

To exclude an informer, etc.

למעוטי מוסר כולי –

Overview

The גמרא states that the מניינא of רב חייה is excluding מוסר ומפגל, they are not included in his אבות נזיקין¹. It seems evident from the ensuing discussion in the גמרא, that מוסר ומפגל are similar in דין to the other אבות in regard to payment²; however ר"ה is not discussing these types of נזיקין. Based on this (and the previous) למעוטי, it seems that the מניינא is excluding items that have the same ruling; however they are not comparable to the type of categories to be enumerated.³ תוספות anticipates, therefore, two extreme questions.

הוה מצי למימר למעוטי כופר⁴ ושלישים של עבד⁵ –

The גמרא **could have said** that the מניינא of ר"ה is coming to exclude **כופר**, and the thirty שקלים payable to the owner of a slave who was gored to death⁶ - והא דלא קתני להו משום דבקטלא לא מיירי –

And the reason ר"ה **did not mention these two is because** ר"ה was not discussing damages which involve killing. The גמרא could have said this exclusion and the accompanying reason, but chose not to.

רב"ה now returns to discuss the two cases that were excluded from the אבות of ר"ה, namely מוסר ומפגל. The גמרא discusses why מוסר ומפגל were omitted from the אבות דר"ה. תוספות anticipates the following question. Perhaps they were not mentioned since ר"ה maintains that a מוסר is פטור⁷. A מוסר merely causes the damage indirectly; he does not do any damage himself. This is considered (at most) גרמי – a cause. According to some opinions גרמי is פטור. תוספות responds to this question.

ומוסר ומפגל אפילו למאן דלא דאין דינא דגרמי –

And concerning מוסר ומפגל; even according to the one who does not implement the rule of גרמי, nevertheless the (ומפגל) מוסר –

מחייב משום קנס בהגוזל בתרא (לקמן דף קיז,א):

¹ (מוסר) מוסר (this excludes דיבור) and damages resulting from קדשים (this excludes מפגל). ר"ה is not discussing קדשים.

² If מוסר would have a different דין (or be פטור), then it is obvious why ר"ה does not include them.

³ See also previous תני. תוספות ד"ה תני. We are not excluding items which are not liable for damages, etc.

⁴ שמונת [משפטים] כופר. שור המועד (who previously killed three people) has to pay (as an atonement) to the יורשים of the one killed by the שור המועד.

⁵ עבד כנעני שור. If a שור kills an עבד כנעני the owner of the שור must pay the owner of the עבד כנעני [משפטים] כא, לב.

⁶ There would be no question if the למעוטי דר"ה is excluding מוסר; for כופר ושלישים are obviously חייבים מדאורייתא. However since we are excluding מוסר (but do not fit the proper type), then we should rather exclude כופר ושלישים which are definitely חייב, than excluding מוסר (ומפגל), which may not be חייב according to the דינא דגרמי.

⁷ It is apparent from a later גמרא (דף ק,א ד"ה טיהר) that מפגל is considered a מעשה not a גרמי. The question here is only concerning מוסר; מפגל mentions תוספות; מוסר is using the expression of the גמרא.

פרק הגזול **is liable** to pay for his damage **on account of a קנס** as is stated in **הגוזל בתרא**.⁸ Therefore a reason is required as to why ר"ה omitted them; which the גמרא offers.

Summary

The גמרא could have stated that the מניינא דר"ה excludes כופר ושלשים של עבד and they are not mentioned for ר"ה is not discussing damages which involve killing. (ומפגל) on account of קנס. even דגרמי חייב are מוסר (ומפגל).

Thinking it over

If we are not דגרמי חייב why do we give a קנס to the מוסר?⁹

⁸ See נח"מ on this הקשה בד"ה והנה הקשה in גמרא who explains how we derive this from the הגוזל בתרא (קטז, ב).

⁹ See נח"מ. הגוזל בתרא קיז, א בד"ה ואי קנסא in רש"י.