

רבי יוסי בר חנינא אמר שמתה מחמת אובצנא -

Rabi Yosee Bar Chaninoh said, she died because of tiredness

Overview¹

ריב"ז explains that in the רישא he is חייב in a case where the donkey died because it overexerted itself. תוספות will explain the various opinions especially in regards to the ruling concerning באונס וסופו בפשיעה וסופו באונס.

שנתייגעה מחמת מלאכה -

אובצנא means that the donkey became weary on account of the work.

תוספות responds to an anticipated difficulty:

ואף על גב דמתה מחמת מלאכה² מכל מקום כיון ששינה חייב -

And even though it died on account of the work, and the rule is that a שוכר or a שואל are [פטור], if it was מחמת מלאכה, so why here is he חייב if the donkey died nevertheless, here he is חייב, since he changed from what was agreed upon -

שאם היה לו להוליכה בהר אפשר שאם היה מוליכה שם -

For if he was supposed to take her in the mountain, it is possible that if he would have taken the donkey there (to the mountain, instead of taking her to the valley) -

לא היתה מתייגעת מחמת אויר והרוח ששולט שם -

She would not have become weary, because of the air and the wind which prevails there (as opposed to the valley where the weather is different) -

או אם היה לו להוליכה בבקעה לא היתה מתייגעת שם לפי שאין טורח שם כמו בהר -

Or if he was supposed to take her in the valley, she would not have been wearied there, for it is not as difficult working in the valley as it is in the mountain -

ולהכי חייב אפילו למאן דאמר תחילתו בפשיעה וסופו באונס פטור³ -

So therefore he is חייב even according to the one who maintains תחבפוסב"א פטור.

תוספות asks:

אך על רבה דאמר כגון שהכניסה נחש קשה לרבינו יצחק בן מאיר -

¹ See 'Overview' to כגון ד"ה תוס'.

² The תוס' amends this to read מלאכה פטור (instead of מכל מקום).

³ In these aforementioned cases (where it was מחמת אובצנא) it is סופו בפשיעה (not באונס), as תוספות just explained. See previous ד"ה תוס' כגון [TIE by footnote # 3].

However, the ריב"ם has a difficulty⁴ with רבה who explained that the רישא, which states חייב, is in a case where for instance a snake bit the donkey -

אמאי נקט לדידיה הר ובקעה דהכי נמי הוה מצי למינקט בקעה ובקעה -

Why, according to רבה does the משנה mention הר and בקעה, for it could have just as well mentioned בקעה ובקעה -

אם ידוע⁵ שנמצא נחשים היום בבקעה ששינה להוליכה שם -

If it was known that there are snakes in the valley to where he changed and took her there -

דלא שייך האי קלקול להשתנות מהר לבקעה טפי מבקעה לבקעה⁶ -

For regarding this problem of snakes there is no greater difference from a mountain to a valley, than there is from one valley to another valley.

answers: תוספות

ואומר רבינו יצחק דרבה לטעמיה דאית ליה תחילתו בפשיעה וסופו באונס חייב⁷ -

And the ר"י answered that רבה follows his ruling, for he maintains תחבפוסב"א חייב -

כדמשמע בסוף פרק השוכר את הפועלים⁸ (לקמן דף צג,ב ושם) -

As it seems in the end of פרק השוכר את הפועלים regarding the shepherd. We can know this -

מדפריך ליה אביי אמאי פטור תחילתו בפשיעה וסופו באונס הוא -

Since רבה challenged there; 'why is he פטור, it is תחבפוסב"א'. This proves that רבה maintains תחבפוסב"א חייב for otherwise what is אביי asking on רבה!

והשתא אתי שפיר דלהכי נקט הר ובקעה -

And now (that we have established that רבה maintains תחבפוסב"א חייב) it is properly understood why the משנה mentions הר ובקעה (instead of הר והר) -

⁴ This question on רבה is in continuation to that which תוספות explained previously כגון [TIE footnote # 7].

⁵ previously (regarding the חייב of אור) explained that he is חייב only if it was known that the weather is different in the הר than in the בקעה (for then it is סופו בפשיעה [so he will be חייב even according to the מ"ד that תחבפוסב"א פטור]). We must therefore presume that in this answer of רבה (that הכישה נחש) it was also known that there are snakes in the place where he took the חמור (disregarding the instructions agreed upon), for if it was not known, it should be considered סופו באונס since snakes are not specifically prevalent there.

⁶ Regarding מהר we understand why the משנה stated לבקעה מהר since a change of weather is more common מהר, etc. (and the same regarding אובצנא). However, regarding the prevalence of snakes, they are found both בהר and בבקעה equally, so the משנה could have made this case where he told him to go to one בקעה (where there were no snakes), but he went to another בקעה (where it was known that there are snakes). Why does the משנה state לבקעה?! See כגון תוד"ה תוד"ה כגון TIE footnote # 9.

⁷ Therefore it is not necessary to assume that snakes were known to be there (not as was assumed in footnote # 5). We can assume that it was not known that there were snakes where he actually went, so it is סופו באונס (a snake bite is not common), but nevertheless he is חייב since it was בפשיעה תחילתו.

⁸ See previously הוחמה בתוד"ה הוחמה, where this was mentioned. [TIE (text by) footnote # 7.]

משום דהשתא הוי תחילתו בפשיעה לענין הוחמה והחלקה⁹ -

Because now (by (הר לבקעה) the הוחמה regarding תחילתו בפשיעה (הר ובקעה) it is (הר לבקעה), or (הר לבקעה), therefore even though it is סופו באונס, nevertheless he is חייב -

אבל אם שינה מבקעה לבקעה היה פטור דליכא תחילתו בפשיעה -

However if he changed מבקעה לבקעה he would be פטור for there is no תחילתו בפשיעה (and snakes are considered אונס for they are prevalent everywhere equally).

תוספות discusses an anticipated difficulty:

ובריש הכונס (בבא קמא דף נא,א ושם) דפריך ארבה דאמר¹⁰ והוא שחתרה -

And in the beginning of פרק הכונס, where רבה challenges גמרא, that the ruling of the משנה is valid only if the animal burrowed and toppled the wall. The גמרא there asked -

הניחא¹¹ למאן דאמר תחילתו בפשיעה וסופו באונס¹² פטור -

's' ruling (that if חתרה he is פטור) is justified according to the one who maintains תחבפוסב"א פטור -

אלא למאן דאמר חייב מאי איכא למימר -

However according to the מ"ד that תחבפוסב"א is חייב, what can we say?; why is he תוספות. גמרא. This concludes the citation from that חתרה since it is בפשיעה by פטור continues with the question -

הוי מצי למיפרך דרבה אדרבה דאית ליה הכא חייב¹³ אי גרס בתרווייהו רבה¹⁴ -

The there could have posed a contradiction from רבה (who seemingly maintains פטור תחבפוסב"א [otherwise how can he justify his ruling that חתרה is פטור]) to רבה here who maintains חייב תחבפוסב"א¹⁵. This would be a valid question if the text in both places reads רבה.

⁹ Based on that which תוספות mentioned previously הוחמה [TIE text by footnote # 2] that even according to the חייב באונס, it will be necessary to say that had he gone to the place which they agreed upon, it is possible that there would not have been a snake there, however since he went elsewhere therefore she was bit by a snake (see מהרש"א).

¹⁰ רבה is referencing the משנה (on נה,ב) which states that if נפרצה בלילה (the wall of the stable was breached at night) and the animal escaped and did damage, the owner is פטור from paying damages. רבה qualified that this ruling is valid only if the animal caused the wall to be toppled, otherwise he is חייב because (presumably) it was a faulty wall.

¹¹ The גמרא there assumes that the ruling of רבה (that by חתרה he is פטור and by חתרה he is חייב) is by a weak wall that may collapse at any time.

¹² This is a case of תחילתו בפשיעה for he placed his animal in a stable with faulty walls, however it is סופו באונס since in actuality the walls collapsed only because חתרה (which is unusual).

¹³ תוספות is pointing out that since we are assuming here that our סוגיא is a case of תחבפוסב"א and therefore he is חייב תחבפוסב"א חייב (here) maintains רבה; proving that נחש הכישה; proving that רבה maintains (here) חייב תחבפוסב"א.

¹⁴ There is the possibility that in one of these places the גירסא, רבא, therefore there would be no contradiction.

¹⁵ תוספות does not explain why indeed the גמרא did not pose this contradiction. However according to the conclusion of תוספות, this will be understood.

concludes: תוספות

והשתא¹⁶ כל אלו אמוראים שבאין לתרץ סוברים כרבא דאמר¹⁷ מלאך¹⁸ המות מה לי הכא כולי -
So now we must assume that all these אמוראים¹⁹ which are coming to answer why in the רישא he is חייב (even if it was not הוחמה or הוחלקה), they all agree with דלאבבי דאמר הבלא דאגמא קטלה אתי שפיר מתניתין בלאו הני שנויי -²⁰
For according to אבבי, who argues with רבא and maintains he is חייב for we assume that the (fetid) air of the marsh killed it, our משנה will be properly understood without all these answers of the aforementioned אמוראים -

וחייב אפילו מתה כדרכה דאמר הווא אוירא שהולכה שם קטלה -
For he will be חייב even if it died naturally, for we will say the air of the place to where he led her, killed her -
אף על פי שאין ידוע שיהא אותו אויר רע כלל יותר מאויר אחר -

Even if it is not known that this air is at all worse than any other air -

responds to an anticipated difficulty: תוספות²¹

דלאו דוקא נקט הבלא דאגמא²² הוא הדין כל שינוי אויר כדמוכח בשמעתין דהתם²³ -
For when אבבי mentioned הבלא דאגמא it was not limited to דאגמא exclusively, for the same rule will apply to any change of air as is evident in the גמרא there.

responds to an anticipated difficulty: תוספות

והא דנקט בסיפא הוחלקה בהר והוחמה בבקעה חייב -

¹⁶ This conclusion is based on the assumption that להולכה בהר והולכה בבקעה or the reverse, is a case of בפשיעה (regarding הוחמה or הוחלקה).

¹⁷ [See previous תוס' ד"ה הוחמה (TIE by footnote # 6).] maintains רבא (לעיל לו,ב) that if the שומר was פושע by not watching the animal (which is בפשיעה), and it went to a marsh and died (סופו באונס) that he is פטור, (even if we maintain חייב since the מלאך המות would have killed it wherever it was).

¹⁸ This means it makes no difference to the מלאך המות whether the cow is in the barn or in the marsh; it would die in any case.

¹⁹ דבי ר' ינאי, ר' יוסי בר חנינא, רבה, ר"ה ב"א אמר ר' יוחנן.

²⁰ Since they agree with רבא (who maintains מה לי הכא וכו'), they need to find an explanation why he is חייב in the רישא (for even though he was לבקעה מהר, משנה מהר לבקעה nevertheless); we should say מלאך המות וכו'. It is no different from פטור where he is פושע בה ויצאה לאגם according to רבא.

²¹ Seemingly אבבי only said הבלא דאגמא קטלה (perhaps because a marsh is known to have fetid air), so how can we use this argument to say that any (other) air caused her death.

²² The דאגמא הוא amends this to read דאגמא הווא (instead of הווא דאגמא).

²³ See the סוגיא there on לו,ב where רבי בר חמא asked from the case where he brought the animal up to the peak of a mountain that if she died כדרכה he is פטור; but why, let us say דהר קטלה. We see that it is not only דאגמא. (See also אין בתוד"ה אין.)

And this which the משנה mentions in the סיפא that if it was הוחלקה בהר or הוחמה **he is חייב**, indicating that if it merely died (without הוחלקה or הוחמה) he would be פטור, this is in contradiction to what תוס' said according to אב"י, therefore we must say -

הוא הדין מתה כדרכה כיון דהוי תחילתו בפשיעה -

That the same rule applies even if it died naturally, since it was תחילתו בפשיעה, he is חייב, because we can blame it on the change of the air, so the question remains why did the משנה state that he is חייב (only) if it is הוחלקה or הוחמה?!

אלא משום דבפטור דהר תני הוחמה²⁴ **אשמועינן אף על גב דחימום הוי בהר טעמא לפטור -**

Rather we must say that since by the פטור of the הר, the משנה states הוחמה, therefore the משנה wished to inform us that even though overheating in the mountain is a reason to exempt him, nevertheless -

בבקעה לא מיפטר בהכי²⁵ **אלא אדרבה הוי טעמא לחיובא -**

In the valley he is not exempted if it was הוחמה (and he was supposed to take it (בהר), **rather on the contrary, הוחמה in a בקעה is a reason to be חייב.**

תוספות asks:

ואם תאמר והא שמעינן ליה מרישא דאפילו מתה כדרכה חייב -

And if you will say; but we can know this (that הוחמה בבקעה and הוחלקה בהר is **חייב** from the רישא, for since even if she died naturally he is liable (this is what we know from the רישא [according to אב"י]) -

משום דהוי תחילתו בפשיעה לענין הוחלקה בהר וחימום בבקעה -

Because it is תחילתו בפשיעה regarding הוחלקה in the mountain or הוחמה in the valley (if he changed its destination), so -

כל שכן כשמתה על ידי החלקה דהר וחימום דבקעה דמחייב²⁶ **-**

So he is certainly חייב if she died through הוחלקה בהר or הוחמה בבקעה, so why is the entire סיפא of חייב בבקעה and הוחמה בהר, necessary at all?!

תוספות answers

ויש לומר דאי לאו אשמעינן בסיפא -

And one can say; that if the משנה would not have informed us in the סיפא that - פשיעה הוחמה בבקעה and הוחלקה בהר

לא הוה ידעינן אמאי חשיב לה ברישא תחילתה בפשיעה לחייבו אפילו במתה כדרכה -

²⁴ In this case (of הוחמה בהר) he is פטור even according to אב"י, because we cannot say she died because of the אויר, when we know she died because of the heat, and therefore she certainly would have died בבקעה.

²⁵ One might have thought that since the משנה teaches us that הוחמה בהר is פטור, this means that the rule of אב"י (that (להולכה בהר והולכה בבקעה) is only when it died naturally but not by הוחמה even בבקעה (if it was הוחמה בבקעה), therefore the משנה teaches us that הוחמה בבקעה is חייב (even more than כדרכה).

²⁶ Once we know from the רישא that by changing the destination it is תחילתו בפשיעה, so certainly in the cases of where it is also בפשיעה הוחמה בבקעה or הוחלקה בהר, that he is definitely חייב.

We would not have known why in the רישא is it considered בפשיעה (just because he changed the destination) so that he should be liable if it died naturally.²⁷

תוספות asks:

ואם תאמר ולרבא²⁸ וכל האמוראים דהכא דפטרי במתה כדרכה²⁹ -

And if you will say, and according to רבא and all the אמוראים here, who exempt him, by מתה כדרכה -

אמאי תני בסיפא הוחמה בהר והוחלקה בבקעה דפטור -

Why does the משנה state in the סיפא that he is פטור if בבקעה בבקעה -

הוי ליה לאשמועינן טפי מתה כדרכה דפטור דלא נימא איירא דההוא אתרא קטלה -

The מתה כדרכה should have informed us of a greater novelty that even by כדרכה he is פטור; that we do not assume that the air of that place killed her (as אב"י maintains), so therefore -

כל שכן הוחמה בהר והוחלקה בבקעה דודאי אילו לא שינה היתה מתה בענין זה³⁰ -

He is certainly פטור if בבקעה בבקעה or הוחמה בהר, for if he would not have changed the destination she certainly would have died in this manner (by הוחמה הוחמה and בבקעה)?!

תוספות answers:

ויש לומר דמשום דבחיובא דהר תני הוחלקה תני לה נמי בפטורא דבקעה³¹ -

And one can say; that since by the חיוב בהר the משנה taught הוחלקה, therefore the משנה also taught הוחלקה by the פטור of בקעה (to make the משנה symmetrical).

תוספות offers an alternate answer:

ועוד נראה דפטורא דחימום בהר והוחלקה בבקעה הוי רבותא טפי ממתה כדרכה -

²⁷ If not for the סיפא we would have to search for reasons why he is חייב in the רישא (perhaps we would use the answers which the אמוראים gave [אירא דהר, אובצנא וכו'], but we would not know the קולא וחומרא of הוחמה and הוחלקה [in a (הר ובקעה)]. We may therefore have thought that the ruling would be the same by a דהר regardless whether it was בבקעה or הוחמה. However now we know that הוחמה בבקעה and הוחלקה בהר is the פשיעה.

²⁸ מלאך המות מה לי הכא מה לי התם maintains רבא.

²⁹ They all require special circumstances to be מחייב in the רישא (like אובצנא דהר, אירא דהר); otherwise he is פטור (because (מלאך המות מה לי הכא מה לי התם).

³⁰ When she died כדרכה we can argue that the change of the air caused her death, and if there would have been no change she would not have died, but now that we say that even כדרכה במתה he is פטור, so if it was הוחמה בהר (which is unusual) he is surely פטור, for if he would gone to the בקעה as agreed upon, she certainly would have been הוחמה and died!

³¹ However, indeed it would have been a greater חידוש if the משנה taught the פטור by כדרכה (and we would have known with a כ"ש the פטור of הוחמה בהר and הוחלקה בבקעה).

And furthermore it seems, that the exemption from paying by **חימום בהר** or **הוחלקה בבקעה**, is a greater novelty than the **פטור** by **מתה כדרכה** -

דאדם יכול ליזהר בהני טפי יותר ממתה כדרכה והוה לן למימר שפשע במה ששינה -

For a person can be more careful to avoid **הוחלקה בבקעה**, **חימום בהר**, more than he can prevent **מתה כדרכה**, so we should have assumed that he was negligent in that he changed the destination -

שאם היה מוליכה בהר היה מדקדק יפה ושומרה יפה -

For if he would have taken her to the mountain (or to the valley) as agreed upon he would be very careful and watch her properly -

שלא תחלוק בהר ושלא תתחמם בבקעה אבל מה ששינה גורם שלא דקדק³² -

That she should not either slip on the mountain or overheat in the valley, but now that he changed the destination, this caused that he was not careful and therefore he should be **חייב**, so the **משנה** teaches us that nevertheless he is **פטור**.

Up to this point **תוספות** assumes that **להוליכה בהר והוליכה בבקעה** (or vice versa) is considered **תחילתו**, and therefore according to **אביי** he will be **חייב** if **שינה** even if **מתה כדרכה**. Now **תוספות** will reject this assumption.

ומיהו דוחק הוא שיחלוק אביי על כל האמוראים³³ -

However, it is implausible that **אביי** should argue on all the **אמוראים**.

תוספות recants from his previous position:

לכך נראה דלא חשיב הכא פשיעה במה ששינה³⁴ -

Therefore it seems that here it is not considered **תחילתו בפשיעה** because he changed the destination. It is not a **פשיעה** -

דיכול ליזהר ולדקדק יפה שלא תחלוק בהר ושלא תתחמם בבקעה -

Because he can be careful and very precise to assure that she will not slip on the mountain and not be overheated in the valley -

ומודה אביי הכא דפטור במתה כדרכה כיון דלא הוי תחילתו בפשיעה -

So **אביי** will agree here that he is **פטור** if **מתה כדרכה** since it is not **תחילתו בפשיעה** when he was supposed to go **בהר** and went **בבקעה** (or vice versa) -

³² Let us assume the case where he was to take her in the valley (where it is hot); if he would have taken her in the valley he would be careful to see that she does not overheat, since this is prone to happen in the valley. The fact is that he took her to the mountain, and he assumed that here I do not have to be careful that it should not overheat, for this is the mountain (and the owner even agreed for me to take it in the valley and was not concerned for overheating, so there is no need to be careful in the mountain. One may have thought that he should be **חייב** (more than **מתה כדרכה** [which is **פטור**]), the **משנה** teaches that nevertheless he is **פטור** even by **הוחלקה בבקעה**.

³³ All the **אמוראים** mentioned here maintain that the reason he is **חייב** in the **רישא** is because of special circumstances, when according to **אביי** (as we understood till now) he will be **חייב** even if **מתה כדרכה** since it is **תחילתו בפשיעה**.

³⁴ See 'Thinking it over'.

³⁵ responds to an anticipated difficulty: תוספות

ורבה דמשני כגון שהכיש נחש-

And רבה who explained the רישא is in a case where for instance a snake bit her - צריך לומר שפעמים מצויים נחשים בהרים מבקעה³⁶ או איפכא להכי נקט הר ובקעה³⁷ -

It will be necessary to say that occasionally snakes are found more often in the mountains that in the valley, or sometimes it is the reverse, therefore he mentions הר ובקעה -

ואתי שפיר לרבה אפילו תחילתו בפשיעה וסופו באונס פטור:

And the משנה would be properly understood according to רבה even if he maintains that תחבפוסב"א פטור because here it is סופו בפשיעה, for we can argue that the snakes were more prevalent in the place where he went.

Summary

Changing from הר to בקעה (or the reverse) is not considered תחילתו בפשיעה.

Thinking it over

concludes that להוליכה בהר והוליכה בבקעה (or the reverse) is not considered תוספות. Why is it then that if השכירו להוליכה בהר and he took her להר and להוליכה בבקעה והוליכה בהר והחלקה, he is פטור, but if השכירה להוליכה בבקעה והחלקה, he is חייב? What is the difference between these two cases, since there was no פשיעה here?!

³⁵ asked previously (see footnote # 4), according to רבה, who established the רישא in a case of נחש, why does the משנה state מהר לבקעה (or vice versa) it could state even מבקעה לבקעה or מהר להר, since (according to תוספות) [see also כגון (תוד"ה כגון)] he is חייב only if it is known that there are נחשים in the other place. תוספות initially assumed that נחשים are not more frequent either בהר or בבקעה. Previously תוספות answered that since רבה maintains חייב תחבפוסב"א, therefore he is חייב even if it was not known that there were נחשים in the other place. הר ובקעה were mentioned to make it a case of תחבפוסב"א regarding הוחמה והחלקה. However, now that תוספות concluded that הר ובקעה are not considered תחילתו בפשיעה, we seemingly have to say that it was known that נחשים are to be found in the other place, so the question remains why mention מהר לבקעה, when it could have been even מהר להר or מבקעה לבקעה.

³⁶ is recanting from what he previously stated (see footnote # 6 and 34) that there is no reason to assume that snakes are more prevalent either in הר or בבקעה. However here תוספות maintains that we will need to assume that sometimes snakes are more prevalent either in הר or בבקעה.

³⁷ We still maintain that it was not specifically known that there were snakes in the other place, rather he is חייב because there is that possibility that snakes were more prevalent in the place where he went than in the place where he was supposed to go.

³⁸ See footnote # 34.

³⁹ See 100-102. אוצר מפרשי התלמוד