ולאביי פטור והאמר רב חסדא כולי –

And is he exempt according to אביי; but ר"ח said, etc.

Overview

The גמרא asked how can we assume that according to אביי, a זר who eats תרומה (במזיד) is פטור from paying on account of קלב"מ, when ר"ח ruled that since the חיוב ממון precedes the חיוב מיתה there is no קלב"מ.

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תוספות anticipates a difficulty:

הכי נמי הוה מצי לאקשויי אמתניתין דכל שעה (פסחים דף לא,ב) דקתני פטור מן התשלומין[[1]](#footnote-1) -

The גמרא could have also asked on the משנה of פרק כ"ש where it states that if one ate תרומת חמץ בפסח he is exempt from payment, the same question would apply -

לפי מה דמוקמינן לה כרבי נחוניא בן הקנה:

According the ר' יוחנן there who established that משנה according to רנב"ה, that he is פטור because of קלב"מ. This would seemingly contradict the view of רב חסדא, just as the view of אביי seemingly contradicts the view of ר"ח.[[2]](#footnote-2)

תוספות does not explain why there was no question asked regarding that משנה.[[3]](#footnote-3)

Summary

The difficulty on אביי (that the חיוב ממון and חיוב מיתה not simultaneous) applies to the משנה in פסחים as well.

Thinking it over

There seems to be a difference whether the contradiction is from אביי or from the משנה. Here אביי made no statement, it is the סתמא דגמרא which assumes that according to אביי the rule is זר שאכל תרומה is פטור. The גמרא challenges this assumption from the ruling of ר"ח. The גמרא, however, cannot challenge the ruling of the משנה from the ruling of ר"ח who is an אמורא; the question is on ר"ח not on the משנה!

1. See (also) previous תוס' ד"ה זר [TIE by footnote # 12]. [↑](#footnote-ref-1)
2. The question on אביי from ר"ח is that ר"ח rules that the פטור of קלב"מ does not apply to paying for eating something which was taken illegally, since the חיוב ממון precedes the חיוב מיתה. This applies to the משנה in פסחים as well as to אביי here. [↑](#footnote-ref-2)
3. See סוכ"ד אות פ"ג and others for possible explanations, why that question was not asked. [↑](#footnote-ref-3)