

**Let the – לפלוג וליתני בדידיה במה דברים אמורים במועד אבל בתם כולי – differentiate by teaching it in the same case; when are these rules applicable, by a מועד, however by a תם, etc.**

### Overview

The גמרא cites the ברייתא of עצמו ע"פ משלם ע"פ הר"ז מ"ז to prove that פ"נ המית שורי וכו' הר"ז מ"ז משלם ע"פ עצמו of the ברייתא. The גמרא refutes this proof, (assuming that we are discussing a תם). The גמרא says that the ברייתא is discussing a מועד. The גמרא challenges this refutation, arguing that the ברייתא should have differentiated between a מועד and a תם (instead of differentiating between an עבד and a [ואדם] שור). תוספות has a difficulty with this proposed differentiation between a תם and a מועד.

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תוספות asks:

**תימה היכי הוה מצי למימר הכי אבל בתם אין משלם על פי עצמו – It is astounding! How could have the ברייתא stated this: ‘however by a תם he does not pay by his own admission’ (as opposed to a מועד)?!**

**דמשמע דעל פי עדים משלם כשהמית שורו את פלוני<sup>1</sup> – For this statement would indicate that by the testimony of witnesses he would pay<sup>2</sup> in the case where his ox killed someone; but this inference may not be true, for -**

**דלמא<sup>3</sup> לא סבר כרבי יוסי הגלילי דאמר תם משלם חצי כופר: Perhaps the ברייתא does not agree with ריה"ג who maintains that a תם pays חצי כופר; but rather the ברייתא maintains that there is no כופר payment at all by a תם. Therefore the ברייתא can indeed be discussing a מועד, but it could not have concluded ‘אבל בתם אין משלם ע"פ עצמו’, for this would be a misleading statement (in the [first] case of המית שורי את פלוני) indicating that he is only עצמו ע"פ פטור but not עדים ע"פ, where in reality it is possible that the ברייתא maintains that by a תם there is never a כופר payment even עדים ע"פ. תוספות does not offer an answer.**

### Summary

It is difficult to understand how the ברייתא could have said that in a case of המית שורי וכו' that he is not עצמו ע"פ משלם if it is a תם; for the inference is that if it were עדים ע"פ, he is משלם. This is not necessarily so; for the ברייתא may not agree with ריה"ג that כופר (חצי) משלם.

### Thinking it over

<sup>1</sup> See רש"י ד"ה לפלוג that the question of וליתני וכו' was only concerning the case of המית שורי וכו'. See מהרש"א who explains why תוספות rejects this explanation (for to divide the א"ב as במד"א maintains, would require a lengthier explanation which is (generally) not acceptable עיי"ש).

<sup>2</sup> When it says that you do not pay עצמו ע"פ, the inference is that you pay עדים ע"פ.

<sup>3</sup> See ‘Thinking it over’

states<sup>4</sup> that there is a difficulty since *perhaps* the ברייתא disagrees with ריה"ג. However it would seem that there is a greater difficulty. How can the גמרא argue that the ברייתא should state that by a תם the rule is that אין משלם<sup>5</sup>, for if the ברייתא agrees with ריה"ג, then the only time that a תם pays כופר is if it is ע"פ עצמו; for if it is ע"פ עדים (where he is מחויב סקילה) then the תם is פטור from כופר since the owner can say<sup>6</sup> הביאהו לבי"ד וישלם לך. Therefore the only way to explain this ברייתא that by a תם he does not pay ע"פ עצמו כופר is if we disagree with ריה"ג and maintain there is no בתם כופר. Then the question of תוספות is much stronger; how can the ברייתא state that by תם he is not משלם, indicating that by ע"פ עדים he is משלם, when this ברייתא *certainly* disagrees with ריה"ג and maintains that הכופר את המשלם.<sup>7</sup>

<sup>4</sup> See footnote # 3.

<sup>5</sup> This will refer to the case of המית שורי את פלוני (in regard to כופר) and to the case of המית שורי שורו (where he is פטור [since] we maintain that קנסא).

<sup>6</sup> See previous תוספות ד"ה הא (footnote # 8).

<sup>7</sup> See: מהרש"א הארוך (בקובץ ע"י אות ט), במהר"ם שי"ף ובאמ"ה בד"ה תמהו.