

## **כפילא ארבע וחומשא זוזא – זוזו The double is four and the fifth is a**

### **OVERVIEW**

The **ברייתא** states that if a person claims that the **פקדון** that was deposited by him was stolen, and he swore to that effect and subsequently witnesses came and testified that he stole the **פקדון** and he also admitted to it, the ruling (according to **רבי יעקב**) is that he must pay **כפל** (for stealing) and bring an **אשם** (for swearing falsely) and the additional 'fifth' (which is usually associated with a false oath) is **עולה לו בכפילו**. [Our **תוספות** will discuss the meaning of this phrase.] The **גמרא** then continues that in normal circumstances when the **כפל** will be four **זוזים**, the **חומש** will be a **זוז**, why is the **עולה לו בכפילו**.

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לפי מה שפירש הקונטרס<sup>1</sup> דחומשא עולה לו בכפילא -

According to the way **רש"י** explains the phrase 'that a fifth is counted for his double' to mean

שמשלם את הכפל ונפטור בכך מן החומש -

that he pays the **כפל** and through the **כפל** he is exempt from the fifth<sup>2</sup> -

קשה קצת מה בכך אי כפילא ארבע וחומשא זוזא<sup>3</sup> -

There is a slight difficulty, what does it matter if the **כפל** is four and the fifth is a **זוז**, since he paid more than the **חומש** he should be exempt from the **חומש**.

**תוספות** offers **רש"י**'s answer to this question:

ומיהו בקונטרס פירש<sup>4</sup> דלית ליה כפרה בחומש כיון שאין ניכר<sup>5</sup> ומובלע בתוך הכפל -

However **רש"י** explained that there will be no atonement in this **חומש**, if the **כפל** is greater than the **חומש**, since the **חומש** is not evident and it is 'swallowed' within the **כפל**.

**תוספות** proposes an alternate explanation:

ואי הוה מפרש דחומשו עולה לו בכפילו שמשלם את החומש ועולה לו לכפל -

And if he would have explained **חומשו עולה לו בכפילו** to mean that he pays the **חומש** and it is counted for the **כפל**, then -

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<sup>1</sup> סה,א ד"ה משלם.

<sup>2</sup> The defendant is not obligated to pay the owner an additional fifth if he pays the **כפל**.

<sup>3</sup> If the **כפל** would be the same as the **חומש**, he would be **פטור** from the **חומש** (if he pays the **כפל**), then certainly if the **כפל** is greater than the **חומש** that he should be **פטור** from the **חומש** if he pays the **כפל**.

<sup>4</sup> שם ובד"ה כפילא (סה,ב).

<sup>5</sup> There is no payment of a **זוז** which is the proper **חומש**.

**הוה ניחא דהוה פריך שפיר -**

**It would be understood for it is a proper question.** If the כפל is four זוזים and the חומש is a זוז, how can paying the חומש of one זוז be considered as paying the כפל of four זוזים?!

תוספות negates the proposed interpretation

**אבל לשון בכפילו לא משמע הכי -**

**However the word בכפילו (in his כפל) does not indicate so;** for if the meaning is that the חומש substitutes for the כפל the ברייתא should have stated לו לכפילו not וחומשו עולה לו לכפילו. Therefore the interpretation of רש"י is the correct one.

תוספות brings additional support to פרש"י:

**ובתוספתא נמי גרסינן וחומשו עולה לו מתוך כפילו -**

**And in the תוספתא the text reads ‘and its חומש is counted for him from within the כפל’;** indicating strongly that the כפל payment substitutes for the חומש payment as רש"י explained and not the reverse that the חומש substitutes for the כפל.

תוספות offers an alternate explanation:

**ורבינו יצחק בן אשר מפרש<sup>6</sup> דאלשון ברייתא קפריך דמשמע דחומשו עולה בכל כפילו:**

**And the ברייתא ריב"א explained that the question is on the phrasing of the ברייתא (when it states וחומשו עולה לו בכפילו), which seems to indicate that the fifth is the equivalent of the כפל (which in many cases it is not so; for the כפל is usually greater than the fifth).**

**SUMMARY**

The meaning of וחומשו עולה לו בכפילו is that the payment of the כפל (if it equals the חומש [according to רש"י]) substitutes the payment of the חומש (and not the reverse). According to ריב"א the כפל payment substitutes the חומש if it is equal to or greater than the חומש.

**THINKING IT OVER**

1. According to ריב"א who maintains that the כפל substitutes for the חומש whenever it equals or exceeds the חומש (which it does in almost all instances);<sup>7</sup> why indeed did the ברייתא phrase it in a manner that indicates that the כפל equals

<sup>6</sup> It would seem that according to ריב"א if the כפל is greater than the חומש then the כפל substitutes for the חומש and no חומש payment is necessary. It is just that the לשון of the ברייתא is not clear. See ‘Thinking it over’ #'s 1 & 2.

<sup>7</sup> See footnote # 6.

the חומש (exactly) which happens only in rare occasions.<sup>8</sup>

2. According to the ריב"א (that the כפל always exempts from the חומש even if it is worth more) what would be the מחלוקת between ר' יעקב and the חכמים?<sup>9</sup>

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<sup>8</sup> נח"מ.

<sup>9</sup> See אמ"ה הערה 112.