

**ואמר לו פרעתך 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 מיגו במקום חזקה לא אמרינן. For otherwise (if he claimed בזמני) there is no reason why it is נתן. The משנה teaches that if he claimed תו"ז he is not believed even though he has a מיגו, 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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**– The גמרא could have answered – הוה מצי לשנויי**

**– that which the משנה states that it is presumed that he did not give his share in the wall –**

**– היינו בתוך זמנו – that is in a case where the claim and the response was made within the time; before the monies were due<sup>4</sup>,**

**– או בזמנו – or (even) that this exchange took place on the date it was due; in either of these two cases –**

**– ואמר פרעתך בתוך הזמן – 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 –**

**– דליכא מיגו – for there is no מיגו of פרעתך בזמני. If the exchange took place before the due date, there is certainly no מיגו of פרעתך בזמני, since it is before the due date. Even if the exchange took place on the due date there is still no מיגו of פרעתך היום**

<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.

**as I previously explained<sup>5</sup>**; a person does not have the **חוצפה** to lie and claim that I paid you today.

**However<sup>6</sup>** if the claim was made **after the due date**, then – **אבל לאחר זמנו** – **it would be presumed that he paid** for his share in the wall even if he claims **תו"ז** – פרעתיך תו"ז –

**for we do say 'why would I lie' even in a place** where the claim contradicts a **חזקה** of **זמנו** תוך זמנו א"א פורע תוך זמנו. We do say במקום חזקה.

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'** (תוך 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:

**However** the גמרא **prefers to answer** differently; that – **אך ניתא ליה לשנויי**

**there** in our משנה the defendant **does surely say** – **התם מימר אמר**

**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** **אביי ורבא**; who maintain that **אדם** פורע תוך זמנו. According to them seemingly the defendant should always be believed even if he claims that he paid **זמנו**. If we were to give interpretation of the משנה, there would be a question on **אביי ורבא**, why is he not believed!<sup>8</sup> Therefore the גמרא answered that the ruling of our משנה disregards the whole issue of **פורע תו"ז**. Rather, the reason it is **לא נתן** בזה, 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 discussing a case where the claim and response took place **תו"ז**. However it would pose a difficulty for **אביי ורבא** who maintain **תו"ז** אדם פורע תו"ז.

## 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>

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

<sup>6</sup> We are now establishing that the משנה is discussing a case where the תביעה was **זמנו** (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** פרעתיך תו"ז. See 'Overview'. See 'Thinking it over' # 2.

<sup>7</sup> Even though that according to this interpretation we cannot infer from the משנה that **אדם** פורע תוך זמנו. 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.

<sup>9</sup> See footnote # 4.

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