

## אף מכה אדם לא תחלוק בו כולי -

**By smiting a person, you should also not differentiate by him, etc.**

### Overview

The <sup>1</sup>, ומכה בהמה ישלמנה ומכה אדם יומת of פסוק derives from the תנא דבי חזקיה that since the מכה בהמה from מכה אדם (היקש), we derive מכה אדם placed them next to each other (a היקש), just as by מכה בהמה one is always liable regardless whether the damage was done בשוגג or במזיד, etc. so too by מכה אדם that in all cases whether he killed בשוגג or במזיד, etc. the killer is not liable to pay any money; rather he is exempt from paying. קים ליה תוספות discusses the need for other פסוקים to teach us the rule of תד"ה of the היקש, when seemingly one can derive it from this היקש.

וקרא דלא יהיה אסון<sup>2</sup> דאשמעין דלא ישלם דמי ולדות בהדי מיתה<sup>3</sup> -

And regarding the פסוק of אסון, לא יהיה אסון, which informs us that the perpetrator does not pay the value of the fetus together with a death sentence -

והא נמי דדרשינן בשילהי פרק כיצד הרגל (בבא קמא כו, א) עליו<sup>4</sup> ולא על האדם -

And also, regarding this which was expounded in the end of הרגל 'on him, but not on the person' -

דלא תשקול מיניה ממונא ותקטליה על הרציחה לחוד<sup>5</sup> -

That you should not take money from him and execute him, for murder alone -

וקרא דלא תקחו<sup>6</sup> דדרשינן מיניה דלא תשקול ממונא מיניה ונפטריה אצטריכו כולהו -

And regarding the verse of 'לא תקחו' and, from which we expound it to mean; that you should not take money from the murderer and exempt him from execution; all these verses are necessary -

דלא מצי למילף מהיקישא דתנא דבי חזקיה כדפירש בקונטרס לקמן (דף לה, א) -

<sup>1</sup> ויקרא (אמור) כד, כא

<sup>2</sup> קלב"מ (משפטים) כא, כב (if there will not be a mishap [the pregnant woman was not killed], the perpetrator should be punished [and pay the value of the (aborted) fetus]). We can infer from this פסוק that if there was an אסון (the pregnant woman was killed), the perpetrator will not pay the ולדות דמי; this is the rule of קלב"מ.

<sup>3</sup> ולא יהיה פסוק of תד"ה, so why is the rule of קלב"מ derived from תד"ה, (seemingly) assuming (now) that we can derive the rule of קלב"מ from תוספות necessary?! (and the other two פסוקים mentioned shortly by תוספות)

<sup>4</sup> עליו, to אדם; we expound the word עליו, אדם; אדם who killed a person, שור המועד states regarding a שור (משפטים) כא, לא, to mean that only if one's ox kills a person is there an obligation for a monetary payment of כופר (besides killing the ox), however if a person kills someone, there is no obligation of כופר (or any monetary payment), since it is a capital crime; the rule of קלב"מ.

<sup>5</sup> This case is different from the previous case of אסון, and, for in that case besides the killing of the woman, there is the loss of the fetus (ממון אחר); however here there is only the loss of life, and no other loss – על הרציחה לחוד.

<sup>6</sup> ולא תקחו כופר לנפש רוצח וגו' כי מות יומת, states regarding a murderer, (מסעי) לה, לא.

<sup>7</sup> ד"ה לחייבו.

For we cannot derive those rulings from the **היקש** of תד"ה, as רש"י explained later on -

דממכה בהמה לא מצי למילף פטור ממון<sup>8</sup> דאדרבה חיוב היה לו למילף דמכה בהמה חייב<sup>9</sup> -

That from the **היקש** of מכה אדם to מכה בהמה, we could not derive an exemption of paying money, for on the contrary we should derive an obligation to pay by מכה אדם, since מכה בהמה, from which we want to derive from, is liable to pay money! להכי איצטריך למכתב כולהו<sup>10</sup> -

Therefore, it is necessary to write all these three פסוקים -

והכי ילפינן מה מכה בהמה לא חלקת במה שכתוב בו דהיינו חיוב דבכל עניין חייב -

And this is how we derive the rules of מ"מ קלב from the **היקש** of תד"ה; just as by מכה בהמה you did not distinguish regarding this which is written by it, meaning that one is liable for מכה בהמה, in any instance -

אף מכה אדם כל עניני פטור ממון שכתוב בו -

Similarly, by מכה אדם all types of exemptions which are written by one who smites a man, namely that they do not pay money; regarding these rules -

לא תחלוק בין שוגג בין מזיד ובין דרך עלייה לדרך ירידה -

You should also not distinguish between שוגג and מזיד, or whether he was killed in an upwards direction or in a downwards direction; in all cases he is exempt from payment -

<sup>11</sup>תד"ה now explains the meaning and the need of the three expression in תוספות

ושוגג למזיד היינו ממון אחר בהדי מיתה<sup>12</sup> -

Not differentiating between שוגג ומזיד is referring to other payments together with death; that he does not pay them even if he was a שוגג and will not be executed -

ודרך עלייה וירידה בכל ענין לא תשקול ממנוא מיניה ונפטריה כדאמרין לקמן<sup>13</sup> -

And not differentiating between דרך עלייה וירידה teaches us that in any case (even

<sup>8</sup> The **היקש** of תד"ה (merely) compares מכה בהמה to מכה אדם, meaning just as by מכה בהמה there is no difference between שוגג ומזיד, the same should be by מכה אדם, that there is no difference between שוגג and מזיד. The simple understanding is that just as one is liable to pay for מכה בהמה in all cases, the same should apply to מכה אדם. The תד"ה does not present any proof at all that there is a concept of מ"מ קלב. It only teaches us not differentiate between שוגג ומזיד.

<sup>9</sup> The fact that מכה בהמה is always חייב to pay במזיד בין, should lead us to understand that by מכה אדם, which is derived from מכה בהמה, he should also always be חייב to pay (both by מזיד and שוגג)! See 'Thinking it over'.

<sup>10</sup> From these three פסוקים we derive that (in a general sense) there are no monetary payments when a capital crime was committed; the rule of מ"מ קלב. However, from those פסוקים we may have assumed that there are no payments, only when the offender is executed, which is the simple understanding of מ"מ קלב, therefore the תד"ה extends this exemption even to cases where there is no actual death penalty.

<sup>11</sup> These are, 1) בין שוגג למזיד; 2) בין מתכוין לאינו מתכוין; and 3) בין דרך עלייה לדרך ירידה.

<sup>12</sup> This may be referring to the דמי ולדות (in the פסוק of אסון); see footnote # 2.

<sup>13</sup> לח, א. This may be referring to the פסוק of כופר. See footnote # 6.

if he killed עלייה (דרך) **do not take payment from the killer and exempt him, as the גמרא states later -**

**ומתכוין לשאין מתכוין לענין דמי<sup>14</sup> האשה:**

**And** not distinguishing between מתכוין לשאין מתכוין **is regarding payment for the murdered woman** that he does not pay her value to her heirs, even if he killed her בשוגג.

### **Summary**

The תד"ה does not teach the rule of קלב"מ. It is only after we know the rule (from the three פסוקים) that תד"ה extends this rule to אינו מתכוין, שוגג, and דרך עלייה.

### **Thinking it over**

תוספות writes that if not for the three פסוקים (which teach us קלב"מ) we would utilize the היקש of תד"ה that one is חייב to pay, even בשוגג (just like מכה בהמה is always liable to pay).<sup>15</sup> Seemingly, at this point where we do not know the rule of קלב"מ, why is a היקש necessary to teach us that שוגג is חייב to pay; why should we assume otherwise?!<sup>16</sup>

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<sup>14</sup> According to תד"ה even if the woman was killed accidentally no payment is made to her heirs for the value of the woman. This may refer to the לימוד of האדם על האדם. See footnote # 4.

<sup>15</sup> See footnote # 9.

<sup>16</sup> See גבורים.