ואי דלא מצי לאהדורה אמאי חייב –

And if he cannot disgorge it, why is he liable

Overview

The גמרא is attempting to find a situation where the חיוב מיתה for eating a דבר האסור, and the חיוב ממון for stealing this דבר האסור, are simultaneous. The גמרא suggested a case where another person stuck this דבר האסור into the בית הבליעה (the throat) of the one who eventually swallowed it. However the גמרא is not satisfied; if he cannot spew it out why is he liable. There is a dispute between רש"י and תוספות as to the meaning of אמאי חייב. According to רש"י it means why is he חייב מיתה, and according to תוספות it means why is there a חיוב ממון.

פירש בקונטרס[1] אמאי חייב מיתה[2] -

רש"י explained the s'גמרא question to mean**; why is he חייב מיתה,** since it was forced upon him.

תוספות disagrees with פרש"י:

וקשה לרבינו יצחק דלוקי כגון שמרצונו מניח לו לתחוב -

And the ר"י has a difficulty with פרש"י, **for let** the גמרא **establish** the case where **for instance he willingly allowed him to thrust** the תרומה into his throat -

דהשתא ודאי חייב מיתה אף על גב דלא מצי לאהדורה -

So now he is certainly חייב מיתה, even though it is לא מצי לאהדורה; since he willingly allowed the other person to thrust it down his throat, he is not an אנוס -

וממון נמי לא מיחייב כיון דלא מצי לאהדורה[3] -

---

[1] ד"ה ואי where he writes מיתה אנוס הוא [אמאי חייב].

[2] Therefore, since there is no חיוב מיתה, there is no קלב"מ and he should be חייב to pay. [It would seem that according to רש"י even though it is an אונס he is liable for תשלומין (see footnote # 3).] It seems that even though קלב"מ applies even by שוגג (see תוס' ד"ה זר on this עמוד [TIE footnote # 4] and א,לקמן לה), nevertheless there is no קלב"מ by an אונס (see רע"א). Alternately רש"י (may) maintain[s] that חייבי כרת are פטורין מתשלומין (according to רנב"ה) only במזיד, where there is an actual חיוב כרת (see רש"י פסחים כט,א ד"ה יוהכ"פ).

[3] תוספות distinguishes between the חיוב מיתה for eating a דבר אסור for which he is liable (even though it is לא מצי לאהדורי), since מרצונו מניח לו לתחוב, and the חיוב ממון for גזילה, for which he is not חייב (even though מרצונו מניח לו לתחוב), since it is לא מצי לאהדורי. The explanation is that the חיוב מיתה is for eating and he ate it willingly, since מניח לו לתחוב (knowing that he will need to swallow and eat it). Therefore he is חייב (see הפלאה that it is likened to ערוית where the woman is חייב since it was ברצון, even though she is קרקע עולם and לא עביד מעשה). Regarding stealing, however, even though he allowed him להניח לו לתחוב (knowing full well that he will have no choice but to swallow it), nevertheless allowing someone else to steal, is not considered stealing for the person who is passive. Therefore up to the point where the food was placed in his throat, he certainly did not steal (even though he may be considered somewhat of an accomplice), and he cannot be liable for destroying the food by swallowing it, since at that point he was already an אנוס.

And he will not be liable to pay **money** for the entire value of the object he swallowed, **since it is לא מצי לאהדורה;** he would be liable (theoretically) -

אלא על הנאת גרונו ומעיו[4] וההיא שעתא קים ליה בדרבה מיניה -

Only for the benefit of his throat and intestines, but at that point (when the food entered into his body completely, he is exempt from paying even for הנאת גרונו ומעיו since it is **קלב"מ.** This case would be the appropriate scenario where he is פטור from תשלומין when he ate תרומה, because of קלב"מ. Why did not the גמרא answer in this manner?!

תוספות offers his interpretation:

ונראה לרבינו יצחק דהכי פירושו אמאי חייב ממון והרי הוא לא גזלו[5] ואהנאתו לא מיחייב[6] -

And it is the view of the ר"י that this is the explanation; 'why is he liable' to pay for the stolen item, **since he did not steal it** (he was passive), **and he should not be liable** even for the **benefit he** received, as תוספות continues to explain.

תוספות anticipates the argument that he should be liable for his הנאה:

דאף על גב דאמרינן (בבא קמא דף קיא,ב) גזל ולא נתייאשו הבעלים ובא אחר ואכלו -

For even though רב חסדא **ruled; one who stole and the owners did not despair and another came along and ate it** (in the house of the גזלן)**,** the rule is: the owner -

רצה מזה גובה כולי -

If he wants can collect from this one, etc. or he can collect from the other one. He can collect either from the thief of from the eater, even though the eater did not steal it. Similarly here he should be able to collect from the eater (at least הנאת מעיו).

תוספות responds that the case there is different from here. The reason the eater is liable there -

היינו דוקא לפי שהדבר הגזול ישנו בעולם בשעה שזה שני גוזלו[7] -

Is only specifically in that case, **since the stolen item exists at the time the second one steals it** (from the owner [who was not נתייאש]) by eating it -

אבל הכא דבשעה שזה נהנה ממנו כבר הוא אבוד מן העולם -

---

[4] Even though he did not steal the food (someone else thrust it down his throat), nevertheless he did derive benefit from it (both in the taste – גרונו, and in satisfying his hunger – הנאת מעיו) and for this benefit he would have to pay [(even though it may be less than the 'regular' value of this food item) as anyone who needs to pay if he derived benefit from someone else (especially if the benefactor suffered a loss [as in this case])], if there was no חיוב מיתה for eating it. However now that this benefit was received simultaneously with the חיוב מיתה, he will be פטור from paying even for the benefit since it is קלב"מ. This is (according to) רש"י view (who [seemingly] maintains that even באונס he is חייב ממון [see footnote # 2]); however see later (footnote # 8) that תוספות disagrees. See 'Thinking it over' # 1.

[5] The 'eater' is certainly not liable for stealing; he did not steal anything (see footnote # 3)! The only possible issue is if he is liable for his הנאה, which תוספות continues to explain that he is not liable.

[6] The גמרא asks that in the case of לא מצי לאהדורי there can be no issue of קלב"מ (even if מרצונו מניח לו לתחוב), since initially there is no חיוב ממון!

[7] It was still ברשות בעלים since he was לא נתייאש and it had its complete value, for it was intact.

However here at the time the eater **derives הנאה from it,** the food item **is already lost forever** and it has no value **-**

שהוא במקום דלא אפשר לאהדוריה אין לו על השני כלום[8] -

Since it is in a place where it is impossible לאהדורי, therefore the owner **has no claim on the second** person (i.e. the eater). Therefore the גמרא asks if it is לא מצי לאהדורי there is no חיוב ממון even without the קלב"מ.

תוספות finds a support for פירש"י:

ורבינו יצחק בן אברהם מפרש כשיטת רש״י[9] -

And the ריצב"א explains the גמרא **in the manner of רש"י** that the question אמאי חייב refers (also) to the חיוב מיתה, that he should be פטור since he is an אנוס. However, תוספות asked that let us establish it in a case where מרצונו מניח לו לתחוב, so he is not an אנוס; to this the ריצב"א replies -

ופשיטא ליה להש״ס דאיירי כשתוחב לו בעל כרחו -

That it was obvious to the גמרא that we are discussing a case **where he thrust it** down his throat **against his will** (so he is an אונס) **-**

דכשתוחב לו מרצונו מיד כשמשים בפיו ולא אהדרה קנאה מיד להתחייב באונסין[10] -

For if he thrust it with the eater's **consent** (as תוספות argues), then **immediately when it was placed in his mouth and the** eater **did not spew it out, the** eater **acquired** the food, **to be liable for any mishap** that will occur to this food -

ואין באין כאחד[11] דמסתמא מניחה בפיו ואחר כך תוחב לו באצבעו או בכוש -

So the חיוב מיתה וחיוב ממון **are not simultaneous, for presumably he places** the food **in the** eater's **mouth and afterward he thrusts it with a finger or a spindle** down his throat. The חיוב ממון is when he placed it in the mouth before he thrust it down, and the חיוב מיתה is after he swallowed it so they are not באין כאחד.

תוספות anticipates a difficulty with this proof:

ואם תמצא לומר שהוא בראש הכוש מתחלתו ועד גמר בית הבליעה -

---

[8] תוספות disagrees with the reasoning in footnote # 3. This (that he is פטור even for הנאת מעיו) should apply even if it was placed there willingly; otherwise the same question which תוספות asked on רש"י applies to the ר"י (let us establish it when he allows him to put it in). See 'Thinking it over' # 1.

[9] But not exactly like רש"י. See later by footnote # 19.

[10] According to the ריצב"א if he allowed it to be placed in his mouth, he will be liable to pay for the full value of the food, not as the ר"י maintains (see footnote # 8), and not only for הנאת מעיו as תוספות insisted (according to רש"י [see footnote # 4]). The ר"י, however, maintains that he does not acquire it להתחייב באונסין, since he did not do anything.

[11] Therefore it was obvious to the גמרא that the case of לא מצי לאהדורי cannot be in a situation where it was ברצונו, for then there can be no קלב"מ since it is not באין כאחד. We must therefore conclude that is בע"כ (so seemingly the חיוב ממון (for הנאה) and חיוב מיתה are באין כאחד (when he swallowed it), nonetheless the גמרא asks if it was בע"כ there is no חיוב מיתה (and ממון) at all! See 'Thinking it over' # 3.

And even **if you will insist on saying that the food is on the tip of the spindle from the** very beginning (when he started to place it in his mouth) **until the end** when it reached the **בית הבליעה,** so seemingly in this case the eater never acquired it for חיוב אונסין, and the חיוב ממון began after he swallowed it, simultaneously with the חיוב מיתה –

תוספות rejects this response:

מכל מקום קונה אותו בפיו להתחייב באונסים אף על גב דיכול לנתקו ולהביאו אצלו -

Nonetheless (even though it did not actually rest [independently] in his mouth, but it was always in the possession of the 'thruster'), the eater **acquires** the food **to be liable for אונסין** (since it was in his mouth and he could have refused it or spit it out). For **even though** the 'thruster' **could have retracted it and bring it back to himself** at any time, so seemingly the eater had no control over the food and therefore does not acquire it להתחייב באונסין –

תוספות responds that the ability לנתקו does not prevent the eater from acquiring it:

דדוקא לענין הגט אמרינן[12] היכא דיכול לנתקו דלא הוי גט -

For it is only specifically regarding a גט that רב חסדא ruled **that if he is able to snatch** the גט away, **that it is not גט -**

משום דבעינן כריתות[13] והא אגידא ביה[14] -

Since by גירושין **we require 'a separation' and** this גט **is** still **attached to him**, therefore it is not a valid גט **-**

אבל לענין זכיה אשכחן בפרק קמא דבבא מציעא[15] (דף ט,א ושם) -

However regarding acquisition of items, **we find in the first פרק of ב"מ** מסכת **-**

טלית חציה על גבי קרקע וחציה על גבי העמוד והגביה חציה שעל גבי קרקע דלא קני[16] -

'A cloak which half of it was on the ground and the other **half was on a pillar** (above the ground), **and he raised the half which was on the ground** (and the other half remained on the pillar)**, that he does not acquire** the טלית', despite -

מטעם שיכול לנתקה ולהביאה אצלו -

---

[12] גיטין עח,ב; ב"מ ז,א. The case there is where there was a string attached to the גט. The husband gave her the גט but retained the string. The rule is if he can snatch the גט away from her with the string she is not מגורשת.

[13] The תורה writes (דברים [תצא] כד,א); <u>כריתות</u> וכתב לה ספר.

[14] The problem there is not that she was not קונה the גט (since יכול לנתקו) but rather (even if she is קונה the גט) nevertheless it is not a valid גירושין since the גט is still attached to him and not completely in her domain.

[15] See רע"א here in the גליון הש"ס who asks that תוספות could have proven his point (that יכול לנתקו is not relevant by זכיה וקנין) from the very same גמרא in ב"מ ז,א, where the גמרא clearly differentiates between גט and חליפין (that by קנין חליפין it is valid even if יכול לנתקו). See סוכ"ד אות צז.

[16] He did not acquire the טלית since he only picked up half of it and the other half remained at rest on the עמוד. The same rule applies if the entire טלית is on the ground and he picked up only part of it; he is not קונה, since he did not pick up the entire טלית off the ground.

The argument that he can pull and bring the entire טלית **to him**[17] **-**

וכיון שאינו זוכה מטעם זה -

So since he cannot acquire the טלית **for this reason** of יכול לנתקו (proving that regarding acquisition יכול לנתקו is not effective to be considered in his domain) -

הוא הדין דאינו מגרע זכיית האחר שהוא מונח בתוך ידו או בתוך פיו מטעם זה -

The same logic applies **that** this יכול לנתקו here **does not diminish the** power of **acquisition of the other party in whose hand or in whose mouth the item is found,** and **for the same reason;** יכול לנתקו is ineffective.

תוספות continues that even if we do not accept his reasoning completely, but rather maintain that יכול לנתקו gives the יכול a certain power, nevertheless the eater still acquires the food להתחייב באונסין -

ועוד דלכל הפחות קונה מחצה כמו שנים שהגביהו מציאה[18] **-**

And additionally; the eater **should acquire at least half** of the food **just like by two who picked up a lost object –**

The ריצב"א concludes:

ולכך פשיטא ליה להש״ס דבאונס מיירי -

So therefore it was obvious to the גמרא that we are discussing a case where it was placed **forcibly** in his mouth, for otherwise there would certainly be a חיוב ממון which precedes the חיוב מיתה and there can be no thought of קלב"מ -

והכי פירושו אנוס הוא ופטור ממיתה וממון[19] **דאנן סהדי דלא ניחא ליה באכילת איסור:**

And this is the explanation of the גמרא's question אמאי חייב, **he is an אנוס and should be פטור from** both **מיתה** (since he is an אנוס), **and** also from **ממון, for we** (the בי"ד) **testify that he is not pleased with eating an איסור!**

SUMMARY

---

[17] One may have thought that since the קונה could have yanked the טלית off the עמוד and at that point the entire טלית would have been off the ground, so he should acquire it. However, it is not so; we do not give him any power of acquisition based on the יכול לנתקו (only if he actually yanked it off, is he קונה (see תוס' ד"ה הואיל there). [The concept of יכול לנתקו does not apply if the entire טלית is on the ground since he will never be able to raise the (large) טלית off the ground if he is merely holding on to the edge of it.]

[18] The ruling there is that they both acquire it, even though one of them may be יכול לנתקו, but so can the other, the same here even though the thruster is יכול לנתקו, however the eater is also יכול לנתקו (by closing his mouth and biting down on the כוש with the food), therefore they both acquire it [totally] regarding חיובי אונסין. However we cannot understand תוספות to mean that each one (the thruster and the eater) acquires half, for when he swallowed it entirely he becomes obligated on the second half and the rule of קלב"מ would apply on the second half (see סוכ"ד אות צו).

[19] רש"י only mentioned that he is פטור ממיתה because of אונס; the ריצב"א adds that he will also be פטור מממון since there is the אנן סהדי that it is לא ניחא ליה, therefore there is no הנאה that he should pay for. See footnote # 9. See 'Thinking it over' # 2.

שיטת רש"י: The question of אמאי חייב refers to מיתה since it was באונס (however he would be חייב for ממון [even if it was באונס (at least הנאת מעיו]).
תוספות rejects פרש"י for let us establish the case where it was ברצון and there is a חיוב מיתה simultaneous with a חיוב ממון of הנאת מעיו.
שיטת תוס': The question is why is there a חיוב ממון (even if it was ברצון), since it is לא מצי לאהדורה it is worthless to the owner.
שיטת הריצב"א: Why is there a חיוב מיתה (since it is באונס) and why is there a חיוב ממון since he does not want the איסור. [If it were ברצון, there would be a חיוב ממון immediately when it was placed in his mouth (even if יכול לנתקו) before there is a חיוב מיתה.]

THINKING IT OVER

1. Initially תוספות maintained that in a case of לא מצי לאהדורה (and it was ברצון) he will be חייב for הנאת מעיו (if not for קלב"מ).[20] Later תוספות writes that if it is a case of לא מצי לאהדורי he is not חייב to pay.[21] How can we reconcile these two views of תוספות?[22]

2. The ר"י and רש"י seem to agree that (even if it was באונס) he would be liable to pay (for הנאת מעיו),[23] and argue with the ריצב"א.[24] How will they deal with the אנן סהדי which the ריצב"א mentions?[25]

3. The ריצב"א argues that it cannot be a case of מרצונו for then it is not באין כאחד.[26] Why is the problem of אין באין כאחד a greater problem, so the גמרא could not have meant it, than the problem that if it is באונס there is no חיוב מיתה וממון, which the גמרא did assume was meant by לא מצי לאהדורי? They seem to be equally problematic!

---

[20] See footnote # 4.
[21] See footnote # 8.
[22] See סוכ"ד אות צב.
[23] The reason the ר"י states he is פטור is (only) because it is אבוד מן העולם; otherwise he would be חייב.
[24] See footnote # 19.
[25] See סוכ"ד אות צח.
[26] See footnote # 11.