

## And if paying money is a leniency

## ואי ממונא קולא הוא -

### Overview

The גמרא states that one cannot derive from חובל that בעלמא the rule is לוקה, regardless whether we consider מלקות to be the stricter punishment, or whether money is the stricter punishment, because חובל has both a קולא and a חומרא in relation to the cases בעלמא. In any event it seems that even though ממון is more lenient nevertheless by חובל (where there is a חיוב ממון and מלקות) we make him pay (and not receive מלקות), even though it is the lesser punishment. תוספות explains this.

asks: תוספות

ואם תאמר איתגורי איתגור שנידון בקלה<sup>1</sup> -

And if you will say; does the חובל indeed profit that he receives the lighter punishment?!

דהכי פריך בפרק הנשרפין (סנהדרין דף פא,א) גבי מי שנתחייב שתי מיתות<sup>2</sup> -

For this is what the גמרא asks in פרק כל הנשרפין, regarding one who is liable for two capital punishments –

answer: תוספות

ויש לומר דשאני הכא דחס רחמנא אממונא<sup>3</sup> של נחבל:

And one can say that here by חובל it is different from the case in סנהדרין, for the חובל had pity on the loss of money of the victim, therefore the חובל pays. However by שתי מיתות there is no compensation to anyone.

### Summary

We may forgo the more stringent punishment, in order to compensate for the loss.

### Thinking it over

<sup>1</sup> The rule by חובל is that he pays and does not receive מלקות. The גמרא explains why we cannot derive from חובל that elsewhere also he is משלם ואינו לוקה, even if we assume that משלם is the lesser punishment than לוקה. The question of תוספות is that if משלם is the lesser punishment, why indeed is he משלם, when he should receive the stricter punishment and be לוקה.

<sup>2</sup> The משנה there states that one who was נתחייב בשתי מיתות, receives the stricter one (like סקילה וחנק, he will receive סקילה, which is stricter). The גמרא there asks that this ruling is obvious איתגורי איתגור?! How can we give him the more lenient punishment if he is liable for the stricter one. The fact that he transgressed another sin does not exempt him from receiving the stricter punishment.

<sup>3</sup> Indeed מלקות may be stricter; however if we give the חובל מלקות and exempt him from paying the injured party for his loss, the נחבל will not be compensated; he gets no reward from the מלקות which the חובל receives. Therefore in order to compensate the נחבל, the תורה ruled that the חובל must pay even though it may be the more lenient punishment.

The גמרא was not sure whether ממונא לקולא or ממונא לחומרא, and according to either assumption the question was whether משלם or לוקה.<sup>4</sup> However if ממונא לחומרא why is there even a question; why should he receive the more lenient מלקות instead of the stricter ממון, especially so since the ממונא חסה על התורה of the ניזק?<sup>5</sup>

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<sup>4</sup> The גמרא initially assumed ממונא לחומרא. Only later does it state ממונא לקולא.

<sup>5</sup> See בית יעקב and שיטה מקובצת.