

What is the difference between them

מאי בינייהו –

OVERVIEW

The גמרא asks, since ר"י agrees that אש is also חייב משום ממונו (besides being חייב משום חציו), what is the difference between ר"י and ר"ל.¹ Our תוספות asks that the גמרא could have presented differences that were already mentioned.²

anticipates a difficulty:

הוה מצי למימר איכא בינייהו כל הני דלעיל כלב³ שנטל חררה ואנחי אנוחי בגדיש⁴ -

The גמרא could have answered that the difference between ר"י ור"ל are all those cases mentioned previously in the גמרא; firstly there is the case of a dog who took a cracker and placed it (did not throw it) on the granary -

דלרבי יוחנן משלם על שאר הגדיש חצי נזק⁵ ולריש לקיש על שאר הגדיש פטור⁶ -

Where according to ר"י he pays for the remainder of the גדיש (outside the מקום ח"נ), and according to ר"ל he is exempt for the rest of the גדיש –

A second difference:

ולרבי יוחנן אפילו לא הצית בגופו של עבד קם ליה בדרבה מיניה⁷ -

Where according to ר"י even if he did not ignite the body of the slave directly (but rather the bound slave was burnt [indirectly] by the fire) the rule of קלב"מ applies, while according to ר"ל it does not⁸ –

A third difference:

וטמון היכא שלא כלו חציו⁹ חייב¹⁰ לרבי יוחנן;

And by טמון in a case where 'his arrows did not cease; where he is חייב according to ר"י, but according to ר"ל he is פטור.¹¹

¹ The גמרא answers that according to ר"י he is חייב בד' דברים (if he burnt a person) and according to ר"ל he is not.

² See להחייבו רש"י ד"ה לחייבו who (basically) asks the same question. See 'Thinking it over' # 1

³ See כב,א.

⁴ גדיש could have seemingly said that he threw it at the גדיש (where according to ר"ל he would be פטור on the גדיש and according to ר"י he would be חייב ח"נ on the גדיש). However this would depend what the ruling is regarding כח (תוס' כב,א ד"ה ור"י see).

⁵ Since משום חציו it is the צרורות of the כלב.

⁶ The אש is not ממונו.

⁷ See כב,ב. Since it is חציו it is considered that he killed the עבד from a distance through חציו.

⁸ By קלב"מ there is no חיוב מיתה and therefore no קלב"מ.

⁹ The fire damaged (something טמון) in a place where the fire can reach initially (with a מצויה).

¹⁰ See our עמוד. Since it is חציו, there is no פטור of טמון by חציו (or אדם המזיק).

¹¹ Since it is 'merely' the מזיק of אש (not אדם המזיק or חציו), where טמון is פטור.

תוספות does not explain why the גמרא did not offer these differences.

SUMMARY

There are three (additional) differences between ר"י ור"ל; namely. 1) גדיש, 2) עבד, and 3) לא כלו חציו by טמון.

THINKING IT OVER

1. Why did תוספות ask this question¹² when רש"י already asked it (and answered¹³)?
2. Why did not תוספות mention the case of the גמל,¹⁴ where according to ר"ל he is only if it is מסכסכת כל הבירה כולה (as רש"י mentions)?!¹⁵

¹² See footnote # 1.

¹³ See נחלת משה.

¹⁴ See כב, א.

¹⁵ See פני יהושע.