

It is similar to a slave and a maidservant

מידי דהוה אעבד ואמה –

OVERVIEW

The גמרא, in discussing whether כוונתו להזיק is a reason to exempt the owner from payment or not, offers proof from an עבד ואמה, that even though by them it is כוונתו להזיק, nevertheless they are פטור¹. רש"י and תוספות disagree as to what the גמרא is referring to when it states עבד ואמה.

ולא כפירוש רש"י שפירש משום דתנן בהחובל (לקמן דף פז,א) עבד ואשה פגיעתן כולי² -

And this should **not** be understood as רש"י explained it that the reference to עבד ואמה is because we learnt in a משנה in פרק החובל; 'entanglement with a slave or a woman, etc. is detrimental -

דאם כן הוה ליה למינקט עבד ואשה³ -

For if the גמרא was referencing that משנה, the גמרא should have mentioned a slave and a woman; (but not an אמה (עבד ו), who is not mentioned in the משנה of החובל.

תוספות offers his interpretation:

אלא מפרש רבינו תם דנקט עבד ואמה משום דקאי אמתניתין דסוף מסכת ידים⁴ -

But rather, explains the ר"ת that the גמרא mentions עבד ואמה because the גמרא is referencing the משנה at the end of מסכת ידים. תוספות proves his point⁵ -

וטעמא משום שמא יקניטנו רבו דבסמוך מפורש התם:

For the reason why the owner of the עבד ואמה is פטור, which is mentioned shortly, namely because his master may anger him; this reason is explicitly stated there in מסכת ידים. Therefore it is reasonable to assume that (even) in the ה"א the גמרא was referencing the משנה in מסכת ידים.

SUMMARY

מסכת ידים in משנה is mentioned as a reference to the עבד ואמה.

¹ It would seem from (ד"ה אפ"ה) that we are referring to the עבד ואמה themselves; they are פטור. The 'proof' then would be that כוונתו להזיק is not necessarily a reason for liability in general. However, it would seem more appropriate that we are referring to the owner, that he is פטור, even when his property (עבד ואמה) damages בכוונה. (This may be partly why תוספות disagrees with רש"י.) See (פירוש"י) תוספות.

² The משנה there explains that whoever damages the עבד ואשה is liable; however if the עבד ואשה damage others they are not liable. (The משנה there is not discussing the liability of the master [or the husband].)

³ The 'woman' would be irrelevant to our discussion here; why should the husband be liable for the damages caused by his wife; she is not his property (see footnote # 1).

⁴ פ"ד מ"ז, The משנה there discusses the exemption of the master from payment.

⁵ In addition, תוספות is explaining why indeed the גמרא cited the משנה in ידים and not the משנה in החובל.

THINKING IT OVER

Is there a tangible difference between רש"י and תוספות?