

Where there is a דררא דממונא

היכא דאיכא דררא דממונא –

OVERVIEW

The גמרא explains that סומכוס (who maintains יחלוק without a שבועה) can agree with our משנה (which rules בשבועה (יחלוק)). The cases are different; סומכוס is discussing a case where there is a דררא דממונא, and our משנה is not a case of דררא דממונא. Our תוספות will explain the meaning of דררא דממונא and will clarify why by דררא דממונא there is no need for a שבועה.

פירוש¹ שבלא טענותיהם יש ספק לבית דין –

The explanation of דררא דממונא is, 'that without their claims, בי"ד is in doubt' as to the monetary issue involved -

דיש לאחד תביעה על חבירו בלא טענותם –

For one has a claim against the other even without their arguments -

– כגון בשור שנגח את הפרה² (בבא קמא דף מו,א) ומחליף פרה בחמור³ –

For instance in the cases of שור שנגח את הפרה⁴ and מחליף פרה בחמור⁴ –

שבועה explains why דררא דממונא should cause dividing without a שבועה:

אחרי שהספק נולד מעצמו דין הוא שיחלוקו אפילו בלא שבועה:⁵

Since the doubt was created on its own (without the litigants presenting any arguments); it is logical that they should divide even without taking

¹ The term פירוש is (usually) used by תוספות to negate another explanation. תוספות here is negating פירש"י that דררא דממונא means a loss of money. According to תוספות the literal translation of דררא is, 'a connection', a שייכות (see תוספות הרא"ש). [The ר"ן explains דררא to mean 'a claim'.] Each party inherently has a connection (or claim) to the monies involved (without even presenting a claim). [In our גמרא תוספות] גמרא rejects פירש"י, for the גמרא's answer that by סומכוס there is no חיוב שבועה since there is a דררא דממונא, is (seemingly) not understood *at all* according to פירש"י that there is a loss of money. If there is a need for a שבועה when there is no loss of money (as in our משנה) then certainly there is a need for a שבועה when there is a loss of money (as the גמרא immediately asks). However according to תוספות it is readily understood that by a דררא דממונא we award them half without a שבועה. See footnote # 5. For an explanation how תוספות explains the continuation of the גמרא see תוספות ד"ה ומה.

² See previous footnote # 1. תוס' ד"ה התם.

³ See previous footnote # 2. לקמן ק,א. תוס' ד"ה התם.

⁴ When בי"ד becomes aware of the facts which all agree to (the ox gored a pregnant cow and a dead fetus was found, or a pregnant cow was swapped for a donkey and a calf was born), there will be an issue (whether the ox's owner is liable, or to whom does the calf belong) even if both parties present no arguments. This is in distinction to our משנה where if two people are holding a טלית and there is no argument then we assume that it belongs to both of them. The doubt arises by בי"ד only after each one claims that it is his.

⁵ When the claim is based on their argument, then a שבועה is necessary to substantiate the argument; however when the claim is inherently valid (as in a case of דררא דממונא) then we award them their due without a שבועה.

an oath.

SUMMARY

A דררא דממונא means that there is a doubt by בי"ד as to the resolution of the matter, without the claims of the litigants. A דררא דממונא should be sufficient cause to warrant a חלוקה (according to סומכוס) without a שבועה.

THINKING IT OVER

It seems from תוספות that דררא דממונא is the cause (not only that there should be no שבועה but also) that there should be יחלוקו.⁶ Why is there need for תוספות to mention דררא דממונא as a cause for יחלוקו?⁷ (in the context of our סוגיא)? How indeed does דררא דממונא address this issue?⁸

⁶ The Tosfos of לשון is: [אפילו בלא שבועה] הוא שיחלוקו [אפילו בלא שבועה].

⁷ Why would we think that we should not say יחלוקו (since our משנה rules that we should not say יחלוקו)?

⁸ See (1) [ובמס' 1] [בכת"י] [ובמס' 1].