

או דלמא קרן כוונתו להזיק – Or perhaps a ‘horn’ has intent to damage

OVERVIEW

The גמרא poses a query whether there is payment by רגל. We can say that it is similar to קרן (who is a מועד, which pays כופר) for רגל is also אורחיה, or perhaps קרן is different from רגל since קרן is כוונתו להזיק. תוספות has a difficulty with this query.

תוספות asks:

תנימה מאי מספקא ליה פשיטא דקרן חמירא מהאי טעמא -

It is astounding! What is the doubt; obviously קרן is more severe than רגל because of this reason that it is כוונתו להזיק; how can we entertain the thought that רגל should also pay כופר!

תוספות anticipates a rebuttal to his contention:

דליכא למימר דמקור בקל וחומר יליף שאין מועד מתחילתו -

For we cannot say that we derive that רגל pays כופר through a ק"ו from קרן, which is not a מועד מתחילתו and nevertheless pays כופר, so רגל which is a מועד מתחילתו, certainly pays כופר -

דהשתא לא שייך למפרך [כדפרישית]¹ במתניתין² -

For now if we make this ק"ו we cannot refute it by saying קרן is כוונתו להזיק (but not רגל) **as I explained in the משנה³.** Seemingly this answers תוספות question³ –

תוספות responds, we can still refute this ק"ו:

דאדם יוכיח שמועד מתחילתו ופטור מכופר⁴ -

For a person will prove this, since he too is a מועד מתחילתו (like רגל), and nevertheless he is exempt from כופר.

תוספות offers an additional refutation to this proposed ק"ו:

ועוד⁵ היכי בעי למילף מקורן שכן חייבת ברשות הרבים:

¹ See [TIE footnote # 20], where תוספות writes that a חומרא which is not written in the תורה (such as the חומרא of כוונתו להזיק, which is merely a סברה, but not a הלכה) cannot be used to refute a ק"ו. Therefore here too we cannot refute the abovementioned ק"ו, by saying קרן כוונתו להזיק, because that is not a חומרא כתובה בתורה.

² [Note: Granted that we cannot refute a ק"ו through a חומרא which is not כתובה בתורה, nonetheless this חומרא is effective that we cannot derive רגל from קרן without a ק"ו. And this ק"ו is refuted as תוספות continues to prove.]

³ When the גמרא writes we derive רגל from קרן, the גמרא meant through a ק"ו which we cannot refute (by saying that קרן is כוונתו להזיק). See ‘Thinking it over’ # 1.

⁴ This proves that the חומרא of מועד מתחילתו (which was the חומרא that we wanted to use to derive that רגל should pay כופר) is not sufficient a חומרא to make one liable for כופר.

⁵ The ועוד may (also) be referring to תוספות original question; how can the גמרא have thought to derive רגל from קרן

And additionally how can we derive רגל from קרן to pay כופר through the ק"ו that קרן is more חמור than רגל, but this is not so, for קרן is more חמור than רגל, **since קרן is liable in the רה"ר**, and רגל is not, so there can be no ק"ו. תוספות does not answer his question.⁶

SUMMARY

We cannot derive רגל from קרן through a ק"ו since either אדם יוכיח or קרן is חייבת ברה"ר.

THINKING IT OVER

1. According to תוספות attempted answer that we derive רגל from קרן through a ק"ו (which cannot be refuted by saying להזיק כוונתו), what are the two sides of the query; specifically why should we not derive רגל from קרן through a ק"ו?!

2. תוספות refutes the ק"ו in two ways; first through a יוכיח from a third party אדם who is a מועד מתחלתו and nevertheless מכופר פטור, and secondly that קרן which is חייבת ברה"ר is more חמור than רגל. Seemingly the second refutation (where we undermine the entire basis of the ק"ו, proving that קרן is the חמור, rather than רגל) is a much stronger refutation (than proving from a third party that the חומרא does not necessarily obligate you to pay כופר). Why does not תוספות reverse the order of his answers, and write the second (and seemingly better) answer, first?!

since קרן is חייבת ברה"ר (in addition to being להזיק כוונתו). See 'Thinking it over'. [However since the גמרא does not mention this, it more logical to assume that תוספות is (also) offering an additional refutation to the ק"ו. On the other hand we can argue that the גמרא only mentions the ideas that pertain to the act which brings the חיוב כופר (either the סברא of אורחיה or the סברא of להזיק כוונתו); however the חומרא of חייבת ברה"ר is not directly germane to the חיוב of כופר. תוספות is merely using it for 'tipping the scale', even if one will argue that אורחיה can perhaps diminish the argument of להזיק כוונתו.] וד"ל. כוונתו להזיק

⁶ See נחלת משה.