

They did not fine him by שוגג

בשוגג¹ לא קנסוה –

OVERVIEW

The גמרא offers an additional way how we can reconcile the two ברייתות (where they both maintain דמי ככרמלית) and it will prevent us from resolving the תוספות רשב"א (according to the רשב"א בעיא דרבב"א). Our תוספות explains why indeed we cannot resolve the רשב"א from this last answer and from a previous answer.

ומיירי מבעוד יום דהשתא ליכא למפשט דרב ביבי –

And the ברייתא (which rules² that אסור להחזירה by מזיד) is discussing a case where he extended his hand **on Friday, so now we cannot resolve** the query **of רב ביבי** since here he will never come to a חיוב חטאת, therefore קנסוה; however by רבב"א where he will come to חיוב חטאת, perhaps they would permit him to be פת רודה.

תוספות asks:

ואם תאמר משנויא קמא נמי³ נפשוט בעיא דרב ביבי דלא התירו –

And if you will say; we can resolve the query of רב ביבי that they did not permit him to be פת רודה, from the first answer that was given to reconcile the two ברייתות, in which we said -

דלמטה מי' אסור להחזירה –

That if his hand is below ten טפחים it is forbidden to return it; proving that חיוב חטאת even if it will come to a התירו.

תוספות responds to an anticipated refutation of this proof:

ואפילו מוקמינן מבעוד יום –

And even if we will establish this resolution in a case where he extended

¹ See תוס' ד"ה ואיבעיתא that this is not a new תוספות, but a continuation of the previous תוספות.

² According to the תוספות our מהרש"ל is referring to the ברייתא that קנסוה. Seemingly we could prove from this ruling that התירו לרדותה just as here we permit him to return his hand, presumably because he is לידי חיוב חטאת. However, תוספות negates this proof, since here we are discussing מבעו"י (so there is no חיוב חטאת), and since he did nothing wrong, therefore קנסוה. However, by רבב"א where he was הדביק, then perhaps התירו, for he did אסור מעשה.

³ See footnote # 5. The תוספות explains that this question is on the רשב"א in the previous תוספות, who stated that the question of תפשוט דרבב"א is (only) in a way of ממ"נ; if we maintain דמי ככרמלית then we are פושט the בעיא of אביי, and if we maintain דמי ככרמלית we are פושט the בעיא of רבב"א. Our תוספות asks, why is it merely a ממ"נ; we can be פושט the בעיא of רבב"א both from the second answer (of 'וכי' (כאן מבעו"י וכו') and from the first answer (of 'למטה מי' (כאן למטה מי'). The בעיא of רבב"א is (seemingly) definitely resolved! See 'Thinking it over' # 1.

his hand **מבעו"י**, so that there can be no חיוב חטאת and therefore it (seemingly) has no bearing on the **בעיא דרבב"א**; this is not so -

הא פירשתי⁴ דאי מבעוד יום לא התירו כל שכן משחשיכה -

For I have previously explained that if they did not permit him to return his hand מבעו"י then certainly they did not permit him to return it משחשכה for it would be a חוכא ואטלולא. We must therefore say that even משחשכה he will not be permitted to return his hand, even though he will be אחי לדי חיוב חטאת, so we can resolve the **לא התירו** that איבעי דרבב"א⁵.

answers: תוספות

ויש לומר דאין לפשוט -

And one can say; that we cannot resolve the **בעיא דרבב"א** -

דהתם מה שלא התירו משחשיכה אף על גב דאתי לידי חיוב חטאת -

For the reason that they did not permit there in the ברייתא for him to return his hand if he extended it **משחשכה even though it will bring him to a חיוב חטאת** -

היינו משום מבעוד יום דלא שייך טעם זה אבל גבי רדיית הפת לעולם אימא דהתירו⁶:
That is because since they forbade him to return his hand if he extended it **מבעו"י**, where the concern of חיוב חטאת **is not applicable** (and once it was **מבעו"י** we have no choice but to forbid him משחשכה; **but by רדיית הפת** (where there is no compelling reason to forbid him) **I can really assume that they permitted him** to be רודה the פת so that חיוב חטאת ⁷.

SUMMARY

The current answer of **כאן בשוגג** is a case of **מבעו"י** and it cannot resolve the **בעיא דרבב"א**. If we are forced to assume that **משחשכה קנסיה** [only] because **מבעו"י קנסיה**, then it does not prove that **לא התירו לרדותה**.

⁴ See previous תוס' ד"ה ואיבעית.

⁵ This question seemingly also applies to the current answer of **כאן בשוגג** וכאן במזיד. For even though that this answer is discussing **מבעו"י**, nevertheless if מזיד is אסור משחשכה (as תוספות states now). We can therefore prove that **לא התירו** even if it will come to a מזיד. The מהרש"ל explains that regarding our מזיד תוספות agrees with **כאן בשוגג** that by מזיד there is no concern that he will drop it, so it is not אחי לדי איסור. However the מהרש"א maintains that indeed the same question applies to the answer of **כאן בשוגג**, and this is what תוספות meant (in his question [see footnote # 3]) **נמי תפשוט** (that this question applies to this answer and **also** to the first answer (of למטה מי)).

⁶ However from the answer of **כאן בשוגג** (לא קנסיה) **כאן משחשכה** (קנסיה) we can resolve the **בעיא דרבב"א**; since there was no איסור מבעו"י there is no reason to forbid משחשכה unless we maintain **לא התירו**.

⁷ See 'Thinking it over # 2.

THINKING IT OVER

1. The משינויא קמא נמי נפשוט וכו' question תוספות explains that מהר"ם is referring to the פירוש הרשב"א.⁸ Why then did not תוספות ask this question immediately after citing the פירוש הרשב"א (in the previous תוספות)? Why did תוספות first explain the answer of תפשוט לא לעולם (at the end of the previous תוספות and the beginning of our תוספות), and then first ask this question on the הרשב"א?⁹

2. תוספות explains that even if we prohibit משחשכה (since it is also אסור because by חשכה it will be a לא התירו לרדותה¹⁰); we cannot prove that (מבעו"י); מתיר משחשכה and אסור מבעו"י if we are חוכא ואטלולא. Seemingly by the same logic we should be אסור לרדות if he put in the bread משחשכה, since it is אסור לרדות if he put in the bread?¹¹

⁸ See footnote # 3.

⁹ See מתק שפתים בד"ה אך דבריהם.

¹⁰ See footnote # 7.

¹¹ See אור החמה וכו' and מהרש"א (הארוך).