

## It died; they are not liable for a mishap

## מתה אין חייבין באונסין -

### Overview

ר"ב ruled that if a father died and left over a borrowed animal to his heirs, they may use it for the period it was borrowed for. If the animal died the heirs are not liable for an unavoidable mishap. תוספות discusses other aspects of their liability.

אבל<sup>1</sup> בגנבה ואבדה נראה לרבינו יצחק שהן חייבין דהואיל ונהנין<sup>2</sup> דמשתמשין בה -

However, it is the view of the ר"י that regarding the cow being stolen or lost, the heirs are liable, since they benefit from it, for they are using it -

והכי<sup>3</sup> אמר בהשואל (בבא מציעה צו,א. ושם):

And this is also what אמימר said in [האומנין] (השואל) פרק.

### Summary

The heirs are liable for גניבה ואבידה.

### Thinking it over

How do we understand this difference that concerning אונסין, the heirs are not liable (even though they are using it for free), since they never accepted upon themselves the liability of a שואל<sup>4</sup>, but when it comes to גו"א they are liable (as a שכר שומר) since they derived benefit from it; but they never accepted to be a ש"ש, just as they never accepted to be a שואל, so why should they be חייב for גו"א?!

<sup>1</sup> Only a שואל is liable for אונסין, however the heirs never took upon themselves the liability to be a שואל.

<sup>2</sup> A שומר שכר (as opposed to a שומר חנם) is liable for גניבה ואבידה, since he is deriving some benefit from watching it (his payment). These heirs are also deriving a benefit from the cow (they are using it) therefore they should be liable for גניבה ואבידה.

<sup>3</sup> The גמרא in פרק הגמרא amends this to read, והכי אמרינן בהאומנין (פא,א), instead of (צו,א). The ר"י queries what is the ruling in a case where the שואל sent the item back to the owner after the period of שאלה (without the owner requesting him to return it), is he חייב בגנבה ואבידה (on its way back) or not. אמימר responded that he is liable since he derived benefit from this item (during the שאלה period) so he is willing to be grateful to the owner (הואיל ונהנה מהנה) and be responsible for גניבה ואבידה. Here too by the heirs, even though they did not take the responsibility of being a שואל, nevertheless והנה, they received a benefit from this פרה, therefore מהנה, they are willing to appease the owner and be liable for גו"א. See 'Thinking it over'.

<sup>4</sup> See רש"י ד"ה אין.