

The Mishnah taught; it is as difficult as the weight – קשה כמשאוי תנן

OVERVIEW

The משנה stated if one rented a donkey¹ to carry wheat,² but he actually carried barley on it (and the animal was injured) the שוכר is liable, for the volume (נפח) is as difficult for the animal to handle as is the weight (משאוי);³ this is the text according to אביי (שהנפח קשה כמשאוי).⁴ According to רבא the text in the משנה reads שהנפח קשה למשאוי that the volume contributes to the weight⁵ (but not that it is the equivalent of weight, as אביי maintains). תוספות explains the משנה according to both views.

לאביי סיפא דקתני כמה יוסיף קאי לפרש רישא⁶ -

According to אביי the סיפא of the משנה, which states; how much does he need to add, in order to be liable', comes to explain the רישא.

[ולרבא רישא] דקתני להביא עליה חטין והביא עליה שעורין -

[And according to רבא the רישא], which states, 'he was to bring wheat on the donkey, but instead he brought barley on it' (where he is חייב) -

היינו בכובד החטין⁷ שהוא סאה כדמוכח בשמעתין⁸ חייב דניפחא הוי תוספת⁹ -

That is in a case where the weight of the barley was like the weight of a חטים, which means he added a סאה, as is evident in our גמרא; in this case he is חייב, for the greater volume is an additional burden which the donkey cannot bear.

¹ A donkey can bear the load of a לתך (fifteen סאה) of wheat. If one adds three קבין (half a סאה) more to the load, he is liable for damages to the donkey. The קב, סאה, לתך are measures of volume (not weight).

² Wheat is more compact and heavier than barley. A לתך of wheat weighs more than a לתך of barley.

³ This means that it is just as difficult for a donkey to carry a לתך of שעורים (which is lighter) as it is to carry a לתך of חטים (which is heavier), since they both have the same volume and כמשאוי.

⁴ According to אביי if one would add three more קבין of barley to the לתך of barley (one thirtieth more), he would be liable (see footnote # 1), even if the total weight is less than a לתך of חטים.

⁵ According to רבא the שוכר will not be liable unless the total weight of the barley is (at least) equal to the weight of a לתך of חטים (by adding a סאה [six קבין]). He is liable because the additional volume (alone) is difficult for the animal to bear (even though it can carry that weight in a smaller volume of a לתך of חטים).

⁶ The רישא stated that if he substituted שעורין for חטין he is liable. It obviously cannot mean that he loaded the donkey with a לתך of שעורים instead of a לתך of חטים that he is חייב, for he lightened the load. The סיפא of the משנה explains that the רישא (which says חייב) is in a case where he added (a סאה לגמל or) three קבין for a חמור. See footnote # 4. [This סיפא can also be referring to a case where the שוכר did not change (see footnote # 14).]

⁷ The meaning (according to רבא) of והביא חטין is that he brought the same weight of שעורין as is the weight of a חטין; meaning he brought sixteen סאה שעורין instead of fifteen סאה חטין. Obviously the שעורין had a greater volume.

⁸ See the גמרא on this עמוד, which states לא סאה שלשת קבין, לא סאה.

⁹ See footnote # 5.

10: רבא continues to explain the rest of the משנה according to רבא:

להביא לתך חטין והביא לתך שעורים פטור -

‘He was to bring a לתך חטין, but he brought a לתך שעורים instead, he is פטור’; this ruling is valid (according to רבא) -

אפילו¹¹ הוסיף ג' קבין לחמור¹² דליכא תקלא כי תקלא¹³ -

Even if he added three קבין (לתך) for a donkey, since there is no ‘weight (of שעורין) like the weight (of חטין)’.

מ: משנה explains the end of the תוספות:

והיכא דלא שני¹⁴ אלא שהביא מין שהתנה כמה יוסיף על משאו ויהא חייב סאה לגמל כולי:

And in a case where he did not change, but he brought the kind which they agreed upon, ‘how much does he need to add on his load and be liable; a סאה for a camel, etc. and three קבין for a donkey’.

SUMMARY

The סיפא according to אב"י explains the רישא (also), while according to רבא the סיפא is only in a case where he did not change from חטין to שעורין.

THINKING IT OVER

Why is תוספות explaining the (rest of the) משנה according to רבא,¹⁵ but not according to אב"י?¹⁶

¹⁰ See ‘Thinking it over’.

¹¹ תוספות is responding to the anticipated question since according to רבא the רישא states the he is חייב only if the שעורין weigh as much as the חטין, meaning that there is more than a לתך שעורין, so why is it necessary to write in this case that if there was a לתך שעורין he is פטור? It is obvious, since it is less weight that a לתך חטין.

¹² However according to אב"י he will be liable if he added three קבין to the לתך. According to רבא, the משנה is rejecting the view of אב"י (this explains the question on footnote # 11).

¹³ According to רבא the extra volume poses no problem if the weight of the barley is less than the weight of the wheat. They weigh the same when he adds a סאה (six קבין) to the לתך, but not three קבין.

¹⁴ This is true according to אב"י as well (see footnote # 6) that if he did not change, etc. however the same rule applies (even) if he did change from a heavier load (חטין) to a lighter load (שעורין) that he is liable for an additional three קבין.

¹⁵ See footnote # 10.

¹⁶ See # 29 אוצר מפרשי התלמוד (ע"ז).