

קטל תוריה עבדא הכי נמי דלא מיחייב –

If his ox killed a slave, would he also not be liable

OVERVIEW

The גמרא asks on ר"ל (who maintains משום ממונו) why is there a rule of קלב"מ if his fire killed the slave? The גמרא states that it is comparable to a case where his ox killed a slave, would you say that there too there is no monetary payment since his ox killed a slave. It is not clear what the גמרא means when it states הכי נמי דלא מיחייב; which payment obligation are we discussing (and what do we derive from this regarding אש).

פירש הקונטרס¹ הא כתיב² כסף שלשים שקלים יתן לאדוניו -

שקלים explained; but it is written, he should give his master thirty silver, we see that if the ox killed an עבד, he is liable to pay for the עבד. This is seemingly the meaning of ה"נ דלא מיחייב.

תוספות asks:

וקשה דאם רצה לומר שהוא הדין לגבי אשו דמשלם שלשים של עבד³ -

And this is difficult; for if the גמרא's intention (according to רש"י) is to say that the same should apply regarding his fire which killed the עבד, that he should pay the thirty שקלים for the עבד –

תוספות rejects this approach:

הא אי אפשר לומר כן דבפרק קמא (דף ט,ב) אמרינן דהשור משלם שלשים של עבד -

But it is impossible to state this, for in the first פרק the ברייתא states that the שור pays the שלשים של עבד if it killed an עבד, however -

מה שאין כן באש⁵ -

It is not so by אש, if his fire killed the עבד there is no payment of שלשים, so what is the גמרא's question that he should pay שלשים של עבד for a killing by אש?!

¹ בד"ה אם.

² עבד כנעני regarding an ox killing an עבד (משפטים) כא,לב.

³ According to this assumption we would need to understand the גמרא as follows. The משנה writes that if the עבד was (and the גדי was פטור) he is פטור for the payment of the עבד (and the גדי) since it is קלב"מ. The גמרא's question was how can he be פטור for the עבד on account of קלב"מ, for since אשו משום ממונו it is as if his ox killed the עבד, in which case he would be required to pay the עבד של עבד, so why here is he פטור from paying for the עבד. [However there was no question regarding the פטור of the גדי (for whatever reason).]

⁴ Regarding אש; it is mentioned on א,י.

⁵ See נחלת דוד here. רש"י י,א ד"ה מה.

ואם רצה לומר דכי היכי דהתם משלם קנס הכא נמי משלם דמי הגדי⁶ -

And if the גמרא (according to רש"י) wants to ask that just like there (by the ox killing the עבד), he pays a fine של שלשים של עבד (even though the עבד was killed), so here too he should pay the value of the גדי (even though the עבד was killed); this too is not understood -

הא לא גמרינן ממון מקנס⁷ -

For we cannot derive monetary payments from fine payments. It is possible that one pays קנס, but will not pay ממון.

ונראה לרבינו יצחק דהכי פריך הכי נמי דלא מחייב בממון שהזיק עם הריגת העבד -

And it is the view of the ר"י that this is what the גמרא is asking; if his ox killed a slave would he also not be liable to pay for monetary damages which occurred together with the killing of the slave (he ripped the slave's clothes); obviously he is liable -

והא בדבר שממונו עושה לא שייך⁸ קם ליה בדרכה מיניה:

Since regarding damage which his possession's cause, קלב"מ is inapplicable; here too since he killed the עבד with his fire which (according to ר"ל) is 'merely' ממונו, that cannot exempt him from paying for the גדי, since there is no concept of קלב"מ when his money killed (for there is no חיוב מיתה for the owner when his possessions kill).

SUMMARY

When an ox kills an עבד he is not exempt from making payments for any collateral monetary damage caused at that time, similarly here by אש the fact the his אש killed the עבד cannot exempt him for paying for the גדי which was burnt by the אש.

THINKING IT OVER

ונראה לרבינו יצחק דהכי פריך הכי נמי דלא מחייב בממון שהזיק עם הריגת העבד - assumes *a priori* that if an ox killed an עבד and caused monetary damages he is liable to pay for the monetary damages since קלב"מ is not applicable by ממונו.⁹ Since this is so obvious, why was it necessary for the גמרא to ask from שור; it should have simply said how can there be a rule of קלב"מ if אשו is ממונו, since the idea of קלב"מ is not applicable?!¹⁰

⁶ According to this assumption the גמרא is asking why is he exempt for paying for the גדי if his fire killed the עבד.

⁷ The payment for the גדי is a monetary payment (for he pays according to the value of the גדי, while the payment for the עבד is a fine (for we pay the same amount regardless of how much the עבד is actually worth)).

⁸ See 'Thinking it over'.

⁹ See footnote # 8.

¹⁰ See # 54. אוצר מפרשי התלמוד and מהרש"א (הארוך).