

That the children should be able, etc.

שיהו התינוקות כולי –

OVERVIEW

רבי יהודה is of the opinion that to become a מועד the ox must have been warned for his goring on three days, and that the מועד reverts back to become a תם, if he did not gore for three days (when he had the opportunity to gore). ר"מ maintains that an ox becomes a מועד if he is warned three times (even in one day) and he reverts back to becoming a תם if he allows small children to play with him. Our תוספות discusses the view of ר"מ.

anticipates a difficulty:

אף על גב דאדם אית ליה¹ מזלא² -

Even though that a person has מזל, how can we derive that he is no longer a מועד for an animal –

responds:

מכל מקום כיון שנעשה שפל כל כך שהתינוקות ממשמשין בו³ ודאי חזר לקדמותו -
Nevertheless, since the ox is so meek that the children can play with him, this indicates that the ox has certainly reverted back to his initial status as a תם.

disabuses us of a possible mistaken notion:⁴

ולא בא רבי מאיר למעט שלא תועיל חזרה שלשה ימים -

And ר"מ is not coming to exclude that recanting for three days is not effective to render him a תם; this is not so -

אלא השמיענו דאפילו⁵ ביום אחד פעמים דאיכא חזרה כגון על ידי תינוקות -

¹ The גמרא previously (בב,ב) taught us that a מועד לבהמה is not a מועד לאדם (since אדם אית ליה מזלא [see following footnote # 2]), therefore the reverse should also be true that even though he is no longer a מועד לאדם (who has מזל) by not goring the תינוקות (see 'Thinking it over' # 1) that does not mean that he is no longer a מועד לבהמה.

² See רש"י and ואינו נוה להמיתו וכו' where he writes בד"ה כתיב שיש לו דעת לשמור את גופו, רש"י בב,ב ד"ה אדם who writes, מלאך שלו ומליץ עליו. In any event a man is less likely to be hurt by an animal, than an animal is likely to be hurt by another animal,

³ It is not merely that the ox stopped goring people, which indeed may not be proof that he is no longer a מועד לבהמה (since אדם אית ליה מזלא), but since he is so tame that children can even play with him, this assures us that he is a תם.

⁴ See 'Overview; ר"מ maintains that to become a תם, he must cease from goring three days, while ר"מ maintains that to become a תם he must allow children to play with him; indicating perhaps that according to ר"מ, merely not goring for three days is insufficient to render him a תם, but rather we require שיהו התינוקות ממשמשין בו. One may have thought this, especially in light of what תוספות just said (see footnote # 3) that תינוקות ממשמשין בו is a superior indication that the שור is a תם, than by merely not goring (people). תוספות rejects this notion.

⁵ He will (certainly) revert to the תם status if he does not gore in three days (like ר"י maintains), he can even revert to תם status in one day, through playing with children.

But rather ר"מ teaches us that occasionally he can revert to the תם status even in one day; for instance through children playing with him.

תוספות forewarns us from another misconception:

וג' פעמים ביום אחד נראה דאין מועיל לדידיה לחזרה אף על פי שמועיל להעדאה⁶ -

However, it seems to תוספות that not goring three times in one day will not be effective according to ר"מ, to have him revert to the תם status, even though ר"מ maintains that goring three times in one day is effective to make him a מועד –

תוספות support his contention:

דהכי נמי אשכחן לרבי שמעון⁷ דבשלשה פעמים הוי מועד ובחזרה בעי ג' ימים:

For we also find this according to ר"ש that he becomes a מועד by goring three times (even in one day) and nevertheless he requires three days (of not goring) to revert to תמות. This proves that becoming a מועד (by goring) in one day is not a compelling argument to revert to תמות (by not goring three times) in one day.

SUMMARY

According to ר"מ: a) Playing with children is more docile than not goring people, b) not goring cows for three days is certainly sufficient, and c) three times not goring cows in one day is insufficient.

THINKING IT OVER

1. When the משנה states, ואינו נוגח בו ומשמשין בו, does that mean he is not נוגח the children,⁸ or he is not נוגח other oxen, even though the children are inciting him?⁹

2. What is a better reason to revert to תמות; three days without goring, or תינוקות משמשין בו?¹⁰

⁶ See 'Overview'. According to ר"י an ox becomes a מועד in three days and reverts back to a תם in three days. According to ר"מ, he becomes a מועד in three times (even in one day) and reverts back to a תם 'even' in one day (by children playing). It seems that ר"מ requires less time for either process, therefore one may think (that since ר"מ agrees with ר"י in principle that not goring is a reason to revert to תמות [see footnote # 5] and he requires less time, therefore) he could revert to תמות by not goring three times in one day.

⁷ לקמן כד,א.

⁸ See footnote # 1.

⁹ See # 26 אוצר מפרשי התלמוד.

¹⁰ See נחלת משה.