

## דכולי עלמא גזירה שוה עדיפא –

**For everyone agrees that a *G'zayroh Shovoh* is preferable**

### OVERVIEW

The *ברייתא* cites a dispute whether one can free half an עבד with a שטר. Initially the *היקש* wanted to say that *רבי*, who maintains that he can be freed, relies on the *היקש* (of שטר to ממון), and the *חכמים*, who maintain he cannot be freed halfway, rely on the *היקש* of גזירה שוה (from עבד to אשה). Their argument is which is more effective a גז"ש or a היקש. However *רבי* argues that all agree that a גז"ש is preferable than a היקש (and their argument hinges on something else). *תוספות* qualifies this statement of *רבי*.

anticipates a difficulty:

**בריש איזהו מקומן (זבחים דף מח,א) ובפרק דם שחיטה (כריתות דף כב,ב) פליגי רבי עקיבא ורבנן -**  
**In the beginning of פרק איזהו מקומן and in פרק דם שחיטה there is a dispute between ר"ע and the רבנן -**

**בספק מעילות<sup>1</sup> ומשמע דכולי עלמא הקישא עדיפא<sup>2</sup> -**  
**Regarding questionable מעילות, and it seems that all agree that a היקש is preferred over a גז"ש, so how can רבי state here that עדיפא?**

responds:

**הכא שאני משום דעיקר שטר מגזירה שוה<sup>3</sup> נפקא לן:**  
**Here (by עבד) it is different because the entire concept that שטר is effective by an עבד is derived through a גז"ש from אשה, therefore in this case only, the גז"ש is dominant**

### SUMMARY

Generally *עדיפא*, however here, since the entire concept of שטר by עבד is derived from this גז"ש, therefore *רבי* can say *עדיפא*.

<sup>1</sup> One who is in doubt whether he transgressed a sin, which requires a חטאת offering, is required to bring an אשם תלוי. The issue is what is the ruling if he is in doubt whether he was מועל בהקדש (used the הקדש property for his own needs). One who is מועל in הקדש brings an אשם offering (not a חטאת); the argument there is whether there is an אשם תלוי for מעילה (which requires not a חטאת obligation but an אשם obligation).

<sup>2</sup> The פסוקים of אשם תלוי follow immediately after the פסוקים of מעילות (this is the היקש which would indicate that there is an אשם תלוי for מעילות). However there is a גז"ש (which are written by אשם תלוי and חטאת) which indicate that only by a חטאת ספק is there an אשם תלוי. However the גמרא there concludes that all agree that *עדיפא*, the opposite of what *רבי* states here that *עדיפא*.

<sup>3</sup> We know that a שטר is effective by an עבד כנעני (both to acquire him and to free him), only from this גז"ש.

### **THINKING IT OVER**

כ"ע Why was it necessary for רבא to say that כ"ע גז"ש עדיפא, he could have said that כ"ע (as it says in the other גמרות) however here the חכמים maintain that הקישא עדיפא since עיקר שטר מגז"ש נפקא לן היקש; why the need to say כ"ע גז"ש עדיפא, when generally this is not the case?!<sup>4</sup>

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<sup>4</sup> See # 175. אוצר מפרשי התלמוד and מהר"ם, מהרש"א