

## It is usual for an ox to become untied

## שור עביד לנתוקי -

### OVERVIEW

The גמרא explains the difference between שור ובור (where the owner is חייב if he gave them to a חש"ו [even if it was מכוסה ומכוסה] and גחלת (where the owner is פטור if he gave it to a חש"ו). The difference is that it is common for a tied שור to become untied and for a covered pit to become uncovered. However a גחלת tends to extinguish with the passage of time. רש"י and תוספות disagree as to the meaning of שור עביד לנתוקי וכו'.

פירש רש"י<sup>1</sup> אפילו בלא חרש דרכו לנתוקי מאליו וכן בור דרכו לנתוקי מאליו<sup>2</sup> -

רש"י explained that even without the intervention of the חרש it is common that the ox will become untied by itself and similarly by a בור it is common that the cover will collapse on its own. (However a גחלת will become extinguished on its own.)

רש"י disagrees with תוספות:

וקשה דעל כרחק בקשרו ובכסהו כראוי מיירי כדפרישת<sup>3</sup> -

And this interpretation is difficult; for you are forced to maintain that we are discussing a case where it was tied and covered properly as I explained -

ולקמן (דף נב,א) תנן כסהו כראוי פטור<sup>4</sup> -

And later the משנה teaches that if he covered the pit properly he is exempt from paying for any damages.

תוספות offers his interpretation:

ונראה לפרש דדרכו לנתוקי על ידי חרש קאמר דגרע משום דמסר לחרש -

And the apparent interpretation is that the גמרא maintains that it is common for an ox to be untied by the חרש. It is an inferior שמירה since he delivered the ox to the חרש. We are discussing a קשירה וכיסוי כראוי, where if it were left alone it will not become untied or uncovered; however since he gave it to a חש"ו, the חרש will untie the ox and cause the pit to become uncovered. That is why the owner is חייב.

אבל גחלת לא גרע כל כך דאין דרכו ללבות גחלת -

<sup>1</sup> ד"ה שור

<sup>2</sup> It seems that רש"י maintains that קשור ומכוסה means כראוי. However if it was קשור ומכוסה כראוי, then even if he gave it to a חש"ו he would be פטור. See 'Thinking it over' # 1.

<sup>3</sup> See previous בשור ד"ה בשור. [It should seemingly read 'כדפירשתי']

<sup>4</sup> Since כסהו כראוי פטור was proved previously that it was קשור ומכוסה כראוי and there is a משנה that rules פטור, how can we assume that by קשור ומכוסה (כראוי) that he is חייב?!

**However** concerning a (glowing) coal the שמירה **does not** become **that inferior** if he gives it to a חש"ו, **for it is not** as **common** for the חש"ו **to ignite the coal** -

כמו שדרכו לנתוקי שור ולנתורי בור דכמה דשביק לה חרש מעמיא עמיא ואזיל:<sup>5</sup>

**As it is common** for the חש"ו **to untie the ox and uncover the pit**; **for the longer** the חרש **leaves the coal alone it continually proceeds to become extinguished.**

### **SUMMARY**

רש"י maintains that שור דרכו לנתוקי on its own accord; however תוספות maintains that (since it is קשור כראוי) it is דרכו לנתוקי on account of the חש"ו, as opposed to a גחלת which tends to become extinguished.

### **THINKING IT OVER**

1. Is there a practical difference לדינא between רש"י and תוספות?<sup>6</sup> What is the root cause of their difference?<sup>7</sup>

2. What are the advantages of פרש"י?

3. The גמרא seemingly should have differentiated between a שור ובור and a גחלת in this manner; by שור ובור it will be מנותק ומנותר through the חש"ו; however by a גחלת, מעמיא ואזיל, meaning that left to its own it will not damage; by a שור בור it will also not damage if left on its own?<sup>9</sup>

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<sup>5</sup> By a שור ובור the presumption is that as time passes the greater the odds are, that the חש"ו will untie or uncover it. The knot or the cover does not become 'stronger' with the passage of time. By a גחלת, however, the longer it remains by the חש"ו, it is more likely to have become extinguished, and unable to cause damage. See 'Thinking it over' # 3.

<sup>6</sup> See footnote # 2.

<sup>7</sup> See ח' ר"נ אות שלו בד"ה ונראה.

<sup>8</sup> 'אבל גחלת לא גרע כ"כ דאין דרכו ללבות גחלת וכו' תוספות.

<sup>9</sup> See footnote # 5, and אמ"ה.