

Come, hear; ר' יהודה says

תא שמע רבי יהודה אומר –

## OVERVIEW

The גמרא attempts to prove that זנוזל"ה is חייב from the ruling of ר"י, who argues with the רבנן. Seemingly this is no proof, for the רבנן argue and maintain that he is פטור.<sup>1</sup> Our תוספות resolves this issue.

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תוספות responds to an anticipated difficulty:<sup>2</sup>

**ואפילו רבנן לא פליגי אלא משום דביתא לעלייה משתעבד:**

**And even the רבנן** who maintain that the בעל העלייה is פטור from paying rent, **they do not argue** that זנוזל"ה is פטור (for they agree with ר"י that זנוזל"ה is חייב), **but rather** the reason the רבנן maintain that the בעל העלייה is פטור is only **because** of the סברא mentioned previously in the גמרא, that **the house is indentured to the attic**; therefore the בעל העלייה has the special dispensation to live there rent free; however in a case of חבירו the רבנן will agree (with ר"י) that זנוזל"ה is חייב.

## SUMMARY

We can maintain זנוזל"ה is חייב and nevertheless the בעל העלייה lives rent free since ביתא לעלייה משתעבד.

## THINKING IT OVER

In the previous תוספות the same issue arose and תוספות responded that the רבנן do not argue with יוסי ר' and he is חייב only because הקיפא יתירא (the explanation which the גמרא gave why the חכמים are מחייב). Why was it necessary for תוספות to respond to the same question and give the same type of answer (that the חכמים agree with ר"י, but here it is ביתא לעלייה משתעבד), we could know this from the previous תוספות?<sup>3</sup>

<sup>1</sup> See previous טעמא ד"ה תוס' (in the 'Overview').

<sup>2</sup> See 'Overview'.

<sup>3</sup> What is the difference (regarding זנוזל"ה) whether we answer הקיפא יתירא, or whether we answer ביתא לעלייה משתעבד?