

בגדי דחד ועבדא דחד –

By a goat which belonged to one, and a slave of another

OVERVIEW

The גמרא concluded that the חידוש according to רבא is that we say קלב"מ, even though the חיוב מיתה was for a slave of one person and the חיוב ממון was for the גדי of another person, and nevertheless he is פטור for the גדי. Our תוספות discusses the פטור of קלב"מ when the חיוב ממון ומיתה are not to the same person

וכן נמי אמר רבא בפרק בן סורר ומורה (סנהדרין דף עד,א) -

And רבא also said this (that the rule of קלב"מ applies even if the one whom he owes money is not the same one as the one who is causing a מיתה) in פרק בן סורר ומורה, regarding -

רודף שהיה רודף¹ אחר חבירו להורגו ושיבר הכלים בין של נרדף בין של כל אדם² פטור -
A רודף who was chasing after his friend to kill him and the רודף broke vessels (while chasing his friend), the רודף is exempt from paying for the vessels, whether the vessels belonged to the נרדף (the one being chased) or whether the vessels belonged to anyone else.

תוספות asks:

וקשה דבפרק קמא דסנהדרין (דף י,א ושם) אמר³ ממון לזה ונפשות לזה חייב -
And there is a difficulty; for (the same) רבא stated in the first פרק of מסכת סנהדרין, 'if he owes money to one party and is sentenced to death for another party, he is obligated to pay the money'. It is apparent from there that ממון לזה ונפשות לזה is פטור, which contradicts what we are saying here that ממון לזה ונפשות לזה is חייב!

¹ A רודף (a chaser) is one who is attempting to kill someone (or to be מאנס an ערוה). The rule is that one may do anything to the רודף in order to prevent him from killing, even if the only way to prevent him is by killing the רודף.

² In this case, the חיוב מיתה is to/on account of the נרדף, and nevertheless the רודף is פטור from paying for the vessels he broke even if they belong to someone else. This proves that מיתה לזה (to the נרדף) and ממון לזה (to כל אדם) is פטור on account of קלב"מ.

³ The case there is where two עדים testified that a person was נערה המאורסה בועל. Had this been true we would have killed the בועל and the נערה המאורסה (it was consensual), and in addition the father would have lost the טובת הנאה (of the daughter) which would be due to him since she is still a נערה. However these עדים were מוזם and we carry out the זמם, so the עדים are killed (for attempting to kill the בועל and the נערה), and have to pay money to the father for the loss of the טובת הנאה. We do not say here קלב"מ and the עדים are exempted from paying, but rather since it is מיתה לזה (for the בועל and the נערה) and ממון לזה (for the father), the rule of קלב"מ does not apply. This contradicts our גמרא and the case of רודף, where the same רבא rules that he is פטור from paying.

answers: תוספות

ותירץ הרב רבינו יצחק בר מרדכי דכל רודף אחר חבירו חשיב מיתה ותשלומין לאחד -
And the ריב"ם answered that every case of רודף אחר חבירו is considered a death sentence and payment to one party -

משום דמחייב מיתה לכל אדם דהכל חייבין להורגו⁴ להציל הנרדף -
Since he liable to die by anyone, for all are obligated to kill the רודף in order to save the נרדף.

In summation the ריב"ם maintains that generally לזה ותשלומין לזה is חייב (as evidenced by עדים), however all cases of רודף are considered לתשלומין לאחד and מיתה קלב"מ applies.

presents an opposing view: תוספות

ורבינו תם מפרש דבכל מקום מיתה לזה ותשלומין לזה פטור⁵ -
And the ר"ת explains that everywhere מלזותשל"ז is פטור from paying -
לבד מעדים זוממין דבעינן שיתקיים כאשר זמם⁶ בכל אחד⁷ -
Except by עדים זוממין (as he plotted) be applied to each one the עדים זוממין attempted to hurt –

anticipates a difficulty: תוספות

ואף על גב דבעדים זוממין נמי כשהוא מיתה ותשלומין לאחד⁸ פטור -
And even though that even by עדים זוממין if it is לאחד, the עדים
would be פטור from paying and we do not say that we need to fulfill the זמם for each testimony –

replies: תוספות

התם משום דבהוא גברא⁹ מתקיים כאשר זמם -

⁴ The רודף is מחייב מיתה not only to the נרדף (whom he wants to kill), but rather he is מחייב מיתה to everyone (including the person whose כלים he broke), since everyone has the right to kill him. Therefore, since the case of רודף is מיתה ותשלומין לאחד, the rule of קלב"מ applies. See פנ"י that this also explains why in our גמרא we say קלב"מ, since the person is actually burning the עבד (or since the עבד is כפות) he is considered a רודף, therefore it is always considered לתשלומין לאחד. See מהר"ם who disagrees (perhaps because the עבד can be untied). See מפרשי אוצר התלמוד # 57. See 'Thinking it over' #1.

⁵ This explains why in our גמרא and by רודף he is פטור (even though it is לתשלומין לזה).

⁶ Regarding עדים זוממין the תורה writes (in יט, יט, דברים [שופטים]) לעשות לאחיו זמם כאשר זמם לעשות לאחיו.

⁷ The עדים זוממין attempted to kill the הנהגה; therefore they need to be killed. They attempted to have the father lose the כתובה; they must reimburse him. Therefore there can be no קלב"מ, regardless that it is לתשלומין לזה.

⁸ The עדים זוממין testified that a person transgressed a capital crime and (separately) a money crime; where if convicted he would be put to death and be liable for payment (since the two crimes did not coincide). When we are these עדים זוממין we say קלב"מ and they are פטור from payment. We do not say אחד לכל זמם כאשר זמם.

⁹ Regarding that (intended) victim the עדים זוממין received (at least) a (partial) punishment of זמם (for the עדים are killed); regarding the additional monetary punishment we apply קלב"מ.

There it is different, since regarding that one person, the כאשר זמם was fulfilled; however by the case of the המאורסה, if we do not make them pay to the father, the כאשר זמם to the father was not fulfilled at all.

The ר"ת attempts to prove that מיתה לזה ותשלומין לזה is פטור:

והביא ראיה דגמרינן (כתובות דף לה,א) שאין מיתה ותשלומין -

And the ר"ת brought a proof; for we derive the rule that a person is not liable for the death penalty and monetary payments simultaneously -

מלא¹⁰ יהיה אסון ענש יענש הא אם יהיה אסון לא יענש¹¹ -

From the פסוק of 'לא יהיה אסון' (there will be no deadly accident [to the woman]), he will surely be punished', we infer from this, however if there will be a death accident (to the woman) he will not be punished -

והתם מיתה לאשה ותשלומין לבעל¹² -

And there it is a case of death for the woman and payment to the husband.

rejection of the proof תוספות

ומיהו אין זה ראיה דעל כרחך צריך לומר דהא חשיב מיתה ותשלומין לאחד כיון שהן גוף אחד -

However, this is not a proof; for perforce it is necessary to say that this case is considered לאחד מיתה ותשלומין, since the woman and the fetus are one body¹³ -

proves that the case of the pregnant woman is considered לאחד מיתה ותשלומין תוספות

דאי לאו הכי למאי דבעי למימר מעיקרא בפרק בן סורר ומורה (סנהדרין דף עד,א) גבי רודף -

For if it is not so (but rather the case of the אשה is considered מיתה ותשלומין); according to that which גמרא wanted to say initially regarding a רודף (לזה);

דמיתה לזה ותשלומין לזה חייב היכי הוה משני ליה לקרא -

פסוק That גמרא explained this; חייב is מיתה לזה ותשלומין לזה

(of אשה הרה), where it is מיתה לזה ותשלומין לזה and nevertheless he is פטור! This proves that the case of אשה הרה is considered לאחד מיתה ותשלומין since it is גוף אחד.

¹⁰ The פסוק in כא,כב reads: שמוות (משפטים) פסוק: וְכִי יִנָּצוּ אֲנָשִׁים וְנִגְפוּ אִשָּׁה הָרָה וַיִּצְאוּ יָלְדֶיהָ וְלֹא יִהְיֶה אֶסּוֹן עָנוּשׁ יַעֲנֹשׁ כְּאִשֶּׁר יִשִּׁית עָלֶיהָ. This means that if two people were fighting and they pushed a pregnant woman and she aborted, but the woman did not die, the aggressor will be punished as assessed by the husband (meaning the payment for the aborted fetus belongs to the husband).

¹¹ This is the rule of קלב"מ; since the man transgressed a capital crime by killing the woman, he is not liable for the monetary payments to the husband.

¹² The aggressor killed the woman and nevertheless he is exempt from paying the husband (for the fetus); this proves that קלב"מ applies even to a case of מיתה לזה (the woman) and תשלומין לזה (the husband). See 'Thinking it over' # 2.

¹³ It is not a case of מיתה לזה ותשלומין לזה but rather it is מיתה לזה ותשלומין לאחד to the woman since the source of the חיוב is one body. Additionally, technically perhaps the payment should go to the woman; however the תורה teaches us (by writing האשה בעלה) that it goes to the husband (since שקנתה אשה קנה בעלה, or it is a גזירת הכתוב).

The פטור is מיתה לזה ותשלומין לזה ר"ת offers another proof that:

ועוד הביא ראיה דתנן במכילתין (דף לד,ב) שהוא שהדליק הגדיש או שחבל בחבירו בשבת פטור -

And the ר"ת brought an additional proof, for we learnt a משנה in our מסכת, that if he lit the granary or wounded his friend on שבת he is exempt from paying whether for the granary or the wound -

דקם ליה בדרכה מיניה -

For it is a case of **קלב"מ**; he is חייב מיתה for either burning the granary (on שבת) or making a wound (on שבת), therefore there is no חיוב תשלומין; this concludes the משנה -

אף על גב דהוי מיתה לשמים ותשלומין לחבירו -

Even though that these cases are מיתה for שמים (Hashem) and payment to his friend; it is (seemingly) a case of מיתה לזה (שמים) and ממון לזה (חבירו) and nevertheless he is פטור from payment, proving that מיתה לזה ותשלומין לזה is פטור.

תוספות rejects this proof (as well):

ואין זה דיוקא דזה חשיב מיתה ותשלומין לחד¹⁴ -

And this is no inference; for this is still considered מיתה ותשלומין לאחד.

תוספות asks:

וקצת קשה לרבינו יצחק מה חידוש יש בגדי דחד ועבדא דחד טפי ממה שהיה של אחד -

And the ר"י has a slight difficulty; what greater novelty is there by 'a goat of one and a slave of another', more than if the goat and slave belonged to one person -

הלא אין מתחייב מיתה לפי שהפסיד לו עבדו דאפילו הרג עבד של עצמו חייב¹⁵ -

For the death penalty (for killing the slave) is not because he caused the owner to lose a slave, for even if one killed his own slave he is liable for the death penalty! He is חייב מיתה because he killed a person; any person!

תוספות replies:

וצריך לדחוק דמכל מקום נראה לו חידוש¹⁶ יותר:

¹⁴ The very same act which causes מיתה (burning the גדיש, making a wound) is the very same act which causes the monetary payments (as opposed to גדי ועבד where the liability for מיתה וממון are for two separate reasons; the גדי and the עבד). It is similar to the גוף אחד argument regarding the אשה הרה, which תוספות just mentioned (see מהרש"א). Alternately; this cannot be considered מיתה לזה וממון לזה since the מיתה is only לשמים not to another person; therefore it is considered מיתה ותשלומין לאחד. Only when the מיתה ותשלומין are to two different people is it מיתה ותשלומין לזה.

¹⁵ It makes no difference to whom the עבד belongs to; it is always לממון לגדי (even if they both belong to the same person). [It would make no difference which of the two explanations (which are mentioned in footnote # 14) we are following; in any event there is no difference to whom the עבד belongs.]

¹⁶ If it is גדי ועבד דחד then it seems more reasonable to say קלב"מ, since it is his property (the עבד and the גדי) that are causing מיתה ותשלומין, as opposed to גדי דחד ועבד דחד that it is not his property that is causing מיתה ותשלומין.

And it will be necessary to answer reluctantly, that notwithstanding what גדי asked, **it appeared** to the גמרא to **be a greater novelty** to say מ"קלב if it was גדי, than if it would be that the גדי ועבדא belonged to the same person.

SUMMARY

The ריב"ם maintains that מיתה לזה ותשלומין לזה is always חייב except by רודף where it is always considered לאחד. The ר"ת maintains that מיתה לזה ותשלומין לזה is always פטור, except by עדים זוממין, for we require זמם for each person.

THINKING IT OVER

1. If we assume the view of the פני יהושע that he is considered a רודף on account of the עבד,¹⁷ will it matter the sequence whether he first burnt the גדי or the עבד?¹⁸ (regarding the פטור of מ"קלב)?
2. The ר"ת seeks to bring proof from the case of אשה הרה that מיתה לזה ותשלומין לזה is פטור.¹⁹ However in that case even the ריב"ם (who maintains מיתה לזה ותשלומין לזה is חייב) will agree that he is פטור, since the aggressor (who killed the woman) may be considered a רודף where even the ריב"ם agrees that it is לאחד?²⁰

¹⁷ See footnote # 4.

¹⁸ See נחלת משה.

¹⁹ See footnote # 12.

²⁰ See מהודרא בתרא להמהרש"א.