

כיון דכייף ופשיט אורחיה הוא –

Since he bends and stretches, it is his usual manner

OVERVIEW

רב maintains that אדם המזיק in our משנה is referring to אדם המזיק. The גמרא challenges this; since the משנה states that the אבות נזיקין are דרכן להזיק, how is it possible to say that (even) a (sleeping) person is דרכו להזיק. The גמרא answered that since it is usual for a sleeping person the bend and stretch it is דרכו להזיק while he is sleeping. תוספות limits the obligation of a ישן to pay.

בירושלמי¹ יש דינן לא מחייב אלא כשהשכיב עצמו אצל הכלים -

It is mentioned in ירושלמי תלמוד that a sleeping person is not obligated for the damage he causes **unless he lied himself down next to the utensils** and broke them while sleeping -

אבל אם ישן והביאו כלים אצלו ושבדן פטור דהם גרמו לו² -

However if a person was sleeping and others brought utensils next to him and he broke them, he is exempt from paying; **for the others caused him** to break the utensils.

וכן³ אם היה ישן והלך חבירו לישן אצלו והזיקו זה את זה הראשון פטור והאחרון חייב:

And similarly if a person was sleeping and his friend went to sleep next to him and they damaged each other during their sleep, the first one is פטור for any damages he caused the second one, **and the last one is חייב** to pay for the damages he caused to the first one.

SUMMARY

A sleeping person is only obligated to pay for damages he caused to people and utensils that were near him when he went to sleep; not otherwise.

THINKING IT OVER

Why is our גמרא mentioning these specific rules about ישן here in our גמרא?⁴

¹ פ"ב ה"ה.

² See תוספות כז, ב ד"ה ושמאל, where תוספות derives from this ירושלמי that an אונס גמור is פטור by an אדם המזיק. However סוכ"ד אות לד. See תוספות here exempts the ישן from paying since הם גרמו לו.

³ In our text, the ירושלמי cites only this latter case of two people and not the former case where others brought utensils afterwards.

⁴ See תפארת שמואל (and פנ"י).