סבר לה כרבי שמעון דאמר דבר הגורם לממון כולי - He agrees with *Rabi Shimon*; who states, anything which causes money, etc.

Overview

The גמרא is explaining the ruling of ר"מ in a case where one stole a שור הנסקל and had it slaughtered that he is liable for the ד' וה' payment. Seemingly since the שור הנסקל is אסור בהנאה the thief is not slaughtering the owner's ox. The גמרא explains that in this case it became a שור הנסקל by a שומר and it was stolen (from the שומר) and slaughtered. ר"מ follows the view of ר' יעקב that the שומר could have returned this שור הנסקל live to the owner and be freed of any monetary obligation, but now that the thief slaughtered it, it caused a loss to the שומר (since he cannot return a dead ox), and ר"מ also follows the view of ר"ש that דבר הגורם לממון כממון דמי,[1] therefore since by slaughtering it, the thief caused a loss of money to the שומר (even though the שור is intrinsically worthless [it is אסור בהנאה]), the thief is liable to pay for the damage he caused to the שומר.[2] Our תוספות explains the need for the גמרא to say that ר"מ agrees with ר"ש.

תוספות asks:

ואם תאמר ואמאי לא קאמר דרבי מאיר לטעמיה דדאין דינא דגרמי[3] (בבא קמא ק,א) -

And if you will say; but why did not the גמרא **state that ר"מ follows his** own **view** elsewhere, **where he implements the ruling of גרמי,** this is to be found -

גבי מקדש תבואת חבירו[4] או שורף שטרות חבירו[5] (שם צח,ב) -

Regarding one who sanctifies his friend's crops, or he burns his friend's notes, so since ר"מ maintains that גרמי is חייב -

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[1] ר"ש maintains that if one stole a קרבן, for which the מקדיש is liable to replace it (if it is lost or stolen), the thief is liable for ד' וה', even though that usually one is פטור for damaging הקדש, nevertheless since by his action, the thief is causing a loss for the owner (he needs to replace the קרבן), it is a דבר הגורם לממון, therefore he is חייב.

[2] If ר"מ would only agree with ר"י and not with ר"ש the thief would be פטור since he stole a worthless ox, however since he caused a loss to the שומר, it is a דבר הגורם לממון therefore he is חייב. Similarly, if ר"מ would only hold like ר"ש, but not like ר"י (meaning that by returning a worthless שור הנסקל, the שומר did not fulfill his obligation), the thief would be פטור, since he caused no loss (for in either case the שומר could not have returned the שור הנסקל, dead or alive).

[3] גרמי (causing) refers to indirect damage caused by one's actions. The examples are given forthwith.

[4] The case there is where there was a wall separating a vineyard from a wheat field (in which case both may plant up to the wall and it is not כלאים. If the wall was breached, there is an issue of כלאים and if the vineyard owner refuses to rebuild the wall, the grain (and grapes) become קודש (forbidden) and the vineyard owner must pay for the loss of the grain. This is a case of גרמי since the vineyard owner did not damage the grain directly.

[5] In this case someone burnt a creditor's loan document, so now he may not be able to collect his debt. ר"מ maintains that he is liable to pay the amount of the debt, even though all he did was burn a piece of paper; another case of גרמי.

וכל שכן דמחייב בדבר הגורם לממון כדאמר התם בהגוזל (שם צח,ב) **-**

Then certainly he will hold liable the one **who is causing** a loss **of money,** for גורם לממון is more liable than גרמי, **as** the גמרא **states there in** פרק **הגוזל -**

דלמא עד כאן לא קאמר רבי שמעון אלא בדבר שעיקרו ממון[6] אבל שטר דאין גופו ממון לא[7] -

'Perhaps ר"ש only finds one liable (by a דבר הגורם לממון) **only by something, which is intrinsically money, however** by burning **a note which is not intrinsically money,** ר"ש would maintain that he is **not liable'** –

תוספות answers:

ויש לומר דאיכא למימר נמי איפכא דעד כאן לא קאמר רבי מאיר -

And one can say; that it is also possible to say the opposite that there is more reason to be liable for גרמי than for גורם לממון, **for ר"מ limited** the liability by גרמי -

אלא בשורף שטרות של חבירו או מקדש תבואת חבירו שהוא ממון הראוי לכל העולם[8] -

Only by burning his friend's notes or where he sanctified his friend's grain, which is money that is fitting for the whole world -

אבל שור הנסקל אין ראוי אלא לזה השומר שיפטור עצמו[9] -

However, by a שור הנסקל it is not fit for anyone **except for this watchman in order to exempt himself** from payment, but to the rest of the world the שור הנסקל is worthless, so perhaps ר"מ would not hold him liable based on גרמי alone, therefore we have to come on to ר"ש, who maintains דבר הגורם לממון כממון דמי.

An alternate explanation:

ויש מפרשים דמשום הכי קאמר סבירא ליה כרבי שמעון -

And there are those who explain that it is on account of the following that the גמרא **states** that ר"מ **agrees with ר"ש -**

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[6] This means the case in footnote # 1 where he slaughtered the קרבן (and the same with our case here in the גמרא). Those are cases of גורם לממון. The damage was something tangible; an animal was killed. However, by burning a שטר, only paper was destroyed, not the actual money owed. This is not גורם לממון, this is called גרמי.

[7] It is apparent from that גמרא that גרמי is not as severe as גורם לממון. We can therefore conclude that ר"מ, who holds one liable for גרמי (as opposed to ר"ש who may not), will surely hold one liable for גורם לממון (the case being discussed here in our גמרא). Why was it necessary for the גמרא to say (the reason he is חייב for ד' וה') is because ר"מ agrees with ר"ש, this is unnecessary, for ר"מ is stricter than ר"ש, and is מחייב even גרמי, so he is certainly מחייב a דבר הגורם לממון!

[8] Just as the גמרא argues (see footnote # 7) that דבר הגורם לממון (destroying a קרבן) may be more severe than גרמי (like שורף שטרותיו), we can also argue the reverse that in certain respects the cases of גרמי are more severe than the case of דבר הגורם לממון (by a שור הנסקל); the case we are discussing here.

[9] In the cases of גרמי (either שורף שטרותיו or מקדיש תבואת חברו) the item destroyed has a universal value; the loan and the grain can be sold and used by anyone, however by destroying the שור הנסקל it only has value for the שומר (he could have fulfilled his obligation by returning the שור הנסקל to its owner) but for everyone else it is worthless. Therefore, it is possible that ר"מ would agree that there is no liability on account of גרמי. That is why it is necessary to state that we will assume that ר"מ agrees with ר"ש that דבר הגורם לממון כממון דמי.

משום דרבי שמעון קאמר דבר הגורם לממון הוי ממון לענין תשלומי ד' וה' -

Because it is ר"ש who maintains that דבר הגורם לממון is considered ממון regarding the payments of ד' וה' -

דאהכי תני ליה במרובה (שם עא,א[10]) **-**

For it was regarding the payments of ד' וה' **that** the ruling of ר"ש **was taught in** פרק **מרובה -**

ואילו רבי מאיר לא חזינא דמיחייב בדינא דגרמי אלא קרן -

However, regarding ר"מ **we do not see that he rules** that there is **liability by גרמי** (for ד' וה', but rather)**, only regarding** paying **the principal -**

אבל לחייב לשלם על ידו תשלומי ד' וה' לא חזינא[11] -

However, we do not see that ר"מ maintains that he **is liable to pay** on account of גרמי the **payments of ד' וה'.**

A final distinction:

ועוד אומר רבינו יצחק בן אשר דמשום דינא דגרמי לא מחייב אלא מדרבנן[12] -

And additionally says the ריב"א that on account of the rule of גרמי one is only liable מדרבנן, but not מן התורה -

כדמוכח בסוף הכונס[13] (שם סב,א)**:**

As is evident in the end of פרק **הכונס;** however, if we maintain דבר הגורם לממון כממון דמי, he will be liable מה"ת.

Summary

We need to say that ר"מ agrees with ר"ש because, either a) גרמי may be more severe than גורם לממון, b) גרמי does not pay ד' וה' as גורם לממון pays, or c) גרמי is only מדרבנן.

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[10] See the משנה there on ב,עד which states, ר"ש אומר קדשים שחייב באחריותם משלם תשלומי ד' וה'.

[11] We need to say that ר"מ agrees with ר"ש that a דבר הגורם לממון (the שור הנסקל in this case by a שומר) is כממון דמי, for if we were to depend on גרמי alone we would argue that גרמי can only make you pay the קרן, the actual damage that was caused (by כלאים or שטרותיו שורף), but not that גרמי is considered that you actually damaged ממון חברו, so you are liable for ד' וה', therefore we need to say that ר"מ agrees with ר"ש regarding דבר הגורם ממון so we understand why he has to pay ד' וה' by this שור הנסקל.

[12] Therefore, since it is only מדרבנן, it is highly unlikely that the רבנן would make you pay תשלומי ד' וה'.

[13] There is a תקנת נגזל; meaning that if we know that someone stole; however, we are not sure how much, the חכמים instituted that the נגזל should swear how much was stolen and the גזלן must pay that amount. The גמרא in הכונס queries whether according to the מ"ד that דאין דינא דגרמי, is there a תקנת נגזל by a מסור (an informer; one who facilitates giving away the property of a ישראל to the government, and is liable to pay as גרמי). This would seemingly prove that גרמי is only חייב מדרבנן, for if it is מה"ת, why should there be a question whether it applies to a מסור; why is he different from a גזלן. However, if גרמי (and the obligation of a מסור paying) is only מדרבנן, then the query is understood.

Thinking it over

According to both the second answer (the יש מפרשים) and the third answer (the ריב"א), there may not be any תשלומי ד' וה' based on דינא דגרמי. Which of these two answers seem more emphatic that there is no תשלומי ד' וה' for גרמי?