And the owner of the coal should be liable – וליחייב בעל הגחלת

Overview

The משנה stated that if a dog took a smoldering biscuit and set fire to a granary, the owner of the dog is liable to pay a חצי נזק for the granary. The גמרא asks that (seemingly) the owner of the coal (biscuit) should be liable. תוספות explains that the גמרא meant that the owner of the coal should also be liable together with the dog owner.

פירוש גם בעל הגחלת ולא שיפטר בעל הכלב לגמרי -

The explanation of וליחייב בעל הגחלת is that **the owner of the coal should also be liable, but not that the dog's owner should be completely exempt** from paying; rather they should share in the payment

כדפרישית לעיל (דף כב,א דיבור המתחיל ואי) גבי חנוני אמאי חייב[1] -

As I explained previously regarding the storekeeper, where the גמרא says, **'why is he liable'.**

תוספות offers an additional proof that the question is that they should both be responsible**:**

ועוד אי בשלא שמר גחלתו[2] ומפטר בעל הכלב -

And additionally if we are discussing a case **where** the owner of the coal **did not watch his coal** adequately **and** therefore **the dog's owner is פטור,** so **-**

אמאי קאמר (לעיל יט,ב) מתניתין[3] באדייה אדויי ודרב הונא בעלמא איתמר -

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[1] The case there is where a storekeeper had a kindled lamp outside his store, and a camel loaded with flax walked by, the flax ignited and burnt a building. The משנה rules that the storekeeper is liable. The גמרא established this משנה (according to ר"ל) in a case where the camel was standing and scorching (מסכסכת) the building. The גמרא asked why the חנוני should be חייב, since the בעל הגמל is allowing his camel to scorch the building. תוספות there explains that the question was not that the חנוני should be completely פטור, for in the case of the dog (with the גחלת) the גמרא here asks that the בעל הגחלת should be חייב. In each of these two cases there is the source of the fire (the בעל הגחלת, or the חנוני), and the igniter (the כלב or the גמל). When the גמרא there asks, that the חנוני (the owner of the fire) should be פטור, it cannot mean that he should be completely פטור, for the גמרא here asks that the בעל הגחלת (the owner of the fire) should be חייב; meaning that the חנוני cannot be completely פטור. The reverse is also true. When the גמרא asks here וליחייב בעל הגחלת it cannot mean that the בעל הכלב (who ignited the גדיש) should be completely פטור, since the גמרא previously asked חנוני אמאי חייב; indicating that the בעל הגמל (who ignited the building) should be (at least partially) חייב. Therefore we must conclude that in both places the גמרא means to ask that they should both share in the payments. See 'Thinking it over'.

[2] This would be the reason why the בעל הגחלת is liable for everything and the בעל הכלב would be פטור.

[3] The משנה on א,יז states that if there was a string tied to the feet of a rooster and it damaged with the string, the rooster's owner pays a חצי נזק. Initially the גמרא cited a ruling of ר"ה, which we assumed was referencing the משנה, that this ruling of ח"נ is only if the string became entangled in the rooster by itself. However if someone tied it to the rooster, he is liable to pay a ש"נ. The גמרא there concluded that ר"ה is not referencing our משנה, and the reason in our משנה that the בעל התרנגול pays (only) a ח"נ is because the תרנגול flung the string (אדייה אדוייה), which is a case of צרורת

Why did the גמרא need to **say that our משנה is** discussing a case **where** the rooster **flung** the string, **and** the ruling of **ר"ה was stated generally;** not in reference to the משנה; when instead -

לימא דרב הונא קאי אמתניתין קשרו אדם חייב הקושר נזק שלם ובעל התרנגול פטור -

The גמרא **should have said that ר"ה is referencing our משנה,** that if **a person tied** the string to the foot of the rooster **the** person who tied it **is liable for a נ"ש and the rooster's owner is פטור -**

כמו הכא דפטור בעל הכלב[4] -

Just like here where the dog's owner is פטור! Therefore -

אלא ודאי בשלא שימר גחלתו חייב נמי בעל הכלב -

We must **rather** say **that** (even) **when he did not watch his coal, the dog's owner is also certainly liable -**

ולכך לא מיתוקמא דרב הונא אמתניתין -

So therefore it is understood **that ר"ה cannot be referencing the משנה -**

דקשרו אדם חייב משמע דחייב הכל הקושר ובעל התרנגול יש לו להתחייב כמו כן:

Since the ruling of ר"ה 'that if **a person tied it he is liable', indicates that the tier is liable for everything,** when in truth **the rooster's owner should also be liable.**

Summary

In the case where two contributed to the damage (בעל הגחלת והכלכ; קושר ;החנוני והגמל הדליל והתרנגול) both are liable.

Thinking it over

תוספות proves from the case of גמל וחנוני that since the גמרא asks חנוני אמאי חייב; indicating that the בעל הגמל should be (at least partially) חייב, that here too when the גמרא asks ולחייב בעל הגחלת it means that the בעל הגחלת should also be חייב together with the בעל הכלב.[5] However one can distinguish between the two cases; by the גמל when it was מסכסכת, the owner should have stopped it while it was מסכסכת, however here the owner was not by the כלב to prevent him from igniting the גדיש, and therefore he may be פטור![6]

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and therefore he is liable for נ"ח only.

[4] The cases of the dog and of the rooster are similar; in both there is the damaging item (the coal or the string) and the perpetrator of the damage (the dog or the rooster). If we assume that the בעל הגחלת is completely liable (even though the dog did the damage) it should follow that the קושר (or owner) of the string should also be liable. Therefore we should be able to apply the ruling of ר"ה to the משנה.

[5] See footnote # 1.

[6] See אוצר מפרשי התלמוד and שטמ"ק # 49-51.