

## ולא ישמרנו האידנא חייב – And he will not guard him now; he is liable

### OVERVIEW<sup>1</sup>

The גמרא cites a dispute between אב"י ורבא as to how ר"י derives that an ox becomes a מועד after being warned three times in three days.<sup>2</sup> There is a dispute between רבא and רש"י how to understand the view of רבא.

פירש בקונטרס<sup>3</sup> בפירוש ראשונה<sup>4</sup> דלרבא בפעם ג' חייב נזק שלם<sup>5</sup> -

רש"י explained in his first interpretation that according to רבא he is liable for a נ"ש the third time he gores.

comments on פרש"י and presents a difficulty:

צריך לומר לפירושו הא דקאמר לקמן<sup>6</sup> דאתו ג' כיתי סהדי בחד יומא -

It will be necessary to say according to רש"י's explanation regarding this which the גמרא states later, that if three sets of witnesses came in one day and testified that the ox gores already three times, (it will be necessary to say) -

דלמאן דאמר<sup>7</sup> ליעודי תורא אייעד ומשלמין בעלים נזק שלם<sup>8</sup> אף על פי שלא ידעו תחלה -

That according to the one who maintains תורא ליעודי, so the ox is a מועד, and the owners of the ox will be required to pay a נ"ש for the third goring (according

<sup>1</sup> It would be beneficial to first study the גמרא on כד,ב and כד,א (regarding לאייעודי תורא ולאיעודי גברא).

<sup>2</sup> The או נודע כי שור נגח הוא מתמול שלשום ולא ישמרנו בעליו שלם ישלם שור תחת השור וגו' (שמות [משטפים] כא,לו in פסוק). According to אב"י the word מתמול means two (days) and שלשום means the third (day) and ולא ישמרנו בעליו refers to the fourth (day and) נגחה. According to רבא the word מתמול means one and שלשום is two and ולא ישמרנו בעליו is three.

<sup>3</sup> בד"ה ולא.

<sup>4</sup> רש"י refers to this a ראשונה, even though in our גמרא there is no other interpretation; however תוספות will state later that רש"י retracted this 'first' interpretation.

<sup>5</sup> According to אב"י who interprets ולא ישמרנו בעליו to refer to the fourth goring, that is when he is חייב a נ"ש, however according to רבא that ולא ישמרנו refers to the third נגחה, that is when he is חייב a נ"ש.

<sup>6</sup> כד,א. The גמרא there presents a query; are we making the owner for a מועד (this is referred to as לאיעודי גברא) or are we making the ox for a מועד (לייעודי תורא). This is relevant in a case where three sets of witnesses came in one day and testified that the ox gores three times (and became a מועד). If we maintain לאיעודי גברא, he was just warned once so he is not liable for a נ"ש yet; however if we maintain תורא ליעודי then the ox is already a מועד.

<sup>7</sup> There is no actual דאמר מאן who maintains תורא ליעודי (or לאיעודי גברא); תוספות means the side of the query which maintains תורא ליעודי.

<sup>8</sup> The query whether תורא ליעודי or לאיעודי גברא is equally relevant according to רבא who maintains according to רש"י that on the third נגחה he pays a נ"ש. The גמרא states that if we maintain תורא ליעודי and three sets of witnesses claim that he gores three times, he is a מועד. [According to אב"י that means that the next time he gores he will pay a נ"ש.] According to רבא this means that he has to pay a נ"ש now for the third נגחה, even though he was not aware that his ox gores at all. [It cannot mean according to רבא that he is now a מועד and the next time he has to pay a נ"ש, for if so the גמרא should have stated that (only) two sets of עדים testified that he gores twice, and since תורא ליעודי, the next time he will have to pay a נ"ש, why mention three עדים?] See 'Thinking it over' # 1.



to <sup>9</sup>, even though the owners were not aware initially before this third goring that the ox is a מועד.

תוספות disagrees:

ואינו נראה דהוועד בבעליו כתיב<sup>10</sup> ואחר כך אם לא ישמרנו משלם נזק שלם -

And this does not seem correct, for the תורה first writes, 'and the master was warned', and afterwards the תורה writes, if he does not guard him he pays a נ"ש -

תוספות offers (additional) proof to his contention:

וברייתא דלקמן קתני<sup>11</sup> דאין השור נעשה מועד עד שיעידו בפני בעלים -

And the ברייתא which is cited later teaches that a שור does not become a מועד unless the testimony is presented in the presence of the owners -

ואם כן אפילו למאן דאמר ליעודי תורא צריך שידעו הבעלים תחלה -

And so therefore even according to the one who maintains תורא ליעודי, it is necessary that the owners be aware first that the ox is a מועד -

וכי אתו ג' כיתי סהדי בחד יומא והעידו בבעלים לא ישלמו בעלים נזק שלם עד נגיחה ד'<sup>12</sup> -

So when three sets of עדים come in one day and warn the owners, the owners will not pay a נ"ש until the fourth goring.

תוספות mentions that רש"י changed his mind:

ורש"י עצמו חזר בו<sup>13</sup> משום דבריש חזקת הבתים<sup>14</sup> (בבא בתרא דף כח,א ושם) קאמר סתמא דגמרא -

And רש"י himself retracted from this explanation, for in the beginning of פרק אי מה שור המועד עד נגיחה ד' לא מיחייב כולי<sup>15</sup> -

<sup>9</sup> תוספות does not say that the גמרא there is only according to אב"י, for the גמרא does not mention any names, and generally, we follow רבא instead of אב"י.

<sup>10</sup> The פסוק (in כט,א) states regarding a שור שהמית אדם that והועד בבעליו ולא או נודע כי פסוק states regarding a שור שהמית שור, the פסוק states ולא ישמרנו בעליו יומת פסוקים seemingly combines these two פסוקים. Our תוספות seems to understand that there can be no payment of a נ"ש unless the owner was aware that the ox was a מועד and did not guard him; only then is he חייב a נ"ש (see ישועה).  
<sup>11</sup> כד,א.

<sup>12</sup> However, since רש"י maintains that according to רבא he pays a נ"ש even by the third נגיחה, why does the גמרא say that three sets of עדים came and he pays by the fourth goring, the גמרא should have said (according to רבא) that two sets of עדים came and he will pay a נ"ש by the third נגיחה. See footnote # 8 [in the second bracketed area].

<sup>13</sup> See ר"פ (משמעות דורשין איכא ביניהו) וכן פרש"י בתשובה, who writes, תוס' ר"פ.

<sup>14</sup> The גמרא there stated (initially) that we derive the need for three years to make a חזקה (in קרקע) from a שור המועד, just as a שור becomes a מועד after goring three times, the same is by a חזקה after three years.

<sup>15</sup> The גמרא did not say there that according to רבא (who maintains [according to רש"י] that he pays a נ"ש the third time) it is understood; indicating that the question of אי מה שור המועד וכו' is according to everyone (סתמא דגמרא) since



If so let us say **just as a שור המועד does not pay a נ"ש until the fourth goring, etc.** the same should be regarding חזקה, that it belongs to the מוחזק after the fourth year.

**ופירש דמשמעות דורשין איכא בינייהו<sup>16</sup> -**

**And רש"י explained that the difference between רבא is merely how to interpret the meaning of the verses.**

רבא offers a practical difference between אביי ורבא:

**והרב רבי עזריאל<sup>17</sup> פירש דאיכא בינייהו -**

**- אביי ורבא explained that there is a halachic difference between ר"ר עזריאל**

**דלאבני דדריש לא ישמרנו לנגיחה ד' לא משלם נזק שלם עד יום ד' -**

**For according to אביי who interprets לא ישמרנו for the fourth נגיחה, he will not pay a נ"ש until he gores on the fourth day (according to ר"י) -**

**דלא ישמרנו הוי יום ד' דומיא דתמול שלשום -**

**תמול שלשום refers to the fourth day (and fourth נגיחה) similar to (which refer to the first three נגיחות on three separate days) -**

**אבל לרבא דלא כתיב נגיחה ד'<sup>18</sup> אפילו נגח ד' בג' חייב -**

**However, according to רבא that the fourth נגיחה is not written explicitly in the תורה, therefore even if he gores the fourth נגיחה on the third day he is חייב a נ"ש.**

In summation: according to רש"י here, רבא maintains that a שור המועד pays a נ"ש by the third נגיחה. However תוס' disagrees and רש"י also retracted that everyone agrees that a שור המועד pays a נ"ש after the fourth נגיחה (if he was warned prior to the fourth נגיחה). The difference between אביי ורבא is either משמעות דורשין, or if it is necessary that the fourth נגיחה take place on the fourth day (רבא), or not (אביי).

תוספות asks:

**וקשה למאי דפירשתי<sup>19</sup> דלא משלם ברביעית נזק שלם אפילו למאן דאמר ליעודי תורא -**

**And there is a difficulty according to what I explained that he does not pay a נ"ש for the fourth נגיחה, even according to the one who maintains תורא ליעודי תורא -**

**אלא אם כן העידו בבעלים בנגיחה ג' -**

**Unless the עדים testified before the owners by the third נגיחה; the difficulty is -**

**דאמרינן לקמן בפרק שור שנגח ארבעה וחמשה (דף מא, א ושם) -**

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all agree that a מועד pays a נ"ש only after the fourth נגיחה.

<sup>16</sup> According to אביי (that מתמול שלשום include three נגיחות) the words לא ישמרנו בעליו refer to the fourth נגיחה for which he is חייב a נ"ש, and according to רבא (that מתמול שלשום include two נגיחות) the words לא ישמרנו בעליו refers to the third נגיחה which makes him a מועד, so that afterwards on the fourth נגיחה he will pay a נ"ש.

<sup>17</sup> See תוס' ב"ב כה, א ד"ה אי, where this interpretation is attributed to ר"ר עזרא (who may be the same person).

<sup>18</sup> It is 'merely' inferred; that if לא ישמרנו בעליו for the third time, then on the fourth time he pays a נ"ש

<sup>19</sup> See the text by footnote # 12.







And when the זוממי זוממין (group three) came and testified by בי"ד against the owner; reinstating his ox as a מועד -

לא הספיקו לגמור את דינו<sup>24</sup> עד שנגח נגיחה ד'<sup>25</sup> בעוד שהיה בבית בעליו<sup>26</sup> -

The בי"ד did not manage to complete issuing his sentence to be killed, when the ox gored a fourth נגיחה, while he still was in his owner's house -

וכמאן דאמר גומרין דינו של שור<sup>27</sup> שלא בפניו<sup>28</sup> -

And this answer is valid only according to the one who maintains, we conclude the ruling of the goring ox even not in the presence of the ox -

responds to an anticipated difficulty:

והוא מצי למפרך הניחא למאן דאמר גומרין אלא בלאו הכי פריך שפיר הניחא אחר<sup>29</sup> -

And the גמרא could have asked that this answer is correct only according to the one who maintains גומרין דינו של שור שלא בפניו, but how can we understand it if we maintain גומרין וכו' אלא בפניו, but nonetheless since the גמרא properly asks another 'הניחא' type question, it overlooked this question.

offers an alternate explanation:

ורבינו תם מפרש שאין נאסר על ידי גמר דין כל זמן שהוא קיים -

And the ר"ת explained that a שור הנסקל as long as it is alive, it does not become prohibited to derive benefit from it, merely by the final judgement alone that it is to be stoned -

ועדיין שלו הוא עד לאחר סקילה או לאחר שחיטה -

<sup>24</sup> The זוממי זוממין (group three) testified in בי"ד before the fourth goring. However, בי"ד did not complete the case and rule that the ox be stoned, for then the ox would be אסור בהנאה and the owner would not be liable for him anymore (see footnote # 23). בי"ד did however accept the testimony of the זוממי זוממין (group three) which establishes the ox as a מועד.

<sup>25</sup> Therefore if we maintain the owner (who was in בי"ד) knew that his ox is a מועד. The ox then went and killed, therefore it is treated as a שור המועד. However if we maintain גברא לאייעודי, then hearing just one time from the זוממי זוממין (group three) which substantiated that his ox gored three times is not sufficient warning to treat his ox as a מועד. That explains why גמרא asks only on גברא, but not on תורא לאייעודי. See (הארוך) מ"הרש"א (האר"ך) in the (ז) ק"י (according to אביי who requires the 'ביום ד' נגיחה'), that the זוממי זוממין (group three) came a day later.

<sup>26</sup> The שור could not have been in בי"ד, for then the owners would not be liable to guard him. Alternately if the שור was in בי"ד, it could not have gored the fourth time.

<sup>27</sup> שור seemingly means that the entire process of prosecuting the שור must be done in the presence of the שור (according to the גומרין וכו' מ"ד). The opposite is true for the other מ"ד that גומרין דינו של שור אלא בפניו. [It would seem then that this which תוספות wrote previously that the שור took the בעלים home is not necessary, for it is possible that the שור was never in בי"ד.] See 'Thinking it over' # 2.

<sup>28</sup> Therefore it is possible that the owners are in בי"ד (finding out that the ox is a מועד and the ox is not in בי"ד) (since גומרין דינו של שור אלא בפניו) and went and killed someone. However if we maintain גומרין דינו של שור אלא בפניו, the ox would have also been in בי"ד so how can it kill or how can the owner be liable if it is in the jurisdiction of בי"ד.

<sup>29</sup> It asked הניחא לאייעודי תורא but not גברא. The answer that applies to that will apply to this as well.



**But rather it still belongs to the owner until after it is stoned or after it is slaughtered;** only then does it become אסור בהנאה -

והשתא אתי שפיר אפילו נגמר דינו ואחר כך נגח<sup>30</sup> -

**And now it works out well** that the owner knew that his ox was a מועד, for the ox still belongs to the owner **even after the final judgement** that he is to be stoned, **and the ox gored a fourth time after** the גמר דין.

In summation; if we maintain that a שור הנסקל is אסור בהנאה after the גמר דין; we must assume in the case of זוממי זוממין that the fourth goring took place after the זוממי זוממין (group three) testified, so the owner was aware that his ox is a מועד, but before the גמר דין, and the שור was בבית הבעלים and we must follow the view of ר"ת who maintains that a שור הנסקל is not אסור בהנאה until it is dead, the fourth goring took place after the גמר דין and we can maintain אין גומרין דינו של שור אלא בפניו.

anticipates a difficulty with his view that a נ"ש is paid only for the fourth time:

והא דקתני לקמן בברייתא<sup>31</sup> נמצאת כת שלישית זוממת כולן חייבין -

**And regarding this which the ברייתא later teaches; if the third set of witnesses was found to be זוממת (discredited), they are all liable -**

אף על גב דעדיין לא חייב נזק שלם<sup>32</sup> -

**Even though that the owner is not yet liable to pay a נ"ש**, for they testified that he gored three times and according to תוספות a נ"ש is paid only after the fourth time –

replies:

<sup>30</sup> Initially we assumed that the fourth גניחה could not have taken place after the זוממי זוממין (group three) were מזים (שור הנסקל), since at that point it was גמר דינו להריגה, the שור becomes אסור בהנאה (like a שור הנסקל), therefore since it is אסור בהנאה, it does not belong to the owner anymore and he cannot be liable for a fourth גניחה (see footnote # 23). The ר"ת, however maintains that even after the גמר דין the שור is not אסור בהנאה yet (until he is killed), therefore he still belongs to the owner who is liable for the fourth גניחה. The case will be that after the second group was מזום and בי"ד ruled that it should be stoned, the ox gored again, for which he will be חייב כופר according to the מ"ד ליעודי תורה, but not if we maintain גברא ליעודי, since he only had one warning. See 'Thinking it over' # 3.

<sup>31</sup> The ברייתא there discusses if three sets of עדים testified respectively that the ox gored three times. If the ox would have gored then an additional time the owner would be required to pay a נ"ש based on their testimony. If the first set was הוּם, it need not pay (the penalty of זמם) for the גניחת מועד (since this testimony alone would not make him into a מועד), the same if the second set was also הוּם (for their combined testimony cannot make the ox a מועד); however if all three were הוּם, then they must pay the extra חצי נזק for which the ox is liable (in the next goring), since in combination they made him a מועד. תוספות clarifies what the payment is for.

<sup>32</sup> According to רש"י who maintains here (according to רבא [only]) that he pays a נ"ש for the third גניחה, the ברייתא is well understood. All the three עדים must pay the extra ח"נ they wanted to obligate the owner for this alleged third גניחה. It is the combined (false) testimony of the three sets of עדים, which obligates him to pay a נ"ש for this third גניחה. [The first ח"נ of this 'alleged' third גניחה will be paid solely by the third set of עדים (See ד"ה כולן).] However according to תוספות that no נ"ש is due now on the third גניחה, what does the גמרא mean that they are all obligated?!



**מכל מקום כיון שמיידיעין אותו וממילא מתחייב נזק שלם ברביעית<sup>33</sup> -**

**Nonetheless, since these three sets of עדים attempted to make the ox a מועד, and inevitably he will be liable for a נ"ש for the 'fourth' גניחה -**

**- כשהוזמו צריכין לשלם כפי מה שתעלה גניחה ד' כשיגח<sup>34</sup> -**

**So since they were הוזם they are required to pay (a ח"נ of) what the alleged fourth goring will cost, when the ox will (actually) gore the (fourth) [next] time.**

anticipates a difficulty with this last answer:

**אף על גב דבפרק הנחנקין (סנהדרין דף פו,ב) אמר עידי גניבה בנפש<sup>35</sup> שהוזמו -**

**Even though the גמרא in פרק הנחנקין states that the witnesses of a kidnapping who were הוזם -**

**ועידי גניבה ראשונה של בן סורר<sup>36</sup> אין נהרגין -**

**As well as the first set of witnesses of a בן סורר who were הוזם, are not killed.**

This seemingly conflicts with this which תוספות just stated –

replies:

**התם לאו משום דיכול להיות שלא יבאו לידי חיוב<sup>37</sup> פטרינן להו<sup>38</sup> -**

**There the reason we exempt them from the death penalty is not because it is possible that they will never come to receive the death penalty –**

**אלא התם משום דמצו למימר להלקותו באנו<sup>39</sup> -**

<sup>33</sup> It is not really the fourth גניחה, it is the first (since their testimony has been discredited); nonetheless according to the false testimony of the עדים it would be considered the fourth if they were not מוזם.

<sup>34</sup> See אוצר מפרשי התלמוד # 76 (that he gored a fourth time). See 'Thinking it over' # 4.

<sup>35</sup> The rule is if someone kidnaps a person and sells him he is חייב מיתה (see משפטים [כא,טז]). However one is not חייב מיתה for kidnapping alone without selling (he is only חייב מלקות). One group of עדים testified that he kidnapped someone. If those עדים were הוזם, we do not apply the death penalty to them, even though that on account of their testimony this 'kidnapper' would have been killed when a second set of עדים testify that he was sold. This seems to contradict what תוספות just taught us that the עד זומם must pay for something which he inevitably causes in the future.

<sup>36</sup> בן סורר is a wayward son. He is considered a בן סורר (and put to death) if he first steals (meat and wine and eats them) and עדים testify to it, and then he is brought to בי"ד and warned and continues to do so again. The first set of עדים are not מחייב him מיתה, only in conjunction with the second set (who testify that he continued his wayward ways even after he was warned). Therefore if the first set were הוזם (before the second set of עדים testified) they are not put to death. This again seemingly conflicts with the view of תוספות that עדים זוממים are liable for future punishments, which they caused.

<sup>37</sup> There may be no witness who will testify that the kidnapped person was sold, or that the בן סורר continued in his wayward ways; in which case there will be no חיוב מיתה (for either of these sets of עדים).

<sup>38</sup> That cannot be the reason according to תוספות, for here too it is possible that the ox will never gore again, and nevertheless תוספות rules that if he does gore again the עדים זוממים have to pay; why is it any different by the kidnapper and the בן סורר.

<sup>39</sup> A person who kidnaps but does not sell his victim receives מלקות (for the תורה writes [יתרו] כ,יג) that לא [שמות (יתרו) כ,יג] that [דברים (תצא) כא,יח] that [in פסוק] states (as the בן סורר who stole and ate it the first time (as the [ויסרו אותו] [It would seem therefore that even if they were הוזם after the מכירה (or the עדים of the second stealing] came, they would still not be מחייב מיתה, since they can claim להלקותו באנו [בן סורר] by a



**But rather** there the עדים are פטור **because they can say that we came and testified, only to inflict lashes** on the person but not to kill him. תוספות proves<sup>40</sup> that a גונב – מלקות receives (without selling him) נפש

ועידי גניבה בנפש שהוזמו לוקין<sup>41</sup> כדפירש התם בקונטרס<sup>42</sup> -

**For the kidnapping witnesses who were מוזהב receive מלקות as רש"י explained there -**

אבל הכא על כרחך לא באו כי אם לייעדו ולחייבו נזק שלם כשיגח נגיחה ד' -

**However here, perforce you must say that the witnesses came only for the purpose of making him a מועד and to obligate him to pay a נ"ש when he will gore the 'fourth' time -**

כדמסיק ואזיל<sup>43</sup> דלא מצו למימר לחיובי פלגא נזקא קאתינן -

**As the גמרא eventually concludes that none of the three sets of witnesses can claim, 'we only came to obligate him for a ח"נ'. Therefore they must all pay for the additional ח"נ they wanted to make him pay for the נגיחה ד'.**

תוספות offers an alternate solution:

**אם כן<sup>44</sup> אין חייבין אלו הכיתות אלא במה שעשאו מועד ואומדין כמה נפחת שורו מדמיו<sup>45</sup> -**  
[Or you may also say] that these three sets of witnesses (regarding the goring) are **only liable for making this ox a מועד, so בי"ד estimates how much the value of his ox decreased,** and that is what the עדים זוממין need to pay -

ולא צריכא השתא<sup>46</sup> לנגיחה רביעית כלל:

**And now we do need to the fourth נגיחה at all to make them liable.**

<sup>40</sup> There is no need to prove that the סורר בן סורר receives מלקות, for the פסוק clearly states ויסרו אותו. See footnote # 39.

<sup>41</sup> This (seemingly) proves that the גונב receives מלקות and therefore the עדים זוממין receive מלקות on account of מלקות; however if there is no חיוב מלקות for the גונב נפש, why do the עדים receive מלקות.

<sup>42</sup> See גמרא אברים that it is not clear which רש"י our תוספות is referring to (for seemingly this is stated in the גמרא there).

<sup>43</sup> See כד,ב. The גמרא there explains that we are discussing a case where it is evident from the actions of the three sets of witnesses that their intention was to make the ox into a מועד (and not only to make him pay a ח"נ for the individual נגיחה). עיי"ש.

<sup>44</sup> The רש"י amends this to read אז נמי (instead of כן אם). [We follow here this reading.] This answer maintains that we cannot make them liable for the fourth נגיחה since it is in the future and we do not know if it will ever happen, just as we do not give the death penalty to the עדים זוממין of the kidnapping and the סורר בן סורר (not as תוספות explained it previously), since it may never happen that there will be a מיתה.

<sup>45</sup> A שור מועד sells for less than an equivalent שור, for the buyer is concerned that it more likely to gore (especially since it gored already) and (additionally) he will have to pay a נ"ש.

<sup>46</sup> According to the previous interpretation (that they pay when the נגיחה רביעית takes place) there is the difficulty that the א"נ, when it states חייבין, does not mention the fourth נגיחה. However according to the א"נ, the ברייתא is understood since the שור must pay now (without a fourth נגיחה) for devaluing the שור.



## **SUMMARY**

נגיחה (initially) maintains that according to רבא a מועד pays a נ"ש by the third גיחה. According to אביי maintains that a מועד pays a נ"ש only by the fourth גיחה. According to the fourth גיחה must take place on the fourth day while according to רבא it may take place even on the third day (according to ר"י). There is a dispute whether a שור (ר"ת) מותר בהנאה (the view of תוס') or אסור בהנאה (the view of ר"י) is הנסקל שנגמר דינו. Three sets of עדים זוממין regarding the goading of an ox to make him a מועד, may have to pay for the fourth גיחה (since their intention was to make him a מועד), or possibly they only pay for his devaluation but not for future damages.

## **THINKING IT OVER**

1. כתי עדים asks on פרש"י from the גמרא later where it states that if the three עדים came יומא בחד, he will be liable for a נ"ש according to the מ"ד that ליעודי תורא, even though he was never aware that his ox gored.<sup>47</sup> Why does תוספות assume that all the עדים came simultaneously; it is possible that the third set came after the first two, so the owner was already aware that his ox gored?!<sup>48</sup>

2. In the case of זוממי זוממין,<sup>49</sup> why is it necessary to mention עדים זוממין at all, if we maintain גומרין דינו של שור שלא בפניו? The case would simply be that three עדים testified that the ox is a מועד, but the ox was home (since שלא בפניו) and before the גמר דין the שור killed a fourth time?!<sup>50</sup>

3. According to the ר"ת that it gored the fourth time after דינו גמר,<sup>51</sup> seemingly the original question of the גמרא remains, why did they not stone the ox immediately, before it had a chance to kill again?!<sup>52</sup>

4. According to תוספות will the עדים זוממים have to pay for the fifth גיחה (sixth, etc.) as well<sup>53</sup> since they wanted to make him a מועד for all the following גיחות?<sup>54</sup>

<sup>47</sup> See footnote # 8.

<sup>48</sup> See אוצר מפרשי התלמוד # 41.

<sup>49</sup> See footnote # 27.

<sup>50</sup> See אוצר מפרשי התלמוד # 61.

<sup>51</sup> See footnote # 30.

<sup>52</sup> See אוצר מפרשי התלמוד (footnote # 68).

<sup>53</sup> See footnote # 34.

<sup>54</sup> See נחלת משה.