

דאפשר למיטרה ואתויי – For it is possible to exert oneself and bring it

OVERVIEW

The גמרא states that we cannot derive that a שואל is חייב for גניבה ואבידה, from the fact that he is חייב for שבורה ומתה, since one can argue that by גניבה ואבידה, the owner can possibly retrieve his animal (albeit with some effort), therefore the שואל should be פטור.¹ Our תוספות explains why we cannot derive it from another of the חיובי שואל.

תוספות asks:

ואם תאמר ונילף משבויה² -

And if you will say; let us derive the חיוב of גו"א by a שואל from a שבויה (a captive animal) for which a שואל is חייב, even though it is possible למיטרה ואתויי?

תוספות answers:

ויש לומר דשבויה לא אפשר כולי האי³ למיטרה ואתויי:

And one can say that it is not that readily possible to retrieve back a שבויה, as opposed to גו"א, where it is more likely to be retrieved.

SUMMARY

It is easier to retrieve a גו"א than to retrieve a שבויה.

THINKING IT OVER

Why did the גמרא ask that we should derive גו"א from שבורה ומתה (which certainly cannot be retrieved), but did not ask that we should derive it from שבויה (which has some possibility of being retrieved)?!

¹ See רש"י ד"ה תאמר

² We have derived (on the previous עמוד ב' (עמוד ב' that a שואל is חייב for a שבויה from the (extra) word או in the פסוק (in שמות ונשבר אן מת שואל, which states regarding a שואל, which states [משפטים] כב,יב.

³ When an item is lost or stolen there is a possibility to find it or to apprehend the thief and retrieve the item; however when something is taken captive by an enemy force, it is highly unlikely that it will ever be retrieved.