

## **חומר בשור מבאש – The stringency by an ox is more than by fire**

### Overview

The **חומר** mentions various **אש** over **שור**. Our תוספות will discuss why he does not mention an additional **חומר**.

-----  
anticipates and resolves the following question:

**הא דלא תני שהשור בעל חי –**

**The reason the **חומר** did not teach** an additional **חומר** of **אש** over **שור**; namely **that a שור is alive** and **אש** is not, is -

**משום דהוי בכלל מסרו לחרש שוטה וקטן –**

**Because this **חומר** is included** in the **חומר** which the **חומר** 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 **שור** is a בעל חי. Therefore it was not necessary to explicitly state that a **שור** is a בעל חי when it is already implied by the **חומר** of **חש"ו**.<sup>3</sup>

### Summary

The **חומר** of **אש** not being a בעל חי, is included in the **חומר** of **חש"ו** פטור.

### Thinking it over

תוספות states that the reason why **אש** is פטור by **חש"ו** is because **אש** is not a בעל חי. Previously<sup>4</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 **אש** is פטור by **אש** is not because **אש** is not a בעל חי, but merely that it is not the דרך of a **חש"ו** ללבות גחלת. How can these two seemingly contradictory תוספות be reconciled?<sup>5</sup>

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

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

<sup>3</sup> There is an advantage in stating the **חומר** of **חש"ו** (as opposed to the **חומר** of בעל חי) because **מסרו** **חש"ו** is a **חומר** in דין, and בעל חי is merely a **חומר** in סברה.

<sup>4</sup> דף ט,ב בד"ה שורז

<sup>5</sup> See אמ"ה.