

**It is not because he is not liable, etc. - לאו משום דלא מיהייב כולי -**

### **Overview**

The **ברייתא** teaches that according to **מאיר ר'** if one steals and is **טובה** on **שבת**, he pays **ד' וה'**. The **גמרא** explained<sup>1</sup> that another person was **טובה** on his behalf, therefore the **גנב** is **חייב** for there is no **מדינה** **קם** ליה **בדרכה**. The **גמרא** asked how is this possible that if the **גנב** himself would be **טובה**, he would be **פטור** from paying (since **קלב"מ**), however now that a **שליח** was **טובה** he will be **חייב** to pay! The **גמרא** answered that it is not so that if he is **טובה** he is not liable to pay, rather we cannot make him pay, since **קלב"מ**. Our **תוספות** clarifies this response.

anticipates a difficulty: תוספות

**אף על גב דהכא אפילו לצאת ידי שמים אינו חייב<sup>2</sup> -**

**Even though that here (by **גנב** where he himself was **טובה** בשבת) he is not even required to pay in order to satisfy his obligation to Heaven (**ה'**) -**

**דדוקא בממון הוא דאמר רבא בהשוכר את הפועלים (בבא מציעא צא,א ושם) -**

**For it is only regarding monetary payments where **רבא** ruled in פרק השוכר את - הפועלים**

**אתנן<sup>3</sup> אסרה תורה אפילו בא על אמו דמיהייב בבא לצאת ידי שמים<sup>4</sup> -**

**'The תורה forbade אתנן from being brought as a קרבן, even if he had relations with his mother', for he is liable to pay her the אתנן, when he wants to fulfill his obligation to Heaven; this is only regarding a monetary payment, that there is a חיוב לצאת ידי שמים -**

**אבל קנס לא מיהייב אלא על פי בית דין -**

**However, he is not liable for קנס (a fine), only by the ruling of a בי"ד -**

**כדאמרין אשר ירשיעון אלהים<sup>5</sup> פרט למרשיע עצמו -**

<sup>1</sup> The difficulty with this ruling is that he should be exempt from paying since he is **חייב מיתה** on **שבת**; it is a classic case of **קם** ליה **בדרכה** **מינה**. We are not discussing the principal and the **כפל** payments, for those were incurred before the **חיוב** took place (through the **טביחה**). Rather the remaining **ד' וה'** payments (which are really **וג'**).

<sup>2</sup> From the **גמרא's** answer (see 'Overview') it would seem that really the **גנב** is obligated to pay, however the **בי"ד** cannot enforce this payment since **קלב"מ**. If indeed this is the case, it would seem that the **גנב** on his own should pay **לצאת ידי שמים** (to fulfill a moral obligation), since he caused a loss to a fellow Jew. However, **תוספות** will show that he is not obligated to pay even **ידי שמים**.

<sup>3</sup> **אתנן** refers to the payment given to a **זונה** for her services. If the payment was a kosher animal, it cannot be offered on the **מזבח** as a **קרבן**, as it states (in **כג,יט**) that **אלקיד** **ה' בית** **וג'** **ה' אלקיד** (דברים [תצא] כג,יט).

<sup>4</sup> See **ד"ה רבא** there **רש"י**. If the mother would demand her **אתנן** from her son, he would not legally be required to give it her, since **קלב"מ** (he is liable for the death penalty, since **אמו** **על** **בא**), nevertheless since he is morally required to pay her (so if he did) it is considered **זונה** **אתנן**.

<sup>5</sup> **אשר ירשיעון אלקים ישרים** (which is a **קנס**), reads **שנים** (משפטים) **כב,ה** in **פסוק**.

As we derive from the verse of אשר ירשיעון אלקים that it excludes<sup>6</sup> if he finds himself guilty<sup>7</sup> –

responds: תוספות

מכל מקום ניהא דכיון שהיה ראוי להתחייב אם לא היה מתחייב בנפשו -

Notwithstanding the above, the s'גמרא answer is understood, for since he was fit to have been financially liable if he would not have to pay with his life, so it is understood -

מתחייב נמי אממון על ידי שליח כיון שאינו מתחייב<sup>8</sup> בנפשו:

That he is also liable monetarily when the טביחה was done through a שליח since he is not paying with his life.

### Summary

There is no מודה בקנס in a case of חיוב לצאת ידי שמים.

### Thinking it over.

derives from the גמרא of פרט למרשיע את עצמו, that in the case of קנס, there is no even חיוב לצאת ידי שמים<sup>9</sup>. However, this needs clarification, perhaps the דרשה of פרט למרשיע את עצמו is only referring to what בי"ד can make him pay, but not regarding חיוב לצאת ידי שמים; from where does תוספות derive this?!<sup>10</sup>

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(in whatever the courts find him guilty he should pay double to his friend), from this we derive that a קנס (like כפל) is paid only when one is convicted by (אלקים) בי"ד, but not where one admits to a crime which requires a קנס punishment. He is not obligated at all to pay the קנס.

<sup>6</sup> Therefore, in our case of גב וטבח בשבת where בי"ד cannot obligate him to pay the ד' וה' (which is a קנס) because of the קלב"מ, there does not remain any obligation on the גב to pay it even שמים לצאת ידי שמים, for in the case of a קנס, only בי"ד can levy a קנס, and where בי"ד cannot levy a קנס, it is as if there is no קנס payment at all. There is no purpose for the גב to pay the שמים לצאת ידי שמים, since no such קנס was ever levied. See 'Thinking it over'.

<sup>7</sup> question is that the גמרא seems to be implying (see footnote # 2) that really the גב וטבח בשבת should be חייב, he is exempt from paying only on account of קלב"מ (which would seem to indicate that if the גב wants to be לצאת ידי שמים, he should pay the ד' וה', however תוספות just proved that in the case of ד' וה' (which is a קנס) there is no point in paying. How does the גמרא answer its original question; if the גב was טובח he would be (completely) exempt from paying (even שמים לצאת ידי שמים), but now that his שליח was טובח he is liable for payment; where is the logic?!

<sup>8</sup> is retracting from the previous assumption (see footnote # 2) that לא משום דלא מחייב וכו' means that he is really שמים לצאת ידי שמים, etc., rather the גמרא means simply that indeed now he is not חייב to pay because of מ' קלב", however if there is no מ' קלב", like when his שליח is טובח, he is obligated to pay.

<sup>9</sup> See footnote # 6.

<sup>10</sup> See רש"ש.