

## Is this not an actual mishap

## מאי לאו אסון ממש –

### Overview

The גמרא (initially) cited the view of ר' יוחנן that one who is inadvertently transgressing a capital crime or a מלקות crime, and at the same time a monetary crime, he is liable to pay, since he will not receive corporal punishment (for he was a שוגג).<sup>1</sup> 'ולא יהיה אסון ענוש יענש' of פסוק from ר"י challenged לקיש<sup>2</sup> regrading one who accidentally hit a pregnant woman and caused her to miscarry. The rule is if the woman was not killed ('ולא יהיה אסון'), the perpetrator is liable to pay (the husband) for the fetus. We can infer from this that if the woman died, there is no payment (for the fetus), even though the attacker was not warned, and he will not be put to death. The seemingly proves that even if there is no death penalty, if a capital crime was committed, there is no monetary payment, contrary to the view of ר"י.<sup>2</sup>

anticipates a difficulty: תוספות

אף על גב דסיפיה דקרא<sup>3</sup> דאם אסון יהיה על כרחך היינו דין אסון<sup>4</sup> כדכתיב ונתת נפש וגומר<sup>5</sup>

**Even though** that at **the conclusion of the verses** where it states **אם אסון יהיה** (if a mishap will occur) that verse **perforce means דין אסון**, for it states, 'and you shall give a life, etc. for a life' –

responds: תוספות

**מכל מקום לא יהיה אסון הוה משמע ליה אסון ממש<sup>6</sup> -**

**Nevertheless, according to ר"ל** the verse of **אסון לא יהיה אסון** means **ממש** –

<sup>1</sup> שמות (משפטים) כא, כב.

<sup>2</sup> ר"ל maintains that אסון means actual death – אסון ממש; but not דין אסון that the perpetrator is executed. Therefore, even if the attacker is not executed, he is nevertheless exempt from monetary payment.

<sup>3</sup> 'ואם אסון יהיה ונתת נפש תחת נפש' reads, שם פסוק כג.

<sup>4</sup> (see footnote # 2). דין אסון means the attacker is executed.

<sup>5</sup> We give (or take) 'a life for a life', when there are witnesses and a warning, therefore obviously in the פסוק of ואם אסון יהיה, the word אסון means דין אסון (see footnote # 4), so how can ר"ל assume that the word אסון in the previous פסוק means ממש, but not דין אסון (see footnote # 2). The word אסון in two consecutive פסוקים should mean the same. And since in the latter פסוק it certainly means דין אסון, it must therefore mean the same in the earlier פסוק, not as ר"ל understood it to mean.

<sup>6</sup> ר"ל will agree that ואם אסון יהיה in the affirmative must mean דין אסון (since it concludes נפש תחת נפש), however the phrase **ולא יהיה אסון**, in the negative, may mean there was no death at all, therefore the inference may be that (even) if there is just a death (without an execution) one is not liable. We cannot compare the meaning of אסון ואם אסון (which is דין אסון), to **ולא יהיה אסון** which means ממש.

offers an alternate solution:

**אי נמי אם אסון יהיה נמי בעי למימר דהוי אסון ממש ודריש<sup>7</sup> ונתת נפש וגומר היינו ממון<sup>8</sup>:**  
**Or you may also say that ר"ל wants to say that also the verse אסון יהיה means**  
**אסון ממש (the woman was killed), but not דין אסון (the attacker was not executed)**  
**and ר"ל expounds the פסוק of ונתת נפש, etc. to mean a monetary payment.**

### **Summary**

Either the word אסון in the two פסוקים mean something different, or they both mean אסון ממש.

### **Thinking it over**

ואם יהיה אסון ענוש of פסוק, ר"ל, that according to (אי נמי) explains תוספות  
י'ענש, means that if the woman was killed (accidentally) the attacker must pay to her  
heirs the value of the woman.<sup>9</sup> However, ר"ל maintains that חייבי מיתות שוגגין are  
exempt from payment, so why is the attacker obligated to pay for the woman; he is  
a חייבי מיתות שוגגין!<sup>10</sup>

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<sup>7</sup> ר"ל needs to explain how the פסוק of ונתת נפש תחת נפש if אסון יהיה can mean אסון ממש, but not דין אסון; for if it is not a דין אסון, there can be no capital punishment of נפש תחת נפש.

<sup>8</sup> This is following the view of רבי (mentioned previously on ב, לג.) that in a case where one intended to kill one person and accidentally killed another, he needs to pay (in this case) the value of the woman (who was not the intended victim) to her heirs. This is what the תורה states אסון יהיה (if the woman was killed unintentionally), the rule is ונתת נפש תחת נפש; the attacker must pay her value to her heirs (see 'Thinking it over'). Therefore, in both פסוקים, the word אסון means אסון ממש, but not דין אסון.

<sup>9</sup> See footnote # 8.

<sup>10</sup> See following מהר"ם, מהר"ם שי"ף, and also תוס' ד"ה ומי.