

If she would demand from him, etc.

אילו תבעה ליה כולי -

Overview¹

רבא explained that the **אתנן** of one who was **בא על אמו** is prohibited, even though it is a case of **קלב"מ** and if she would demand payment from him, the **בי"ד** could not obligate him to pay, nevertheless, it is **אסורה**. Our **תוספות** explains why indeed it is **אסורה** if he is not obligated to pay.

תוספות responds to an anticipated difficulty:²

אף על גב דמוקמיה בעבודה זרה³ (דף סג,א ושם) דקאי אתנן בחצרה -

Even though that in ע"ז⁴, the גמרא establishes the case of אתנן, where the אתנן is already in her courtyard, so she already acquired it through her **הצר**, nevertheless -

מטעם זה לא היה נאסר ולא חשיב אתנן אלא מתנה בעלמא⁴ -

The sheep **would not be forbidden for this reason** that she acquired it, **for it is not considered אתנן, but rather merely a gift**, since it is a situation of **קלב"מ**, where he cannot be coerced to pay her, therefore it should be considered a gift, and not **אתנן** -

תוספות explains why indeed it is considered **אתנן** (and not a מתנה):

ועיקר טעמא דאתנן כדמסיק הכא משום דקא יהיב לה הוי אתנן -

And the main reason why it is אתנן is as the גמרא concludes here, 'because he gave it to her, it is אתנן' -

פירוש כיון שצריך לתת לה לצאת ידי שמים⁵ אפילו לא היה עומד בחצירה⁶ -

The explanation is; since he is required to give her the **אתנן** in order to fulfill his obligation to heaven, even if the sheep was not standing in her courtyard, therefore

¹ See 'Overview' to the previous **אתנן** תוס' ד"ה אתנן.

² **תוספות** is now assuming that the question of **אתנן** לה קום הב לה **אתנן** מי אמרינן ליה וכו' is that since in actuality she will not receive it, so how can this sheep be considered **אתנן**, therefore **תוספות** has this following difficulty.

³ The rule by **אתנן** is that if he gave her the **אתנן** after the **ביאה** it is not considered **אתנן**. The **גמרא** there establishes the case of **אתנן** where his sheep was in her **הצר**, and he told her that she should acquire the sheep when they are intimate. Therefore she certainly acquired the sheep regardless of **קלב"מ**, because it becomes hers as soon as they are intimate. What does **רבא** mean that if she would demand it, we would not force him, but it is already hers?!

⁴ He does not owe her this sheep; the fact that he gave it to her and she acquired it, does not make it **אתנן**; this transaction is considered a gift, but not payment for services rendered. **רבא** meant to say that since if it was not **בחצרה**, the **בי"ד** could not coerce him to pay her (on account of **קלב"מ**), this proves that he does not owe her the sheep as payment, but rather she acquired the sheep as a gift, and a gift is not considered **אתנן** (which is payment for services rendered).

⁵ **תוספות** is (seemingly) saying that **קלב"מ** only means the **בי"ד** cannot coerce him to pay, but in reality he owes the money, and in order to be a righteous person and fulfill his duty to ה', he should pay, even though he is **חייב מיתה**. Therefore when he gives her the sheep it is considered a payment of **אתנן**, but not a מתנה.

⁶ However if it is not **בחצרה** (even though he is obligated to give it to her **לצאת ידי שמים**, nevertheless) it is not considered **אתנן**, since it is given after the **ביאה** (see footnote # 3).

(when it is בחצירה) -

חשיב אתנן ולא מתנה הכא נמי הוא מכירה⁷ -

It is considered אתנן, but not a gift, similarly here by גניבה, it is considered a valid sale –

לצאת ידי שמים proves his point that even by מ"קלב there is an obligation to pay in order

וכן משמע בהשוכר את הפועלים (בבא מציעא דף צא,א ושם) דחייב ליתן לצאת ידי שמים -

And so it seems in פרק השוכר את הפועלים that he is obligated to give payment in order לצאת ידי שמים -

דאמר התם החוסם את הפרה ודש בה⁸ לוקה ומשלם ד' קבים לפרה וג' קבים לחמור -

For the גמרא rules there, one who muzzles a cow and threshes with it, he receives lashes and pays four קבים of food for a cow and three קבים of food for a donkey -

ופריך והא קיימא לן דאין לוקה ומשלם ומשני רבא אתנן אסרה תורה אפילו בא על אמו -

And the גמרא asked, why should he pay, since we have an established rule that one does not receive מלקות and pay as well?! And רבא answered אתנן אסרה תורה ואפילו – בא על אמו

Tosfos asks:

ואם תאמר דבפרק בן סורר ומורה (סנהדרין דף עב,א ושם) אמרין -

And if you will say; for the גמרא relates in סורר ומורה that -

רבא איגניבו ליה [דיכרי] במחתרת¹⁰ אהדרינהו ניהליה ולא קבלינהו -

Rams were stolen from רבא by thieves burrowing under the walls; the thieves later returned the rams to רבא, but he did not accept them, saying -

הואיל ונפק מפומיה דרב דבדמים קנינהו¹¹ -

⁷ The גמרא (even though he cannot be coerced to give the buyer the animal [on account of מ"קלב, nevertheless] in order מכירה, he must give him the animal (in exchange for the figs), therefore it is considered a valid

⁸ The case there is where רבא rented an animal from שמעון in order to thresh his grain. שמעון assumed that his animal would be able to eat while it is threshing (as the תורה rules שור בדישו (in כה,ד) לא תחסם שור בדישו. However רבא muzzled the animal so it could not eat. רבא receives מלקות for transgressing the לאו of תחסם. In addition he must pay שמעון for the food he withheld from the animal.

⁹ See ד"ה בבא לצאת ידי שמים, and that is how רבא explains the rule by גמרא the words שמים, based on the rule by אתנן that in both places he is שמים. Therefore he pays by חסימה and it is considered an אתנן since he needs to pay if שמים. See 'Thinking it over'.

¹⁰ The term מחתרת refers to stealing something by digging under the walls and stealing the items. The rule is that if the owner catches the thief while he is digging, and the owner kills the thief, he is פטור, since the thief forfeited his life by digging into someone's property.

¹¹ רב ruled (there) that if a thief stole utensils במחתרת he is exempt from returning them. The reason is that since the thief has forfeited his life, for he may be killed by the owner (see footnote # 10), therefore the rule of מ"קלב applies, that since there is a מיתה, there is no monetary payment. The stolen items remain by the thief, and ב"ד cannot make him return it. Therefore the rams belong to the thieves, and רבא did not want to take a gift from them.

‘since it came out from the mouth of רב that the thieves acquired the stolen goods with their blood’ -

ואם היו חייבין לצאת ידי שמים אמאי לא קבלינהו -

And if (as תוספות is saying here) they are liable to return the rams in order לצאת ידי שמים, why did רבא not accept them –

answers: תוספות

ויש לומר שהם לא היו מחזירים אלא משום שהיו סבורים שחייבין¹² להחזיר מן הדין:

And one can say that the thieves were not returning it שמים, but rather because they assumed that they are legally required to return them.

Summary

The reason why אתנן אסרה תורה ואפי' בא על אמו is that in order לצאת ידי שמים one must pay even in a case of מ"מ קלב.

Thinking it over

In the case of אתנן, if he does not want לצאת ידי שמים, is it still considered אתנן? What about in the case of חסימה, is he obligated to pay if he does not want לצאת ידי שמים? How about in our case of ד' וה', if the thief does not want to give him the animal לצאת ידי שמים, is it a valid מכירה?

¹² However had they known that they are not obligated to return it מן הדין, they would not have returned it לצאת ידי שמים. Therefore רבא did not want to take it from them under mistaken assumptions.