

He should not pay

לא ישלם –

OVERVIEW

The גמרא derives the rule of בעלים מטפלים בנבילה from the פסוק of¹ לא ישלם, which is written concerning a שומר שכר. Our תוספות anticipates a difficulty with this לימוד, and resolves it

anticipates a difficulty:

אף על גב דקרא בשומר שכר כתיב דפטור מאונסין -

Even though the פסוק of לא ישלם is written concerning a paid watchmen who is exempt from paying for unavoidable mishaps; The תורה teaches us in this פסוק that a ש"ש is completely פטור by אונסין; how can we derive from this פסוק that when there is a חיוב to pay, nevertheless the בעלים are בנבילה?!²

responds:

מכל מקום מדכתיב עד הטרפה לא ישלם³ -

Nevertheless since it is written עד הטרפה לא ישלם (up to the טריפה [he should pay, but] he does not pay [for the טריפה itself]) -

יש ללמוד דהיכא דישלם לא ישלם כלום בשביל הטרפה עצמה:

We can derive a general rule that whenever he does pay, he does not pay anything for the טריפה itself, for בעלים מטפלים בנבילה.

SUMMARY

The פסוק of לא ישלם עד הטרפה teaches us that whenever there is payment it does not apply to the טריפה.

THINKING IT OVER

The גמרא explains that we derive the rule of בעלים מטפלים בנבילה from the פסוק of עד הטרפה לא ישלם (the word עד to mean until). Seemingly this פסוק reads that you do not pay עד הטרפה; however we wish to derive that you do pay עד הטרפה and you do not pay for the טריפה. How are we to read this פסוק of לא ישלם עד הטרפה?!⁴

¹ The פסוק reads: לא ישלם עד הטרפה; which translates to: if it was killed he should bring a witness; he need not pay for the killed (animal).

² This פסוק is teaching that the ש"ש pays nothing; not that he does not pay for the טריפה!

³ The תורה could have written לא ישלם or something similar; the fact that the תורה writes עד הטרפה לא ישלם, teaches us that payment is only until the טריפה; the טריפה itself, however, need not be paid for. Alternately, the תורה needs to teach us that he does not have to pay עד הטרפה, because he is an אונס (indicating if he were not an אונס [or by נזיקין where אונס is חיוב], he would have to pay); however concerning the טריפה itself, even if he was a פושע he would be פטור, for בעלים מטפלים בנבילה. See 'Thinking it over'.

⁴ See אמ"ה, and footnote # 3 [Alternately,...].