

## And similarly regarding a fine

## וכן לענין קנס –

### OVERVIEW<sup>1</sup>

The גמרא stated that the same rule that applies to חיוב מיתה (by עדים זוממין) applies to קנס as well.<sup>2</sup> רש"י and תוספות both agree<sup>3</sup> that by monetary obligation it is different from מיתה and קנס. However their reasons are different.

אבל ודאי לענין ממון לא –

However concerning monetary issues it is certainly not the same as it is by קנס and מיתה issues –

דכשמעידין דבחד בשבת גנב ובאו שנים ואמרו דבערב שבת גנב ובחד בשבת עמנו הייתם –

For when the (זוממין) עדים testified (on Monday) that the accused stole on Sunday, and two witnesses (the המזימים) came (on Tuesday) and testified that that the accused stole on the previous Friday, and on Sunday the זוממין were with us (the המזימים) and they could not have seen the accused steal on Sunday; in such a case the עדים זוממין –

ודאי אין משלמין ממון דבהיה שעתא דמסהדי גנבא בר חיובא<sup>4</sup> –

Certainly do not pay money (to fulfill the זמם), since at that time (on Monday) when the זוממין עדים testified, the thief was already a liable party for the theft he committed the previous Friday –

דיני ממונות to דיני נפשות (וקנס) explains the difference between תוספות

אף על גב דלגבי נפשות לא תדמנו<sup>5</sup> לבר חיובא –

בר Even though that regarding capital crimes we do not deal with him as a חיובא (in the same situation), nevertheless concerning ממונות, even though –

דכל<sup>6</sup> כמה דלא נגמר דינו (נמי הוי בר חיובא משום שאינו ספק כל כך<sup>7</sup> עדות) בממון –

A verdict has not been issued, he is still considered a חיובא, because there is not much doubt regarding עדות ממון

[הוי]<sup>8</sup> קרוב לודאי שיבואו עדים ויעידו –

<sup>1</sup> See the 'Overview' (and the תוספות) for the previous דבעידנא תוס' ד"ה.

<sup>2</sup> If the עדים המזימים came later and testified עמנו הייתם and the קנס was due on another day (either before or after), the קנס עדים זוממין pay the.

<sup>3</sup> See רש"י ד"ה ה"ג באו. According to רש"י that the reason the זוממין עדים are חייב by קנס and נפשות is because the accused has the option of admitting and therefore not liable for מיתה and קנס, it is understood that by ממון where there is no such option, the עדים will not be חייב since he cannot escape his חיובא status.

<sup>4</sup> Therefore the זוממין עדים did not testify against an innocent man, but rather they testified (truthfully) that this accused owes money (which he does for his theft on Friday).

<sup>5</sup> The גירסא of the הגהות ה"ה amends this to read, לא תדינו לבר (instead of תדמנו לבר). The translation here follows the גירסא of the גירסאות (not of the מהרש"א); the idea is basically the same according to both.

<sup>6</sup> According to the מהרש"א who ([seemingly] deletes the words in the parenthesis (from נמי to עדות), the reading should be; בממון הוי קרוב וכו' (however), לבר חיובא כל כמה דלא נגמר דינו; יעב"ץ. See (however) the.

<sup>7</sup> The הגהות ה"ה amends this to read, כך בעדות בממון (instead of עדות בממון). He seemingly does not omit the bracketed test.

<sup>8</sup> The הגהות ה"ה amends this to read לודאי וקרוב בממון (omitting the bracketed word [הוי]).

**And it is highly probable that witnesses will come and testify** that he already stole on Friday and he will be convicted (as has actually happened in this case) -

אבל בעדות נפשות<sup>9</sup> דבעינן דרישה וחקירה<sup>10</sup> -

**However, regarding עדות נפשות where investigation and interrogation of the witnesses are required,** before a guilty verdict can be passed -

אז ודאי אמרינן דקודם שנגמר דינו לאו הוי בר חיובא:

**Then we certainly sate that before a verdict is issued he is not considered a בר** חיובא and therefore the עדים זוממין are מיתה.

### SUMMARY

There is a much greater possibility that he will be convicted by דיני ממונות (therefore he is a בר חיובא), than he will be convicted by דיני נפשות (וקנס) where he is not a בר חיובא.

### THINKING IT OVER

1. There is seemingly a more basic difference between נפשות וקנס and ממון. One is not מיתה or חיובא unless קנס בי"ד rules that he is guilty; therefore as long as there is no גמר דין he is not yet a בר חיובא. However regarding money, the thief owes the money whether or not בי"ד found him guilty, therefore he is always considered a בר חיובא. Why did not תוספות explain the difference in this manner?<sup>11</sup>

2. Is דרישה וחקירה required by קנס?

---

<sup>9</sup> See 'Thinking it over' # 2.

<sup>10</sup> עד נפשות are scrutinized very intensely and if there is a discrepancy in their testimony (however slightly), their testimony is discarded, therefore there is no certainty that the accused will be convicted; however by דיני ממונות we are more lax scrutinizing the עדים and there it is more likely that a conviction will be obtained,

<sup>11</sup> See # 133-4 אוצר מפרשי התלמוד and גליון הש"ס להגרע"א.