

אי מה שור המועד עד נגיחה רביעית כולי – If you will argue; just as a forewarned ox, until the fourth goring, etc.; he is not liable

Overview

The תורה writes¹ that if an ox gores another ox he pays half the damage. This is known as a שור תם. However, continues the פסוק that 'או נודע כי שור נגח הוא מתמול' – that 'if it was known that he is a goring ox from yesterday and the day prior to that and the owner did not watch him, etc.', then he must pay full damages². He is considered a שור המועד. We derive from the phrase 'מתמול שלשום ולא ישמרנו' the rulings of a שור המועד. Specifically there is a dispute between רבא and אביי how this is derived from the פסוק. פוסקים will cite רש"י's interpretation, elsewhere, of their dispute, and show that our גמרא here refutes רש"י's interpretation, to the extent that רש"י himself retracted that interpretation.

– From the גמרא here, רש"י retracted – מכאן חזר בו רש"י

– from that which he interpreted in מסכת ב"ק – ממה שהיה מפרש בבבא קמא (דף כג, ושם דיבור המתחיל ולא)

רבא and אביי – concerning the dispute between גבי [הא³] דפליגי אביי ורבא

– דאמר אביי – for אביי says –

תמול – yesterday, refers to one goring⁴. The additional letter 'מ' in the word –

מתמול – from yesterday, refers to a second goring. The word –

שלשום – before yesterday, refers to a third goring. The פסוק continues –

– and the owner will not watch their ox. This phrase –

– comes to teach us a fourth goring. That is when he is a שור המועד, and pays full damages. This concludes the opinion of אביי.

however רבא maintains that we do not derive two gorings from the fact that the תורה could have written תמול and instead writes מתמול, but rather the word –

מתמול, even though it could have been written תמול, nevertheless it refers to only one goring. This concludes the quote from the גמרא.

According to אביי the phrase 'ולא ישמרנו בעליו' is referencing the fourth goring, and according to רבא it is referring to the third goring. רש"י there explains that the practical difference between אביי ורבא is as follows:

¹ משפטים כא, לה-לו.

² There is another difference between a שור תם and a שור מועד. A שור תם is liable for damages only up to the amount that the שור תם itself is worth (מגופו). By a שור המועד there is full liability regardless of what the שור המועד is worth (מן העלייה).

³ See הגהות הב"ח.

⁴ The תורה writes 'מתמול' – from yesterday. It could have written תמול; therefore from the word 'תמול' we derive one day's goring, and from the extra 'מ' we derive a second day's goring.

that the owner is not liable to pay the full damages of a שור המועד until the **fourth goring**. For the first three gorings he pays the חצי נזק of a שור תם.

and רבא maintains that the owner is liable for damages **by the third goring**⁵. This is how רש"י (in ב"ק) interpreted the מחלוקת between רבא and אב"י. However רש"י retracted this interpretation;

for if this interpretation is correct, that רבא maintains that by the third גניחה he is a מועד, then –

the גמרא here, that states explicitly that a שור המועד is not liable for full damages until the גניחה רביעית, this גמרא **will have concluded –**

not according to the הלכה; since רבא maintains, according to רש"י, that he is a שור המועד by the third גניחה –

for we (always) establish the law according to רבא when he disputes אב"י⁶. The הלכה therefore should be that he is a מועד by the third גניחה. Why therefore, according to רש"י, does the גמרא here follow the opinion of אב"י and state that he is a שור המועד only by the fourth גניחה?

Therefore on account of the גמרא here –

רש"י **retracted** that interpretation⁸. רש"י agrees that according to both an ox does not become a מועד until the גניחה רביעית.

and רש"י subsequently interpreted that the difference between רבא and אב"י, is in the derivation process of the rule of a שור המועד. According to אב"י the phrase ולא ישמרנו בעליו is referring to the fourth goring for which the owner is liable for שור המועד payments. רבא, however maintains that ולא ישמרנו בעליו is referring to third goring as a תם. It is after this third goring of ולא ישמרנו בעליו that the owner is liable on the fourth goring for שור המועד payments. Both אב"י and רבא agree that שור המועד payments are made only from the fourth goring onwards. There is no difference להלכה between רבא and אב"י. They only argue as to how we derive this rule from the פסוק.

offers another explanation, wherein the dispute between רבא and אב"י has practical ramifications.

and ה"ר עזרא explains:

that it is certain, that according to everyone; both רבא and אב"י agree that the owner –

is not liable for שור המועד payments **until the fourth goring** –

however their argue as follows –

⁵ Both אב"י and רבא agree, according to this רש"י, that 'ולא ישמרנו' is referring to the goring of a שור המועד.

⁶ Except for six cases which are referenced as יעל קג"ם.

⁷ See הגהות הב"ח.

⁸ (and the commentaries) does not state where this retraction is found.

⁹ In והר"ר עזריאל ב"ק כג, (כד, תוס' ד"ה ולא) he is referred to as עזריאל.

נגיחה רביעית – that according to אב"י who derives the fourth
–

ולא ישמרנו בעליו of פסוק – מקרא דלא ישמרנו; as mentioned previously this מועד נגיחה is referring to the fourth, then –

אם נגח נגיחה רביעית ביום ג' – if he gored the fourth on the third day; the same day that he gored the third –

he is not liable for מועד payments. **לא מחייב**

– unless he gores on the fourth day; the day after the third **עד שיגח ביום רביעי** נגיחה.

– דלא ישמרנו קאי אימים – for phrase ולא ישמרנו refers to days –

– yesterday and before **תמול שלשום** – similar to the phrase **דומיא דתמול שלשום** **yesterday**, which refer to days. Therefore just as תמול and שלשום are separate days, so too is נגיחה רביעית, which refers to the fourth, a separate day¹⁰.

– אב"י, רבא – however according to **רבא**, that the phrase ולא ישמרנו בעליו is still referring to the third נגיחה of a תם, it is apparent –

– דנגיחה רביעית לא כתיבא בהדיא – that the fourth is not written explicitly; it is merely inferred; it cannot be compared to מתמול שלשום which are written explicitly. Therefore -

– אפילו ביום שלישי אם נגח נגיחה רביעית מיחייב **even if he gored the fourth goring on the third day,** that same day that he gored his third נגיחה, nevertheless the owner **will be liable** for מועד payments.

Summary

Originally, אב"י ורבא maintained that there is a dispute between אב"י whether a נזק שלם on the third נגיחה – רבא, or on the fourth נגיחה – אב"י. However from our גמרא it is evident that all agree that a נזק שלם pays a נזק שלם only at the fourth נגיחה. Their dispute may be whether the fourth נגיחה can be on the same day as the third נגיחה – רבא, or it must be the next day – אב"י.

Thinking it over

ה"ר עזרא states that according to אב"י the fourth נגיחה cannot take place on the same day as the third נגיחה. The reason given¹¹ is that ולא ישמרנו must be similar to תמול שלשום. However it seems that there may be a more obvious explanation, as follows: The תורה states clearly, according to אב"י, that the three נגיחות תם took place מתמול שלשום, yesterday and the days before, not on the same day as ולא ישמרנו, the מועד נגיחה. If the fourth נגיחה took place on the same day as the third נגיחה, they were not¹² תמול שלשום.

¹⁰ See "Thinking it over".

¹¹ See footnote # 10

¹² If this were the reason for אב"י, then it would be much clearer why according to רבא it can be on the same day.