

## And it died naturally by the thief

## ומתה כדרכה בי גנב-

### Overview

The revised story with מרימר was that the mules were stolen from the בי חוזאי and it died by the thief. The assumption was that it was שמירה בבעלים so the חוזאי should be פטור, but it turned out that it was not שמירה בבעלים.

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תוספות asks:

ואם תאמר מה צריך לומר דמתה בי גנב<sup>1</sup> -

**And if you will say; why was it necessary for the גמרא to say that it died by the thief;** this (seemingly) has no relevance to the case –

תוספות answers:

ויש לומר משום דבזה טעו אותם<sup>2</sup> שסברו שמתה בפשיעה:

**And one can say;** the גמרא mentions this detail that ומתה כדרכה בי גנב, **because this caused the רבנן to assume that the mule died בפשיעה.**

### Summary

The fact that it died by the גנב explains why the רבנן (initially) assumed that it died בפשיעה.

### Thinking it over

Initially we assumed that the חוזאי were פושע and it died. The מסקנא was that they were not פושע, but rather it was stolen. The גמרא had to explain the fact that it died (there was no mistake regarding its death), therefore the גמרא said it died בי גנב. What is תוספות question?!

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<sup>1</sup> See 'Thinking it over'.

<sup>2</sup> The רבנן argued (in the original version) that it is פשיעה בבעלים (and they should be פטור). However how did the רבנן know that it was a פשיעה? Now that we say that it actually died, and רבא held them liable it must mean it died בפשיעה for otherwise a שוכר is פטור for אונסין. Therefore the רבנן asked; 'it is פשיעה בבעלים' (in the original version). Eventually it was realized that there was no פשיעה only גניבה.