

## אבל ארישא לא והיינו דרב פפא -

**However, not on the *Raishoh*, and this is like *Rav Pohpoh***

### Overview

ר' פפא ruled that a שואל becomes liable for אונסין, only when the אונס occurs (but not from when he took possession of the item). The גמרא cited a ברייתא that if the שואל died and left over the borrowed cow to his heirs, they are not liable for אונסין. If they mistakenly assumed it belonged to their father and slaughtered it and ate it, they must pay the cheaper price for the meat. The ברייתא concludes that if the father left over property, the heirs are liable. According to one interpretation, the end of the ברייתא is referring to the last case (where the heirs ate it), but not to the first case (of אונסין), where the estate will not be liable for אונסין even if the father left over property; and this is in accordance with the ruling of ר' פפא, that there was never any obligation on the father's estate to pay for אונסין, since during the father's lifetime there was no אונס, and his obligation begins only after the אונס happens. Therefore, the estate is not liable for the אונסין, which happened by the heirs. תוספות clarifies this issue.

### דלא אמרינן משעת שאלה חייב באונסין -

**For we do not say that the שואל is liable for the אונסין from the time it was borrowed,** but rather from the time the אונס happened (according to ר"פ).

תוספות asks:

**ואם תאמר אם כן בסיפא נמי בשטבחוה אמאי משלמין כשהניח להן אביהן אחריות נכסים -**  
**And if you will say; if indeed it is so (that there is no obligation on the father's estate until the time of the mishap), why do they pay even in the סיפא, when the father left over an estate of property -**

**הא לא נתחייב בהן האב<sup>1</sup> -**

**Since the father's estate never was liable,** for nothing happened during the father's lifetime –

תוספות answers:

**ויש לומר דהתם פשע בה האב שהיה לו לומר לבניו שאינה שלו -**  
**And one can say; that there in the סיפא (where they ate it) the father was negligent, for he should have advised his sons that the cow is not his -**

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<sup>1</sup> Why is there a difference between the רישא, where the estate is not liable (since no mishap occurred during the father's lifetime), and the סיפא where the estate is liable (even though no mishap occurred during the father's lifetime)?!

**הלכך מחיים פשע בה ונתחייב בה באותה שעה ונשתעבדו נכסיו:**

**So therefore, he was negligent while he was still alive, and at that time (when he should have told them) he was liable, so his estate was subjugated to a lien.**

### **Summary**

When the heirs ate it, the father was a פושע for not informing them that it is not his, so his estate is משועבד for the damage.

### **Thinking it over**

What would be the ruling in a case where the father was פושע (he did not inform them that it is not his), however the heirs did not eat it, rather an אונס happened, is the estate liable (since he was a פושע), or not (since his פשיעה did not cause any loss)?<sup>2</sup>

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<sup>2</sup> See אבן ישראל and רשב"א