

And an ox pays for damages only

ושור אינו משלם אלא נזק –

OVERVIEW

rules in a case where one hit someone and damaged his hand, but it can be healed that the מזיק only pays for his inability to work during his rehabilitation (שבת), but does not pay for his decrease in value (נזק) if he were to be sold as a slave. The גמרא comments that if the damage was done by an animal, there would be no payment at all, since an animal pays only for נזק but not for שבת.

יש רוצים לפטור את השוכר או שואל סוס מחבירו -

There are those who want to exempt, one who rents or borrows a horse from his friend, from paying for any damage sustained by the horse -

אפילו הוזק בפשיעה ונתבטל הרבה ממלאכתו כיון דסופו לחזור להתרפאות -

Even if the horse was injured through negligence and was not able to work for a long time, since eventually the horse will be healed; their reasoning is -

דכי היכי דדרשינן איש בעמיתו¹ ולא שור בעמיתו -

For just as we expound the פסוק of איש בעמיתו (a man to his friend), but not שור regarding שבת that the בעל השור is only חייב for נזק if he injured a person -

הכי נמי דרשינן איש בעמיתו ולא איש בשור -

We also expound איש בעמיתו (is דברים בד' חייב), but not איש בשור; if a person damages a שור there is no חיוב of דברים -

ואין לחלק² בין שומרים לאדם המזיק -

And we cannot differentiate between guardians (who are perhaps דברים בד' חייב) and a person who damages (who is not חייב) –

מדפריך בבבא קמא (דף ד,ב) ותו³ שומר חנם והשואל כולי אדם דאזיק שור הוא -

Since the גמרא asks in מסכת ב"ק 'but a ש"ח and a borrower, etc. are all cases of a person who damaged an ox' –

¹ The גמרא in כו,א expounds on this פסוק ב"ק כו,א, ואיש כי יתן מום בעמיתו כאשר עשה לו יעשה לו ויקרא (אמור) כד, יט in פסוק. The שור בעמיתו but not חייב בד' דברים is איש בעמיתו to teach us that only.

² is responding to an anticipated question; perhaps the דרשה of דרשה, ולא איש בשור, applies only when a person actually damages the animal (in this case he is דברים מד' פטור) however if a שומר was negligent in watching the שור and it was hurt, perhaps that is a different case and he would be דברים בד' חייב, so תוספות rejects this idea.

³ A marginal note amends this to read והא שומר (instead of ותו שומר). The גמרא there was trying to explain why ר' אבון דאזיק שור did or did not include certain cases in his counting of the אבות נזיקין, saying that once a category is mentioned, he does not see fit to repeat another מזיק which is in the same category. The גמרא asked on this, but ר' אבון דאזיק שור mentioned an אדם המזיק שור, and nevertheless he also mentions ש"ח וכו', which is also a case of אדם המזיק שור. It is evident from this question that the גמרא does not differentiate between אדם המזיק and the שומרים, so therefore just as שומר חנם, the same should apply to the שומרים and therefore they would (seemingly) be פטור in a case where the animal was incapacitated, but is expected to fully recover.

replies to an anticipated question:

והא דפריך בריש הנחנקין (סנהדרין פד,ב) הכחישה באבנים הכי נמי דלא מיחייב⁴ -

And this which the גמרא asks in the beginning of הנחנקין, 'if he weakened the animal by loading it with stones, is it indeed so that he will be liable'?!'

היינו בהכחשה דלא הדרא⁵ -

There we are discussing a weakening that will not go back; the animal will be permanently weakened –

offers a differing view:

ורבינו חיים⁶ אומר דלא שייך שבת אלא באדם דשבתו לא הוי בכלל נזק -

And the ר"ח says that the concept of an independent שבת is not applicable, only by a person, for his שבת is not included in the נזק payment -

דמשום שבת לא פחתי דמיו כל כך⁷ -

Since the monetary value of a person does not decrease that much on account of שבת -

אבל שור פשיטא דשבתו בכלל נזק הוא דפחתי דמיו⁸ -

However by an ox it is obvious that his שבת payment is part of his נזק payment, because his value decreases on account of his שבת -

ומתחלה כשהוזק שמין אותו כמה דמיו פחותים⁹ לימכר:

And initially when he was injured we assess the ox how much has his selling price decreased.

SUMMARY

⁴ The פסוק (יה) there derives from another (אמור) כד, כא in פסוק, ומכה בהמה ישלמנה ומכה אדם יומת ויקרא states (אמור) כד, כא in פסוק, ומכה בהמה נפש בהמה that the חיוב is only when there is a חבורה (there was blood letting). The גמרא there asks does that mean that if he made the animal weaker by loading it with heavy stones but there was no blood that he is פטור. This cannot be! It appears from that גמרא that one is חייב for damaging a בהמה not as the רוצים יש maintain.

⁵ By a הכחשה דלא הדרא all agree that the מזיק is חייב, because that is נזק; the רוצים יש wanted to exempt the שומר from paying by a הכחשה דהדר so there is no נזק, only שבת, and one is seemingly פטור for שבת by an animal.

⁶ This follows the text of the תוספות הראש who writes ור"ח כהן (which is רבינו חיים).

⁷ When we assess the value of a person (how much it would cost to buy him as a slave) that fact that he cannot work a week or so, will hardly diminish his price, because when you purchase a person, you are buying someone with intelligence whose value cannot be measured solely on how much physical labor he can do. Therefore in order to compensate for his שבת we need to assess it separately. However when a שור incapacitates a person temporarily there is no נזק (according to רבא) and a שור is פטור from paying שבת.

⁸ An ox is only used for work, if he cannot work (even for a short time) his value is diminished, therefore it is not (merely) שבת, rather his inability to work is considered נזק and one is חייב for the היזק to a שור.

⁹ When an ox is injured by a מזיק we determine the amount to be paid by assessing the value of the ox before he was injured and the value immediately after he was injured; the lower current value certainly includes his inability to work for whatever period it takes him to recover, this is therefore included in נזק. See the commentaries for various explanations of ר"ח's view.

There is a dispute whether the financial loss of the time a recuperating animal cannot work is considered שבת (and therefore [even] a שומר who was negligent will be פטור), or is it part of נזק (and the שומר will be חייב).

THINKING IT OVER

תוספות contends that an אדם דאזיק שור is פטור from שבת, because just as we expound איש בעמיתו ולא שור בעמיתו, we also expound איש בשור. Why did not תוספות cite an explicit גמרא in ב"ק ד,ב, which states that an אדם דאזיק שור נזק הוא¹⁰ (but not דברים).

¹⁰ See רש"ש.