

There is substance in his money

ממונו אית ביה ממשא –

OVERVIEW

The גמרא explains the reason ר"י disagrees with ר"ל that אש is because a person's money has substance, however the fire has no substance, so it cannot be considered ממונו (but rather חציו). תוספות discusses this concept whether all the מזיקין (which we consider ממונו) have substance.

anticipates a difficulty: תוספות

אף על גב דבור לית ביה ממשא שחייבה תורה להבלו ולא לחבטו¹ -

Even though a 'pit' has no substance (especially) according to the one who maintains that **when the תורה obligated the owner of the pit to pay it was on account of the foul air in the pit, but not on account of the blow;** why therefore does ר"י maintain that אש cannot be ממונו because it has no substance, when we find that בור which also has no substance and nevertheless it is ממונו.

responds: תוספות

מכל מקום ממונו כעין חציו שדרכו לילך ולהזיק אית ביה ממשות² -

Nevertheless a ממונו style מזיק like חציו, whose manner is to travel and do damage, has substance. We cannot derive anything from בור regarding אש, since בור is a passive מזיק (and does not need to have substance), however an active מזיק like אש must have substance in order to be considered ממונו, and since it has no substance it can only be חייב ממשא.

offers an alternate response: תוספות

אי נמי בור נמי חשיב אית ביה ממשא -

Or you may also say that בור too is considered ממשא -

דעל ידי כריית הבור משתנה ממשות של קרקע ונעשה חלל³ -

For through the digging of the בור, the substance of the ground changed and

¹ This is the view of רב later on ג,ב. שמואל argues with רב and maintains that לחבטו ו"ש להבלו.

² The תורה informed us that there are various מזיקים including שור, אש, בור, and אדם. The question is, under which category is אש; is it like the מזיק of (בור) שור which are ממונו or is it under the category of (and similar to) אדם המזיק. ר' יוחנן maintains that it is not similar to שור since אש has no substance. Even though בור has no substance and is nevertheless considered ממונו; however אש is completely different from בור since אש is active and בור is passive, therefore we wish to include אש under the active מזיקים either שור or אדם; therefore ר"י concludes it is more similar to חציו than to שור which has substance. Later תוספות will show that by חציו there is also a case of no substance. See 'Thinking it over'.

³ Therefore since by digging a בור it is considered ממשא, אית ביה ממשא, so even by opening (the cover of) a בור it is included in the digging of a בור (see רשב"א).

became hollow; this is considered **אית ביה ממשא** -

אבל מקום הילוך שלהבת אינו משתנה ממשותו אלא שנעשה דולק ושורף -

However when the flame goes through an area, the substance of the flame (which is doing the damage) **does not change, but rather it ignites and burns;** therefore it is considered **לית ביה ממשא**.

asks:

ואם תאמר ממונו נמי לית ביה ממשא -

And if you will say; we also find cases of **ממונו** where it is **לית ביה ממשא** even when their damage is done actively, not passively like **בור** -

כגון צרורות ברוח שבכנפיהם בריש פירקין⁴ דאיכא לסומכוס⁵ נזק שלם -

For instance a damage of **צרורות** which is caused by the wind of their wings, mentioned in the beginning of our **פרק**, where according to **סומכוס** he pays a **נ"ש**. Let us therefore compare **אש** to this type of damage which is **לית ביה ממשא** and is considered **ממונו**.

answers:

ויש לומר דמכל מקום גוף הממון שפשע בו אית ביה ממשא -

And one can say; that nevertheless the body of his money in which he was **negligent** (i.e. the rooster) **has substance**, therefore he is liable **ממונו** -

שיש לו לשמור ממונו שלא יזיק לא ברוח ולא בשום דבר -

For he should watch his belongings that it should not damage, not by a wind (flapping its wings) **and not through any other means -**

ואין שום ממון שלא יהא בו ממשא במה שפשע -

And there is no instance of ממון where there is no substance in that in which he is negligent.

responds to an anticipated difficulty:⁶

⁴ יז, ב. The **ברייתא** there states that if roosters damage something by the wind of their flapping wings (it caused a vessel to break) this is considered **צרורות** (an animal damaging by flinging pebbles while walking). There is a dispute whether **צרורות** pays a **ח"נ** (the view of the **רבנן**) or a **נ"ש** (the view of **סומכוס**). Granted that **ר"י** agrees with the **רבנן** that **ח"נ צרורות** is a **מלכה למשה מסיני**; however we can derive from **סומכוס** (who claims there is no such a **הלל"מ**) that when this would happen according to the **רבנן** when it is not **צרורות**, they too would agree that he would be liable for a **נ"ש** even though the damage was done through a medium which **לית ביה ממשא** (the wind). See footnote # 5.

⁵ (דבר דלית מה ממשא אף על ידי צרורות) **רבנן** perhaps chose not to bring proof from the **רבנן** (that there is a **חייב צרורות** even by a **ממשא**), because it is possible to refute this proof arguing that we do not find a **חייב נ"ש** (like there is by **אש**) for a **דבר דלית ביה ממשא**.

⁶ Now that **תוספות** is saying that by all **ממון** he is **הממון** (even though the actual **מזיק** is **ממשא**), the question is that **אש** and **חץ** are also **ממון**; for the **חץ** is **ממשות** and the object which is burning is also **ממשא**, so **אש** can be included in the category of **ממונו**, since the thing that is burning is **ממשא**.

אבל יש חץ שאין בו ממשות כגון שיבר כלי ברוח פיו -

However there is an 'arrow' which has no ממשות, for instance if he broke a vessel through blowing on it with his mouth -

ויש אש שאין בו ממשות כגון שלהבת בלא גחלת כדאמרין בסוף ביצה⁷ (דף לט, א) -

And there is a 'fire' which has no ממשות, for instance a flame without a coal, as the גמרא states in the end of ביצה -

הילכך דמו להדדי שאין בשניהם ממשות בהמזיק שפשע בו רק בגוף⁸ האדם:

Therefore אש and חץ are similar to each other, for there is no substance in either of them regarding the מזיק in which he was negligent, (even though there is substance) only in the body of the person who is causing the damage.

SUMMARY

We cannot include אש as ממונו even though בור is ממונו, either because אש is as דרכו לילך ולהזיק as opposed to בור, or בור is considered ממשא ביה since it is dug out. In all cases of ממונו the item in which one was פושע there is ממשא (even if the actual מזיק is ממשא); however by חץ ואש there is an instance where there is no ממשא even in the מזיק for instance blowing by חץ and גחלת by אש.

THINKING IT OVER

חייב משום ממונו בור as an example that there is a ממונו even by a ממשא ביה, דבר שאין ביה ממשא, since אש is דרכו לילך ולהזיק as opposed to בור.⁹ Seemingly however it would seem the opposite; if by בור, which is a lesser מזיק than אש (for בור is דרכו לילך ולהזיק), nevertheless it is ממונו even though it is ממשא ביה, so certainly אש which is a more severe מזיק (for it is דרכו לילך) should be ממונו (even though ממשא ביה)?!¹⁰

⁷ The משנה there states; המוציא גחלת לרה"ר חייב ושללהבת פטור. Once we find that there is אש which is ממשא ביה (and must therefore be ממונו חציו), we assume that this applies to all the מזיקים of אש (even when ממשא ביה; where it is קשור לגחלת).

⁸ תוספות may be saying that regarding damages of ממונו the cause of his liability is his negligence in watching his property (but not in the immediate cause of damage; i.e. the wind), therefore in all cases of ממונו it is ממשא ביה. However by a person who damages the cause of his liability is not on account of his negligence of watching himself, but rather the liability is because of the object that causes the damage (i.e. the 'arrow') on account that the person threw the arrow. Therefore when the arrow has no substance, as where he blew on a כלי, it is considered לית ביה ממשא. See בל"י אות קלו.

⁹ See footnote # 2.

¹⁰ See אוצר מפרשי התלמוד # 43 and שטמ"ק.