

## מה דרכו של אדם להוציא פחות שבכלים –

### What is the custom of a person; to bring out the least of his utensils

#### OVERVIEW

stated that a מדאורייתא בעל חוב can collect only from זיבורית. We derive this from the פסוק which states;<sup>1</sup> בחוץ תעמוד והאיש אשר את נושה בו יוציא אליך את העבוט. When the מלוה wishes to collect from the לוה collateral for his loan, he must wait outside till the לוה brings out the משכון to him.<sup>2</sup> This indicates that it is dependent on the לוה as to what type of משכון to give for the מלוה. The assumption is that the לוה will chose the least valuable of his possessions; the זיבורית.

anticipates and resolves an apparent difficulty.

אף על גב דשליח בית דין היה מוציא לא היה מוציא<sup>3</sup> אלא מה שהלוה נותן לו:

**Even though it was the agent of ב"ד that extracted the collateral<sup>4</sup> (not the מלוה);** one might therefore assume that the שליח ב"ד could take whatever he saw fit.<sup>5</sup> Nevertheless the שליח ב"ד **would not take** from the לוה as he pleased,<sup>6</sup> **but rather** he would take only **what the לוה gives him.**<sup>7</sup> We therefore assume that the לוה will give the שליח ב"ד the פחות שבכלים.

#### SUMMARY

A שליח ב"ד can take only the משכון that the לוה offers.

#### THINKING IT OVER

In the question<sup>8</sup>, why did תוספות assume that the שליח ב"ד is more empowered than the מלוה, and may take (forcibly) what he pleases, from the לוה?

<sup>1</sup> דברים [תצא] כד, יא.

<sup>2</sup> See סוכ"ד אות כ' who explains how we derive the rules of payment from the rules of a משכון.

<sup>3</sup> Others are 'מוציא' גורס 'מוציא'.

<sup>4</sup> See ב"מ קיג,א that the מלוה is not permitted to take (forcibly) a משכון from the לוה unless authorized by ב"ד.

<sup>5</sup> See 'Thinking it over'.

<sup>6</sup> See footnote # 4; even the שליח ב"ד was prohibited from entering the house of the לוה (according to one מ"ד). See פורת יוסף.

<sup>7</sup> The שליח ב"ד was to enforce that the לוה gives a משכון. However it was up to the לוה to decide which type of משכון will be offered.

<sup>8</sup> See footnote # 5.