

## In place of; giving, etc.

## תחת נתינה כולי –

### OVERVIEW

The גמרא teaches us that we derive that all the **אבות** pay from **מיטב**, through the **גזירה** of **שוה**. **רש"י** offers his explanation how (in particular) we derive the payment of **עדים זוממים** is from **מיטב**. Our **תוספות** offers a possible alternate explanation and rejects it. **תוספות** also explains when it is necessary to have a special **לימוד** that **עדים זוממים** pay from **מיטב**.

בספרי מפיק בושט מוקצותה את כפה ולא<sup>1</sup> תחוס עיניך (דברים כה, יב) -

In ספרי we derive that for **בושט** there is a monetary compensation **from** the **פסוק** of **לא תחוס עיניך** (which refers to the consequence of causing **בושט**) and the **פסוק** concludes **לא תחוס עיניך** -

וילין מעדים זוממין דכתיב לא תחוס עיניך (שם יט, כא) -

And we derive the ruling by **בושט** **from** **עדים זוממין** where it is (also) written **לא תחוס עיניך**. The same phrase **לא תחוס עיניך** is written both by **עדים זוממין** and by **בושט**. We compare them, that just as the **עדים זוממין** pay money; the same applies to **בושט** that it is a monetary compensation (and not a corporal punishment of **כפה**).<sup>2</sup>

cautions, however -

ואין לומר שהוא גזירה שוה גמורה מדלא קאמר אתיא תחת נתינת<sup>3</sup> עיניך -

We cannot assume that this **גז"ש** (which would enable us to derive that **עדים זוממין** pay from **מיטב**, just as **בושט** pays **מיטב**), since the **גמרא** does not state that we derive the application of **מיטב** from the words **תחת נתינת**; the word **עיניך** does not appear among the **גז"ש** words in our **גמרא**.<sup>4</sup> This indicates that the derivation of a **מיטב** payment by **עדים זוממין** is not derived from this **גז"ש** of **עיניך**.<sup>5</sup>

**עדים זוממין** by **חוב מיטב** explanation of **רש"י** (therefore) cites **תוספות**:

ועדים זוממים פרש"י דכתיב בהו נפש בנפש -

And regarding the obligation of **עדים זוממים** to pay from **מיטב**, **רש"י** explains that

<sup>1</sup> In the **פסוק** it is written **לא תחוס עיניך** (without a **ו**).

<sup>2</sup> It would now be possible to assume that we can derive **עדים זוממין** from **בושט**; just as **בושט** pays **מיטב** (as **רש"י** explains), the same should apply to **עדים זוממין**, since there is this **גז"ש** of **לא תחוס עיניך**. **תוספות** rejects this logic.

<sup>3</sup> Others amend this to read **נתינה**.

<sup>4</sup> The foregoing interpretation of **תוספות** is based on the explanation of **פרץ**. According to the **רשב"א** however, it seems that based on the **ספרי**, it may have been possible to derive the **חוב מיטב** by **בושט** from **עדים זוממין** through the **גז"ש** of **לא תחוס עיניך**.

<sup>5</sup> It would seem that **לא תחוס עיניך** is a limited **לימוד**, to teach us (only) that **וקצותה את כפה** means money.

נפש תחת **it is written נפש בנפש**, and this is considered as if it would be written תחת נפש, allowing us to derive the obligation of עדים זוממין to pay ממיטב from the גז"ש of תחת נפש.

ממיטב pay עדים זוממין that לימוד will now explain the need for any תוספות

**וצריך לומר דאפילו אם העידו על שור תם שהזיק -**

**שור תם testified regarding a שור תם** And it is necessary to say that even if the עדים זוממין **that damaged;** where there is no obligation for the בעל השור to pay<sup>6</sup> (if their עדות would have been upheld) -

**או העידו פלוני חייב לפלוני מנה דדינו בזיבורית דמשלמי במיטב -**

**Or** that the עדים זוממין **testified that someone owes another a מנה, where the ruling** (מן התורה) **is** that the ליה is only required to pay from the **poorest quality,** nevertheless these עדים זוממין would be required to **pay** their accused **with מיטב** (that is what the גז"ש [of תחת] is teaching us) -

**דאם רצו לחייב אחרים ממיטב<sup>7</sup> לא צריך קרא דמכאשר זמם נפקא דיתחייבו ממיטב:**

**For if** the ruling that עדים זוממין pay from מיטב would be limited only to cases where the עדים זוממין **desired to make others pay ממיטב, no פסוק** (of a גז"ש) **would be required** to teach this to us, **for it could be derived** from the פסוק of **כאשר זמם** **that they are obligated** to pay **ממיטב**; just as they wanted to obligate their (falsely) accused to pay ממיטב. We must therefore conclude that the לימוד from the גז"ש by עדים זוממין (as רש"י explains) comes to obligate them to pay ממיטב even if their accused would not have to pay ממיטב.

## **SUMMARY**

The גז"ש of לא תחוס עיניך (by בושט ועדים זוממין) is limited to obligate money for בושט (but not that עדים זוממין pay ממיטב). The נפש בנפש of לימוד teaches us that עדים זוממין pay ממיטב even if their falsely accused victims would not need to pay ממיטב.

## **THINKING IT OVER**

If the obligation is for the מזיק to pay from his מיטב (בשלו הן שמין)<sup>8</sup>, then even if the accused someone to pay מיטב, we would still need the גז"ש to teach us that if the מיטב of the עדים זוממין is better than the מיטב of the accused, they are required to pay from their מיטב!<sup>9</sup>

<sup>6</sup> See previous 'תוס' on this ד"ה הא (and the 'Thinking it over' there).

<sup>7</sup> They testified (falsely) that someone's animal ate his neighbor's crops.

<sup>8</sup> See the גמרא later on ב,ז.

<sup>9</sup> From the פסוק of כאשר זמם we would think that they have to pay only the inferior מיטב of the accused.

Conversely if the obligation is to pay from the מיטב of the נזיק,<sup>10</sup> we need the גז"ש in a case where the זיבורית דמזיק is like the מיטב דנזיק. On account of כאשר זמם alone the עדים just pay the זיבורית דמזיק (for that is the loss they intended to cause); however on account of the גז"ש they will have to pay the מיטב of the מזיק (for the מזיק is their נזיק)!<sup>11</sup>

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<sup>10</sup> The view of ר' ישמעאל on ב,ב on ר'.

<sup>11</sup> See אמ"ה.