

זאת אומרת גרמא בנזקין אסור –

This tells us that it is forbidden to cause indirect damage

OVERVIEW

The גמרא asked why should there be a prohibition of placing a ladder near a dovecote (because a נמייה may jump directly from the ladder to the dovecote), since it is merely a גרמא (and גרמא בנזקין is פטור). (פטור רב טובי בר מתנא. replied, this ruling teaches us the even though גרמא בנזקין is פטור from paying damages, nevertheless one is forbidden from causing damage even through גרמא. Our תוספות discusses the difference between גרמא (which is פטור) and גרמי (for which one is חייב).

ומעיקרא סלקא דעתין כי היכי¹ דמעיקרא פטור הכי נמי דמותר -

And initially (when we asked why is it prohibited) we assumed that just like one is (initially) פטור for a damage done by גרמא, similarly it should be permitted to even do something which may cause a damage through גרמא.

הכא משמע² דגרמא בנזקין דפטור -

It seems from the גמרא here that if one caused damage indirectly (גרמא) he is exempt from paying. גרמא בנזקין פטור cites some examples where we see that -

וכן בפרק כיצד הרגל (בבא קמא דף כו,ב) זרק כלי מראש הגג והיו תחתיו כרים וכסתות -

And similarly in גמרא states, he threw someone's vessel from the rooftop and underneath there were pillows and blankets (which would prevent the כלי from shattering) -

וקדם וסילקן אפילו הוא פטור³ -

And even if the thrower went ahead and removed them before the כלי landed, so that the כלי broke; the thrower (who is the remover) is פטור from paying for the כלי -

ובפרק הפרה (שם דף מז,ב) הכניס פירות לחצר בעל הבית שלא ברשות כולי -

And in הפרה, it states if one brought in produce into the owner's courtyard without permission, etc. -

וקאמר בגמרא דאם אכלה והוזקה פטור⁴ -

And the גמרא rules that if the owner's cow ate so much of these פירות and was

¹ The גמרא amends this to read היכי דפטור הכי (instead of היכי דמעיקרא הכי). The מקשן assumed that since גרמא is פטור, this indicates that גרמא is not considered to be a מזיק; therefore he should be allowed to do it. See 'Thinking it over'.

² The גמרא asked that he should be even permitted to place the ladder there since it is only גרמא, and the answer was that גרמא בנזקין is אסור, but the גמרא did not answer that there is a חייב.

³ He is not liable for throwing it off the roof, since they would have landed on the pillows and would not break; he is not liable for removing the pillows, since that is merely a גרמא (he did not break the כלי directly).

⁴ The בעל הפירות did not encourage the בהמה to eat; the בהמה ate on its own, therefore the בעל הפירות is only a גרמא.

damaged by the excess food, the בעל הפירות is פטור -

ונתן סם המות לפני בהמת חבירו דפטור (שם) -

And similarly the גמרא there rules that one who placed poison before his friend's animal and the animal ate it and died, that the poisoner is פטור -

ושולח בעירו⁵ ביד חרש שוטה וקטן (שם נט,ב) -

And one who sends fire in the hands of a חש"ו and it damaged; the sender is פטור -

ופורץ גדר בפני בהמת חבירו⁶ וכופף קמת חבירו בפני הדליקה⁷ -

And one who breaks a fence in front of his friend's animal, and one who bends over his friend's standing grain into the path of a fire -

ועושה מלאכה במי חטאת⁸ (שם נה,ב נו,א.) וליבה וליבתו הרוח -

And one who did work with his friend's מי חטאת, and in a case where he fanned the flames and the wind fanned the flames (both together) -

דפטור בכל הנך כדאמר בפרק הכונס (שם דף נט,ב) -

That in these cases he is פטור as the גמרא rules in פרק הכונס -

ומבעית חבירו דהוי נמי גרמא -

And one who frightened his friend and caused him damage that is also considered גרמא and he is פטור for any damages to his friend -

כדאמר בפרק קמא דקדושין (דף כד,ב) דאיהו הוא דאבעית אנפשיה⁹ -

As the גמרא states in the first פרק of קדושין, that he is פטור since the victim frightened himself -

ובכיצד הרגל (בבא קמא דף כג,ב) שיסה בו כלב שיסה בו נחש פטור -

And in כיצד הרגל the ברייתא states, 'he incited a dog against him, or he incited a snake against him and he was damaged by the dog or the snake, the inciter is פטור'. This concludes the many examples of פטור בגרמא.

Tosfos asks:

ויש ליתן טעם מאי שנא כל הני מדינא דגרמי -

And it is necessary to give a reason, how are all these cases of גרמא different from the rule of גרמי -

כגון אחווי אחווי דהגוזל בתרא¹⁰ (שם דף קטז,ב ושם) ומראה דינר לשולחני ונמצא רע -

⁵ A marginal note amends this to read הבערה (instead of בעירו).

⁶ The animal then ran out and did damage, the breaker of the fence is פטור for the damage, since it is considered גרמא.

⁷ See the גמרא there גמרא that the fire reached the קמה through an unusually strong wind, therefore he is פטור.

⁸ מי חטאת is the water in which the פרה אדומה was mixed into it. One may not use it for any work such as using it for a weight. If any work is done with it the מי חטאת is פסול.

⁹ The one who was frightened contributed to his damage for he became frightened and that caused the damage.

¹⁰ A person heard that the king wished to take possession of people's property illegally, and he went and told them to take the property of a certain person, he is liable דגרמי, even though he did not actually take away his friend's field.

For instance the cases where he pointed out his neighbor's field, in פרק הגוזל בתרא, and where he showed a דינר to the moneychanger who pronounced it good and it turned out to be bad¹¹ -

ונפרצה אומר לו גדור¹² ודן את הדין¹³ דחייב לרבי מאיר אפילו לא נשא ונתן בידו -

And the case where if the wall between a vineyard and a wheat field **was breached, we tell** the vineyard owner, ‘**fence it**’, and if he did not, he is liable for the loss due to כלאים, **and where one passed judgment** incorrectly **where he is liable according to ר"מ**, even if he did not take and give the money with his own hand -

והשורף שטרותיו של חבירו¹⁴ ומוכר שטר חוב לחבירו וחזר ומחלו¹⁵ -

And one who burns his friend's notes of debt, and one he sells his note of debt to his friend and forgave the debtor; in all these case he is liable because of דינא דגרמי. It is necessary to establish criteria when is it considered גרמא (and he is פטור) and when is it considered גרמי (and he is חייב).

תוספות offers some solutions:

וחילק רבינו יצחק לשון אחד –

And the ך"י, in one version, differentiated between גרמא and גרמי -

דדינא דגרימי חייב היינו שעושה הוא עצמו היזק לממון חבירו -

That the rule where גרמי is חייב is where he himself damaged another's money –

In the case of **שולח** the damage is done by the **אדמה** not the person. In **זרק כלי** the damage is done by the ground. By **הכניס פירות** or **סם המות** the damage was done by the food or poison. By **שלח הבערה ביד חש"ו** the damage was done by the **חש"ו**. By **פורץ גדר** the damage was done by the **גדר**. By **כופף קמתו** the damage was done by the fire. By **מי חטאת** it is a **ניכר** therefore he is only a **גרמא**. By **ליבה וליבתו הרוח** the **מזיק** is the fire. By **מבעית חבירו** the **מזיק** is the fire. By **שיסה** the damage was done by the **מזיק**. In contrast the laws of **גרמי** are where the person does the damage. By **אחורי** as well as by the **שולחני** as well as by the **דיין** it is their words which cause the damage. By the **כרם** it is the reluctance of the **הכרם** that makes it **בלאים**. The same is by **השורף**.

¹¹ See ב"ק צט,ב. The שולחני did not actually damage him he only caused him to accept a counterfeit coin.

¹² "ב"ק קא. It is the responsibility of the בעל הכרם to repair the fence so as not to cause the wheat to become אסור on account of כלאים. The בעל הכרם חייב for the loss of the wheat (due to the איסור כלאים) if he decides not to repair the fence, even though he did not actually damage the wheat directly.

¹³ שם. The דיין ruled incorrectly; causing a loss to one party. The rule, according to ר"מ, is that the דיין must pay for the loss, even if he did not make the loss directly. He did not take away the money from the respondent and give it to the claimant.

¹⁴ ב"ק צה, 14. The מלוה can no longer collect his debt for he does not have his שטר to prove that he is owed money. The burner is חייב to pay the מלוה the amount of the loan written in the שטר because of גרמי.

¹⁵ See א, כתובות פו. The מלוה sold his שטר to a third person. The מלוה then went and forgave the לווה the debt. The לווה is not required to pay to the buyer of the שטר. However because of גרמי the מלוה must pay to the buyer the full face value of the שטר.

מוחל מזיק through burning or being שט"ח לחבירו and שטרותיו

גרמי and גרמא offers another distinction between תוספות

ועוד חילק דדינא דגרמי דחייב היינו¹⁶ משעת מעשה שבא ההיזק -

And the ר"י additionally distinguished that the rule that גרמי is חייב is when the damage happened at that time, not later as by גרמא -

By שולח the damage is not done when he places the ladder, rather after the נמייה jumps. By סם המות and הכניס פירותיו the damage came after he threw it or removed the pillows. By שולח הבערה ביד חש"ו the damage happened after he placed it, when the בהמה ate it later. By כופף קמתו the damage happened after he gave it to them. By פורץ גדר the damage happened later. By ליבה [The case of חטאת במי חטאה needs some clarification.¹⁷] By מראה the damage happened later when the fire came. By נכרים as soon as he showed it to the אהוויי אהוויי the property was lost. By כלאים as soon as he gave up to repair the fence it becomes כלאים. The same is true by the דיין as soon as he ruled wrong the damage was done, The same applies to שטרותיו and השורף שט"ח לחברו ומחלו in all these cases the damage happens immediately. Therefore they are considered גרמי and he is חייב.

ועל הכל קשה טיהר את הטמא ובעל הבית עצמו עירבן עם פירותיו -

And there is a difficulty with all (?) these explanations; the case where the דיין was מטהר food that was really טמא and the owner mixed these foods which the דיין was מטהר with his other foods which were טהור, thereby causing all his foods to become טמא, and the ruling is that the דיין is חייב on account of גרמי. The question is -

ואמאי חייב דהוא עצמו אינו עושה היזק בממון חבירו -

But why is the דיין himself did not do damage to his friend's money; this presents a difficulty for the first version of the ר"י -

וגם באותה שעה שמטהר אינו בא ההיזק -

And also at the time he was mistakenly מטהר the damage did not happen; it only happened later when the owner mixed them with his פירות טהורים. This presents a difficulty to the second version of the ר"י.

גרמי and גרמא offers an alternate distinction between תוספות

¹⁶ The הגהות הב"ח amends this to read **משעת מעשה שבא ההיזק בא דבשעת מעשה** (instead of **משעת מעשה שבא ההיזק**)

¹⁷ Perhaps since it is a ניכר שזינו ניכר it is considered as if there is no damage now but it happens later (when he wants to use it, וצ"ע).

ונראה לרבינו יצחק בן אברהם דדינא דגרמי הוי מטעם קנס¹⁸ כדמוכח בירושלמי¹⁹ -

And it appears to the רי"ב that the ruling by גרמי that it is חייב, is because it is a punishment as is evident in תלמוד ירושלמי -

ולכך כל היזק המצוי ורגיל לבא קנסו חכמים -

So therefore any damage which is frequent and occurs usually, the חכמים fined the perpetrator -

וטעם דקנסו שלא יהא כל אחד הולך ומזיק לחבירו בעין²⁰ -

And the reason they fined him is in order to prevent everyone from going and (directly) damaging his friend -

והיינו טעמא דמאן דמחייב בהיזק שאינו ניכר²¹ -

And this is also the reason of the one who holds one liable for an unnoticeable damage, which was done במזיד -

ואפשר דבשוגג נמי קניס²² רבי מאיר²³ כי היכי דקניס במטמא²⁴ ומדמע²⁵ אחד שוגג ואחד מזיד:

And it is possible²⁶ that גרמי even if it was accidental, just like מ"מ fines by making טמא and mixing whether he is a שוגג or a מזיד.

THINKING IT OVER

writes that in the הו"א we assumed that just as he is פטור therefore we assume that it is מותר.²⁷ How is it possible to assume even in a הו"א that it is permitted to cause damage to another person; we are even obligated in השבת אבידה,

¹⁸ According to the רי"ב there is no intrinsic difference between the case of גרמא and גרמי, rather one is more frequent (גרמי) and the other is less common (גרמא). This may explain why טיהר את הטמא is חייב since it is frequent.

¹⁹ See דיני דגרמי משום קנס, מס' שבועות פ"ו ה"ו in ירושלמי who cites שו"ת מהר"ם מרוטנבורג ח"ד סי' ת"ס.

²⁰ See רש"ש who is troubled by this word 'בעין'. He suggested that it should be inserted in the next line which should read, והיינו כעין טעמא וכו'.

²¹ See גיטין נג,א where there is a dispute whether היזק שאינו ניכר is considered a היזק and one is חייב or it is not considered a היזק and one is פטור. However even the מ"ד who maintains היזק שאינו ניכר, nevertheless he admits that if he did it מזיד he is חייב in order that חבירו של חבירו ומטמא טהרותיו של חבירו. See footnote # 24 & 25 for examples of היזק שאינו ניכר.

²² One is usually fined if he transgressed premeditatingly (במזיד), however if it was בשוגג there would seem no reason to fine him; it was accidental. Nevertheless by גרמי perhaps the חיוב is even for a שוגג, for we are גזור שוגג אטו מזיד.

²³ דאין דינא דגרמי is the תנא who is ר"מ.

²⁴ is when one is מטמא the טהרות of his friend, thus rendering it worthless, since it needs to be burnt. This is considered a היזק שאינו ניכר, because superficially the טהרות look the same as they did before they became טמא.

²⁵ מדמע is when one mixes תרומה into his friend's חולין; causing the value of the חולין to become less. This too is a היזק. In both these cases שוגג even by גרמי is ר"מ.

²⁶ writes that it is possible that by גרמי we are also מחייב the שוגג, just like we are מחייב a שוגג by ניכר. However, it is also possible that we cannot compare a היזק שאינו ניכר where the damage was done directly (it is merely אינו ניכר) and therefore we are stricter, however by גרמי where it was an indirect damage perhaps we are more lenient and are not גזור שוגג אטו מזיד.

²⁷ See footnote # 1.

so certainly it is forbidden to cause damage even indirectly?²⁸

SUMMARY

גרמי – חייב	טעמי הפטור והחויב	גרמא – פטור
אחוי אחויי	א. בגרמא הוא לא עשה בעצמו מעשה ההיזק,	סולם אצל שובך
מראה דינר לשולחני	בגרמי הוא עושה בעצמו ההיזק	זרק כלי מראש הגג
נפרצה אומר לו גדור	ב. בגרמא הנזק לא נעשה מיד,	הכניס פירות
דן את הדין	בגרמי ההיזק בא בשעת מעשה	נתן סם המות
שורף שטרותיו של חברו	ג. גרמא אינו מצוי ורגיל תמיד – לא קנסו,	שלח בערה ביד חש"ו
מכר שט"ח ומחלו	בגרמי מצוי ורגיל - קנסו	פורץ גדר בעד בהמה
		כופף קמת חברו בפני הדליקה
		עושה מלאכה במי חטאת
		לבה ולבתו הרוח
		מבעית חברו
		שיסה בו כלב נחש

²⁸ See נחלת משה