

Rav Ashee said; it is required, etc.

אמר רב אשי איצטריך כולי -

Overview

The גמרא derived different types of קלב"מ from different פסוקים. However there seems to be a case which does not fall into any of these categories. תוספות explains from where we derive קלב"מ in this instance as well.

תוספות asks:

תימה דמשמע דאם הרגו וקרע שיראין דידיה¹ דמחייב -

It is astounding; for it seems that if someone killed a person and simultaneously ripped the victim's silk cloth that he will be liable to pay for the שיראין, and we will not exempt him on account of קלב"מ -

דליכא למיפטריה לא מקרא דלא² יהיה אסון -

לא יהיה אסון of פסוק Since we cannot exempt him from payment, **not from the** **ולא מקרא דנפש תחת נפש³ דהא הוי ממון ונפש תחת ממון ונפש -**

נפש תחת נפש of פסוק And we also cannot exempt him from payment based on the **ממון ונפש as a punishment for נפש**. We also cannot say that in this case, indeed he is חייב to pay -

ולעיל (דף ל, ב) פטר אביי⁴ זר שאכל תרומה משלו⁵ וקרע שיראין של חבירו⁶ -

But previously [רב אשי] (אביי) exempted from payment, a non-כהן who ate his own תרומה and ripped the שיראין of his friend, on account of קלב"מ -

תוספות answers:

ויש לומר דלפי האמת נפקי כולהו מתנא דבי חזקיה⁷ -

¹ We are discussing where he simultaneously did two acts, he killed the person, and ripped the שיראין דבבר אחר.

² כב, שמו"ת (משטפים) כא, This פסוק exempts from payment (only) if the חיוב מיתה and the monetary obligation happened with one act (where he pushed the women and killed her [מיתה] and the fetus [תשלומין]). However here the killing and ripping were two (simultaneous) separate acts. See footnote # 1. See (however) מהרש"א.

³ This פסוק teaches us קלב"מ even if there were two acts as in the case of בד"ה הא [see TIE there footnote # 6 & 7], so there is no blinding of the eye is חלום כלום (as תוספות said previously) לא חשיב כלום (as תוספות said previously) so there is no payment due; however here the ripping of the שיראין is an additional loss (beside the killing) so it is considered ממון! עין ונפש תחת נפש גרידא and not like there where it would be נפש תחת ממון ונפש.

⁴ A marginal note amends this to read רב אשי (instead of אביי). See רש"ש.

⁵ This is according to the view (ר' נחוניא בן הקנה) who applies קלב"מ even by מיתה בידי שמים, which is the punishment for a זר who eats תרומה. There is no חיוב ממון for eating (the ש'ק, תרומה, for it belonged to the זר. He either bought it or inherited it from a כהן relative (maternal grandfather).

⁶ Here there are two simultaneous acts (of חיוב מיתה and חיוב ממון) and nevertheless אביי maintains קלב"מ. The question is from where did אביי derive this?

⁷ The היקש can be expounded to say; just as by מכה במכה you are always liable whether it was with one מכה or two מכות, the same way by מכה אדם we say קלב"מ in all instances whether it was one act or two acts. See "Thinking it over".

– **תד"ה** that truthfully all cases of קלב"מ are derived from the תד"ה

⁸clarifies: תוספות

והכי פירושו והא נמי מאידך תנא דבי חזקיה נפקא -

And this is the explanation of what רבא asked; 'but this too (סימא את עינו והרגו) (עין תחת עין) - **תד"ה** can be derived from the other תד"ה (בד"א)

כלומר על כרחך לא איצטריך כל חרם להכי אלא כולה נפקא לן מתנא דבי חזקיה דפטור -
Meaning to say, perforce we do not require the פסוק of חרם to teach this ruling (of תד"ה), for rather we can derive all cases of קלב"מ from תד"ה that they are exempt from payments -

דאי הוה צריך קרא למפטריה בלא כל חרם הוה פטרינן ליה מאידך תנא דבי חזקיה⁹ -
For if a פסוק is required to exempt him (in these other cases), we still would have exempted him without the פסוק of חרם, but rather from תד"ה אידך!

¹⁰asks: תוספות

ואם תאמר ולישני דאיצטריך כל חרם להרג חבירו וקרע שיראין -

And if you will say, and let רבא answer¹¹ the question of רבא that we require the פסוק of חרם for this case where he killed his friend and ripped silk, that he is exempt from paying –

answers: תוספות

ויש לומר דכל חרם לא יפדה משמע ליה בממון שבא על ידי אותה חבלה שהמיתה באה על ידה:
And one can say that it seems to רבא אשי that the words לא יפדה כל חרם indicates that we are discussing a monetary damage that occurred through the same blow which caused the death; however the case of הרג חבירו וקרע שיראין is when they came as a

⁸ According to what תוספות just said that we can derive all types of קלב"מ from מכה בהמה, why did רבא challenge רמי (עין תחת עין וכו') אידך תד"ה (the סימא את עינו והרגו בד"א for חרם that we do not need חרם for חרם, for we can derive it from תד"ה of מכה בהמה as תוספות just explained (in footnote # 7). תוספות responds to this question.

⁹ The issue here is why do we need the כל חרם. According to רב"ה it teaches us קלב"מ by בד"א סימא וכו' רבא, which according to רב"ה we cannot drive from תד"ה of מכה בהמה, since there it implies one הכאה not two. רבא argues that we do not need חרם for חרם, since we can derive it from תד"ה of מכה בהמה (and therefore חרם is teaching something else, as רבא explains later). To prove his point רבא argues that even according to you that we cannot derive סימא from מכה בהמה, but we can certainly derive it from תד"ה אידך (עין), so in any case חרם is still superfluous. This proves that חרם is used as ר"א explains and סימא וכו' as well as קרע שיראין are all derived from the original תד"ה.

¹⁰ Regarding this case (הרג חבירו וקרע שיראין), רבא could not have said (as he did regarding the case of רב"ה) that we can derive it from תד"ה אידך, for this is not case of נפש תחת נפש גרידא, but rather נפש תחת נפש ממון. Why was it necessary for רבא אשי to totally disregard the approach of רב"ה and utilize כל חרם for something completely different.

¹¹ This question seems to be the reason why the ד"ה of תוספות is אשי, and not רבא וכו', since seemingly the beginning of this תוספות is discussing רבא, but not רבא אשי. See however footnote # 9.

result of two different acts.

Summary

We derive all cases of מ"קלב (even if done in two [simultaneous] acts) from תד"ה of מכה בהמה. The פסוק כל חרם indicates a case with one act only.

Thinking it over

תוספות writes that לפי האמת we derive everything (including killing and damaging with two actions simultaneously) from תד"ה מכה אדם.¹² Previously¹³ תוספות wrote that מכה אדם and מכה בהמה indicate that it is with one blow (not two). How can we reconcile these two תוספות?¹⁴

¹² See footnote # 7.

¹³ תוד"ה הא.

¹⁴ See מהר"ם.