אבל שבת דבעי התראה אימא לא –

However, *Shabos* which requires a warning, I would say, no

Overview[1]

The גמרא explains that it is necessary for רבה to teach us the rule of קם ליה בדרבה מיניה, both by שבת and by מחתרת.[2] Had we just known the rule of קלב"מ by מחתרת, we could not have known if for שבת as well; we may have argued that the חיוב מיתה by מחתרת is more severe than by שבת, since by מחתרת he is מחויב מיתה, even without a התראה, therefore we apply there the rule of קלב"מ, however by שבת, which requires a התראה for חיוב מיתה, there is no קלב"מ, therefore רבה taught us that even by שבת we rule קלב"מ.

תוספות asks:

תימה דעיקר קים ליה בדרבה מיניה ברציחה כתיב[3] דבעינן[4] התראה[5] -

It is astounding! For the main rule of **קלב"מ is written** regarding **murder, where התראה is required** to administer the death penalty -

An additional question:

ועוד דשבת ומחתרת תרווייהו תננהי דבפרק המניח (בבא קמא דף לד,ב) תנן -

And furthermore, the rule of קלב"מ **regarding both שבת and מחתרת were taught in the משניות, for in פרק המניח the משנה teaches -**

והוא שהדליק את הגדיש בשבת פטור מפני שנידון בנפשו -

'And when **he ignites a stack** of grain **on שבת, he is exempt** from paying for the grain, **since he is liable with his life'** (he will be executed for חילול שבת) -

ומחתרת נמי תנינא בפרק בן סורר (סנהדרין עב,א) היה בא במחתרת ושיבר את החבית -

And the משנה also taught the rule of קלב"מ **by מחתרת in פרק בן סורר,** where the משנה states, **'**if **he was coming in a מחתרת and broke a barrel** while he was tunneling in -

אם אין לו דמים[6] פטור -

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[1] See 'Overview' to the previous תוס' ד"ה משום.

[2] This is s'רש"י understanding for the need of the צריכותא for שבת and מחתרת. See later in this תוספות (footnote # 8).

[3] We derive the rule of קלב"מ from the פסוק (in שמות [משפטים] כא,כב) which states (regarding someone who hit a pregnant woman and caused her to miscarry), ולא יהיה אסון ענוש יענש (if the woman did not die, the man should be punished), from which we infer that אם יהיה אסון לא יענש (if the woman dies by his blow, the perpetrator will not be punished); since he is חייב מיתה for killing the woman, he is פטור from paying for the fetus, on account of קלב"מ.

[4] The person who killed the woman will not be מחוייב מיתה, unless he was first warned not to kill her.

[5] How can the גמרא say that we may have thought that by שבת there is no קלב"מ, since the חיוב מיתה of שבת requires התראה, when the entire source of קלב"מ is derived from the case of רציחה, which requires התראה.

[6] The משנה is paraphrasing the פסוק in שמות (משפטים) כב, א that if a person is killed while tunneling in a מחתרת, the killer is not liable - אין לו דמים; the בא במחתרת is considered a dead man - he has no blood. See TIE previous תוס' ד"ה משום footnote # 2.

If he has no blood, he is exempt[7] from paying for the barrel on account of קלב"מ –

תוספות answers:

ונראה דהכא עביד צריכותא אמאי דבקנס מיקטיל ומשלם[8] **-**

And it appears to תוספות **that here** the גמרא is **making the צריכותא on the** ruling of רבה **that for a קנס** payment the rule is that **he is killed and he has to pay -**

והכי קאמר[9] **משום דחמיר איסוריה והוה אמינא דהתם דווקא הוא דליחייב קנס עם המיתה -**

And this is what the צריכותא **is saying; since its prohibition** (whether שבת or מחתרת [as the case may be]) **is** more **severe, so I may have thought that only there he should be liable** for the **קנס** payment **together with the death** penalty.

תוספות finds support for his explanation of the צריכותא:[10]

וכהאי גוונא עביד צריכותא לקמן (דף לז,א) גבי לא יהיה אסון[11] **וכדי**[12] **רשעתו**[13] **-**

And we find **later** that the גמרא **makes a צריכותא in this manner regarding** the two פסוקים of **כדי רשעתו and לא יהיה אסון -**

דמשום[14] **דחמור הוי אמרינן דלעביד ביה תרתי -**

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[7] תוספות question is, how can the גמרא make this צריכותא and say that if רבה would have only taught this rule of קלב"מ either by שבת, or by מחתרת (but not both), I would not know that קלב"מ applies in the other case; but this cannot be, since we have the two aforementioned משניות, which teach us that קלב"מ is applied both to שבת and to מחתרת!

[8] תוספות is rejecting פרש"י (see footnote # 2) and maintains there is no need for a צריכותא for the second half of s'רבה ruling that we say קלב"מ both by שבת and by מחתרת (since these laws are already taught in the משניות), rather the צריכותא is on the first half of s'רבה ruling, namely that for a קנס payment there is no קלב"מ, and even if he is put to death nevertheless he has to pay the קנס. The צריכותא explains why רבה had to teach us this rule (that מיקטיל ומשלם) both by שבת and מחתרת.

[9] To clarify; if רבה would have stated the rule (that by קנס he is מת ומשלם), only by שבת, we may have thought that since איסור שבת is so severe for it is an איסור עולם, therefore only then do we sat קנס מת ומשלם, but by מחתרת where it is not an איסור עולם he does not have to pay. The same is in the reverse, if he would just teach it by מחתרת we would say only by מחתרת is he קנס מת ומשלם since it is a severe case for it requires no התראה, but שבת, since it is not that severe, for it requires התראה, we would think that he is not קנס מת ומשלם. Therefore, to avoid this mistake רבה taught us this ruling that קנס מת ומשלם, both by שבת and by מחתרת.

[10] Seemingly logic would dictate the opposite of what תוספות is suggesting; meaning that the stricter the death penally, the less reason to have him pay. The idea of קלב"מ is that if he is receiving a harsher punishment there is no reason to give him a lesser punishment. Therefore, the more severe the death penally, the less reason to pay the קנס. However, the manner in which תוספות explained the גמרא (see footnote # 9), the opposite is true; the harsher the punishment, the more reason to pay the קנס. Therefore, תוספות brings proof to his contention.

[11] See footnote # 3. We derive קלב"מ from this פסוק; only one punishment of מיתה but no monetary payment.

[12] דברים (תצא) כה,ב. We derive from this פסוק, which is written in the singular רשעתו; that he is only punished once, but not twice.

[13] The גמרא there explains that from לא יהיה אסון we derive there is no מיתה וממון, and from כדי רשעתו (which is written by מלקות) we derive that there is no מלקות וממון. The גמרא there makes a צריכותא why we need both דרשות.

[14] The גמרא there said if we would only know the rule from כדי רשעתו by ממון ומלקות we would say that since מלקות is not a severe איסור therefore we do not make him receive both punishments; מלקות and ממון, but in a case of מיתה which is a severe איסור we may have thought that he will receive both punishments מיתה and ממון, therefore we also need the פסוק of ולא יהיה אסון that even by מיתה we also rule קלב"מ and there are no monetary payments.

That because מיתה is stringent we may have said that we should give him both[15] punishments; מיתה and ממון.

תוספות asks on his explanation:

אבל קשה למאי דפרישית[16] דרבה אליבא דרבי מאיר[17] קאמר -

However, there is a difficulty, according to what I explained previously **that רבה made his ruling** (that קלב"מ is not applicable by קנס) only **according to ר''מ -**

אם כן היכי קאמר אבל שבת דבעיא התראה אימא לא מיקטיל ומשלם -

Therefore, how can the גמרא **state** that if רבה would teach us his ruling only by מחתרת (that he is מת ומשלם) we would think that **by שבת however, where a התראה is required, I may assume that he is not** both **killed and** also **required to pay -**

והא עיקר מילתיה דרבי מאיר גבי שבת תניא לעיל[18] -

But the main teaching of ר''מ that there is no קלב"מ by קנס was **taught in a ברייתא previously regarding שבת![19]**

תוספות reconsiders, and that the צריכותא may be on the latter part of s'רבה ruling:

ומצינן למימר דרבה אשמועינן דשייך קים ליה בדרבה מיניה -

And it is possible to say that רבה is teaching us that קלב''מ is applicable -

אף על גב דבשעה דמתחייב[20] עדיין הממון בעין[21] לא הוה לן למימר קים ליה בדרבה מיניה[22] -

Even in a case where **at the time where he was liable** for the death penalty, **the money was still in existence,** where one may have assumed **that we should not utilize קלב''מ,** since he can just return the money (item) as is **-**

כדאמר רבה גופיה בפרק בן סורר (סנהדרין עב,א ושם) **-**

As רבה himself states in פרק בן סורר -

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[15] We see from that גמרא that there is such a logic that if it is a more severe איסור we do not apply קלב"מ, just as תוספות suggested here in our צריכותא.

[16] תוס' ד"ה דאמר on this עמוד (TIE footnote # 1).

[17] It is only ר"מ who maintains מת ומשלם by קנס.

[18] On דף לג,ב the ברייתא states that ר"מ maintains that if one stole and was טבח בשבת he is חייב in תלשומי ד' וה'. How can the גמרא say here that if רבה (who is following the view of ר"מ) taught only that by מחתרת there is no קלב"מ, we would not know שבת, when שבת was explicitly taught in the ברייתא that by קנס there is no קלב"מ according to ר"מ?!

[19] This question is only according to פי' התוס' that the צריכותא was regarding the first half of s'רבה statement that there is no קלב"מ by קנס. However according to פרש"י that the צריכותא is regarding the second half of s'רבה statement (that there is קלב"מ by מחתרת ושבת), there is no difficulty. See footnote # 8.

[20] He is מתחייב בנפשו by שבת when he steals the animal and takes it out from the רה"י of the owner into the רה"ר. The same is by מחתרת when he is tunneling, he is מתחייב בנפשו the whole time while he is stealing the animal.

[21] See footnote # 20. At the time he was מתחייב בנפשו (both by שבת and by מחתרת) the animal is still here (and it is still legally in the רשות of the owner, until the טביחה).

[22] At that point (when the גזילה is בעין), we are not obligating the thief to pay anything back, rather the owner is taking back his animal which belongs to him; there is no punishment here. It would not be logical to say that since the thief is being killed, the owner is not entitled to take back his animal which belongs solely to him.

אמר רבה מסתברא מילתיה דרב[23] כששיבר דליתנהו אבל נטל דאיתנהו[24] לא[25] -

'רבה stated, the ruling of רב is understood in a case **where he broke** the vessels **so they are not around, however** if **he took** the vessels, **where they still exist,** the ruling of רב does **not** apply', but rather the thief must return it -

אפילו הכי[26] כיון דטבח אחרי כן מיפטר על הגנבה -

Nevertheless, since he was טבח afterwards, so he is exempt from paying **for the stealing,** since now it is no longer in existence -

ואהא[27] דפטור אגנבה אף על גב דבאותה שעה הוי בעין עביד[28] צריכותא:

And it is regarding this novel ruling of רבה **that he is exempt from** paying for the **גניבה that** the גמרא makes the **צריכותא.**

Summary

The צריכותא is either a) (רש"י) that we say קלב"מ by שבת and מחתרת, b) that we say מת ומשלם by both, c) that we say קלב"מ by both even if the גזילה was בעין by the חיוב מיתה.

Thinking it over

תוספות explains the novelty of רבה is that even though that at the time he was מתחייב בנפשו, the גניבה was still בעין, and the victim/owner would have the right to retrieve his animal (even though the גנב will be put to death), nevertheless since now בשעת העמדה בדין the animal exists no longer the גנב is פטור on account of קלב"מ.[29] However there seems to be no great חידוש in this ruling, since now the animal is not בעין, and the גנב is חייב מיתה,[30] how can we hold him liable and make him pay (from

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[23] רב ruled there that if the בא במחתרת took vessels he is פטור from paying since he is מתחייב בנפשו.

[24] See footnote # 22.

[25] Therefore, without the ruling of רבה we would have thought that קלב"מ would not apply in these two cases of שבת or מחתרת, since the גניבה was בעין when the thief was מתחייב בנפשו. Therefore, רבה teaches us a novelty that nevertheless the rule of קלב"מ does apply as תוספות continues to explain.

[26] See footnote # 25. See 'Thinking it over'.

[27] תוספות will now explain that according to this interpretation, the initial question which תוספות had on פרש"י (see footnote # 7), no longer exists.

[28] The גמרא stated that if רבה would have said this חידוש by either שבת or מחתרת (that קלב"מ is applicable even if the stolen item was בעין when he was מתחייב בנפשו [as long as he was טבח later]), we could not derive the other from it (because one is stricter than the other). We cannot ask that we would have known it from the משניות (see footnote # 7 & 27), because those משניות are in cases where the item was not בעין when he was מתחייב בנפשו (he was מדליק את הגדיש on שבת, or שבר את הכלים by מחתרת), therefore it is understood that he is פטור, but the חידוש of רבה is that he is פטור even when the item is בעין (as long as it is not בעין later בשעת העמדה בדין).

[29] See (text by) footnote # 26.

[30] He was מתחייב מיתה the entire time including when he was טבח ומכר.

his own assets for the animal, when he is being put to death?! It is the classic case of קלב"מ!!