

**For instance if the choicest – כגון שהיתה עידית דניזק זיבורית דמזיק**  
**fields of the ניזק were equivalent to the poorest fields of the מזיק**

## OVERVIEW

The גמרא explains that the difference between ר"י (who maintains שיימינן) and ר"ע (who maintains that שיימינן) is in a case where the עידית דניזק is זיבורית. According to ר"י the מזיק pays (only) with his זיבורית, and according to ר"ע the מזיק must pay with his עידית (which are superior to the דניזק). Our תוספות will discuss alternate cases<sup>1</sup> where there would be a difference between ר"י ור"ע.

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 anticipates and negates a different case where ר"ע ור"י would argue:

**ואיפכא<sup>2</sup> לא מצי למימר דכולי עלמא מודו דאין משלם אלא עידית שיש לו –**

**And the גמרא could not have offered an opposite case and say that ר"י ור"ע are**  
**arguing where the זיבורית דניזק was like דמזיק; for all agree (even ר"י) that in this**  
**case the מזיק pays only with the עידית that he possesses** (even though it is זיבורית דניזק) -

**ואין צריך לקנות כדאמרינן לקמן (ד' ז:): אין לו אלא זיבורית כולם גובין מן הזיבורית –**

**And the מזיק is not required to purchase fields which are the equivalent of the עידית**  
**and pay him with these fields; as the גמרא states later that if the debtor (who is**  
**also a מזיק and is divorcing his wife) possesses only זיבורית, then they all (the ניזק, the**  
**מזיק and the מלוה) collect from the זיבורית.**<sup>3</sup> There is no obligation for the מזיק to purchase עידית to satisfy the ניזק. Therefore the גמרא could not have cited this example.

continues to offer other cases which the גמרא could have mentioned:

**ומיהו אי בשל עולם הן שמין<sup>4</sup> הוה מצי למימר כגון זיבורית דמזיק כעידית דעלמא –**

**However if we assume that the values of properties are assessed 'at large' (and**  
**not the עידית of the מזיק's fields), the גמרא could have offered an alternate case; if**  
**for instance the זיבורית of the מזיק was like the עידית at large (the מזיק owned very**  
**high quality fields, and his worse fields were equivalent to what is generally considered**  
**עידית) –**

**דלרבי עקיבא גובין מן הזיבורית ולרבי ישמעאל יהיב ליה מעידית דניזק –**

<sup>1</sup> The difficulty with the case the גמרא mentions is that ר"ע is מחמיר and ר"י is מיקל. This would seem to contradict what תוספות mentioned in the previous ד"ה ור"י that the expression of אלא indicates that ר"ע is מיקל. [See there TIE 'Thinking it over; # 2.] In the (three) cases that תוספות suggests ר"ע is the מיקל.

<sup>2</sup> ר"ע would maintain that the מזיק pays his עידית (which is זיבורית דניזק) and ר"י would maintain that the מזיק must obtain the equivalent of עידית דניזק and pay off the ניזק with it.

<sup>3</sup> The מלוה generally collects from בינונית and אשה collects from זיבורית.

<sup>4</sup> The גמרא later (ז,ב) has an איבעיא according to ר"ע (who maintains דמזיק), whether the מזיק need (only) pay with fields that are generally considered עידית (even though the מזיק owns better quality fields), this is called בשל עולם; or is the מזיק obligated to pay the best of his fields (בשלו הן שמין) even if they are superior to דעלמא.

**Then according to ר"ע we collect from the זיבורית (of the מזיק), since it is כעידית דעלמא; however according to ר"י the מזיק would be required to pay an equivalent of עידית דניזק (even if they are better than זיבורית דמזיק, and are the equivalent of עידית דמזיק).**

תוספות presents an additional case the גמרא could have mentioned:

**ואפילו למאן דאמר בשלו הן שמין הוה מצי למימר דלית ליה למזיק כעידית דניזק –**

**And even according to the one who maintains that we assess according to his field (of the מזיק), not in the general market, the גמרא still could have said that there is a difference (between ר"ע ור"י) in a case where the מזיק does not have the equivalent of the עידית דניזק (only lesser quality fields), then –**

**דלמאן דאמר<sup>5</sup> כסף או מיטב ישלם כסף לרבי ישמעאל –**

**According to the one who maintains that the מזיק is required to pay either money or מיטב, then according to ר"י the מזיק will be required to pay כסף, since מיטב refers to מיטב דניזק and the מזיק does not possess the מיטב דניזק –**

**ולר' עקיבא לא ישלם אלא ממיטב שלו:**

**However, according to ר"ע, the מזיק is only required to pay with his מיטב (and not with כסף); since בדמזיק שיימינן.**

## **SUMMARY**

The גמרא could have mentioned a case where כעידית דעלמא, if we maintain שמין הן עולם (according to ר"ע he pays דעלמא and according to ר"י it is עידית דניזק); or where the מזיק does not have עידית דניזק and we maintain או (כסף or מיטב according to ר"ע he pays דמזיק and according to ר"י he pays כסף or מיטב). The מלוה is never obligated to purchase fields in order to pay מעידית.

## **THINKING IT OVER**

1. תוספות proves that (according to ר"י) the מזיק is not required to buy the equivalent of עידית דניזק and pay him, from the fact that the ברייתא states אין לו אלא זיבורית כולם. However it seems that the ברייתא there is following the opinion that (בשל עולם הן שמין or בשלו) (hence the discussion whether בדמזיק שיימינן view of ר"ע; however here that we are discussing the view of ר"י who maintains <sup>6</sup>כעידית דניזק, perhaps the מזיק is required to buy דניזק שיימינן?

2. Why indeed did the גמרא not mention the cases which תוספות suggests?<sup>7</sup>

<sup>5</sup> כסף or עידית only with מטלטלין; He maintains that the מזיק cannot pay with לקמן ט,א.

<sup>6</sup> אמ"ה See.

<sup>7</sup> סוכ"ד אות מה See.