

## ‘Rip my garment’; he is liable

קרע כסותי חייב –

### OVERVIEW

רבה ruled that if someone placed a burning coal on his friend’s garment and it burnt; he is liable to pay for it.<sup>1</sup> רבא commented that we know this from the משנה which states, if someone says to his friend, ‘rip my garment’ and he ripped it, he is liable.

תוספות asks:

תנימה היכי מיייתי ראייה דלמא שאני הכא שהיה לו להסיר הגחלת מעל בגדו<sup>2</sup> -

**It is astounding! How does רבא bring proof** from the case of קרע כסותי רבא to the case of בגדו ונשרף, **perhaps here by בגדו it is different, for the victim should have removed the coal from his garment –**

תוספות proves that this argument that the victim should have prevented the damage, releases the perpetrator from paying:

תדע מדנקט רבה על בגדו חייב מכלל דעל בשרו פטור<sup>3</sup> -

**You know** that this is so **since רבה mentioned that he is liable** for payment if he placed the coal **on his garment; indicating** that if he placed the coal **on his flesh** and the victim was wounded, the perpetrator would **be exempt** from paying for the damage -

והתם לקמן (דף צב,א) תנן סמא את עיני אפילו על מנת לפטור חייב -

**But we learnt there in a משנה later**, if he says, ‘blind my eye’, **even** if he said, ‘with the stipulation that you will be exempt from payment’ nevertheless he is **liable** for payment; why is there this difference?

אלא על כרחך על בשרו פטור משום שהיה לו להסיר כמו בעל לבו ומת -

**Rather perforce** you must distinguish that by **על בשרו he is פטור** because the victim **should have removed** the coal, **just** as the perpetrator is פטור when he placed the coal **על לבו and the victim died**; he is פטור because the victim should have removed it. The question remains why he is חייב if he placed a coal on his garment, the perpetrator can argue that the victim should have removed the coal so it will not damage his garment.

<sup>1</sup> However if he placed a coal on his heart (and killed him), he is פטור. The difference is that no one will allow himself to be killed, therefore the victim should have removed the coal from his heart, if he did not, the perpetrator cannot be held liable for his death; however people do not necessary prevent their items from being damaged if they can collect their loss later, therefore he is liable.

<sup>2</sup> תוספות argues that the two case are different; by קרע כסותי the owner of the garment (once he allowed the other to rip his garment) could not do anything further to prevent him from doing it. [The one who ripped it is חייב since the owner never told him that he will be פטור.] However here after his friend put the coal on his garment, the owner should have removed the coal, and since he did not, the one who placed it there should be פטור.

<sup>3</sup> See ‘Thinking it over’.

על בשרו and על בגדו answers and distinguishes between תוספות

ויש לומר דהא פשיטא ליה דמעל בשרו יסיר הגחלת<sup>4</sup> ומעל בגדו לא חייש<sup>5</sup> -

**And one can say; that this is obvious that a person will remove the coal from his flesh, but is not concerned to remove it from his garment -**

**– ולא איצטריך לאתויי ראייה**

**And for this it was not necessary** for רבא **to bring proof** that a person is not that concerned when someone damages his property, for he is convinced that he will collect later -

**אלא שלא תאמר כיון שמניח על בגדו והוא שותק<sup>6</sup> אם כן דעתו הוי שיפטר -**

**But rather** (רבא brings proof) **so that you should not assume that since he is placing the coal on his garment and the victim is silent, that proves that the victim's intent is that the perpetrator should be exempt**, therefore רבא proves from קרע כסותי that it is not so -

**דהא אשכחן אפילו במצוה לקרוע דחייב:**

**For we find that even when the victim commands him to rip, nevertheless he is חייב.**

## SUMMARY

There is implied consent to exempt the perpetrator, only when there is bodily damage, but not for monetary damage (as evidenced from קרע כסותי חייב).

## THINKING IT OVER

1. על בשרו פטור<sup>7</sup>, על בגדו חייב רבה states that which תוספות infers from that. Seemingly why is there a need to infer, since רבה clearly states על לבו פטור<sup>8</sup>!?

2. על בשרו פטור<sup>9</sup>, על בגדו חייב רבה states that which תוספות infers from that. Seemingly we can infer the opposite from the רישא, where it states על לבו פטור; indicating that על בשרו is חייב!<sup>10</sup>

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<sup>4</sup> No one wants to endure pain and damage to his body even if he will be paid for it later

<sup>5</sup> There is no proof from על בשרו (where he is פטור, since he should have removed the coal) to על בגדו (where he is not so concerned to remove it, since he thinks he will recover the monetary loss in בי"ד). Therefore the fact that he did not remove it does not release the perpetrator from his obligation to pay.

<sup>6</sup> We may have thought that even though a person will not remove the damage if he can collect later; however if he sees the perpetrator making the damage and he does not protest, this should indicate that he will not hold him liable; therefore רבא proves from קרע כסותי that even if he tells him קרע כסותי he is liable, and certainly where he merely allows him to burn his garment.

<sup>7</sup> See footnote # 3.

<sup>8</sup> See מהרש"א.

<sup>9</sup> See footnote # 3.

<sup>10</sup> See # 44, 45. אוצר מפרשי התלמוד