

They all are exempt

כולן פטורין –

OVERVIEW

The גמרא cites a dispute between the רבנן and ר"י in a case where ten people hit a person and killed him. The רבנן maintain that all are פטור, while ר"י maintains that the last one is חייב.¹ Our תוספות will qualify the view of the רבנן.

וביש לראשון כדי להמית² -

And we are discussing a case where **there is sufficient force in the first blow(s) to kill** on it own. It is only in this situation that all are פטורין, however -

דבשאין בו כדי להמית אפילו לרבנן אחרון חייב כדמוכח בפרק כל הנשרפין (סנהדרין דף עח,א):

When the first blow(s) do not have sufficient force to kill on their own, **even the רבנן maintain that the last one is חייב**, since he alone killed him as is evident in פרק כל הנשרפין.³

SUMMARY

If the first (nine) blows are כדי להמית אין בו כדי להמית then the רבנן agree that אחרון חייב.

THINKING IT OVER

1. Why cannot we use the case of להמית אין בו כדי להמית (where the אחרון is חייב לכו"ע) as an example of הכשרתי במקצת נזקו וכו'?⁴

2. Does תוספות mean⁵ that each of the nine was כדי להמית יש בו כדי להמית; or that all nine together were כדי להמית יש בו כדי להמית?

3. in a case where the ראשון was כדי להמית, will the ראשון be liable to pay תשלומי נזק to the heirs of the deceased?⁶

¹ See ויקרא (אמור) כד, יז in פסוק where he explains that they differ in the interpretation of the פסוק, which states כי יכה כל נפש אדם.

² See 'Thinking it over' # 2.

³ The גמרא there cites a ברייתא which stated initially that the פסוק of כל נפש אדם teaches us that if one person hits another and it was כדי להמית אין בו כדי להמית and then a second person killed him; the second one is חייב. The גמרא asked that this is פשיטא! [The גמרא therefore revised the reading of the ברייתא according to the שיטה of ר"י.] It is evident from the question 'פשיטא' that the חכמים agree that in this case the אחרון is חייב; otherwise why is it a פשיטא that he is חייב.

⁴ See מהרש"א. See also בל"י וסוכ"ד for the difference between this case and בור.

⁵ See footnote # 2.

⁶ See נח"מ.