

And a goat was tied to it

והיה גדי כפות לו –

OVERVIEW

The משנה (in trying to ascertain whether משום חציו or משום ממונו) cites a משנה which states if someone ignited a granary and there was a goat tied to the granary (so it could not escape) and a slave (עבד כנעני) was near the granary, the igniter of the fire is liable to pay (for the granary and the goat). If however the עבד was tied to the granary (so he could not escape the fire) and the goat was near the granary the מדליק is not liable to pay for the granary and the goat; since it is a case of קם ליה he is liable for the death penalty for killing the עבד, so he is exempt from any monetary payments. [The גמרא continues that this seemingly proves that משום חציו.] Our תוספות discusses why the משנה mentions a (tied) goat.

תוספות asks:

תימה דליתני ברישא גדי ועבד סמוך ובסיפא גדי ועבד כפות דהוי רבועא טפיל¹ -

It is astounding! For let the תנא of the משנה teach us in the רישא (where he is חייב for the גדי [and the גדיש]) that the גדי ועבד were close to the גדיש (and neither was tied up), and in the סיפא (where he is פטור) it should state that the גדי ועבד were tied to the גדיש, for this will be an even greater novelty?!

תוספות answers:

ופירש רבינו שמואל בן מאיר דגדי נמי היה לו לברוח² -

And the רשב"ם explained that indeed the goat also should have run away from the fire -

ורישא דקתני גדי כפות ועבד סמוך דוקא בכהאי גוונא חייב³ -

And the רישא which stated, 'a tied goat and a slave nearby'; it is specifically in this manner that the מדליק is חייב –

⁴ תוספות responds to an anticipated question:

¹ In the רישא he will be חייב for the גדי even though it was not tied up and could have run away from the fire, nevertheless he is חייב (see עבד כפות רש"י ד"ה עבד כפות towards the end where he writes גדי ואיידי דנקט גבי עבד כפות וסמוך נקט גבי גדי (כפות וסמוך ואע"ג דבגדי אין לומר היה לו לברוח שהרי אין בו דעת ואם אינו כפות וסמוך נמי חייב קלב"מ). In the סיפא he will be פטור for the גדי, even though it was tied up and could not escape, since קלב"מ.

² This is in opposition to רש"י mentioned in footnote # 1.

³ The עבד should have run away so there is no חיוב מיתה (and therefore no קלב"מ) and since the goat was tied he is liable. However if the goat was untied he would not be liable to pay for the goat (even if the עבד was only לו סמוך and not כפות), since the goat should have escaped the fire.

⁴ Why does the סיפא state that by עבד כפות וגדי סמוך לו he is פטור (for the גדי), presumably because of קלב"מ; according

ובסיפא גדי סמוך ועבד כפות לו פירוש או⁵ עבד כפות לו -

And in the סיפא where it states that if the גדי was סמוך and the עבד was כפות לו he is פטור (for the goat), the explanation of לו ועבד כפות is, 'or the עבד was כפות לו' -

והכי פירושא גדי סמוך לו ועבד כמו שאמר ברישא שהיה סמוך לו פטור -

And this is the explanation of the סיפא; [the first case is] if the גדי was סמוך and the עבד was in the same status as we said in the רישא, namely that the עבד was also סמוך לו, the מדליק is פטור for the גדי -

אף על גב דלא קם ליה בדרכה מיניה משום דהיה לו לברוח -

Even though there is no קלב"מ (since the slave could have escaped there is no חיוב), nevertheless since the גדי should have escaped, the מדליק is פטור for the גדי.

This is the first case of the סיפא where he is פטור if the גדי ועבד were both סמוך לו and neither was כפות לו. The second case of the סיפא is -

ועבד כפות לו וגדי כמו כן כפות כמו שאמר ברישא פטור -

Where the עבד was כפות לו and the גדי was also כפות just as we said in the רישא, the מדליק is פטור for the גדי -

אף על גב דלא היה לו לברוח דקים ליה בדרכה מיניה -

Even though the גדי could not escape (since it was כפות), nevertheless he is פטור for the גדי, since קלב"מ for he is חייב מיתה for killing the עבד who was כפות and could not escape.

In summation; according to רש"י the חייב and פטור in the משנה refers to both the גדי and the גדי, and regarding the גדי it is irrelevant whether it was tied up or not, for the גדי does not have the sense to run away from the fire. According to the רשב"ם the חייב and פטור refers to the גדי (only) and a גדי has the foresight to escape from a fire and if it was not כפות, he is never liable for the גדי regardless if the עבד was כפות or not.

anticipates a difficulty:

וההוא דסוף פירקין (דף כז,א) עבדו כגופו שורו כממונו⁶ -

And regarding that which we learnt in the end of this פרק; 'his slave is like his body, his ox is like his money' (which would seemingly indicate that an animal does not

היה since the עבד was כפות or not, regardless whether the גדי, he is always פטור for the גדי, if the גדי was סמוך לו, since רשב"ם to the לו לברוח.

⁵ The 'ו' of ועבד should be understood to mean 'or', instead of 'and'.

⁶ רבה ruled there that if one placed a burning coal on the heart of his (friend's) slave and the slave died he is exempt, because it is just like he placed a coal on someone's body, where the person can (and would) remove the coal, therefore he is פטור. However if he placed the coal on his friend's ox it is as if he placed it on his friend's garment and he is חייב. It seems that regarding the שור we do not say that the שור (like the עבד) should have shaken off the coal. This contradicts the view of the רשב"ם that even by the גדי we say לברוח היה.

know how to protect itself from fire); not as the רשב"ם maintains –

תוספות responds:

איירי בעבד ושור כפות⁷ והבעלים עומדים אצלם -

That ruling is **discussing** a case where the **עבד and שור** were tied up and their owners were standing next to them -

וכשהניח הגחלת על לב עבדו פטור שמחשב בלבו שהאדון יסירנה ולא יסמוך את שלומין⁸ -

So when he placed the coal on the heart of his friend's slave he is פטור, for he **assumes in his heart that the master of the slave will** certainly remove the coal from his slave to save the slave's life **and he will not depend on the payment** that he will receive for his dead slave; he would rather keep the slave alive. Therefore the פטור is מזיק for in his mind the slave would never have died -

אבל כשהניח על לב שורו אינו חושש האדון להסירה לפי שישלם לו דמי שורו -

However when he placed the coal on the heart of his friend's ox, he is חייב for he realizes that the **master is not** overly concerned to remove the coal from his ox, **since he will be paid for the value of his שור**.

⁹ (גדי כפות גמרא mentions why the תוספות offers an alternate explanation

ורבינו תם מפרש דאיצטריך גדי כפות דחייב -

And the ר"ת explains that it was necessary to teach us that he is חייב for a tied up גדי; the reason is -

אף על גב דפטרינן טמון¹⁰ באש דדרשינן מה קמה¹¹ בגלוי אף כל בגלוי -

for even though אש is exempt from paying for טמון as we interpret the word קמה; just as **קמה is revealed**, so too one is liable only for everything which is **revealed**, but not for טמון -

וסלקא דעתין דכל דבר דלאו אורחיה הכי לאו כעין קמה¹² הוא ופטור -

So we may have assumed that anything which is not in its usual manner it is

⁷ Therefore we cannot prove anything from that גמרא whether or not an animal can protect itself from fire, since in that case the animal (and the עבד) were tied up and could do nothing to protect themselves.

⁸ A person is not that cold blooded that he would see his slave die as long as he is compensated for his loss

⁹ This will be in disagreement with the רשב"ם and maintain like רש"י that regarding a גדי we do not say לברוח היה לו לברוח.

¹⁰ טמון means hidden. If a fire burnt down a pile of wheat and there were utensils in the wheat (which do not belong there), there is no liability to pay for the hidden utensils. See later ט,א (and the משנה on ט,א,ב).

¹¹ The פסוק writes regarding אש (in כב,ה) (שמות [משפטים] כב,ה) that **הַקְמָה** או הַשְׂדֵּה שֶׁלֶם יִשְׁלַם. The word קמה refers to standing (growing) grain, which is open for all to see.

¹² It is not every טמון that is פטור by אש; only if it is not usual to hide it there; however if it is usual to hide it there, there is no פטור of טמון (see later in this תוספות). Therefore we can assume that the פטור of טמון excludes things that are not in their ordinary or proper place. So just as we derive from קמה that the burnt item has to be revealed like קמה and be in its natural state, we can perhaps also say that the burnt item has to be like קמה that it is found in its natural state, otherwise he will be פטור even if it is not טמון.

not like קמה, and therefore one would be פטור if he burned it -

וגדי אין דרכו להיות כפות וסלקא דעתין למפטריה -

And since a goat is not usually tied up, we may have assumed that he is exempt from paying for burning a כפות גדי -

וקא משמע לן השתא ברישא דאפילו הכי חייב -

So now the רישא informs us (by writing כפות גדי) that nevertheless he is liable to pay for the כפות גדי -

וסיפא קא משמע לן דאף על גב דסמוך הוא דהוי כי אורחיה פטור -

And the סיפא of the משנה informs us that even though the גדי was סמוך so it was in its normal manner, nevertheless he is פטור from paying for the גדי since it is קלב"מ for killing the עבד.

טמון: טמון offers a support to פירוש ר"ת that כפות גדי is somewhat connected to the concept of תוספות

לכך תניא¹³ ההיא מתניתין דהכונס (לקמן דף סא,ב) בתר פלוגתא דטמון דר' יהודה ורבנן -

Therefore the משנה regarding גדי ועבד in פרק הכונס is written after the argument between טמון ר"י regarding ר"י ורבנן -

ובתר הך בבא דגדי כפות קתני ומודים חכמים לר' יהודה במדליק הבירה -

And after this segment of גדי כפות the משנה continues, 'and the חכמים admit to regarding one who ignites a mansion -

שמשלם כל מה שבתוכה שכן דרך בני אדם להניח בבתי -

That he pays for whatever is in the בירה, for indeed it is customary for people to place their belongings in houses', so it is not considered טמון בבית -

והפסיק התנא בהאי בבא¹⁴ -

And the תנא of the משנה interrupted the discussion regarding טמון with this segment of גדי ועבד which seemingly has no connection with טמון. The explanation of this interruption is -

כדפרישית לאשמועינן דאף על גב דלאו אורחיה בגדי להיות כפות חייב -

As I explained, to inform us that even though it is not usual for a גדי to be כפות, nevertheless he is חייב and this is not included in the פטור of טמון.

טמון: טמון anticipates some difficulty with this assumption regarding תוספות

ואפילו למאן דאמר אשו משום חציו דלא שייך בדידיה למפטור טמון¹⁵ -

¹³ Others amend this to read מיתני' (instead of תניא), for it is a משנה.

¹⁴ The משנה (on סא,ב) can be divided into three segments; the first deals with the מחלוקת between ר' יהודה ורבנן regarding טמון, the second regarding גדי ועבד כפות וכו', the third is where the חכמים מודה to ר"י that by בתי there is no טמון. Seemingly the third segment should follow immediately after the first segment, since they are both discussing the מחלוקת between ר' יהודה ורבנן regarding טמון. Why did the משנה interject the second segment of גדי ועבד, which seemingly has no connection to טמון? תוספות explains that the case of גדי כפות is also related to טמון.

And even according to the one who maintains אשו משום חציו, where according to him it is not possible to exempt one from paying for טמון –

replies: תוספות

מכל מקום אצטריך לאשמועין דחייב היכא דכלו לו חציו¹⁶ לאחר שריפת העבד -

Nevertheless it was necessary for the משנה to inform us that he is חייב for the גדי after the עבד was burnt –
(even) in a case where חציו כלו לו

anticipates an additional difficulty with the ספא of קלב"מ:

ואף על גב דשריפת העבד מחמת חציו¹⁷ ושריפת גדי מחמת ממונו¹⁸ -

And even though that the burning of the עבד was an account of חציו, and the burning of the גדי was on account of ממונו, nevertheless -

שייך ביה שפיר קם ליה בדרכה מיניה הואיל ועל ידי מעשה אחד בא הכל¹⁹ -

The rule of קלב"מ is applicable here, since it all came as a result of one action –

proves this: תוספות

ותדע דלמאן דאמר משום ממונו מוקי כשהצית בגופו של עבד²⁰ ופטרינן ליה -

And you can know that this is so; for according to the one who maintains אשו פטור he is כפות (that if the עבד was חציו) we establish the משנה (that is ר"ל) משום ממונו on account of (קלב"מ) in a case where he directly ignited the body of the slave -

אף על גב דלא הצית בגופו של גדי –

Even though he did not ignite the body of the גדי directly (but rather the fire spread to

¹⁵ See the גמרא on כג,א that if we maintain חציו משום אשו, one is חייב even for טמון (for if אש is his חציו, he is like an אדם המזיק). Therefore since there is no concept of טמון there is also no reason to exempt him from paying for the גדי since it is כפות; that assumption was valid only if we assume that since טמון is פטור, then by extension perhaps לאו פטור is also פטור, but if חייב is טמון then חייב is also לאו אורחיה (certainly). What is the חידוש of גדי כפות?!

¹⁶ חציו כלו לו means 'his arrows ceased'; this refers to a case (see the גמרא on כג,א) where when he started the fire it could only spread a certain distance, and after the fire started something unforeseen happened and enables the fire to go beyond its original potential, this additional destruction cannot be considered חציו for חציו and nevertheless he is still חייב, for even though it is not חציו it is still considered ממונו. See [TIE footnote # 3]. רבי יוחנן ד"ה תוספות כב,א. In a case of חציו פטור the טמון of חציו applies. Here too since when it burnt the גדי it was already חציו (and חציו טמון applies) we may have thought that he is חייב only if it is אורחיה, the משנה teaches us that even in this case (where it is חציו and it is not אורחיה, nevertheless) he is חייב.

¹⁷ We cannot say that the עבד was burnt after חציו כלו לו for then there would be no חיוב מיתה for the igniter (and no subsequent חציו to exempt him from the גדי), since it is merely ממונו שהמית.

¹⁸ A classic case of קלב"מ (by fire) is when someone burns his friend's property on שבת. He is exempt from paying for the damage, since he is חייב מיתה for making a fire on שבת. In this case it is the exact same fire that makes a חיוב מיתה and אורחיה; therefore we say קלב"מ. However here the fire that causes מיתה was חציו and the fire that causes a חיוב ממונו is חציו; perhaps that is not sufficient to say קלב"מ. It is (seemingly) like when a person kills someone and his ox damages someone else (at the same time); there is no חציו. קלב"מ rejects this notion.

¹⁹ See 'Thinking it over' # 1 & 2.

²⁰ In this case it is not considered אש but rather אדם המזיק, where he is חייב מיתה for killing the עבד.

the גדי [from the עבד]), and nevertheless we still say קלב"מ even though regarding the עבד it was מזיק and regarding the גדי it is משום ממונו. The same will apply according to ר"י.

concludes: תוספות

ולפירוש רבינו תם ורבינו שמאול בן מאיר אתי שפיר הא דנקט גדי ולא נקט גדיש²¹ -

And according to the explanations of the ר"ת and the רשב"ם it is understood why the משנה mentions גדי and does not mention (only) גדיש -

ובקונטרס פירש²² משום דמסקינן בגדי דחד ועבדא דחד -

And רש"י explained that the reason he mentions גדי is **because we conclude** that we are discussing a case **where the גדי belonged to one person and the עבד belonged to another** person and nevertheless the rule of קלב"מ applies. The reason we could not say the same חידוש regarding the גדיש without the גדי, that the גדיש and the עבד belong to two separate people and we would have the same חידוש as by עבד וגדי, to this רש"י responds -

וסתמא העבד לבעל הגדיש שאדם מניח עבדו לשמור גדישו²³ -

For presumably the עבד belongs to the owner of the גדיש, for usually a person places his עבד to watch his גדיש.

ולפירושו צריך לומר הא דפריך מאי למימרא -

And according to רש"י's explanation it will be necessary to say that when the גמרא asked on ר"ל, **what is the משנה teaching us** if it was עבד של עבד; obviously it is a case of קלב"מ, the גמרא -

הוה מצי למימר ולטעמין תיקשה לרבי יוחנן אמאי²⁴ נקט גדי:

Could have responded to this question by saying, **and according to your view** (that the משנה follows the view of ר"י), **there is a similar difficulty with ר"י, why mention גדי** when גדיש would suffice!

SUMMARY

According to רש"י (and the ר"ת) we do not say ליה לו לברוה by an animal. The only reason the משנה mentions גדי according to רש"י is because we conclude בגדי דחד ועבד

²¹ According to the ר"ת he mentions גדי to teach us that even though כפות גדי is לא אורחיה, it is not a cause to exempt him (like טמון), and according to the רשב"ם the גדי teaches us that if it were not כפות he would be פטור since היה פטור. However according to רש"י (who says that by גדי there is no difference whether it is כפות or not), so why indeed did the משנה mention גדי at all; it could have discussed his liability for the גדיש alone.

²² בד"ה עבד כפות.

²³ Therefore the גמרא assumed that it would be better to be discussing an עבד וגדי that belonged to two separate people.

²⁴ גמרא concedes that before we knew of עבד דחד ועבד דחד there is no reason to mention גדי, therefore when the גמרא asked on ר"ל what is the חידוש (since we do not know yet the answer of עבד דחד וגדי דחד), there is a similar question on ר"י why mention גדי! The answer will obviously be the same that it was עבד דחד וגדי דחד.

דחז. According to the רשב"ם we do say by an animal לברוח היה לו לברוח and that is why the משנה mentions כפות גדי for otherwise לברוח היה לו לברוח. According to the ר"ת he mentions כפות גדי for we may have assumed that just as he is פטור (since it is not like קמה) he should also be פטור for אורחיה.

We say מצד חיוב ממון מצד אדם המזיק חיוב מיתה is חיוב קלב"מ even though the מצד חיוב ממון is חיוב קלב"מ. ע"י מעשה אחד if it was ממונו שהזיק.

THINKING IT OVER

1. What would be the ruling if one dug a בור on שבת (for which there is a חיוב מיתה) and later someone fell into the בור and was damaged? Is this a case of קלב"מ and he will be פטור from paying, since the חיוב מיתה and the חיוב ממון was מעשה אחד,²⁵ or is בור different from אש?²⁶

2. It is apparent from תוספות that (in the סיפא) the עבד was burnt (and killed) first and then the גדי.²⁷ Nevertheless when תוספות discusses whether קלב"מ applies here (he only asks that it should not apply since one is חציו and the other is ממונו, however), תוספות does not ask that קלב"מ should not apply here since the חיוב מיתה (for killing the עבד) precedes the חיוב ממון (for the גדי); in which case we (usually) do not say קלב"מ. How can we resolve this?²⁸

3. When the גמרא asks (on ר"ל) 'א"ה מאי למימרא'; is that a question regarding the רישא of the משנה, the סיפא of the משנה, or both?²⁹

²⁵ See footnote # 19.

²⁶ See # 44. אוצר מפרשי התלמוד.

²⁷ See footnote # 19.

²⁸ See בית לחם יהודה אות קמז.

²⁹ See נחלת משה ד"ה לאשמועין.