

אליבא דרבי ישמעאל לא תיבעי לך דאמר בדניזק שיימינן –

ניזק According to ר"י do not query, for he says we assess the

Overview

had a query; when we assess the **מיטב** payment, do we assess the **מיטב** of the particular individual, or do we assess according to what is generally considered **מיטב** (at large)¹. The **גמרא** continues that this query is not applicable according to **ר"י** for he maintains that **בדניזק שיימינן** (and therefore not **עולם**). The query is only according to **ר"ע** who maintains **בשל עולם**; does he specifically mean **בדמזיק** or perhaps he meant **עולם**. Our **תוספות** explains why indeed the query is only according to **ר"ע**, and not according to **ר"י**².

- **ר"י** explains that there is no **איבעיא** according to **תוספות**

כיון דיליף מגזירה שוה³ דשדה שדה מוביער בשדה אחר זהו דניזק –

since he derives his rule of **בדניזק שיימינן** **through a גז"ש** of **שדה שדה** from the **פסוק** of **אחר וביער בשדה אחר** which refers to the field of the **ניזק**. Therefore there is no doubt that we maintain **בשלו** (of the **ניזק**) **הן שמין**, and not **עולם**⁴.

אבל לרבי עקיבא אפשר דהא דקאמר דהאיך דקמשלם לא אתא אלא למעוטי דניזק:

However according to ר"ע it is possible that when he said that the **מיטב** should be assessed **by the one who is paying, he is not** (necessarily) **coming** to say that **בדמזיק שיימינן** (it has to be the **עידית** of the **מזיק** exclusively), **but rather to exclude** that it is not the **עידית** of the **ניזק**⁵.

Summary

There can be no doubt according to **ר"י** since he derives **דניזק מיטב** from a **למעוטי דניזק**; however **ר"ע** when he said **משלם דקא** may have meant **האיך**.

Thinking it over

Why is there no **איבעיא** according to **ר"י** in the case where **קרא**?⁶

¹ If the **עולם** of the individual is **זיבורית** **דעלמא**, then he can pay him from the **זיבורית** (if **הן שמין**).

² The **איבעיא** according to **ר"י** would be if the **זיבורית דניזק** is **דעלמא**, (or if the **עידית דעלמא** is better than the **עידית דניזק**) and the **מלוה** possesses **דעלמא** **דעלמא**; which does he have to pay; **כעידית דניזק** (for **כעידית דניזק** or **כעידית דעלמא**) (if **הן שמין**).

³ See **גמרא**, **ו**.

⁴ If not for the **גז"ש** then **ר"י** would agree that **בדמזיק שיימינן**. The **תורה** specifically writes the **גז"ש** to inform us that it is not so, but rather **שיימינן**. If the **תורה** meant to teach us **הן שמין**, it should not have used a **גז"ש** which indicates that **בדניזק שיימינן**.

⁵ According to **ר"ע** there is no (extra) **לימוד** that **בדמזיק שיימינן**; rather the **פסוק** of **ישלם** indicates **מיטב שדהו** that it refers to the **דמשלם**. In addition **ר"ע** never stated explicitly **דמזיק**; rather he said **האיך דקא משלם**. Therefore we can query whether the **פסוק** and **ר"ע** meant that the **מזיק** cannot pay (only) with the **מיטב** of the **ניזק**, but must rather pay **דעלמא** (which is better than **דניזק**; see **כגון**).

⁶ See **מהרש"א** (הארור) **וכו'**. See **גמרא** **לעיל**, **ו**.