

**For they are indeed מועדין, etc.**

**שכן מועדין וכולי –**

## **OVERVIEW**

The גמרא here states that (according to one view) if the תורה would have written just בור and one other אב, we would be able to derive from them all the other אבות except for קרן. The reason why קרן could not be derived from this צד השוה is because the אבות of the צד השוה are מועדין מתחילתן (however קרן is not a מועד (מתחלתו)). If however we were to maintain that by קרן there is more reason to be חייב since it is כוונתו להזיק, then we could also derive קרן from the abovementioned צד השוה. It is not clear what the גמרא means that the other אבות are מועדין מתחילתן (as opposed to קרן). It is also not clear who maintain these two opposing opinions concerning קרן; whether there is more reason or less reason to hold קרן liable.

In the גמרא later<sup>1</sup> there is a dispute concerning the חצי נזק that a תם pays, whether it is a קנס or it is ממון.<sup>2</sup> The גמרא explains that this depends whether we maintain that לאו בחזקת סתם שוורים are סתם שוורים (then ח"נ is a קנס),<sup>3</sup> or whether סתם שוורים are סתם שוורים (then ח"נ is ממון).<sup>4</sup>

שכן מועדין מתחילתן תוספות rejects a possible explanation of:

**אין לפרש שמשלמין נזק שלם דאם כן קרן נמי אתיא כיון דלא כתיב<sup>5</sup> –**

**We cannot explain that the meaning of 'שכן מועדין וכו' is that pay a נזק בור וחד מאינך that the term מועדין מתחילתן means that it is common for these אבות to cause damage; they are initially prone to damage -**

תוספות offers his explanation:

**אלא מפרש רבינו תם דמועדין מתחילתן היינו שדרכן להזיק -**

**Rather, explains the ר"ת that the term מועדין מתחילתן means that it is common for these אבות to cause damage; they are initially prone to damage -**

<sup>1</sup> דף טו, א.

<sup>2</sup> One of the differences would be if the מזיק admitted that his שור תם gored. If ח"נ ממוןא, then he is חייב; however if פטור is מודה בקנס then the דין is that ח"נ קנסא.

<sup>3</sup> The oxen are considered to be guarded and not prone to cause damage (by goring); therefore מן הדין the owner should not be liable. However the תורה punishes the בעל השור in order that he should guard them more carefully.

<sup>4</sup> Oxen are considered to be prone to gore. In reality the owner should therefore pay a נזק שלם. However the תורה took pity on the owner, since he was not sufficiently warned as of yet, and obligated him to pay only a ח"נ. (It would seem that that even according to this מ"ד, the מזיק of קרן is less דרכו than the other מזיקים.)

<sup>5</sup> The גמרא is now discussing whether we can derive קרן from the צד השוה, if קרן was not written in the תורה. If קרן is not written, we cannot say that קרן does not pay initially a נ"נ, for there is no קרן at all. In fact we will derive from the צד השוה that קרן will initially pay a נ"נ.

**מה שאין כן בקרן דסתם שוורים בחזקת שימור קיימי למאן דאמר פלגא דניזקא קנסא -**  
**However it is uncommon for קרן to cause damage, since oxen in general are**  
**considered to be guarded, according to the one who maintains that the חצי נזק**  
קרן (of קרן) pays **is punitive**; not a monetary obligation.<sup>6</sup> This explains why קרן  
cannot be derived from the צד השוה, for it is the only מזיק that is שימור and is not להזיק.<sup>7</sup>

צד השוה continues to explain the other view that קרן can be derived through a תוספות

**ולמאן דאמר אדרבה קרן עדיפא<sup>8</sup> היינו למאן דאמר דפלגא ניזקא ממונא -**  
**And the one who maintains that there is more reason for קרן to be liable (than**  
the other אבות); **this is referring to the one who maintains that the ח"נ is a**  
**monetary payment and not (merely) punitive -**

**שדרכו להזיק ולא קיימי בחזקת שימור -**  
**since it is common for קרן to cause damage, for oxen are not considered to be in**  
**a guarded state.**

**ולא כמו שפירש הקונטרס<sup>9</sup> דלא איתפרש היכא:**  
**And it is not as ר"י maintains that it was not made explicit anywhere who is**  
קרן עדיפא מ"ד that maintains.

## **SUMMARY**

The dispute whether קרן can be derived from the צד השוה or not, is dependent on the dispute whether שוורים are שימור or not.

## **THINKING IT OVER**

According to the ר"ת,<sup>10</sup> the גמרא should have said עדיפא דקרן להזיק because שוורים  
כוונתו להזיק or לאו בחזקת שימור קיימי, etc.; why mention כוונתו להזיק, which the other  
also agrees to?!<sup>11</sup> (who maintains that שימור קיימי) also agrees to?!

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<sup>6</sup> See 'Overview'.

<sup>7</sup> It appears that the חומרא of קרן, cancels out (and outweighs) the חומרא of להזיק.

<sup>8</sup> עדיפא, as the גמרא states, for (in addition to להזיק as are the other אבות) it is also להזיק; which we do not find by the other אבות. See 'Thinking it over'.

<sup>9</sup> בד"ה ולמאן.

<sup>10</sup> See footnote # 8.

<sup>11</sup> נה"מ וכו'.