוספות question.

תוספות rejects this resolution:

דאם כן⁹ כי נמי תוקי רישא במלאכה אחרת תיקשי אמאי איצטריך סיפא אפילו¹⁰ -

For if indeed it is so, then even when we establish the רישא by אחרת, the question still remains why is it necessary for the סיפא to state, [ע"ג],

הא מרישא שמעינן דמלאכה אחרת הוא כעל גבה¹¹ -

For we know already from the רישא that מלאכה אחרת is like ע"ג. The original question remains. Why do we need to base our question on the סיפא, when we can ask directly from the רישא?!

תוספות answers

ויש לומר¹² דאי רישא במלאכה אחרת ניהא ליה דנקט בסיפא אפילו בעליה על גבה לרבותא -
סיפא it is satisfactory that the רישא is אחרת במלאכה אחרת
mentions ע"ג בעליה for a novelty, that -

⁶ We can distinguish factually between מרפי ואזיל and ע"ג, however the ברייתא teaches that even מרפי ואזיל (which is factually not the same as ע"ג, nevertheless it) is considered ע"ג, so that the שואל is פטור.

⁷ The סיפא (by saying ע"ג אפי') seems to say that even if he was more than just מרפי ואזיל, but he was actually ע"ג, nevertheless he is still חייב. However we already know from the רישא that מרפי ואזיל is the equivalent of ע"ג, so why is there a bigger חידוש by ע"ג than by מרפי ואזיל! We go back to the original question; why two cases (see footnote # 3).

⁸ The gist of this answer maintains that once we know there is no הלכה difference between מרפי ואזיל and ע"ג, there is no חידוש in writing ע"ג (even though there is a factual difference); therefore no need for two cases.

⁹ See footnote # 8. Once we assume that we only look at the הלכה (not the factual difference). There is also no difference between מלאכה אחרת (which exempts when it was במלאכה for it is considered ע"ג), and ע"ג ממש (so we do not need the סיפא to teach us that ע"ג does not exempt when it was not במלאכה). See 'Thinking it over'.

¹⁰ The אמירה הגהות הב"ח amends this to read אפילו על גבה הא (instead of אפילו הא).

¹¹ If the question from the סיפא is based on the הלכה similarity between מרפי ואזיל and ע"ג (despite their factual difference), then there is a question (not only on רב המנוח, but) on the ברייתא which is repetitive, for once we know that מלאכה אחרת is the הלכה equivalent of ע"ג, there is no need for the סיפא.

¹² תוספות is basically accepting the answer of the previous 'וכי תימא', by distinguishing between the factual difference between מקום אחר and ע"ג (which is vast) and the factual difference between מרפי ואזיל and ע"ג (which is minimal).

אף על גב דמרישא שמעינן¹³ כיון דעל גבה הוי רחוק ממלאכה אחרת¹⁴ -

That even though that we can derive it from the רישא, nevertheless since ע"ג is factually far from מלאכה אחרת, therefore he mentions ע"ג אפ"י in the סיפא -

אבל אי רישא באותה מלאכה וכגון דמרפי ואזיל -

However if the רישא is discussing באותה מלאכה, and meaning for instance מרפי ואזיל, therefore the question is -

כיון דאשמעינן רישא דהיינו כעל גבה -

Since the רישא taught us that מרפי ואזיל is like ע"ג -

תו לא הוה צריך למינקט בסיפא אפילו בעלים חורשים על גבה:

It is no longer necessary to mention in the סיפא, 'בעלים חורשים ע"ג even', since it is not that much different than מרפי ואזיל.

SUMMARY

We can more readily distinguish between major factual differences, as opposed to minor factual differences (even if להלכה they are equivalent).

THINKING IT OVER

מלאכה אחרת refutes his proposed answer by equating מרפי ואזיל and ע"ג, with מלאכה אחרת¹⁵. However there seems to be a major difference; when we are equating מרפי ואזיל and ע"ג, we agree with רב המנונא that it must be באותה מלאכה so מרפי ואזיל and ע"ג are both considered אותה מלאכה (they are equivalent). However if the רישא is במלאכה אחרת, we reject רב המנונא and maintain that he is not required to be באותה מלאכה, therefore the סיפא tells us an important חידוש that even if he was ע"ג (which is not מלאכה אחרת) nevertheless if was not במלאכתה he is חייב!

¹³ See footnote # 7-9.

¹⁴ Such a vast difference between מלאכה אחרת and ע"ג justifies writing ע"ג in the סיפא even if they are the same להלכה.

¹⁵ See footnote # 8.