

I will not derive *Keren* from *Keren*

אני לא אדון קרן מקרן –

OVERVIEW

נ"ש. He derived this from a ק"ו; if in a place where שן ורגל (the רה"ר), nevertheless we are on them in the רשות הניזק to pay a נ"ש, so קרן which is strict in רה"ר (where it pays a ח"נ), should certainly pay a נ"ש in the רשות הניזק.¹ The רבנן responded דיו לבא קרן, so קרן ברשות הרבים from קרן ברשות הניזק; you are deriving קרן from ברשות הרבים cannot be more liable than קרן ברה"ר, which is only for a ח"נ.² To this (דיו) responded I will not derive קרן from קרן (where you claim the restriction of ר"ט), but rather I will derive קרן from שו"ר. If in the place where שו"ר are פטור (in the רה"ר), nevertheless קרן is חייב, so in the רשות הניזק where שו"ר are חייב a נ"ש, so קרן should certainly pay a נ"ש.³ Our תוספות discusses דיו and the ק"ו.⁴

לדבריהם קאמר להו⁵ דלדידיה לית ליה דיו היכא דמפריך קל וחומר⁶ -

ר"ט, there was responding to the argument of the רבנן; for according to ר"ט, there is no ruling of דיו where it will nullify the ק"ו. According to ר"ט the first ק"ו is valid.

asks (on the second ק"ו):

ואם תאמר מה לשון ורגל שכן הזיקן מצוי תאמר בקרן שאין הזיקו מצוי כל כך -

¹ In a ק"ו there are two steps; first to establish that there is a קל and a חמור (this is sometimes referred to as תחילת דין); in this ק"ו the קל is the רה"ר (where שו"ר are פטור) and the חמור is the רשות הניזק (where שן ורגל are חייב). The second step (which is referred to as סוף דין) tells us that whatever applies to the קל certainly applies to the חמור. In our ק"ו since קרן pays in the רה"ר (the קל) a ח"נ, it should certainly pay in the חמור (the רשות הניזק) a נ"ש (like שו"ר). In this (in the second step) we are deriving קרן ברשות הרבים from קרן ברשות הניזק. See footnote # 2.

² See footnote # 1. In this case the argument of דיו seems very strong; for we wish to derive that קרן should pay a נ"ש in the רשות הניזק, since it pays a ח"נ in the רה"ר.

³ In this second ק"ו the first step (תחילת דין) establishes that קרן (which is חייב ברה"ר) is more חמור than שו"ר (which are פטור in the רה"ר). Therefore (the second step) (סוף דין) tells us that whatever applies to the קל (which is שו"ר who are חייב a נ"ש in the רשות הניזק) certainly applies to the חמור (that קרן also pays a נ"ש).

⁴ This דיו means that even though you have established (in step one) that קרן is more חמור than שו"ר, nevertheless that חומרא is only pertaining a ח"נ, so therefore we cannot derive (in the second step) that it should pay a נ"ש. This argument of דיו is weaker than in the previous case, and תוספות will discuss this later (see footnotes # 21 & 22).

⁵ argued that even if you (the רבנן) maintain דיו in the first ק"ו (footnote # 1 & 2) which I don't; you cannot claim דיו in the second case (see footnote # 3 & 4). See later in this תוספות.

⁶ If we say דיו that קרן pays only a ח"נ (even) ברשות הניזק, the ק"ו would not accomplish anything (since even without the ק"ו we know that קרן pays a ח"נ everywhere [whether in the רה"ר or in רשות הניזק]), and since there is a ק"ו (for the רשות הניזק is stricter than the רה"ר [for שו"ר are liable only in the רשות הניזק]) therefore it must teach us a new strictness in רשות הניזק; namely that קרן pays a נ"ש in the רשות הניזק.

And if you will say; why is it by שו"ר that they pay a נ"ש בחצר הניזק, because their damage is common, can you say so by קרן, whose damage is not that common -

דבחזקת שימור קיימי למאן דאמר פלגא נזקא קנסא⁷ -

For regarding damaging by קרן, the animals are in a status where they presumed to be guarded, according to the one who maintains that the ח"נ which a תם pays is 'merely' a fine, but not a monetary payment. The question is that we cannot derive קרן from שו"ר, since שו"ר have a חומרא which קרן does not.

anticipates a solution to his question;

ואין לומר מרשות לרשות גמרינן⁸ -

And we cannot say that we derive רשות הניזק from רשות הרבים, but not קרן from שו"ר. ק"ו continues to explain this -

ומה רשות הרבים שהקיל בה לענין שו"ר ורגל החמיר בה לענין קרן רשות הניזק לא כל שכן -

And what if by a רה"ר where we are lenient regarding שו"ר (for the פטור are in the רה"ר), we are strict there regarding קרן (which is ח"נ ברה"ר a חייב), so by the רשות הניזק it should certainly be so that קרן be at least as strict as שו"ר to pay a נ"ש. In this ק"ו there is seemingly no פירכא from שו"ר since we are deriving רשות הניזק from רה"ר, instead of שו"ר from קרן.

rejects this solution:

דמכל מקום שייך למפרך שפיר כדמשמע לקמן⁹ -

For nonetheless we can properly challenge it in this manner as is indicated later - דבעי למילף כופר¹⁰ שלם בתם בחצר הניזק מנזקין דרגל¹¹ -

Where the גמרא wanted to derive (according to ר"ט) from the damage caused by

⁷ See previously on טו,א that the מ"ד פלגא נזקא קנסא maintains that oxen are presumed to be guarded and do not gore, therefore ideally the owner should not be liable (since he is not at fault for not (especially) guarding his ox); the תורה fined him so he should be even more careful with his ox. In any event we see that regarding קרן the damage is not common as by שו"ר.

⁸ This seems to be the first ק"ו mentioned in footnote # 1. Even though the argument of דיו is stronger in this (first) ק"ו, it is only שו"ר that ultimately uses a ק"ו (and the רבנן reject either ק"ו on account of דיו), and ר"ט does not agree to ק"ו where דיו is more חמור, this does not seemingly apply in this ק"ו. See 'Appendix' (however) מהר"ם ומהודרא בתרא למהרש"א.

⁹ will prove from there that we can ask a פירכא even on the דין תחילת דין (where we wish to establish the קל and the חמור) that the חמור of the רשות הניזק (where שו"ר are חייבים) is only because מצי therefore this cannot reflect at all regarding קרן ברשות הניזק which is not מצי.

¹⁰ If an ox, who is a מועד to kill people, killed a person the owner must pay כופר to the יורשים of the deceased. ר' יוסי maintains that a תם who killed pays a כופר חצי, just like he pays a ח"נ for damages.

¹¹ They derived it from a ק"ו as follows; if רגל which is פטור ברה"ר pays a נ"ש ברשות הניזק, so a תם who pays a כופר חצי in the רשות הניזק (according to ר"י), should certainly pay a שלם כופר in the רה"ר.

כופר **that a תב who killed a person in the חצר הניזק pays a complete**
ופריך מה לנזקין דרגל¹² שכן ישנן באש¹³ -

And the כופר from נזיקין ק"ו saying that we cannot derive
for נזיקין of רגל are found also by fire; however there is no כופר by fire.¹⁴

answers: תוספות

ויש לומר דלאו פירכא היא דאין חומרא זו מועלת לחייבו ברשות הרבים -
And one can say that (the fact that ק"ו is מצוי שו"ר) does not refute the ק"ו, since
this severity of שו"ר is not effective to obligate them in the רה"ר -
והכי דיינינן קל וחומר -

And this is how we will prosecute this ק"ו -
ומה שן ורגל שאין חומרות מועילות לחייבו ברשות הרבים¹⁵ נזק שלם כולי -
And what if by שו"ר when their severity is not effective to hold them liable in
a רה"ר, nevertheless they pay a נ"ש in the חצר הניזק, so קרן (regardless that מצוי שו"ר,
but nevertheless) it is liable in the רה"ר, so it should certainly be liable to pay a נ"ש in the
רשות הניזק.

anticipates a difficulty: תוספות

ובפרק קמא דזבחים (דף יא, גבי¹⁶ שוחט לשמה לזרוק דמה שלא לשמה דפסול -
And in the first פרק of זבחים, regarding the ruling of יוחנן ר' that if one
schechts for the sake of this קרבן with the intent to sprinkle its blood not for this
קרבן (or not for the owner of this קרבן), the rule is that the קרבן is invalid, and we
derive this ruling -
מקל וחומר דשוחט חוץ לזמנו דכשר -

¹² The פירכא is that since אש is חייב for נזיקין and not חייב for כופר, therefore we understand that נזיקין is חמור, so there is a payment of נ"ש by רגל in the חצר הניזק, but not by כופר in the חצר הניזק (since כופר is less חמור than רגל (or general נזיקין).

¹³ Tosfos argues why cannot we change the ק"ו there and say that we are not deriving כופר from רגל, but rather we are deriving מרשות (as we wanted to answer here); if in a רה"ר the תורה was lenient by רגל, nevertheless he was strict by כופר (to pay a כופר), so in רשות הניזק where he is strict by רגל he should surely be strict by כופר to pay a כופר שלם. The fact that the גמרא did not respond in this manner indicates that no matter how we phrase the ק"ו, we can always challenge it by saying (either in step one, or in step two [see footnote # 1] that if the קולא has also a חומרא the ק"ו is null (see footnote # 9 [and here too since the חומרא of חנין is that it pays a נ"ש by נזיקין this cannot translate to the חוב כופר since there is no כופר by נזיקין such as אש]). So just as this applies to the ק"ו regarding כופר that since נזיקין i.e. רגל has a חומרא that אש is חייב by נזיקין as opposed to כופר, and therefore the ק"ו is voided, similarly by us since שו"ר who are (part of) the קולא (it is שו"ר ברה"ר that makes it a קולא) have also a חומרא (that חנין this invalidates the ק"ו).

¹⁴ See previously ד"ה מה רש"י and יא,א.

¹⁵ The הגהות הב"ה amends this to read; קרן [נזק שלם] לחייב מועילות ברשות הניזק (as amended by the marginal note).

¹⁶ The ruling of יוחנן ר' is on ט,ב.

Through a ק"ו from one who *schechts* with the thought that he will *schecht* it not in its proper time,¹⁷ the כשר is קרבן -

ופריך מה לחוץ לזמנו שכן כרת¹⁸ -

And the גמרא challenges this ק"ו; do you know why חוץ לזמנו is פסול because there is a כרת for thinking a thought of לזמנו, but there is no כרת for thinking שלא. This concludes the citation from the גמרא. Tosfos continues with his question

אף על פי שאין חומרא זו מועלת לחוץ לזמנו לפסול¹⁹ -

Even though this חומרא of כרת is not effective to disqualify a חוץ לזמנו -

replies: תוספות

חומרא שהחמירה תורה שאני דכיון שהחמירה תורה חומרא זו החמירה חומרא אחרת²⁰ -

A severity which the תורה declared is different (than the חומרא of מצוי which is 'merely' a concept, but not a הלכה), for we assume that since the תורה was strict in this ruling it also may be strict in other rulings.

¹⁷ Having certain thoughts when offering a קרבן with the intent that certain aspects of the קרבן will be done not in the proper time (he will sprinkle the blood at night, or he will eat it after the designated time), renders the קרבן as פיגול, and the כהן who had these thoughts is חייב כרת. Thinking that he will do certain acts not for the sake of the קרבן (he will do it for a different קרבן or different owners) is called לשמה (and there is no חיוב כרת for these thoughts). There can be no thought of חוץ לזמנו by שחיטה; if one thinks when he is about to *schecht* that he will *schecht* it later (when he actually *schechts* it now) the קרבן is כשר. This is the meaning of חוץ לזמנו כשר. We will derive the rule of לשמה (a ruling of לשמה) from a ruling by פיגול (or חוץ לזמנו). By פיגול if one does the שחיטה with a מחשבה of חוץ לזמנו the קרבן is כשר (see above in this footnote), showing that פיגול is lenient (compared to לשמה [as will be shortly pointed out]), nevertheless if he *schechts* it to sprinkle the blood חוץ לזמנו it will be פיגול and פסול, so certainly regarding לשמה (which is more severe than פיגול, [since if he *schechts* it לשמה it is פסול (not like פיגול where there is no חוץ לזמנו by שחיטה)], it should certainly be פסול if he *schechts* it (even with the intent of לשמה) with the intent of sprinkling the blood לשמה. To summarize: לשמה is more חמור than חוץ לזמנו, שלא בזמן לשמה can disqualify a קרבן by שחיטה, which cannot. If it is פסול by שחיטה it should certainly be פסול by לשמה. לשמו ע"מ לזרוק דמו חוץ לזמנו.

¹⁸ The גמרא challenges the basis of the ק"ו, which is that לשמה is more strict than חוץ לזמנו (since it can apply to חוץ לזמנו which cannot), by arguing that חוץ לזמנו (where there is a חיוב כרת) is stricter than לשמה.

¹⁹ The question is, just like here we say that we cannot refute the ק"ו (which posits that קרן is more חמור than שו"ר since only קרן is חייב ברה"ר) by saying that שו"ר is more חמור than קרן since מצוי is taught we will respond that this alleged חומרא of שו"ר is still ineffective to be חייב ברה"ר, therefore it is no refutation and the ק"ו remains. Similarly there in זבחים, we should also say that this alleged חומרא of חוץ לזמנו (for which there is a חיוב כרת) cannot be considered a חומרא since it is ineffective to disqualify a שחיטה by חוץ לזמנו. Why the difference between the חומרא here of מצוי which תוספות dismisses and the חומרא there of כרת which the גמרא accepts to refute the ק"ו.

²⁰ Tosfos distinguishes between a חומרא which is 'merely' a סברא like the חומרא of מצוי, which is not a ruling, and a חומרא which is written in the תורה, like the חומרא that פיגול is כרת. Regarding the חומרא of a סברא, it does not refute the ק"ו, for we say since there is a קולא in this case (the שו"ר by פטור ברה"ר) which proves that the חומרא of מצוי (which is merely a סברא) is not relevant in הלכה since it has no effect on שו"ר in רה"ר. However we cannot dismiss a חומרא which is written in the תורה which is relevant in הלכה (like the חומרא of כרת by פיגול), therefore we can say that any other חומרא which פיגול has cannot apply to לשמה (even though in one instance לשמה has a חומרא over פיגול), since the reason it is found by פיגול is because of the חומרא הכתובה בתורה.

asks: תוספות

ואם תאמר והיכי קאמרי רבנן דיו²¹ כל קל וחומר כך הוא²² -

And if you will say; but how can the רבנן invoke the rule of דיו (here), for this is the way it is by every ק"ו -

דבשביל חומרא אחרייתי קטנה שיש בזה מה שאין בזה יש ליתן בחמור כל החומרות שבקל -

That on account of one ancillary minor חומרא that one has and not the other we can place in the stricter one all the חומרות of the lenient one, and we do not say קל. that it should only have its own original חומרא, but rather it attains all the חומרות of the קל.

answers: תוספות

ויש לומר כיון שהחומרא מעין הדין שאנו באין ללמוד שיידך לומר דיו שפיר²³ -

And one can say that since the חומרא (in this case that קרן pays a ח"נ ברה"ר) is similar to the law which we wish to derive (that קרן should pay [א"ש] in the רה"י), it is proper to apply the rule of דיו.

asks: תוספות

ואם תאמר בפרק אחד דיני ממונות (סנהדרין דף לה,ב) אמר -

And if you will say; the פרק אחד דיני ממונות גמרא asks -

ותהא קבורת מת מצוה דוחה שבת מקל וחומר -

And the burial of a מת מצוה should push away the prohibition of שבת through a ק"ו; we can derive from a ק"ו that one should be permitted to bury a מת מצוה on שבת, even though he is transgressing doing work on שבת, the ק"ו is -

ומה עבודה שהיא דוחה שבת קבורת מת מצוה דוחה אותה²⁴ -

And what if regarding the service in the ביהמ"ק which is שבת, nevertheless

²¹ Let us take the second ק"ו of ר"ט (see footnote # 3 & 4) that we know that קרן is more חמור than שו"ר (because only שו"ר ברשות הניזק pay a ח"נ שו"ר then certainly קרן should pay a ח"נ שו"ר) so it follows if שו"ר pay a ח"נ שו"ר then certainly קרן should pay a ח"נ שו"ר. In this ק"ו we are deriving the ח"נ שו"ר from the ח"נ שו"ר; how can we entertain the thought of דיו. We cite the חייב of ח"נ שו"ר by קרן in the רה"ר, only to establish that קרן is more חמור than שו"ר, once that is established then whatever חומרות there are by שו"ר apply certainly to קרן.

²² Let us take the ק"ו on כו,א where the גמרא attempts to derive through a ק"ו that a person should pay כופר from the fact that a שור pays כופר. The ק"ו is as follows; if שור which is קל for he is דברים מד' פטור מ' (i.e. ריפוי וכו') is חייב to pay כופר, so a person who is חמור for he is דברים בד' חייב should certainly be מחויב in כופר. According to the חכמים we should say דיו; the חומרא of אדם is that he pays דברים ד' (not כופר) so therefore we cannot derive that he pays כופר. This type of argument would destroy the whole concept of a ק"ו.

²³ When the תחילת דין (the first step) and the סוף דין (the second step) are discussing separate issues, as in the example in footnote # 22, where the תחילת דין establishing the חומרא of אדם over שור is regarding דברים ד', and the סוף דין (the second step; the new rule which we wish to derive) is discussing כופר, a different type of payment altogether, we cannot say דיו; this is a valid ק"ו. However here the תחילת דין is that קרן pays ח"נ and the סוף דין is that it should pay ח"נ; we are merely adding to the payment of ח"נ; therefore the רבנן argue that we can say דיו.

²⁴ If a חכה happens on a מת מצוה he must be מטמא himself to bury it, even though this will prevent him from doing the עבודה (for a while), since he becomes טמא; proving that מת מצוה is דוחה עבודה.

the burial of a **מת מצוה** is **דוחה עבודה**, so -

שבת שנדחית מפני עבודה אינו דין שתהא מת מצוה דוחה אותה²⁵ -

דוחה שבת **מת מצוה** can be **דוחה** **עבודה**, **which is pushed aside for** **עבודה**, certainly. This concludes the citation from the גמרא there. **תוספות** continues with the question -

והשתא²⁶ **נימא כמו שאינה דוחה את העבודה אלא בשב ואל תעשה**²⁷ -

But now that the רבנן say דיו, let us say that just like מת מצוה is דוחה עבודה only by a שב ואל תעשה -

כך אל תדחה שבת אלא בשב ואל תעשה²⁸ -

Similarly מת מצוה should also only be דוחה שבת by a שב ואל תעשה, but not with a קום ועשה.

answers: **תוספות**

ויש לומר כיון דגוף העבודה נדחית מפני קבורת מת מצוה -

And one can say; since the entirety of the עבודה is eliminated on account of the burial of a מת מצוה, therefore -

אין לנו לומר שתהא חמורה ממנה בשום²⁹ **מקום:**

We cannot entertain that עבודה should be stricter than מת מצוה in any situation.

SUMMARY

The second ק"ו was only mentioned to placate the question of דיו for the רבנן; however ר"ט does not rule דיו if it is מיפרך ק"ו. A חומרא (or קולא) which is merely a

²⁵ To rephrase the ק"ו; we know that עבודה is stronger than שבת, since we do the עבודה on שבת even though we are transgressing forbidden מלאכות, such as שחיטה and הבערה. So if דוחה מת מצוה (the stronger) עבודה, it should certainly be שבת (the weaker) דוחה.

²⁶ Perhaps תוספות means that now that we say דיו regardless whether it is on סוף דין or תחילת דין, so there too (by מת מצוה) we should also say דיו. Otherwise we can say if עבודה is שבת דוחה עבודה even בקום ועשה (we do מלאכה) so (שבת) we should also say דיו. (which is stronger than עבודה), can do what עבודה does, namely to be שבת דוחה. We are deriving מת מצוה from עבודה, so there is no [strong] דיו. But now that we say דיו even on תחילת דין; here too we should say דיו, since the חומרא of מת מצוה is only בשב ואל תעשה.

²⁷ When a כהן is מטמא himself to a מת מצוה, he cannot do the עבודה; it is שב ואל תעשה he must refrain from doing the עבודה, but he may not desecrate the עבודה, by doing it when he is טמא (from the מת מצוה).

²⁸ [He would be allowed to bury the מת מצוה (שבת) even though that on account of this he will not be able to make קידוש on שבת for instance, but] he should not be allowed to bury on שבת, since he is actively violating the שבת with a קום ועשה, which we do not find by מת מצוה being דוחה עבודה.

²⁹ This (seemingly) means that if the only way to bury this מת מצוה would be by desecrating the עבודה בקום ועשה, we would do that as well; since we see that מת מצוה takes precedence over the entirety of the עבודה; it is not 'merely' that שבת has a severity that עבודה does not have, but rather it eliminates the עבודה. However regarding שבת in relation to קרבן, so even though קרבן is חמור in the ר"ה, it does not eliminate שבת, therefore it is possible (on account of דיו) that קרבן pays only a חטאת ברשות הניק and שבת should be חמור that קרבן in שבת. However by שבת it is being eliminated entirely on account of מת מצוה, so it can never be stronger than מת מצוה (even בקום ועשה, if there would be such feasibility), therefore we cannot say דיו.

and not a **פירכא** can be made equally on **דין** as well as on **דין**. We only say **דין** when the **לימוד** is merely an extension of the known ruling, but not if it teaches us new rulings. **דין** does not apply when the **חומרא** consists of being **דוחה** the **קל** (like by **מצוה** and **עבודה**).

THINKING IT OVER

1. Which **ק"ו** does **ר"ט** ultimately use; **קרן מקרן** or **קרן משו"ר**?³⁰

2. Does **ר"ט** maintain **קנסא** or **פ"נ ממונא**?³¹

APPENDIX³²

asked on the second **ק"ו** (where we derive **קרן** from **שו"ר** [in order to minimize the issue of **דין**]) that this **ק"ו** can be refuted (there is a **פירכא**) since **שו"ר** (which are **מצוי**) is more strict than **קרן**. **תוספות** continues that even if we will say that the **ק"ו** is **מרשות לרשות** (not **קרן** from **שו"ר**), where seemingly this **פירכא** does not apply, nevertheless **תוספות** concludes that it does apply. This **ק"ו מרשות לרשות** is seemingly the same as the first **ק"ו**.³³ The difficulty with this **ק"ו** is that even if we assume that the **פירכא** (that **שו"ר** is more **חמור**), is not relevant since we are not deriving **קרן** from **שו"ר**, nevertheless there is the issue of **דין** again. What will be gained by reverting back to the first **ק"ו**?!

However since **תוספות** writes in detail this **ק"ו** of **מרשות לרשות** (and does not refer us back to one of the (two) previously mentioned **ק"ו**), it seems that it is a third **ק"ו**, which **תוספות** is introducing, where there is no (great) difficulty with **דין** and neither (seemingly) with the **פירכא**.

These may be the three **ק"ו**.

1. If **קרן** pays a **ח"נ** in **רה"ר** where **שו"ר** are **פטור** it should surely pay a **נ"ש** in **רשות** where **שו"ר** are **חייב**. We are deriving **קרן** from **קרן** by saying if **קרן** is liable in the more lenient **רשות** (where **שו"ר** are **פטור**); it should certainly be (more) liable in

³⁰ See **אוצר מפרשי התלמוד** # 12.

³¹ See **אוצר מפרשי התלמוד** # 9.

³² See footnote # 8 and **אוצר מפרשי התלמוד** #10-15.

³³ See footnote # 8 (and # 1).

the stricter רשות. There is a major issue of דיו with this ק"ו (according to the רבנן), but no פירכא, since we are not deriving קרן from שו"ר (קרן מקרן only). This is the first ק"ו in the משנה where we derive קרן מקרן.

2. If שו"ר do not pay in רה"ר and קרן pays a ח"נ in the רה"ר (proving that קרן is stricter than שו"ר); in רשות הניזק where שו"ר pays a נ"ש, so קרן should certainly pay a נ"ש. We are deriving קרן from שו"ר. In this ק"ו (which is the second ק"ו of ר"ט) there is only a moderate difficulty with דיו, however there is the פירכא of תוספות that הזיקן מצוי is שו"ר.

3. This is the ק"ו that תוספות may be suggesting. If in רה"ר which is lenient (for שו"ר are פטור), nonetheless קרן pays a ח"נ; in רשות הניזק which is stricter (for שו"ר pay a נ"ש), so קרן should certainly pay a נ"ש. We derive קרן from רה"ר (קרן) ברשות הניזק that there is an increase in payment. If there can be a major increase from nothing to נ"ש (by שו"ר), there can surely be a minor increase from ח"נ to נ"ש by קרן. There is no (major issue of) דיו, for we are not deriving קרן from קרן, rather we are being shown that there is an increase in payment for damaging in רשות הניזק over the payment for damaging in רה"ר. There is also seemingly no פירכא for we are not saying that קרן is more חמור than שו"ר, but rather there is an increase in payment from רשות הניזק to רה"ר.

In fact the way תוספות states his מרשות לרשות ק"ו is almost identical to the way the משנה states the second ק"ו (קרן משו"ר).³⁴ This may be to emphasize that there is no major issue of דיו here. ועצ"ע.

³⁴ The משנה states (in the second ק"ו): (אני אדון קרן מרגל) ומה במקום שהקל על השן ועל הרגל ברה"ר החמיר בקרן מקום שהחמיר: (קרן משו"ר) This is in contrast to the first ק"ו where the משנה states: ומה רה"ר שהקיל בה לענין שן ורגל החמיר בה לענין קרן רשות. על השן ועל הרגל ברשות הניזק אינו דין שנחמיר בקרן ומה במקום שהקל על השן ועל הרגל ברשות הרבים. This is in contrast to the first ק"ו where the משנה states: והוא פטור החמיר עליהן ברשות הניזק לשלם נזק שלם מקום שהחמיר על הקרן ברה"ר לשלם חצי נזק אינו דין שנחמיר עליו ברשות הניזק לשלם נזק שלם.