

המשסה כלבו של חברו כולי – One who incited his friend's dog, etc.

OVERVIEW

The גמרא poses a query; what is the rule if someone incites his friend's dog to attack a third party, is the dog's owner liable or not.¹ תוספות differentiates between this query and a ruling in a משנה later.

משסה כלבו של חברו explains that the case of תוספות

לא דמי לשור האצטדין² (לקמן דף לט, א) שהאדם נלחם עמו להורגו:

Is not similar to the 'stadium' ox where משנה rules that [the owner of] the ox is פטור for killing his human opponent, **for there the person** (who was killed³) **is fighting against the ox in order to kill** the ox, therefore the ox who killed the person in self-defense is פטור; however here there is no interest in attacking the dog, therefore it is a valid query.

SUMMARY

The owner of animal is not liable if the animal damaged in self-defense.

THINKING IT OVER

1. What is the ruling if the שור האצטדין did not kill but merely wound;⁴ is the owner liable for damages?⁵
2. What would be the ruling if the ox did not kill his opponent (who was inciting him), but rather he killed a bystander,⁶ will there be a חיוב or not?⁷

¹ The query is regarding his liability to pay the damages his dog inflicted on the victim; there is no query if the dog killed the person; the owner will not be liable. See 'Thinking it over' # 1.

² A שור האצטדין is an ox that is trained to fight and kill (other oxen or) people for sport. These contests were held in stadiums therefore the name אצטדין. The משנה says that he is פטור if he kills for the פסוק states (where he gores on his own volition), but not in this case where others incite him to gore (ולא שיגיהוהו אחרים). Seemingly in our case also it is יגיהוהו אחרים the dog is being incited by others, he is not biting on his own, so there should be no query.

³ See (however) 'Thinking it over' # 2.

⁴ See footnote # 1.

⁵ See 128-131 # אוצר מפרשי התלמוד.

⁶ See footnote # 3.

⁷ See נחלת משה