

הא כלים וכלים חייב – חייב 'utensils and utensils' is However

OVERVIEW

The גמרא attempted to prove that הילך is חייב from the משנה which states that כפר (הילך) and הודה בקרקעות and טענו כלים וקרקעות he is פטור. We can infer that if it was a case of כלים וכלים which is similar to [meaning a case of הילך by כלים] he would be חייב; proving that הילך is חייב. The גמרא rejects this proof. תוספות suggest an alternate rejection of the proof.

הוא מצי לשנויי¹ בחפר בה בורות² שיחין ומערות³ כדבסמוך⁴:

The גמרא could have answered that he dug בורות שיחין ומערות in the ground, thereby making it not a case of הילך as the גמרא shortly answers regarding a different question.

SUMMARY

We could reject the proof from the משנה by assuming the משנה is discussing a case of חפר בה בורות וכו'.

THINKING IT OVER

גמרא is comparing the proof from the משנה to the question later in the תוספות. Seemingly there is no comparison. Later the גמרא asks if we maintain הילך is חייב why is it necessary to teach us that קרקע is פטור since all קרקע is חייב. The גמרא answers that the פסוק is necessary in a case of חפר בה וכו'. However, here תוספות is suggesting that the משנה of טענו כלים וקרקעות is discussing a case of חפר בה וכו'. Why should we assume that the משנה is discussing such a case when there is no mention of it in the משנה?⁵

¹ תוספות is commenting instead of asking, since in any event the proof from this משנה is rejected.

² בורות שיחין ומערות are different types of pits.

³ We cannot prove from the inference of חייב דכלים וכלים דומיא דכלים וקרקעות חייב, that הילך is חייב, for it is possible that the case of קרקע in that משנה was where the defendant dug up the קרקע, making it a non הילך situation and indeed we may infer that if it would have been כלים וכלים similar to a קרקע non הילך situation, there would be a שבועה חייב.

⁴ The גמרא asks (on ה,א) if we maintain הילך is פטור from a שבועה, then why was it necessary for the תורה to exclude קרקע (from מוב"מ), since all קרקע (of מוב"מ) is considered הילך. The גמרא answered that there can be cases by קרקע where it is not הילך; in a case where the defendant dug up the ground and cannot return it in the present state, unless he repairs it.

⁵ See נה"מ (and בל"י).