

כראי אדם שאין משלם את הכופר –

(Is not) like the nature of man who does not pay *koifer*

OVERVIEW

The תורה writes,¹ ונגפו אשה הרה ויצאו ילדיה ([if] they pushed a pregnant woman and she lost the children), so if ולא יהיה אסון (the woman did not die), the rule is ענוש (the perpetrator will be punished monetarily) and he will have to pay ולדות דמי. We derive² from this פסוק that the obligation to pay is only if there is no אסון; however, if there is an אסון – the woman was killed; since the killer is מיתה (he receives capital punishment), there is no obligation to pay ולדות דמי. This is known as קים ליה בדרכה מיניה 'he receives an even greater punishment'.

The תורה writes,³ ומכה בהמה ישלמנו ומכה אדם יומת, in which the תורה compares damaging or killing an animal, to killing a person. The תנא דבי חזקיה derive⁴ from this פסוק that just as by מכה בהמה you are always liable for payment, whether you hit it בשוגג or במזיד, etc., there is no difference; similarly when you kill a person, which exempts you from monetary payments (as derived from אסון ולא יהיה אסון), there is no difference as to how you killed the person, whether it was בשוגג or במזיד; in all instances there are no monetary payments.

The תורה writes⁵ regarding a שור המועד which killed a person that ונתן פדיון נפשו (the owner of the ox must give the redemption of his soul) (as much as ככל אשר יושט עליו will be assessed upon him). This payment is called כופר. The גמרא derives⁶ from the (extra) word עליו, that this כופר is only upon the owner of the ox, but not on a person who killed another person; he is exempt from כופר.

Our גמרא states that שור is stricter than אדם, for by שור שהמית אדם there is a חיוב כופר, however by אדם שהמית אדם there is no חיוב כופר. Our תוספות examines this stringency in light of the above-mentioned.

תוספות asks:

הקשה רבינו יצחק בן אשר מאי חומרא היא זו -

The ריב"א asked; what stringency is this; that a שור pays כופר as opposed to an אדם?!

¹ שמות (משפטים) כא, כב.

² כתובות לו, ב [במשנה].

³ ויקרא (אמור) כד, כא.

⁴ לקמן לה, א.

⁵ שמות (משפטים) כא, ל.

⁶ לקמן כו, א.

האי דאין משלם את הכופר משום דקים ליה בדרכה מיניה -

This rule that a person does not pay כופר is because of מיניה⁷; he receives a more severe punishment; he is put to death. There is no leniency for the person who killed, compared to the owner of the שור, who pays כופר (but is not killed).

answers: תוספות

ותירץ דשווג נמי פטור מדתנא דבי חזקיה⁸ -

And the ריב"א answered; that if the killing was done inadvertently the killer is still exempt from paying כופר, based on the teaching of דבי חזקיה. Therefore there is a חומרא by שור that the owner pays כופר; however if a person kills another person שווג, there is no כופר, even though there is no death penalty.⁹

presents a dissenting opinion: תוספות

ואומר רבינו יצחק דלאו פרכא היא כלל דלא מפטר משום קים ליה בדרכה מיניה¹⁰ -

And the ר"י says that the ריב"א's original question, is no question at all, for a person is not פטור from paying כופר on account of מ"מ קלב"מ (but rather because we derive it from the פסוק of¹¹ אשר יושט עליו¹²), as תוספות will mention shortly¹² -

וכאן נמי אין שייך להזכיר תנא דבי חזקיה¹³ -

And it is also not applicable here by כופר to mention the ruling of the דבי חזקיה (since it is not a case of מ"מ קלב"מ).

will explain how we know that the exemption from paying כופר ([even] by מזיד) is not because of מ"מ קלב"מ: תוספות

דלקמן בפרק ב' (דף כ"א) משמע דאי לאו קרא דעליו ולא על האדם -

For later in the second פרק it appears that if not for the פסוק of עליו, from which we derive that כופר is administered only 'on him' (the owner of the ox), but not on a person who killed another person; if not for this פסוק of עליו -

הוה ילפינן אדם משור שיתחייב מזיד מיתה וכופר -

We would derive the rule of a person who kills from the rule of an ox that kills; that the person who kills would be חייב the death penalty and כופר if he killed

⁷ See 'Overview'.

⁸ See 'Overview'.

⁹ There is, however, a גלות penalty, which is (seemingly) more severe than כופר. Others answer that the פטור from כופר applies even to those cases of שווג where there is no גלות. See also 'Thinking it over' # 1.

¹⁰ See footnote # 17 for one explanation why there is no כופר by קלב"מ.

¹¹ שמות (משפטים) כא,ל. See 'Overview'.

¹² Therefore it is indeed a קולא that an אדם ההורג is פטור from paying כופר.

¹³ The ר"י is making two statements: a) that מ"מ קלב"מ is not applicable to כופר (even by מזיד), and b) that there is no need for the דבי חזקיה to teach us a פטור כופר.

– ¹⁴ (קלב"מ and we would not say שור (and we would not say **במזיד**

will now explain that we cannot say that the תנא דב"ה teaches us the פטור כופר by שוגג for it is unnecessary (besides being inapplicable):¹⁵

ומעליו פטרי ליה אפילו שוגג דומיא דשור דאין מזיד לשור -

And from the word עליו we exempt the person from כופר even if he killed בשוגג, similar to an ox; for there is no concept of מזיד by an ox. An ox always kills¹⁶ (בשוגג) and pays כופר, and we excluded a person from כופר in this same type of killing (which is בשוגג).

will now explain why indeed we do not derive from the תד"ה that a person is exempt from כופר (and why there is no קלב"מ):

ותנא דבי חזקיה דפוטרי אפילו שוגג היינו ממון שהזיק בשעת חיוב מיתה¹⁷ -

And the תד"ה that exempts monetary payments even if the act of חיוב מיתה was done בשוגג (he is not referring to a כופר type payment, but rather) he means that he is exempt from paying for the monetary damage that he caused while he did the act for which he is liable for מיתה -

ולאפוקי¹⁸ ממאן דדריש בפרק אלו נערו (כתובות דף לה,א ושם) -

And the תד"ה comes to excludes from the view of the one who interprets in פרק אלו נערו the verse of ענוש ענוש יענש, to mean -

הא אם יהיה אסון לא יענש דדוקא דין אסון -

But if there is an אסון he should not be punished monetarily; this מ"ד interprets this literally; he is exempt from paying only specifically if the law of אסון (capital punishment) is actually carried out. However, if it is a situation where there is no capital punishment, for instance שוגג, then there is monetary payment. Therefore -

אתא חזקיה ואשמועינן לאו דוקא דין אסון לא יענש אלא אפילו שוגג לא יענש:

אתא חזקיה ואשמועינן לאו דוקא דין אסון לא יענש אלא אפילו שוגג לא יענש: comes to teach us that not only if there is a אסון, is there no monetary

¹⁴ If there is a דין of קלב"מ by כופר, why is it necessary to derive פטור כופר באדם. One cannot say that עליו teaches us the פטור כופר באדם, however by שוגג, because of פטור by שוגג, this cannot be, for if he is פטור by שוגג because of קלב"מ, he will also be פטור by שוגג on account of the תנא דב"ה. This proves that if not for שוגג there would be a חיוב מיתה וכופר and no קלב"מ (as תוספות will explain [see footnote # 17]).

¹⁵ See מנחת יהודה who discusses why it is necessary to negate the תד"ה since it is inapplicable anyway..

¹⁶ See רש"י who discusses this. See 'Thinking it over' # 2.

¹⁷ כופר and מיתה of חיובים since both קלב"מ and קלב"מ are a result of the same misdeed, namely the act of killing. קלב"מ is applicable when there are two separate חיובים, for instance in the case where a woman was pushed and killed and the child was aborted (or where someone burnt his friend's object on שבת). The act of killing a woman (or חילול שבת) requires a מיתה penalty, and the act of aborting the children (or destroying his friend's object) requires a monetary payment. It is in this case where we apply קלב"מ and exempt him from monetary payments. However, by both מיתה וכופר both חיובים stem from the same act of killing this person. See מהר"ם, מהרש"א וכו'. See also אמ"ה נח"מ, אמ"ה וכו'. See 'Thinking it over' # 3.

¹⁸ See 'Thinking it over' # 3 [in the bracketed area].

punishment, **but even if it was בשוגג**, when there is no דיין אסון, nevertheless **he is not punished** monetarily. The rule of קלב"מ is applicable, regardless whether the death penalty is actually meted out, or not.

SUMMARY

The ריב"א maintains that a person is פטור from כופר on account of קלב"מ (and is פטור even בשוגג, on account of תד"ה). The ר"י maintains that קלב"מ does not apply to שור כופר. The פטור from כופר is derived from the word עליו, which limits כופר to אדם and excludes אדם.

THINKING IT OVER

1. The ריב"א answered that an אדם is פטור from כופר even בשוגג (on account of the תד"ה).¹⁹ Seemingly, the פטור from תד"ה is also because of קלב"מ! How is the question answered?²⁰
2. תוספות states that there is no מזיד by an ox.²¹ How do we know that a person is פטור מכופר if he killed במזיד? The לימוד על האדם refers (seemingly) to a killing (by an ox)!²²
3. It appears that תוספות alludes to the reason that קלב"מ is not applicable by כופר, when mentioning תד"ה.²³ Why does not תוספות offer this same explanation by a case of מזיד? [And what relevance is there in the concluding discussion²⁴ regarding תד"ה, to our תוספות?!]

¹⁹ See footnote # 9.

²⁰ See בל"י ועוד.

²¹ See footnote # 16.

²² See בל"י.

²³ See footnote # 17.

²⁴ See footnote # 18.