

## ‘Harmed’?! It should rather be ‘liable’

## חב חייב מיבעי ליה –

### Overview

The משנה stated that when the מזיק caused damage, then the חב is חב to pay, etc. The word 'חב' is generally translated to mean 'harm or harmed'. The גמרא asks that the משנה should have stated חייב המזיק which is translated to mean, the מזיק is 'obligated' (or liable) to pay. תוספות will offer some examples where the term חב is more appropriate than the term חייב.

### בשאר דוכתין לא דייק הכי –

In other places, where the term חב is used, the גמרא is not so particular; to ask why does it not say חייב instead of חב

כגון אין חבין לאדם אלא בפניו ותופס לבעל חוב במקום שחב לאחרים –

For instance concerning the expressions of 'we do not harm a person only in his presence'<sup>1</sup> or 'one who seizes for a creditor where he harms others'<sup>2</sup>; in these cases the גמרא does not ask that it should say 'וכו' or 'אין חייבין לאדם וכו' or 'במקום שחייב לאחרים'.<sup>3</sup> The reason is –

דהתם לא שייך לשון חיוב אלא לשון חובה:

Because there the term 'obligation' (or liability) is not applicable<sup>4</sup>; only the term 'harm' is applicable. However in our משנה the opposite is true. When the מזיק damages he is liable and obligated to pay; but not that he is harmed. Therefore the גמרא correctly asks here that the term should be חייב, not חב.

### Summary

The term חב is used for a חובה, while the term חייב is used for a חיוב.

### Thinking it over

We can perhaps distinguish between חב which is a פועל יוצא<sup>5</sup> and חייב which is a פועל עומד<sup>6</sup> and that would address תוספות concern.

<sup>1</sup> See גיטין יא,ב. This is referencing that one cannot accept a גט from the husband on behalf of the women (that she should become divorced immediately) without her consent. The divorce is considered detrimental to the woman (she loses her support) and therefore one cannot become her agent unless she agrees to it.

<sup>2</sup> See יא,מ. A third person may not seize the assets of a borrower for one lender, when this borrower owes monies to other people as well. The other creditors are being harmed by this 'grabbing', for there will not remain sufficient assets for them to collect their debts.

<sup>3</sup> [It would seem that תוספות (in the ה"א) may have understood that the question חייב מיבעי ליה, is that 'חב' is essentially an incorrect term in לה"ק; the language of the משנה.]

<sup>4</sup> The woman (see footnote # 1) who is to receive the גט or the creditors (see footnote # 2) who are being denied, are not 'obligated' (to do anything), but rather they are being 'harmed' by the action being taken.

<sup>5</sup> A פועל יוצא is a 'transitive verb' (a verb that has an additional object besides the subject; for instance; 'he hit me'; the object is 'me'). A פועל עומד is an intransitive verb (a verb that has no object. e.g. 'he is sleeping', the verb 'sleeping' has no object). In our משנה the verb (חב) [חייב] is a פועל עומד, it does not mention to whom the מזיק is חייב; there חב is a פועל יוצא, it refers to either the אדם or the אחרים.

<sup>6</sup> See רש"י.