

## The stringency by an ox is more than by fire

## חומר בשור מבאש –

### OVERVIEW

The **ברייתא** mentions various **חומרות** of שור over אש. Our **תוספות** will discuss why he does not mention an additional **חומרא**.

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anticipates and resolves the following question:

**הא דלא תני שהשור בעל חי משום דהוי בכלל מסרו לחרש שוטה וקטן -**

**The reason the ברייתא did not teach** an additional **חומרא** of שור over אש; namely **that a שור is alive** and אש is not, is **because** this **חומרא is included** in the **חומרא** which the **ברייתא** does mention; namely **if he gave it (the מזיק) over to a חש"ו**, then by שור he is חייב and by אש he is פטור -

**דבהכי תלי טעמא דפטור באש<sup>1</sup>:**

**For the reason he is פטור by אש** when he gave it over to a חש"ו **is on account of this very** fact that אש is not a בעל חי<sup>2</sup>; however if he gave a שור over to a חש"ו he is חייב since a בעל חי is a שור. Therefore it was not necessary to explicitly state that a שור is a בעל חי when it is already implied by the **חומרא** of לחש"ו<sup>3</sup>.

### SUMMARY

The **מסרו לחש"ו פטור** of אש not being a בע"ח, is included in the **קולא** of **מסרו לחש"ו פטור**.

### THINKING IT OVER

**תוספות** states that the reason why אש is פטור by לחש"ו is because אש is not a שור. Previously<sup>5</sup> **תוספות** explained that it is the manner of the חש"ו to untie the שור and uncover the בור, but it is not the דרך of the חש"ו to ignite the גחלת; this indicates that the פטור by אש is not because אש is not a בע"ח, but merely that it is not the דרך of a חש"ו ללבות גחלת. How can these two seemingly contradictory **תוספות** be reconciled?!<sup>6</sup>

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<sup>1</sup> **תוספות** does not state that the reason he is חייב by שור (if **מסרו לחש"ו**) is because he is a בע"ח; for we find by בור also that if **מסרו לחש"ו** he is חייב (even though בור is not a בע"ח). Indeed the cause for חיוב is not dependent on being a בע"ח; by בור there is a חיוב since דרכו לנתורי (or לאו צבתא דחרש גרם). However the cause of פטור by אש is because it is not a בע"ח, and without the דחרש צבתא the fire would have extinguished; as opposed to a בע"ח who is continually active. See מהר"ם.

<sup>2</sup> See 'Thinking it over'.

<sup>3</sup> There is an advantage in stating the **חומרא** of לחש"ו (as opposed to the **חומרא** of בע"ח) because **מסרו לחש"ו** is a סברה **חומרא** in דין, and בע"ח is merely a **חומרא** in סברה.

<sup>4</sup> See footnote # 2.

<sup>5</sup> דף ט, ב בד"ה שור.

<sup>6</sup> See אמ"ה.