

התם שור שחוט לפניך – There, an ox is slaughtered before you

OVERVIEW

The גמרא offers an explanation as to why ר"י differentiates between the cases of מגו in the first פרק (where the מגו is ineffective), as opposed to the מגו of פרק ראשון (which is effective). The גמרא compares the מגו of שור שחוט to a שור שחוט and the מגו of שני פרק שחוט. There is a dispute between רש"י and תוספות as to the interpretation of this answer; based on their dispute concerning the actual litigation in the case of שדה זו.

פירש בקונטרס¹ שהוא טוען עד שלא אירסתין נאנסת -

It is explained in רש"י, that the reason the cases in פרק ראשון are compared to a שור שחוט is, since the husband **claims you were forced before I betrothed you**. The husband's claim against his wife is compared to a שור שחוט; there is a need for a response here, just as a שור שחוט necessitates a response as to who slaughtered it.

והכא אין שור שחוט לפניך דאין הלה תובעו -

However here in the case of שדה זו וכו' **there is no 'ox slaughtered before you'**; there is no need for a response since the son is **not demanding** anything from the buyer.²

תוספות has a different interpretation:

ורבינו יצחק מפרש דהכא נמי איירי בהלה תובעו כדפירשית³ -

And the ר"י explains that here too; in the case of שדה זו וכו' it is discussing a case **where the son is claiming** ownership of the field, as I explained.

אין שור שחוט and שור שחוט will now clarify what is meant by תוספות:

והכי פירוש התם שור שחוט לפניך דהרי אין לה בתולים⁴

And this is the explanation of the גמרא; there, in the cases of פרק ראשון, there is a שור שחוט לפניך for she has no בתולים –

ואינה יכולה לומר בתולה אני כמו בשור שחוט שאין יכול לומר חי הוא –

¹ See, רש"י ד"ה הכא, for a more complete rendition of s'il view.

² If there is a need for a response (שור שחוט), then according to ר"י a (certain type of) מגו is insufficient to substantiate her claim; however when there is no need for a response (אין שור שחוט), the מגו is effective.

³ See שור שחוט וכו' [see 'Thinking it over' # 1]. According to תוספות the meaning of שור שחוט וכו' cannot be that a response is required; for in all cases a response is required, since it is הלה תובעו.

⁴ The husband is always believed if he claims that his wife has no בתולים (see יא, כתובות) [in addition, that presently she is certainly not a בתולה]. Alternately it is a case where there was no דם on the (cloth) עדים.

And she cannot claim I was a בתולה by the נישואין; therefore her status is just as by a שור שחוט where no one can say he is alive; similarly she cannot deny the fact, that she is not a בתולה⁵ –

ולהכי בין אומרת משארסתני נאנסתי בין אומרת מוכת עץ אני תחתיך לא מהימנא –
And therefore whether she claims I was forced after the אירוסין, or whether she claims I was struck by wood while I was an ארוסה she is not believed.⁶ However –

הכא אין שור שחוט לפניך ונאמן במגו דאי בעי אמר לא היתה של אביך מעולם –
Here in the case of שדה זו **there is no שור שחוט לפניך**; we do not know, independent of the buyer's admission, that it once belonged to the claimant's father,⁷ **so** therefore the buyer is **believed** that he purchased it from the father, since he has **a מגו for he could have claimed it never belonged to your father.**⁸

SUMMARY

According to רש"י the difference between שור שחוט and אין שור שחוט is if there is a claim or not. According to תוספות the difference is whether the counter claim to the מיגו is (basically) substantiated (as by בתולים) or whether it remains unsubstantiated (as by שדה זו).

THINKING IT OVER

1. According to תוספות,⁹ is the claim of the son (merely) that it once belonged to my father; or does he additionally claim that I know he never sold it to you?

2. Is the שדה זו by אין שור שחוט, caused by the weakness of the claim (שדה זו); or by the strength of the מגו (that אביך מעולם)?¹⁰

⁵ It is not necessary for her to admit that משארסתני נאנסתי, in order to establish that she was not a בתולה at the נישואין. See previous footnote # 4. Therefore it is considered a שור שחוט.

⁶ The lack of בתולים disqualifies the woman from receiving the full כתובה; unless she can prove that she was a בתולה (or a מוכת עץ according to ר"מ) at the time of אירוסין. There is no real מגו here; the claim of מוכת עץ, cannot effectively challenge the fact the she is not a בתולה.

⁷ The claim of the son, does not establish it as fact that it once belonged to his father. Therefore it is considered as אין שור שחוט. See 'Thinking it over' # 2.

⁸ If the buyer would have claimed אביך מעולם של אביך he would certainly be believed, since the son has no עדים, that it once belonged to his father; and the buyer is currently occupying the field (albeit without a חזקה or שטר).

⁹ See footnote # 3.

¹⁰ See footnote # 7.