

לפי שבה ממון הן גובין – They collect according to the monetary value

OVERVIEW

ר' יוחנן resolved the query of ר' אלעזר that for building the חומת העיר we collect from the inhabitants based proportionately on their wealth (the rich pay more than the poor), but we do not tax them all equally per capita (as one option of the query suggested). ר' יוחנן explains the reason for the ruling of תוספות.

כיון דאין¹ סכנת נפשות לא אזלינן אלא בטר ממון –

Since [here] primarily there is no danger to life if there would be no חומה, therefore we do not go according to the people (that they should contribute per capita) but rather we go according to the wealth of the citizens. They each pay proportional to their assets (which may be stolen, if there is no חומה).

תוספות offers a corollary case:

והכי נמי אמר בהגוזל בתרא (בבא קמא דף קטז,ב) שיירא ההולכת במדבר ועמד עליה גייס –

And the גמרא also states a similar ruling in בתרא הגוזל בתרא; פירק הגוזל בתרא; שיירא and the גייס agreed on the amount of money to be given to the גייס, so the שיירא will continue on its way -

מחשבין לפי ממון דליכא סכנת נפשות כיון דאין הגייס בא רק בשביל ממון –

We assess the members of the שיירא according to the money they have with them, and they each give proportionally (this concludes the גמרא); תוספות continues the reason for this is since there is no סכנת נפשות because the גייס only came for money, but not to kill and maim.

תוספות responds to an anticipated difficulty:

ואף על גב דאמר בפרק בן סורר (סנהדרין דף עב,א) דהבא במחתרת נידון על שם סופו² –

And (we rule in this case that מחשבין לפי ממון) even though the גמרא states in פרק בן סורר that a thief who burrows through a tunnel is judged according to the consequence of his actions -

ומפרש רבא טעמא בגמרא משום חזקה דאין אדם מעמיד עצמו על ממונו כולי³ –

¹ דאין בה סכנת, תוספות amends this to read, הב"ה.

² The rule is that if a thief is burrowing his way into a house to steal and the בעל הבית apprehends him and kills the thief, the בעה"ב is not liable for his death, as explained shortly.

³ The owner will not stand idly by while the thief steals his money; he will put up a fight and the thief in return may kill the בעה"ב in order to steal the money, therefore the בעה"ב is initially exempt for killing the thief immediately, based on the axiom of להרגך השכם להרגו.

And **רמב"ם** explained the reason there in the **גמרא**, because there is a presumption that a person cannot hold himself back regarding his money, etc.⁴

ואפילו⁵ הכי אין מחשבין אלא לפי ממון כיון דהגייס ברצונו אינו בא על הנפשות –

But nevertheless we only assess the **שיירא** according to the money (and not according to **נפשות** even though it can come to **נפשות** as in the case of **במחלת**); since the intent of the **גייס** is not come for **נפשות** only for **ממון**. We know this is true –

דאם לא יעמדו נגדם לא יזיק לגופם הילכך לא חשיב סכנת נפשות⁶ –

For if the people of the **שיירא** will not rise up against the **גייס**, the **גייס** will not cause them bodily harm, therefore since the main intent of the **גייס** is **ממון**, it is not considered **סכנת נפשות** (even though it is possible that it may eventually turn out to be a **סכנת נפשות** [if the **שיירא** refuses to cooperate]).

לפיכך אם יעמדו עליהם לסטים ונתפשו עמהם גובין לפי ממון –

Therefore if robbers apprehend the **שיירא** and they came to a monetary agreement with the **לסטים**, we collect according to the money and not **נפשות** –

אבל היכי דטעו⁷ במדבר אמר התם⁸ דמחשבין אף לפי הנפשות⁹ –

However, in a case where the **שיירא** was lost in the **מדבר**, the **גמרא** rules there that we assess also according to **נפשות** –

משום כיון דטעו איכא¹⁰ סכנת נפשות:

Because, since they are lost in the **מדבר**, there is **סכנת נפשות**.

SUMMARY

Where there is no immediate **נפשות** but only a monetary loss, we collect לפי

⁴ We see from that **גמרא** that the **במחלת** is considered that he is coming **נפשות** (even though he initially only wants money), so seemingly by **גייס** it should also be considered **נפשות** and they should pay **נפשות**.

⁵ Others amend this to read אפילו (not ואפילו); see מהר"ם.

⁶ **דיני נפשות** and **דיני נפשות** where it is considered **נפשות** (even though the owner has no liability for killing him, and the case of **שיירא** where it is not considered **נפשות** (even though seemingly the **חזקה** of **ממונו** על **ממונו** should apply here as well). One explanation may be that by **מחלת** the owner of the house may assume that the thief realizes that the owner will put up a fight, so the thief is coming על **נפשות** and therefore he may be killed (as a **רודף**). However by **שיירא** or **חומה** the poor people can argue we are not interested in fighting for our money, and so from our perspective they are only coming **ממון** and therefore על **נפשות** and therefore **ממון** (see מהר"ם). Alternately, it depends what the issue is; by **מחלת** we are discussing the right of the owner to defend his property, therefore the **במחלת** is a **רודף** and may be killed; if however we are discussing how much to pay, then the **גייס** is only **ממון** so we are **ממון**. See **נח"מ**, **סוכ"ד**. for various explanations to differentiate between the cases.

⁷ The **הגהות הב"ח** amends this to read, אבל היכא דטעו, etc.

⁸ ב"ק קטז,ב.

⁹ They pay the guide to lead them back to civilization both according to **נפשות** and **ממון**. [Presumably, half the fee is **נפשות** (where all contribute equally) and half the fee is **ממון**.]

¹⁰ In their current situation (since they are lost) there is a **סכנת נפשות** (they may perish in the **מדבר**) and lose their money.

ממון (even if it can deteriorate to a סכנת נפשות situation).

THINKING IT OVER

1. Is the obligation to pay לפי ממון because of the (additional) money that the (richer) person is being protected from losing, or is it based on the cause of the problem, that the thieves come because of the (larger) amounts of money that is there (which belong the richer people)?¹¹ [In the case of שיירא would they pay according to how rich they are, or according to how much money they are traveling with?]

2. Is there more reason to say גובין לפי ממון by חומה over שיירא or vice versa?

¹¹ See ביאורים והערות (לרי"מ קנובלוביץ) אות קיד.