

**For instance, she died because of the air**      **כגון שמתה מחמת אויר -**

### **Overview**

The משנה first stated that if one rented a donkey to take it in the valley and instead took it in the mountain (or vice versa) and the donkey dies; he is liable (without any qualifications). However in the next case the משנה ruled that he is liable only if the donkey slipped in the mountain or overheated in the valley. The גמרא asks this question and explains that in the רישא it died because of the air (not הוחמה and not הוחלקה). Our תוספות explains how this resolves the difficulty.

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**פירוש<sup>1</sup> שידוע שאותו יום היה אויר משונה בהרים יותר מבקעה או איפכא משלג או ממטר -**  
**The explanation of the answer (שמתה מחמת האויר) is that it was known<sup>2</sup> that on this day there was an unusual weather (air) in the mountain more than there was in the valley or vice versa on account of snow or rain -**

**והוי תחילתו וסופו בפשיעה<sup>3</sup> -**

**So it is considered that there was negligence in the beginning<sup>4</sup> and in the end.<sup>5</sup>**

תוספות comments (anticipating a difficulty):

**ולחכי' נקט להוליכה בהר והוליכה בבקעה ולא נקט להוליכה בהר זה והוליכה בהר אחר<sup>7</sup> -**  
**And therefore it is understood why the משנה mentioned; 'to take her to the mountain, and he took her to the valley', but the משנה did not mention, 'to take her to this mountain and he took her to the other mountain, he is חייב' the reason is -**  
**משום דאין רגילות להשתנות אויר אלא מהרים לבקעות<sup>8</sup> -**

**Because it is not common that there is a change of weather (air) unless it is from the mountains to the valleys (there is usually different weather in these two locations) -**

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<sup>1</sup> The term פירוש בד"ה, indicates that תוספות is rejecting a different explanation. Here it seems תוספות is rejecting פירוש שמתה, which maintains that the משכיר can claim the air of the mountain (or valley) caused her to die.

<sup>2</sup> This (presumably) means that everyone including the שוכר was aware of this beforehand.

<sup>3</sup> The שוכר will be חייב even according to the מ"ד תחילתו וסופו באונס פטור.

<sup>4</sup> The פשיעה in the beginning is because of the possibility of הוחלקה בהר (or הבקעה).

<sup>5</sup> The פשיעה in the end is because he took the חמור to a place where there was unusual weather, which can be damaging to the חמור.

<sup>6</sup> [This means that since we are interpreting the משנה that he is חייב only if it was known that there is a weather change (not like פירוש"י [see footnote # 1] that the משכיר can merely claim [without proof] that the weather killed her), we will understand why the משנה states מהר לבקעה (or מבקעה להר) but not מבקעה לבקעה.]

<sup>7</sup> Since it was known that there was a change in weather, he is חייב even if the change was להר.

<sup>8</sup> [The משנה, by stating מהר לבקעה, is indicating to us that the death was caused by a change in weather, which occurs regularly between אר and אבקעה.]

**אבל מהר להר ומבקעה לבקעה אין דרך אויר<sup>9</sup> להשתנות:**

**However, from one mountain to another mountain, or from one valley to another valley it is not usual that there is a weather change.**

### **Summary**

The שנינו is חייב (in a case of לבקעה) only if it was known that there was a אויר.

### **Thinking it over**

Why does תוספות not agree to פרש"י (and vice versa)?<sup>10</sup>

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<sup>9</sup> The משנה teaches us this ruling where it usually can occur (which is מהר לבקעה [but not מהר להר]); however if it was known that there is a change of weather מהר להר, he is also חייב.

<sup>10</sup> See אוצר מפרשי התלמוד # 81-4.