

**ואמר לו פרעתוך בזמני אמאי לא כולי -**

**And he said to him; 'I paid you on time', why is he not believed, etc.**

### **OVERVIEW**

The גמרא attempted to prove from our משנה that לא אמרינן in a case where one claimed בזמני פרעתין there is no reason why it is not believed. The משנה must be teaching us that if he claimed תו"ז he is not believed even though he has a מיגו of בזמני פרעתין, since it is a במקום חזקה.

The גמרא deflected this proof; the משנה is not discussing the issue of תו"ז at all. He is not believed on account of מי ימר וכו'.

When refuting a resolution of an איבעיא it is preferable that the refutation maintain the exact opposite opinion<sup>1</sup> from that which we were trying to prove originally.<sup>2</sup> Then there remain two equal and opposite positions; maintaining the original status quo of the איבעיא.

If however we merely deflect the proof, by maintaining that we can avoid the issue entirely,<sup>3</sup> then there is no equal balance. There is the original proof which maintains one side of the issue; however there is no counterbalance. Indicating perhaps that the refutation is merely a deflection; but in essence we are biased towards the original proof since we cannot offer an interpretation that maintains the opposite view.

תוספות will contend that the גמרא could have refuted the proof by maintaining the opposite opinion; instead of the actual deflection which merely avoids the issue.

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תוספות offers an alternate refutation of the proof:

**הוה מצי לשנויי הא דקתני בחזקת שלא נתן -**

The גמרא **could have answered that which the משנה states that it is presumed that he did not give** his share in the wall -

**היינו בתוך זמנו או בזמנו ואמר פרעתין בתוך הזמן דליכא מיגו כדפרישית לעיל<sup>5</sup> -**

**That is** in a case where the claim and the response was made **within the time;**

<sup>1</sup> In our case: מיגו במקום חזקה אמרינן.

<sup>2</sup> In our case: מיגו במקום חזקה לא אמרינן.

<sup>3</sup> In our case: saying 'מי ימר וכו'.

<sup>4</sup> See 'Thinking it over' # 1.

<sup>5</sup> See תוס' (ה,א) ד"ה ובא, בסופו.

before the monies were due, **or** (even) that this exchange took place **on the date** it was due; in either of these two cases **if the defendant said I paid you before the due date** he is not believed. In both these cases it is understood why the defendant is not believed **for there is no מיגו** of בזמני פרעתיו. If the exchange took place before the due date, there is certainly no מיגו of בזמני פרעתיו, since it is before the due date. Even if the exchange took place on the due date there is still no מיגו of פרעתיו היום **as I previously explained**; a person does not have the הוצפה to lie and claim that I paid you today.

**אבל לאחר זמנו הוי בחזקת שנתן דבמקום חזקה אמרינן מה לי לשקר**<sup>6</sup> –

**However** if the claim was made **after the due date**, then **it would be presumed that he paid** for his share in the wall even if he claims תו"ז פרעתיו **for we do say 'why would I lie' even in a place** where the claim contradicts a חזקה of פורע תוך א"א פורע תוך of חזקה. We do say במקום חזקה. זמנו.

maintains that the גמרא could have explained that the reason he is not believed is because there is no מיגו (since it took place וכו' זמנו וכו'), however, if there would be a מיגו (if it were לאחר זמנו) he would be believed. Why indeed did the גמרא not give this answer? תוספות continues:

**אך ניחא ליה לשנויי התם מימר אמר מי יימר דמחייבי לי רבנן דלא תיקשי נמי לאביי ולרבא:**

**However** the גמרא **prefers to answer** differently; that **there** in our משנה the defendant **does surely say**, **'who says that the רבנן will hold me liable'**. The reason the גמרא prefers this answer<sup>7</sup> as opposed to the answer תוספות proposed is **so that you should not also have a question on רבא**; **אביי ורבא**; who maintain that אדם פורע תוך. According to them seemingly the defendant should always be believed even if he claims that he paid זמנו. תוך. If we were to give תוספות interpretation of the משנה, there would be a question on משנה, why is he not believed!<sup>8</sup> Therefore the גמרא answered that the ruling of our משנה disregards the whole issue of תו"ז פרע. Rather, the reason it is בחזקת שלא נתן, for the defendant himself is not sure that he is liable. A person does not pay money, if he is not sure that he owes it.

## SUMMARY

The גמרא could have refuted this proof by maintaining that the משנה is

<sup>6</sup> We are now establishing that the משנה is discussing a case where the תביעה was זמנו תוך (or בזמנו). It is only then that he is not believed. We can therefore infer from this משנה that if the תביעה was לאחר זמנו he will always be believed even if he claims תו"ז פרע; for במקום חזקה. See 'Overview'. See 'Thinking it over' # 2.

<sup>7</sup> Even though that according to this interpretation we cannot infer from the משנה that במקום חזקה. Seemingly this is a weakness in the refutation of the original proof (see 'Overview').

<sup>8</sup> The גמרא in fact asked this very same question on ה,ב.

discussing a case where the claim and response took place תו"ז However it would pose a difficulty for אדם פורע תו"ז who maintain ורבא אביי.

### **THINKING IT OVER**

1. What is the meaning that the claim was made תו"ז?<sup>9</sup>
2. Why does תוספות add 'אבל לאחר זמנו וכו' how is this relevant?<sup>10</sup>

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<sup>9</sup> See footnote # 4. See מהר"ם.

<sup>10</sup> See 'Overview', footnote # 6.