

Is it rather not, on a weekday

אלא לאו בחול -

Overview

The גמרא concluded that the פסוק of מכה אדם יומת cannot be discussing שבת, for then if they were warned, why is מכה אדם יומת (he should be exempt because of קלב"מ), if there was no warning, why is מכה אדם יומת. We must therefore conclude that the פסוק is discussing חול.¹ Our תוספות explains why we must say that מכה אדם יומת is discussing both מזיד and שוגג (or whether or not there was a התראה),² and therefore מכה אדם is also במזיד ובין בשוגג.

תוספות asks:

ואם תאמר בחול נמי מצינן למימר³ דבהדי דמחייה לבהמה⁴ הרג את האדם⁵ -

And if you will say, we can also say regarding a מכה בהמה on a weekday that the פסוק is discussing a case where at the same time that he smote the בהמה, he killed a person -

ולא אתרו ביה משום אדם⁶ -

And they did not warn him regarding the person, when he was killing the cow and the person –

תוספות continues to ask:

ואפילו בשבת נמי מצינן למימר דאתרו ביה משום בהמה ולא אתרו בו משום שבת⁷ -

¹ We can now say, just like by מכה בהמה, there is no difference between שוגג ומזיד (on חול); he is always חייב, similarly the פטור of מכה אדם by קלב"מ is both by שוגג and מזיד.

² No התראה and שוגג are the same, in the sense that there is no actual מיתה.

³ תוספות is asking how do we know that by מכה בהמה there is no difference between (לא התרו) and שוגג (לא התרו). Perhaps the חוב of מכה בהמה is only in a case where there is no קלב"מ, because no one is being executed.

⁴ He was warned not to kill the בהמה; it was אתרו ביה, the same is by מכה אדם that he was warned not to kill. There was a warning regarding to what the פסוק states clearly, by מכה בהמה there was a warning regarding the בהמה (only), and by מכה אדם there was a warning regarding מכה אדם. See 'Thinking it over'.

⁵ Perhaps the reason תוספות can establish the פסוק in this manner that he killed the בהמה and the אדם, because possibly the פסוק hints to it, by saying יומת ומכה אדם יומת, somehow putting together the מכה בהמה with the מכה אדם. The מכה בהמה cannot pay if יומת אדם, because of קלב"מ, so we will interpret the פסוק in the following way; מכה בהמה, if he was warned for the בהמה only, the rule is ישלמנה (even if he was מכה אדם [without התראה]), but when he was warned for the אדם then יומת and there is no payment, because there is an actual execution, but if there is no execution then ישלמנה מכה בהמה even if he killed a person, provided it was שוגג or התראה.

⁶ Therefore, the case of מכה בהמה is not בו התרו בו בין התרו בו, but rather only by התרו בו (regarding the בהמה), and so the פטור of מכה אדם (by יומת אדם) is only by התרו בו where there is an actual מיתה.

⁷ The explanation of the פסוק will be similar to what was stated previously (in footnote # 5); he killed the בהמה on שבת, and he was warned not to kill the בהמה, but he was not told or warned that by killing the בהמה he is חייב מיתה for שבת. therefore, he has to pay, but if he was warned (in a different case) not to kill a person he is חייב מיתה, so in both cases he was warned, which is what the פסוק states מכה בהמה and מכה אדם respectively, but there is no hint of לא

And even if the מכה בהמה took place on שבת, as the גמרא asked previously, we can also say that they warned him regarding the בהמה, not to kill it, but they did not warn him regarding שבת –

answers: תוספות

ויש לומר דמכל מקום ילפינן שפיר -

And one can say the notwithstanding all this we can correctly derive that by מ"קלב there is no difference whether he was a שוגג or a מזיד, for in all cases he is exempt from paying -

דמה מכה בהמה לא חלקת בין שוגג בהכאתה למזיד בהכאתה⁸ -

For just as by מכה בהמה, you have not distinguished whether he was a שוגג when he hit her, or whether he was a מזיד when he hit her -

אף אדם לא תחלוק בו בין מזיד בהכאתו לשוגג בהכאתו -

Similarly, by a person, do not distinguish whether he was a מזיד when he smote him, or whether he was a שוגג when he smote him, and in both cases, there is the פטור of מ"קלב –

offers an alternate solution: תוספות

אי נמי הואיל ומכה אדם איירי באתרו ביה⁹ מכה בהמה נמי איירי בכל ענין¹⁰ דאתרו ביה -

Or you may also say, since 'ומכה אדם' (according to תוספות proposed suggestion), is discussing where he was warned, therefore מכה בהמה is also discussing a case where he was warned, in whichever manner possible -

ולהכי לא מצי איירי בשבת ולא בהרג אדם עמה:

Therefore, it cannot be discussing that it happened on שבת, nor that he killed a person together with killing the בהמה, for since he was warned on everything, he would not be liable to pay because of מ"קלב. Therefore, we must conclude that by מכה בהמה he was not warned.

Summary

Regardless whether he killed another person or he killed on שבת, regarding the killing of the בהמה, he is liable whether it was done בשוגג or במזיד, the same applies to the פטור of מ"קלב by מכה אדם.

מ"קלב. for he was a מזיד in both cases, and only then do we say מ"קלב.

⁸ Even if we assume that מכה בהמה is in a case of אתרו ביה (for the בהמה [see footnote # 5]), nevertheless it is obvious that even if לא אתרו ביה, he will be liable by מכה בהמה.

⁹ See previously in this תוספות (footnotes # 4, 5 and 7).

¹⁰ Just as by מכה אדם, he was warned regarding all aspects of his transgression (there was no prohibited action for which he was not warned), similarly we will need to say by מכה בהמה that he was warned for all his actions (not only for killing the בהמה, but) including חילול שבת and killing a person.

Thinking it over

תוספות, in his question, is (seemingly) saying that both מכה בהמה, and מכה אדם are in a case of התרו בו, except that by מכה בהמה they only warned him about the בהמה, but not about the חיוב מיתה (which is killing or שבת).¹¹ However, this seems puzzling what kind of warning is there regarding killing a בהמה; it is a meaningless warning; one is liable for damaging property (a בהמה) whether or not there was a warning. How can we say that both cases (מכה בהמה and מכה אדם) are with a warning, when the warning by מכה בהמה is meaningless?!

¹¹ See footnote # 8.