

He should have said, 'I did it intentionally' - היה לו לומר מזיד הייתי -

Overview

The גמרא cites a משנה which states; if a שליח told his בעה"ב 'bring me money from this window', and the שליח brought it to him and it turned out that it was הקדש money, the rule is that the בעה"ב is מעל, even though the בעה"ב later said that in his mind he did not want him to bring the money from this window, but rather from elsewhere (which was not הקדש). The גמרא wants to prove from this משנה that דברים דברים is (not because of שבלב שבלב, but rather) because he is lying in order to save himself from bringing a מעילה. The גמרא replies that it cannot be that he is lying to save himself the קרבן, for he could have said, 'I did it on purpose' (for there is no קרבן מעילה for מזיד, only for שוגג). תוספות explains why he is more believed to say מזיד הייתי, than to say this was not my intention.

דנהי דאין אנו מאמינים אותו לומר בלבי היה כך -

For granted that we do not believe him to say, 'my intention was this' (to take from another place which is not הקדש), because we assume that he is lying to acquit himself from a קרבן (so we should also not believe him to say מזיד הייתי, for the same reason; he wants to avoid bringing a קרבן) -

מכל מקום מזיד הייתי הוי טענה מקובלת יותר¹ ואין נראה כל כך רמאות² -

Nevertheless 'מזיד הייתי' is a more acceptable claim (than 'לא היה בלבי כו'), **and it does not appear as much a deception** as 'לא היה בלבי וכו'.

תוספות offers an alternate explanation:

והרב רבינו משה(?) פירש ודאי מזיד הייתי אנו מאמינים לו יותר -

And הר"מ explained; we certainly believe him to say מזיד הייתי more than saying 'לא היה בלבי וכו' -

כי הא דאמרין בפרק קמא דבבא מציעא (דף ג,ב) -

¹ It is not that readily believable that a person says one thing ('bring it to me from the window'), and then later says, 'I did not mean what I said; I meant something else'. However when a person says, 'I did it on purpose', there is no reason not to believe him; his actions do not indicate whether it was שוגג or מזיד.

² Indeed we will not believe him to claim מזיד הייתי just as we do not believe him to claim בלבי היה כך (for the same reason because he wants to exempt himself from a קרבן); however the גמרא is arguing, how can you say that the reason he is not believed to say בלבי היה כך is because he wants to exempt himself from a קרבן (and not as we wanted to say because דברים שבלב אינם דברים), but it is obvious that the reason he is saying בלבי היה כך is not to exempt himself from a קרבן, for if that were the case he should have said the more acceptable claim that מזיד הייתי. Therefore since he is not doing it to exempt himself from a קרבן, the reason he is not exempt from a קרבן is because דברים שבלב אינם דברים. See 'Thinking it over' # 1 & 2.

Like this which the גמרא states in the first פרק of מ"ב - מסכת ב"מ

גבי אמרו לו שנים אכלת חלב והוא אומר לא אכלתי -

Regarding the case where two witnesses said to him, 'you ate חלב' (which requires him to bring a קרבן חטאת if he ate it בשוגג), and he said, I did not eat the חלב -

דחכמים פוטרים מטעם דאם ירצה לומר מזיד³ הייתי:

That the חכמים exempt him from bringing a חטאת, for this reason, for if he wanted he could have said, 'I ate it במזיד', which would have exempted him from a קרבן.

Summary

We can assume that מזיד הייתי is (also) not believed but nevertheless it makes for a valid מיגו, since it is a more acceptable claim, or we can maintain that מזיד הייתי is believed.

Thinking it over

1. The first explanation of תוספות assumes that מזיד הייתי will also not be believed;⁴ how will it explain the גמרא in מ"ב cited by תוספות, that מזיד הייתי is believed?⁵

2. The גמרא is out to prove that דברים שבלב לא הוי דברים, for if הוי דברים, he should be believed to say כך בלבי היה (and be פטור from a קרבן), for if he was lying לאפטורי (תוספות in פי' the first), however (according to the first), מזיד הייתי. However (according to the first), even if we maintain הוי דברים, how can he be believed (and be פטור from a קרבן) based on the מיגו of מזיד הייתי, for even if he would claim מזיד הייתי, he also would not have been believed (and would be חייב a קרבן)! How can the claim have more power than the מיגו?⁶

³ See ד"ה מה אם ירצה לומר תוס' there, that the meaning of אם ירצה לומר is (not that he has a מיגו, for it is a במקום, but rather) that we can interpret his words of לא אכלתי שוגג אלא מזיד to mean מזיד הייתי and be פטור. [Otherwise (without 'פי' תוס') what is the proof from מ"ב that מזיד הייתי is believed, perhaps there too we can learn like the פי' הראשון in our תוס' that it is a טענה מקובלת יותר than לא אכלתי (which contradicts the עדים).]

⁴ See footnote # 2.

⁵ See # 161-2 אוצר מפרשי התלמוד and נחלת משה.

⁶ See # 157 אוצר מפרשי התלמוד and נחלת משה.