

בשגגה מכלל דהוי ליה ידיעה –

Inadvertently; indicating that he had knowledge

OVERVIEW

The גמרא discusses a case where a man was initially aware that there was a stone in his bosom, and then forgot about it. The rule is that if he accidentally killed a person with this stone (by standing up, etc.), he is required to be exiled to the ערי ונס שמה רוצח מכה¹ the תורה writes¹ ערי מקלט. The reason is because regarding טעם, the word בשגגה indicates that initially there was awareness. תוספות qualifies this understanding of the word בשגגה.

משום דגבי גלות כתיב טובא בשגגה² דריש לה³ -

The גמרא interprets בשגגה in this manner (that there was an initial awareness (ידיעה בתחלה), because regarding גלות the word בשגגה is written many times -

דהא גבי חלב אף על גב דכתיב ביה בשגגה⁴ לא חיישינן להיתה לו ידיעה -

For regarding eating חלב (suet, animal fat) even though the word בשגגה is written there as well, nevertheless we do not require that he had knowledge beforehand that this was חלב, in order from him to be obligated to being a קרבן חטאת -

Based on the above, תוספות explains another distinction between חייב גלות and other איסורים:

ומהאי טעמא נמי ממעטינן בריש אלו הן הגולין (מכות דף ז, ב ושם דיבור המתחיל אלא) אומר מותר⁵ -

And for this reason also (that חייב גלות by שגגה is oft repeated) that in the beginning of הגולין אלו הן, פרק אלו הן הגולין, רבא excludes from going to גלות one who assumed it is permitted to kill, we exclude him -

מבשגגה לגבי גלות -

Based on the word בשגגה regarding גלות -

אף על גב דגבי שבת ועבודה זרה כתיב בשגגה -

¹ במדבר (מסעי) לה, יא.

² The translator was able to find only two times the word בשגגה in פרשת מסעי regarding גלות (in טו and פסוק יא) unless we include the two times בשגגה, which is written in ט כג, ט. See 'Thinking it over'.

³ The extra 'בשגגה' teaches that it needs to be a שוגג where he knew initially (so he should have been more careful) but not a שוגג where he never knew (for that is [perhaps] closer to אונס).

⁴ תוספות is not referring to the חלב איסור exclusively, but rather to all כריתות, for which one is obligated to bring a קרבן חטאת if he transgressed them בשוגג. Regarding the obligation to bring a קרבן חטאת the תורה writes (in ד, כז) (ויקרא ד, כז) that בשגגה, but nevertheless there is no requirement that the person first be aware that it was חלב and then forget. He is חייב אף על גב דלא ידע even if he never knew that it was חלב.

⁵ See footnote # 3. The extra בשגגה excludes אומר מותר for that too is closer to אונס than to שוגג.

Even though that regarding desecrating the שבת or worshipping ע"ז, the word בשגגה is also written -

ומחייבין אומר מותר בפרק כלל גדול⁶ (שבת דף סח, ב ושם) :

And nevertheless in פרק כלל גדול we hold liable one who assumes it is permitted to either desecrate the שבת or worship ע"ז. The reason for this difference is (again) because regarding גלות the word בשגגה is repeated many times. However the word בשגגה by itself does not indicate an exclusion of לא היה לו ידיעה or אומר מותר.

SUMMARY

We interpret בשגגה to exclude בתחלה and לא היה לו ידיעה only regarding גלות where the word בשגגה is repeated but not regarding other איסורים.

THINKING IT OVER

Tosfos writes that by גלות (as opposed to חלב/חטאת) the word בשגגה is written many times. The word בשגגה regarding גלות is written twice,⁷ and regarding חטאת it is written more times.⁸ How do we explain this?

⁶ The גמרא states that that a child that was captured among the nations is חייב a חטאת for his transgressions (of שבת ע"ז, etc.) even though he never knew they were prohibited.

⁷ See footnote # 2.

⁸ חטאת ע"ז regarding במדבר (שלה) טו, כו כז כח and in חלב regarding ויקרא ד, כב כז.