לא צריכא דמצי לאהדורה על ידי הדחק –

It is applicable only where he can disgorge it with difficulty

Overview

The גמרא is discussing the feasibility of קלב"מ when someone thrust תרומה down another's throat. The גמרא asked; if it is מצי לאהדורי, then the eater's obligation to pay (for the entire תרומה that he ate), which takes effect when the תרומה was placed in his mouth, precedes the חיוב מיתה (which is when he swallows it) and there is no קלב"מ. The גמרא answered it is מצי לאהדורי with difficulty. תוספות explains how this resolves the problem.[1]

והשתא ליכא למימר דניהדרה דאין מרויחין בעלים בכך דכבר נמאסו[2] -

So now (that he can disgorge it only ע"י הדחק) **we cannot say** (as the גמרא asked previously when we assumed that it was מצי לאהדורי) **that he should disgorge it, since the owners will not profit from it, for the** food **is already repulsive -**

הלכך ליכא חיוב ממון[3] אלא על ידי הנאת מעיו[4] ואז באין כאחד -

Therefore (since it is כבר נמאסו) **there is no monetary obligation** for not disgorging it, b**ut rather** there is a monetary obligation only **for the הנאת מעיו, and at that time the** מיתה and ממון **are simultaneous**, so he is פטור because of קלב"מ**.**

תוספות anticipates a difficulty:

ואף על גב שחבירו גזלה[5] -

And even though that his friend stole it; so why should he pay (even) for הנאת מעיו?[6]

תוספות responds:

הואיל ויכול להחזירה הויא כמו שהיא בעין והרי הוא בולעה ונהנה בה -

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[1] Seemingly the original question remains he should have disgorged it, so the חיוב ממון precedes the חיוב מיתה.

[2] If it was thrust in his throat in such a manner that it is מצי לאהדורי only ע"י הדחק; the food is therefore repulsive and worthless, so the eater ate something worthless and no payment is required.

[3] The eater did not steal it; the point where he can possibly be liable is when it is מצי לאהדורי ע"י הדחק, at which point it is worthless to the owner, so he does not owe the owner anything for destroying (by swallowing) something which is worthless.

[4] He should pay the owner, for the benefit which he derived by swallowing the תרומה.

[5] The one who thrust it down his throat in a place which made it worthless to the owner; he should be liable to pay.

[6] This question follows the view of the ר"י in the previous תס' ד"ה ואי [TIE Footnote # 8] that if it is not בעולם, only the גזלן is liable but not the eater. Seemingly here too since now it is worthless for the בעלים it should be considered אינו בעולם. However, according to רש"י, who maintains that he is always חייב for הנאת מעיו [TIE footnote # 4 there], and the ריצב"א [TIE footnote # 19] who maintains that he is פטור only because of the אנן סהדי (which does not apply here since מצי לאהדורי ע"י הדחק); there is (seemingly) no question why the eater is חייב.

Since the eater **is** still **capable of returning** the תרומה (albeit with difficulty), **it is considered as if it is observable,**[7] **and so he is swallowing** (a tangible item) **and benefiting from it** therefore he is חייב for הנאת מעיו**.**

תוספות asks:

ואם תאמר והא אמרינן בפרק בהמה המקשה (חולין דף עא,א) גבי טומאה בלועה [דלא מטמאה -

And if you will say; but the גמרא **states regarding a טומאה which is swallowed up** inside a person **that** this טומאה בלועה **[is not מטמא;** and the reason it is not מטמא -

לא משום דלא חזיא[8] דנהי דבפניו לא חזיא] שלא בפניו מיחזא חזיא -

Is not because it is not fit (to be eaten by a גר), **for granted it is not fit** to be eaten if it was disgorged **in his presence], however** if it was disgorged **not in his presence it is indeed fit** to be eaten by a גר. This concludes the citation from the גמרא in חולין. תוספות concludes his question -

אם כן אי הוה מהדר לה הויא חזיא -

If indeed this is **so** (that swallowed נבילה which is disgorged שלא בפניו, is fit to be eaten), so **if he would disgorge** the תרומה (שאפשר לאהדורה ע"י הדחק), **it would** (certainly) **be fit** to be eaten**;** it is not worthless, why therefore is he not חייב for the entire value of the תרומה at that point (before he swallowed it) and there should be no קלב"מ?!

תוספות answers:[9]

ויש לומר כגון דמעיקרא לא הוי בה כי אם שוה פרוטה או מעט יותר -

And one can say that initially the תרומה **was only worth a שוה פרוטה or slightly more** than a שו"פ -

ועתה שנתקלקלה קצת אינה שוה פרוטה -

But now that it became slightly ruined (because it is in his mouth in a place where מצי לאהדורי only ע"י הדחק), **it is not worth** even a **פרוטה** (even if the owner did not see him disgorge it). Therefore he is not liable to pay him for the actual value. However he is liable for the entire הנאת מעיו.[10]

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[7] In this case of מצי לאהדורי ע"י הדחק it is not considered אינו בעולם (see footnote # 6).

[8] If the נבילה would not be fit (for a גר תושב) it would be understood why it is not מטמא, for it is no longer considered an (edible) נבילה, and only an edible נבילה is מטמא.

[9] תוספות answers that indeed in most cases he would be חייב for everything (since שלא בפניו חזיא), however he we are discussing a special case.

[10] It seems that even though the food (in this 'swallowed' state) is not worth a פרוטה (if it would be sold in the open market), nevertheless the person who is swallowing this food (which was worth (more than) a פרוטה, is receiving הנאת מעיו worth a פרוטה (for if he would want to have this amount of הנאת מעיו it would cost him a פרוטה to buy the proper food).

תוספות responds to an anticipated difficulty:[11]

ואפילו אי זה נהנה וזה לא חסר פטור[12] מכל מקום כיון דשוין כל שהוא אז מיחייב בכל[13] -

And even if the rule is, **פטור זנוזל"ח** the נהנה is **, nevertheless since it is worth something** (even פחות משו"פ), **therefore he is liable** to pay **for everything –**

תוספות proves that if there is a חסר, the נהנה is liable for the entire הנאה:

כדאמרינן התם (בבא קמא דף כ,ב) **משום דאמר ליה את גרמת לי היקפא יתירתא מיחייב בכל הנאה -**

As the גמרא **states there,[14] 'because he** (the מקיף) **says to him, 'you caused me extra fencing'',[15]** therefore the ניקף **is liable for** his **entire benefit[16] -**

או משום שחרוריתא דאשיתא[17] מיחייב לכולי עלמא בכל[18] -

Or a similar ruling there; **on account of blackening the walls,** the squatter **is liable for everything according to all** opinions.

תוספות offers an alternate explanation why it is considered באין כאחד:

ורבינו יצחק בן אברהם פירש דמיירי אפילו באוכלין דלא מאיסי[19] -

And the ריצב"א explained that we are even discussing a case **where the food**

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[11] If we assume זה נהנה וזה לא חסר is פטור, the eater should be פטור here as well. See footnote # 12

[12] זה נהנה וזה לא חסר literally means, this one is deriving benefit and this (other) one is not losing. The classical case of זנוזל"ח is where a squatter lived in someone's property, where the owner left it vacant and has no intention of using it or renting it out. The squatter is נהנה for otherwise he would have to pay rent, and the owner is not losing anything, since he is not using it at all. There is a discussion whether the squatter needs to pay rent to the owner (after he lived there). Seemingly our case here is a זנוזל"ח situation. The eater is נהנה for a שוה פרוטה (the הנאת מעיו, see footnote # 10), while the owner is not losing anything by the eater swallowing it, since even before he swallowed it (once it was מצי לאהדורי only ע"י הדחק) it was not a שו"פ.

[13] Since the swallower caused the owner a loss (even though it is פחות משו"פ), it is not considered לא חסר, and the נהנה must pay for the entire הנאה; not just for the חסר. See 'Thinking it over'.

[14] The case is where there is a landowner (ראובן) whose field is surrounded (without fencing) on all four sides by a surrounding landowner (שמעון). If שמעון build a fence around the outside perimeter of all his properties (thereby also enclosing and protecting the property of ראובן), the rule is that ראובן must pay שמעון his part in the expense of this field, since ראובן is deriving benefit from this fence. The גמרא asked, this proves that זנוזל"ח is חייב (for seemingly שמעון is building the fence for himself, why should it bother him that ראובן also derives some benefit from it).

[15] It is not a case of לא חסר, for שמעון is losing on account of ראובן. Since ראובן is in the middle of his fields the amount of fencing increases. If not for ראובן the perimeter of שמעון would be smaller.

[16] ראובן must pay the valued amount of the benefit he received for having his property protected, which can turn out to be much more than the extra fencing needed to cover the חסר of ראובן. We see that if there is even a relatively small חסר, the נהנה must pay for the entire הנאה received.

[17] This is referring to the case of the squatter (see footnote # 12); if the squatter caused the walls to be blackened by having a fire burning in the house, etc., the squatter must pay the full rental value (the הנאה he received) and it is not sufficient to pay the landlord for the minimal damage he caused (the חסר). Again we see that by זה נהנה וזה חסר, the payment is for the נהנה and not just for the חסר.

[18] Similarly here even though the חסר is miniscule (פחות משו"פ), nevertheless the נהנה (the eater) must pay for the entire הנאת מעיו (which is [more than] a שו"פ). See 'Thinking it over'.

[19] The question is why is it באין כאחת; since it is not מאיסי, the eater should have disgorged it, and since he did not, he is חייב ממון even before he swallowed it and became מחויב מיתה so there is no קלב"מ?

did not become repulsive

וכיון דתחב לו בבית הבליעה ובלע ונהנה מיד חשוב באין כאחת[20] -

But since it was thrust down his throat and he swallowed the תרומה **immediately and derived benefit it is considered באין כאחת -**

אף על פי שאין כאחד ממש כדאשכחן בסוף פרק ד' אחין (יבמות דף לג,א ושם) **-**

Even though technically **it is not exactly כאחד** באין**; as we find in the end of פרק ד' אחין -**

דמפרש בעל מום ששמש בטומאה דאתו בהדי הדדי[21] כגון שחתך אצבעו בסכין טמאה[22] -

Where the גמרא **explains** that there can be a case **where a בעל מום who was טמא served** in the ביהמ"ק and he is חייב two חטאות, because the two איסורים of מום and טומאה **happened simultaneously; for instance he cut his finger** (which made him a בעל מום) **with a knife which was טמא** (which made him טמא)**.** This concludes the citation from the גמרא.

אף על פי שאי אפשר שלא יגע בסכין קודם שיחתוך:[23]

Even though it is impossible that he should not touch the knife (which makes him טמא) **before he cut** himself (which makes him a בעל מום); nevertheless since they are in such close proximity in time it is considered בב"א; similarly here since he swallowed it immediately after it was in his mouth it is considered באין כאחד.

Summary

The case of קלב"מ by תחב לו בבית הבליעה is (only) when the תרומה was initially worth a פרוטה and now it is worth less than a פרוטה, but since there was a חסר (of even less than a פרוטה) he must pay for the entire הנאה (of a פרוטה or more). According to the ריצב"א, since the act of swallowing followed immediately after the thrusting, it is considered באין כאחד and the פטור of קלב"מ applies.

Thinking it over

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[20] If it would be in a case where מצי לאהדורה, then the בליעה is not מיד so it is not באין כאחד; however if it is מצי לאהדורה only ע"י הדחק; since the בליעה והנאה follows immediately, it is considered באין כאחד. See רש"ש.

[21] Generally the rule is אין איסור חל על איסור so therefore if he was first a בעל מום who is אסור בעבודה, the איסור טומאה would not be חל on the איסור מום; however if both איסורים became effective בב"א then both איסורים take effect.

[22] The כהן became a בעל מום and טמא when he cut his finger with the סכין טמא. Since it is בבת אחת, we say איסור חל על איסור and he is חייב two חטאות, if he did the עבודה בשוגג.

[23] See תוספות ישנים here who states: ורבינו תם פירש כיון שהוא במקום דלא מצי לאהדורי אלא על ידי הדחק כבר נהנה גרונו ובאין כאחד. ואם תאמר והיאך יתחייב ממון כיון שתחב לו באונס, ויש לומר כיון דמצי לאהדורה על ידי הדחק ולא הדרה ניחא ליה בהנאה זו The ר"ת explained that since (the תרומה) is in a place where he cannot disgorge it only ע"י הדחק, his throat derived הנאה (for מיתה חיוב) and (the מיתה וממון) come simultaneously. And if you will say how can he be liable for payment since it was thrust into him against his will? And one can say; that since he can disgorge it ע"י הדחק and he did not disgorge it he is pleased with this benefit.

תוספות proves that by זה נהנה וזה חסר, the נהנה is obligated to pay (not only for the חסר, but) for the entire הנאה. However, the cases which תוספות cites are where the חסר was more than a שו"פ; however here the חסר was less than a שו"פ (for which there is no חיוב).[24] How can תוספות compare the cases?![25] Additionally; by the house the squatter is paying the full rent which the owner could have received. However here, the eater is paying more that owner could have received for this partially swallowed morsel![26]

[24] See footnote # 13 & 18.
[25] See מהרש"א ומהר"ם שי"ף and סוכ"ד אות קא.
[26] See מחנה אפרים הלכות מכירה דיני אונאה סי' כו.