

עד נגיחה רביעית לא מחייב - Until the fourth goring he is not liable

OVERVIEW

taught that we derive שנים ג' חזקת from a שור המועד who is required to gore three times before he becomes a מועד. The גמרא challenges this. A שור המועד has to pay a נזק שלם only after the fourth time that he gores. It stands to reason therefore that a חזקה should be accomplished only after four years. תוספות will discuss two ways how we are to understand the comparison of שור המועד to שנים ג' חזקת, and consequently the soundness of the גמרא's question.

תוספות asks:

תימה לרבינו יצחק דמאי פריך הא הכי יליף משור המועד –

It is astounding to the ר"י; for what is the question that the גמרא is asking; that he should not be a מוחזק until the fourth year, just as an ox pays full damages only on the fourth goring – this is not a question! **For that which he is deriving from a שור המועד is as follows –**

מה התם הוחזק נגחן שלש פעמים הכא נמי הוחזק שתקן בשלש שנים¹ –

Just as there, by a שור המועד, **he is established as a goring ox**, if he gored **three times, here too**, by a חזקה in a field, the previous owner **is established as being acquiescent**, by not protesting for **three years**.

אם כן משלש שנים ואילך קמה ליה ברשותיה –

If that is so; that we deriving from a שור המועד the amount of times that is required to establish a pattern; specifically regarding the intention of the original owner, whether his silence is just a coincidence or it is to be interpreted as admitting to this transfer of ownership, then **from three years and onwards**, that the original owner did not protest **it becomes established in the domain** of the מחזיק. We have the necessary proof that the original owner has no claim on this field. This is similar to a שור המועד, where it becomes established that its nature is to gore, after three goring incidents. Why should there be a need for a fourth year?!

¹ The comparison to an ox is as follows. When an ox gores once or twice it does not indicate that he is by nature a goring ox. It is possible that it was a coincidence, and in reality it is a tame ox – שור תם. However when the ox gores three times a pattern has been developed; we do not assume anymore that his goring is a mere happenstance, but rather that he is a goring ox; this is his nature. A pattern is established (only) by a three time repetition. Similarly by a חזקת ג' שנים when the original owner does not protest for the first or second year we may attribute his silence to other causes; not necessarily that he is forfeiting his right to the field. However when he does not protest for the third year as well, we have established a pattern of silence. He is not protesting, because there is no reason to protest. His silence is a tacit admission, indicating that he sold the field to the מחזיק.

answers: תוספות

ואומר רבינו יצחק דסלקא דעתיה דמקשה דהכי יליף –

And the ר"י says; that the questioner who asked 'עד נגיחה רביעית וכו' he assumed that this is what the גמרא derived from שור המועד –

מה התם מכי נגח ג' פעמים נפק ליה מחצי נזק לנזק שלם –

just as there, by a שור המועד, when he gored three times he changed his status from a half damage liability into a full damage liability –

הכא נמי כיון שאכלה שלש שנים ולא מיחה נפקא ליה מרשות מוכר לרשות לוקח –

here too by שנים ג' חזקה since he consumed the produce for three years and the owner did not protest, the field was removed from the possession of the seller and placed into the possession of the buyer –

אף על גב דמילתא בלא טעמא הוא:²

Even though this is a concept without a rational basis.

SUMMARY

There two ways of understanding how we derive חזקה ג' שנים from שור המועד.

1. A pattern of behavior is established when something is repeated three times.

2. The rules and laws change when something is repeated three times.

Our מקשן assumes the second view.

THINKING IT OVER

How are we to understand the תירוץ of the 'הכי השתא וכו' גמרא?³

² It seems (from the ר"י) that according to the מקשה we are not discussing patterns of behavior; but rather the status of the laws of the תורה. From שור המועד we derive that three times, changes the status of the law, from חצי נזק to נזק שלם. Similarly, (according to the מקשן) when a buyer and seller are disputing the ownership of property; up to the first three years (of occupation by the buyer) the seller is considered to be in possession - the מוחזק; after three years the buyer is considered to be the מוחזק. [If the seller is the מוחזק, then the onus of proof is on the buyer, that he actually bought the field, and if the buyer is the מוחזק then the seller must prove that he never sold it.] It is difficult to understand the relationship of these two laws that just as the payment changes by a שור after three times, therefore the status of possession changes after three years; that is why תוספות refers to it as a טעמא בלא מילתא. If we are to assume that this is the comparison between שור המועד and חזקה, then the גמרא's question is more readily understood. The changing of the status of a חצי נזק to a נזק שלם does not take place until the fourth נגיחה; it is only then that he actually pays a נזק שלם. By חזקה, therefore, the law should be the same, that the changing of possession should take place only after the fourth year. Others explain that a שור ceases to be a תם after the third נגיחה; however he is not (completely) a מועד to pay a נ"ש until the fourth time. Similarly by a חזקה after three years the original owner relinquishes his חזקה; however it should not be in the possession of the מחזיק, until after the fourth year. [During the fourth year the דין should be גבר דאליה גבר.]

³ See בל"י אות כג.