

## ואם יש בדמיה לשכור ישכור רב לטעמיה -

**If it has sufficient funds to rent, he should rent; Rav follows his ruling**

### Overview

The גמרא established the ruling of רב (that לו שכרו של (he said <sup>1</sup>, חמור זה) in a case where one cannot buy another donkey with the value of the carcass. The גמרא asked, but let the שוכר rent another donkey with the value of the carcass; the גמרא answered that רב maintains קרנא לא מכלינן. Our גמרא reconciles our גמרא with a seemingly contradictory גמרא.

-----  
הוה מצי לשנויי דאין בדמיה לשכור<sup>2</sup> אלא רוב פעמים יש בדמיה לשכור והאמת משני ליה -  
The גמרא **could have answered that there is not sufficient value** in the carcass even **to rent** another donkey; **but** the reason the גמרא did not answer this is because **generally there is sufficient money to rent** another donkey, **and** additionally, the גמרא offered **the true answer**; that even if there were enough money to rent, he is not permitted according to רב who maintains קרנא לא מכלינן.

anticipates a difficulty:

והא דאמר בסוף פרק השואל (לקמן דף קג,א) אי דאמר בית זה<sup>3</sup> ונפל אזדא לה -  
**And regarding this which the גמרא states in the end of פרק השואל; if owner said, 'I am renting you this house', and it collapsed, it is gone;** the משכיר is not obligated to provide the tenant with a new house. This concludes the citation from the גמרא. Tosfos continues with the question -

**ולא אמר אם יש בדמיה לרב ליקח יקח ולשמואל אפילו לשכור ישכור -**  
**And the גמרא there does not rule if there is sufficient value in the rubble, to buy** another house, **so according to רב he should buy, and according to שמואל, even** if there is only sufficient funds **to rent** another house **he should rent**. Why is it that by the חמור he needs to either buy (according to רב) or rent (according to שמואל) another donkey with the money of the carcass, but by the house there is no such requirement and the משכיר has no obligation to provide him with another house, with the money of the remaining rubble.

<sup>1</sup> See footnote # 3.

<sup>2</sup> The גמרא answered previously that there is not enough value in the carcass to purchase another donkey (even though the questioner assumed that there should be enough money), so the גמרא could have answered here as well that there is not enough money even to just rent another donkey.

<sup>3</sup> See footnote # 1.

replies: תוספות

**דהתם אין הבית עומד לימכר אלא להוסיף עליו ולחזור ולבנותו כבתחילה -**

**For there (regarding the house), the ruins of the house is not meant to be sold, but rather to improve on it and rebuild it as it was initially -**

**וכיון דאמר ליה בית זה ונפל אין למוכרו וגם<sup>4</sup> לא קבל עליו להוסיף יציאה בבנין בית זה -**

**Therefore since he (the משכיר) said בית זה, and it collapsed, the משכיר is not required to sell the ruins (since he intends to rebuild it), and the משכיר did not accept upon himself the obligation to add more expense in building this house for the benefit of the שוכר -**

**אלא בית זה כמו שהוא השכיר לו לדור בו כל זמן שיוכל וכי נפל אזדא -**

**But rather the משכיר rented to the שוכר this house 'as is', as long as the שוכר can live there, so when it collapsed, it is gone, the משכיר need not repair it or find him another house -**

**אבל חמור שמת אין עומד אלא למכרו בדמים ולכך יש בדמיה ליקח יקח לשכור ישכור:**

**However when a donkey dies, it is not meant for anything else, except to sell it for its value, so therefore if there is sufficient funds to buy another donkey it should be bought, and if there are funds only for renting, one should rent another donkey according to שמואל.**

### **Summary**

Regarding a collapsed house (which is meant to be rebuilt), the owner is not required to provide him with another house (with the money of the ruins), however by a dead donkey whose carcass is meant to be sold, the owner is obligated to buy (or rent [according to שמואל]), with the proceeds of the carcass.

### **Thinking it over**

What would be the ruling if the donkey (which was already rented by the שוכר) died before setting out on the trip; is the משכיר obligated to supply him with another donkey (from the proceeds of the carcass), or not?<sup>5</sup>

<sup>4</sup> This explains why the משכיר is not obligated to repair the house and allow the שוכר to live there. When the משכיר said בית זה; it means the house as is, and he is not accepting upon himself to make any improvements for the benefit of the שוכר.

<sup>5</sup> See # 43. אוצר מפרשי התלמוד.