His fire; because it is his money – אשו משום ממונו

Overview

The גמרא cites the view of ר"ל that one is liable if he damages by fire, for the fire is considered his money (as if he owns it), and one is liable for damages done by one's possessions. תוספות clarifies the meaning of this statement.

כלומר חיוב ממונו יש בו[1] ולא שיהא האש שלו דאפילו הדליק באש של אחר חייב -

The meaning of אשו משום ממונו **is that there is a liability** in making a fire as if the fire **is his money** (his possession, for which he is liable), **but there is no** requirement **that the fire** actually **belong to him, for even if he ignited** something **with someone else's fire** the igniter **is liable -**

כדאשכחן בפרק הכונס (לקמן דף נו,א) **בכופף קמתו של חבירו בפני הדליקה[2] ומטיא ברוח מצויה[3] -**

As we find in פרק הכונס regarding one who bends over the standing crops of his friend in the path of a fire, which can reach the bent crops **with a normal wind –**

תוספות offers an additional proof:

וגבי גץ שיצא מתחת הפטיש[4] אף על גב דמסתמא מפקיר ליה -

And regarding a spark which comes forth from under the hammer of a smithy, for which the smith is liable for any fire damages the spark caused, **even though that presumably** the smith is **מפקיר** the spark, and nevertheless he is liable for payment; proving that one need not own the fire in order to be liable for the damage it causes.

תוספות offers a logical reason why we must say that the liability for fire is not dependent on ownership:

ועוד דאין לך אדם שיתחייב בדליקה שיפקיר הגחלים וידליק גדיש של חבירו -

And additionally (if there is requirement of ownership) **no one will** ever **be liable for** causing a **fire, for he will be מפקיר the coals and light his friend's granary.**

תוספות concludes by disagreeing with רש"י:

ולא כפירוש הקונטרס[5] דפירש[6] דאיכא בינייהו[7] דאדליק בגחלת שאין שלו:

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[1] This is in opposition to ר"י who maintains אשו משום חציו, which means that he is liable for it is considered as if he did it (not just that his money did it).

[2] Had he not bent over the crops, the fire would not have reached it; his bending caused them to be destroyed.

[3] The rule there is that the 'bender' is liable for the burnt crops, even though the fire does not belong to him at all.

[4] ב,סב. See 'Thinking it over' # 1.

[5] בד"ה משום ממונו.

[6] רש"י actually writes, וקס"ד דא"ב כגון שהדליק בגחלת שאינו שלו.

And the aforementioned is **not like s'רש"י interpretation, who explained that the difference between** ר"י ור"ל is in a case **where he lit a fire with a coal which did not belong to him.**[8]

Summary

Even if we maintain אשו משום ממונו, the fire need not belong to him.

Thinking it over

1. תוספות proves from גץ היוצא מתחת הפטיש that the fire need not belong to the מזיק.[9] However, by גץ היוצא, the damage is being caused directly through the כח of the person; he is banging with the hammer and causing the spark to fly; this should be considered אדם המזיק (or actual חציו), where all agree that it need not belong to him. What is תוספות proof?![10]

2. Can we differentiate between a case where one makes a fire in his own domain and accidentally it travels to another domain and does damage (in which case there is the מחלוקת between ר"י ור"ל whether he is חייב משום חציו or משום ממונו), and a case where he intentionally plans to set fire to his friend's property (in which case there is no מחלוקת and all agree that he is an אדם המזיק)?[11]

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[7] According to תוספות even ר"ל agrees that one is liable for kindling a fire which he does not own.

[8] According to ר"י he is חייב since it is חציו, and according to ר"ל he is פטור since it is not ממונו.

[9] See footnote # 4.

[10] See בית לחם יהודה אות קלג.

[11] See אוצר מפרשי התלמוד # 39. This may answer the questions תוספות has on פירש"י.