

He omitted טמון

שייר טמון –

OVERVIEW

The גמרא says that the ברייתא does not mention all the קולות וחומרות, but rather omitted some. Among those omitted is the דין of טמון, which is אש by פטור and is בור by חייב. Our תוספות will discuss the case of טמון which is בור by חייב.

The אש of קולות וחומרות טמון; meaning it could have included טמון amongst the קולות וחומרות versus בור ובור -

דפטור באש ושור ובור חייב -

For טמון is חייב by שור ובור; however by אש by פטור is טמון.

- What are the cases of טמון by שור ובור; where they are חייב?

ופירש הקונטרס¹ כגון בעט שור בשק מלא כלים ושברן -

So רש"י explains that for instance if an ox kicked a sack full of utensils and he broke them (that is an example of טמון by שור; the utensils are טמון in the sack) -

וכן אם נפל בבור שק מלא תבואה² חייב -

And similarly if a sack full of grain fell into a pit and were (lost or) damaged³ (this is an example of טמון by בור); in both these two case of טמון, the בעל השור ובעל הבור are חייב.

בור by טמון interpretation of רש"י's criticizes תוספות:

ולא דק דכל מילי דלאו בעלי חיים ממעטים מחמור דבור⁴ כמו כלים -

And רש"י was not precise when he used a שק מלא תבואה as an example of טמון by בור **for we exclude all things that are not alive** (that they are פטור by בור) **from the word חמור** which is written by בור, **just as we exclude כלים** by בור. The grain in the sack is considered כלים and the בעל הבור would be פטור for damaging them.

בור by כלים proves his point that anything which is not alive is considered כלים by תוספות:

כדאמר בסוף הפרה (דף מהב) גבי נפל לבור והבאיש מימיו לאחר נפילה⁵ שהוא פטור -

¹ בד"ה שייר.

² It seems that רש"י mentioned תבואה by בור as opposed to כלים by שור, since כלים are פטור by בור. However תוספות disagrees. (see following footnote # 3).

³ They became dirty and it needs to be cleaned which requires some effort. See 'Thinking it over'.

⁴ The תורה writes (שמות [משפטים] כא, לג) by בור that חמור או שור (the word שור comes to exclude אדם, and) the word חמור excludes כלים. The exclusion of כלים is not limited to utensils only, but refers to anything that is not alive like a חמור.

⁵ When the ox fell into the pit, it did not ruin the waters immediately; but rather it ruined the water after a period of time had gone by.

As the **rules in the end of פרק הפרה** concerning the case where an ox **fell into a pit and contaminated the waters of the pit, after falling** into the pit; **that** the **בעל השור is פטור** for ruining the water, as the גמרא there explains -

משום דהוי שור בור ומים כלים:

For the falling ox is deemed to be a **בור** (it is damaging the water while the מזיק is immobile) **and the waters** which were damaged are **כלים**; and a **בור** (in this case the שור) is **פטור** for **כלים**. We see from that גמרא that water (which is certainly not a utensil) is considered **כלים**; therefore anything which is not alive (including תבואה) is considered **כלים**, and is **פטור** by **בור**.⁶

SUMMARY

בור is **פטור** for all damages to inanimate objects (including grain [and water]), and is only **חייב** for damages to a **חי**.

THINKING IT OVER

The **שור ולא** is **פטור** if a person was killed in his **בור** since the תורה writes **שור ולא**. However this exclusion does not apply if the person was hurt in the **בור**; then the **בעל הבור** is **חייב**. By **כלים** however the **בעל הבור** is always **פטור** (from the דרשה of **חמור ולא כלים**) for by **כלים** we say that **שבירתן זוהי מיתתן**. Based on this, we can perhaps defend **רש"י**, and differentiate between **כלים** in general and **הבאיש מימיו** (and **כלים**) and our case⁷ where the **תבואה** was (merely) soiled in the **בור** (and the damage is limited to the reduced price of the soiled grain).⁸

⁶ It would seem that according to תוספות the **טמון** that is **חייב** by **בור** must be in a case where an animal that was hidden in a sack fell into a **בור**.

⁷ See footnote # 3.

⁸ See **ב"י**. See also **סוכ"ד**.