

Pet Peeve: Your Animal Damaged Hezek on the Safari

Rav Yonoson Hool

Let us begin with a story. Mr. Cohen is taking his family on a trip to the local safari park. He rides, uneventfully, with his family through the park. At one point Mr. Cohen gets out of his car to wash *Netilas Yodaim* so that he can eat his lunch. Mr. Cohen leaves the car door open and while he is out of the car a monkey enters, grabs

Mr. Cohen's lunch and eats it in the car. Discovering this, Mr. Cohen goes to the owner of the safari park and asks him to pay for the damage his monkey has

caused. The question is whether the owner is obligated to pay?

At first glance, it would appear that the safari owner would have to pay. It would seem that this is a classic case of the damage of *shein* where the owner of an animal who ate another's

produce is liable to pay for his animal's damages. This is learned from the *posuk* of *U'bier b'sedei acheir*. While

we learn from the word *achier* that the owner is only obligated to pay if his animal ate in the *reshus hanizak* i.e. in the other person's property and not for example in the public domain, it would appear that by eating Mr. Cohen's lunch in his car that is exactly what the safari owner's monkey did. The safari owner should therefore be obligated to

pay Mr. Cohen for his monkey's damages.

However, from the Gemora in *Bava*

Kama Daf 23b: one might see that it is not so simple. The Gemora there relates that the goats of a certain family were causing damage to Reb Yosef's property. Reb Yosef told Abaye to tell the family to guard their goats from doing more damage. Abaye responded that if he tells that to the family they will say to Abaye that Reb Yosef should build a fence around his property

preventing the goats from causing damage. According to Abaye the responsibility

is on the owner of the field to protect his field from outside damage. Asks the

Gemora according to Abaye how is there ever an obligation to pay for *shein*? If there is no fence the owner of the animal is

not obligated to pay and if there is a fence how did the animal get into the field to cause damage? The Gemora answers that either the owner had properly

erected a fence but the animal knocked down the fence which is unusual or in

the middle of the night the fence collapsed unknown to the owner of the field.

The *Chazon Ish Bava Kama* 11:20 and the *Teshuras Shai Simon* 122 both say that the owner of the

animal was aware that the fence was down and therefore he is obligated to pay
for *shein*.

Do we *pasken* like Abaye that the obligation is on the owner of the field to protect his field and when he does not build a fence the owner of the animal would not be responsible for his animal's damages? Concerning this question, we find a *machlokes rishonim*.

The *Rif* says

that Abaye's ruling is not the Halacha. The *Rosh*, however, quotes the *Rabbeinu Chananel* that the Halacha

is like Abaye. Although the Shulchan Aruch rules like the *Rif*, the *Shach* quotes the *Rosh* in the name of *Rabbeinu Chananel* and rules like him.

When an animal wanders into a neighbor's unfenced field and begins eating according to the *Rif* the animal owner will be *chayiv* and according to the *Shach*

who *paskens* according to the *Rabbeinu Chananel* the animal owner is *patur*.

Therefore, if we are to answer our question concerning the monkey eating Mr. Cohen's food inside his car we can say that this would depend

on the *machlokes* between the *Rif* and the *Rabbeinu Chananel*. According to the *Rif*,

to which the Shulchan Aruch and the Rambam agree, the safari owner must pay for

shein damages even though the door to the car was left

ajar. Even according to the *Shach* who *paskens* like the *Rabbeinu Chananel* that there is no *shein*

damages when the *reshus* of the *nizak* is left unprotected there is still an obligation

for the safari owner to pay the cost of *mah shenehenis* i.e. the cost of cheaper monkey food as the *Chazon Ish* and the *Teshuras Shai* point out.

Possibly, we can add another reason why the safari owner

would be *patur* from damages. Since the car

is given permission by the safari owner to ride through the park it is a case of where the *reshus* of the *nizak* i.e. the car is found within the *reshus* of the *mazik* i.e. the safari park

owner. The safari owner can say to the car owner, "I only gave you permission

to drive through my park if you would take care of yourself in a responsible was and not by leaving your car and leaving the door open." Possibly for this

reason as well the safari owner would be *patur* from damages.