

Did the רבנן fine him not to return it

אב"י posed a query whether an extended hand into another רשות will be considered a כרמלית, meaning did the רבנן fine him¹ and prevent him from returning his hand back to where his body is. תוספות questions the idea of a fine; it would seem that it is a prohibition² and not (merely) a fine.

נראה לרבינו יצחק דגרס מי אסרוה ולא גרס מי קנסוה –

It is the view of the ר"י that the text reads מי אסרוהו (did the רבנן prohibit him), but the text does not read מי קנסוהו (did they fine him).

דלקמן בסמוך כי מוקמא דלאו כברמלית דמיא אמרינן דאסור להחזירה משום קנס –

For only shortly later in the גמרא **when we established** that both ברייתות maintain that his extended hand **is not considered a כרמלית**; only then **did** the גמרא **say that** (one ברייתא maintains that) **it is forbidden to return the hand because of a קנס**. However now when we are assuming (according to one side of the query) that ידו is ככרמלית דמיא then it is forbidden as an איסור and not (merely) because of a קנס.³

קנסוה of גירסא (provisionally) justifies the תוספות

ושמא⁴ הא דעבדוה ככרמלית נמי הוי קנסא ונפקא מינה דאסור בשווג מבעוד⁵ יום:

And perhaps we can say that **this which** the חכמים made his hand like a כרמלית,

¹ The רבנן may have fined him since he did something ‘illegal’ by extending his hand to another רשות. He was in the process of committing an איסור הוצאה.

² A rabbinic prohibition is not because of a fine (that the person did something wrong), but rather because the רבנן were concerned that this act can lead to an איסור דאורייתא. In this case if we allow him to return his hand, it may cause (others) to mistakenly allow making a complete הכנסה.

³ If *כרמלית דמי* is a קנס that means that if we assume *לאו כרמלית דמי* there is no קנס; how can the גמרא say that *לאו כרמלית דמי* and nevertheless it is אסור because of a קנס?! This proves that *כרמלית דמי* is an אסור.

⁴ See ‘Thinking it over # 3.

5 The אז מבעו"י amends this to read 'אז מבעו"י'. The מהר"ם has it as 'ומבעו"י'. See תוספות הרא"ש who explains that if the deemed it as a כרמלית (because of a קנס) then even if he extended his hand מבעו"י he will be forbidden to return it (משחשכה) because the רבנן fined him since he did not return his hand before שבת, and similarly if he extended his hand on שבת בשוגג he will be forbidden to bring it back because they made a קנס by a שוגג on account of מזיד; however if we maintain דמי ככרמלית דמי, and it is merely a קנס then that קנס is only if he extended his hand משחשכה מבעו"י (ככרמלית דמי) if it was both מבעו"י and במזיד. The רא"ש does not state clearly what would be the ruling (if we maintain דמי ככרמלית דמי) if it was both מבעו"י and בשוגג (he did not realize משחשכה that it is שבת). The מהר"ם retains our גירסא (which is יום אסור (בשוגג מבעוד יום) and it seems that even if it is בשוגג and מבעו"י it will be אסור. The לשון הזהב maintains that if it is either (משחשכה) or בשוגג (משחשכה) or בשוגג even אסור then it is ככרמלית דמי, and if it is לאו ככרמלית דמי it will be אסור even מבעו"י (במזיד) מבעו"י.

that is also because of a קנס (however it is a different type of קנס than what the גמרא later calls a קנס when we assume כרמלית דמי). **And the difference** whether it is 'merely' a קנס (and not כרמלית as the גמרא explains later), or whether his hand is considered a כרמלית because of a קנס (as we assume now in the query), will be whether it is **אסור** (even) **if** he extended his hand **inadvertently (or) [and] while it was still Friday**. If it is merely a קנס (as the גמרא explains later when we maintain (לאו כרמלית דמי), he will be permitted to return his hand since he did nothing illegal (on purpose); if however, the רבנן made his hand a כרמלית (because of a קנס as we maintain now in the query), then he will be prohibited from returning his hand in these cases as well. ⁶

SUMMARY

The query of אביי was whether the רבנן enacted an איסור כרמלית to prohibit the person from retracting his hand, but not that they (merely) punished him and prohibited him to retract his hand. The prohibition of איסור כרמלית (even if it based on a קנס) extends even to cases of בשוגג מבעו"י as opposed to a mere קנס which will prohibit him only במזיד ומשחשכה.

THINKING IT OVER

1. אביי prefaced his query by first stating 'ידו של אדם אינו לא כר"ה וכו' and only afterwards did he ask מהו שתעשה כרמלית. Would this be an indicator whether the גירסא should be אסרוה or קנסוה?
2. What is the logic that if it is merely a קנס then it is אסור only במזיד ומשחשכה; however if the קנס is that it is a כרמלית then it is אסור even בשוגג מבעו"י? Why should a קנס be associated with his hand becoming a כרמלית?
3. Is there a difference between תוספות initial stance (that the גירסא is אסרוה), and the latter explanation of קנסא הוי קנסא נמי הוי קנסא?⁷

⁶ See 'Thinking it over # 2.

⁷ See footnote # 4.