

**If you will argue; אי מה שור המועד עד נגיחה רביעית כולי -**  
**Just as a forewarned ox, until the fourth goring, etc.; he is not liable**

**OVERVIEW**

The תורה writes<sup>1</sup> that if an ox gores another ox he pays half the damage. This is known as a שור תם. However, continues the פסוק that 'או נודע כי שור נגח הוא מתמול' – that 'if it was known that he is a goring ox from yesterday and the day prior to that and the owner did not watch him, etc.', then he must pay full damages.<sup>2</sup> He is considered a שור המועד. We derive from the phrase 'מתמול שלשום ולא ישמרנו', the rulings of a שור המועד. Specifically there is a dispute between רש"י and אביי רבא how this is derived from the פסוק. Our תוספות will cite רש"י's interpretation, elsewhere, of their dispute, and show that our גמרא here refutes רש"י's interpretation.

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 מכאן חזר בו רש"י ממה שהיה מפרש בבא קמא (דף כג,ב ושם דיבור המתחיל ולא) –

**From the גמרא here, רש"י retracted from that which he interpreted in מסכת ב"ק -**  
**גבי דפליגי אביי ורבא -**

**concerning the dispute between רבא and אביי -**

**דאמר אביי תמול חד מתמול<sup>4</sup> תרי שלשום תלת ולא ישמרנו בעליו אתאן לנגיחה רביעית –**  
**For אביי said, the word תמול – yesterday, refers to one goring. The additional letter 'מ' in the word (מתמול) from yesterday refers to a second goring. The word (שלשום) before yesterday refers to a third goring. The פסוק continues, 'and the owner will not watch their ox'. This phrase comes to teach us a fourth goring. That is when he is a מועד, and pays full damages. This concludes the opinion of אביי.**

**ורבא אמר תמול מתמול חד הוא כולי<sup>5</sup> –**

**However, רבא maintains the word מתמול, even though it could have been written**

<sup>1</sup> שמות (משפטים) כא, לה-לו.

<sup>2</sup> There is another difference between a שור תם and a שור מועד. A שור תם is liable for damages only up to the amount that the שור תם itself is worth (he מגופו). By a שור המועד there is full liability regardless of what the שור המועד is worth (he העלייה).

<sup>3</sup> גבי הא דפליגי, אמר הגהות הב"ח.

<sup>4</sup> The תורה writes 'מתמול' – from yesterday. It could have written תמול; therefore from the word 'תמול' we derive one day's goring, and from the extra 'מ' we derive a second day's goring.

<sup>5</sup> We do not derive two gorings from the fact that the תורה could have written תמול and instead writes מתמול. This concludes the quote from the גמרא. According to אביי the phrase 'ולא ישמרנו בעליו' is referencing the fourth goring, and according to רבא it is referring to the third goring.

תמול, nevertheless it refers to only **one** goring, etc. רש"י there explains that the practical difference between אב"י ורבא is as follows:

– דאב"י סבר דעד נגיחה רביעית לא מיחייב ורבא סבר דחייב בנגיחה שלישית<sup>6</sup> –

**That אב"י maintains that the owner is not liable to pay the full damages of a שור until the fourth goring, while רבא maintains that he is liable for full damages by the third goring;** However רש"י retracted this interpretation -

– דאם כן הוה מסיק הכא גמרא דלא כהלכתא דקיימא לן כרבא לגבי אב"י –  
**for if this interpretation is correct,** that רבא maintains that by the third נגיחה he is a שור, then **the גמרא here,** that states explicitly that a שור is not liable for full damages until the רביעית נגיחה, this גמרא **will have concluded not according to the הלכה;** since רבא maintains, according to רש"י, that he is a שור by the third נגיחה, **for we (always) establish the law according to רבא** when he disputes אב"י.<sup>7</sup>

Therefore on account of the גמרא here –

– וחזר<sup>8</sup> רש"י ופירש דמשמעות דורשין איכא בנייהו –

אב"י ורבא רש"י retracted that interpretation. רש"י agrees that according to both אב"י ורבא an ox does not become a שור until the רביעית נגיחה. **And רש"י subsequently interpreted that the difference between אב"י ורבא, is in the derivation process of the rule of a שור המועד.**<sup>10</sup>

offers another explanation, wherein the dispute between אב"י ורבא has practical ramifications.

– והרב רבינו עזרא<sup>11</sup> מפרש דודאי לכולא עלמא לא מיחייב עד רביעית אבל בהא פליגי –  
**And עזרא ה"ר explains: that it is certain, that according to everyone; both אב"י ורבא agree that the owner is not liable for שור המועד payments until the fourth**

<sup>6</sup> For the first three gorings he pays the נזק of a שור, and רבא maintains that the owner is liable for שור המועד damages by the third goring. Both אב"י ורבא agree, according to this רש"י, that 'ולא ישמרנו' is referring to the goring of a שור המועד. This is how רש"י (in ב"ק) interpreted the מחלוקת between אב"י ורבא.

<sup>7</sup> Except for six cases which are referenced as יע"ל קג"ם. The הלכה therefore should be that he is a שור המועד by the third נגיחה. Why therefore, according to רש"י, does the גמרא here follow the opinion of אב"י and state that he is a שור המועד only by the fourth נגיחה?

<sup>8</sup> The וחזר בו רש"י amends this to read, וחזר בו רש"י.

<sup>9</sup> (and the commentaries) does not state where this retraction is found.

<sup>10</sup> According to אב"י the phrase ולא ישמרנו בעליו is referring to the fourth goring for which the owner is liable for שור המועד payments. רבא, however maintains that ולא ישמרנו בעליו is referring to third goring as a תם. It is after this third goring of בעליו ולא ישמרנו that the owner is liable on the fourth goring for שור המועד payments. Both אב"י ורבא agree that שור המועד payments are made only from the fourth goring onwards. There is no difference להלכה between אב"י ורבא. They only argue as to how we derive this rule from the פסוק.

<sup>11</sup> In והר"ר עזריאל he is referred to as ב"ק כג,ב (כד,א) תוס' ד"ה ולא.

goring, however their argue as follows –

דלאבוי דמפיק נגיחה רביעית מקרא דלא ישמרנו –

**That according to אבוי who derives the fourth נגיחה from the פסוק of ולא ישמרנו** as mentioned previously this פסוק is referring to the fourth נגיחה, then - בעליו

אם נגח נגיחה רביעית ביום ג' לא מיחייב עד שיגח ביום רביעית –

**if he gored the fourth נגיחה on the third day;** the same day that he gored the third נגיחה **he is not liable** for מועד payments **unless he gores on the fourth day;** the day after the third נגיחת תם -

דלא ישמרנו קאי אימים דומיא דתמול שלשום<sup>12</sup> –

**For the phrase ולא ישמרנו refers to days, similar to the phrase תמול שלשום – yesterday and before yesterday,** which refers to days.

אבל לרבא דנגיחה רביעית לא כתיבא בהדיא –

**However according to רבא,** that the phrase ולא ישמרנו בעליו is still referring to the third נגיחה of a תם, it is apparent **that the fourth נגיחה is not written explicitly;** it is merely inferred; it cannot be compared to תמול שלשום which are written explicitly. Therefore -

אפילו ביום שלישי אם נגח נגיחה רביעית מיחייב:

**Even if he gored the fourth goring on the third day,** that same day that he gored his third נגיחה תם, nevertheless the owner **will be liable** for מועד payments.

## SUMMARY

Originally, רש"י maintained that there is a dispute between אבוי ורבא whether a שור pays a נזק שלום on the third נגיחה - רבא, or on the fourth נגיחה - אבוי. However from our גמרא it is evident that all agree that a שור המועד pays a נזק שלם only at the fourth נגיחה. Their dispute may be whether the fourth נגיחה can be on the same day as the third נגיחה - רבא, or it must be the next day – אבוי.

## THINKING IT OVER

ה"ר עזרא states that according to אבוי the fourth נגיחה cannot take place on the same day as the third נגיחה. The reason given is that ולא ישמרנו must be similar to תמול שלשום.<sup>13</sup> However it seems that there may be a more obvious explanation, as follows: The תורה states clearly, according to אבוי, that the three נגיחות תם took place מתמול שלשום, yesterday and the days before, not on the same day as ולא ישמרנו

<sup>12</sup> Therefore just as תמול and שלשום are separate days, so too is ולא ישמרנו, which refers to the נגיחה רביעית, is a separate day. See 'Thinking it over'.

<sup>13</sup> See footnote # 12.

נגיחת בעליו, the גגיחת מועד. If the fourth נגיחה took place on the same day as the third נגיחת תמול שלשום were not תם, the three נגיחות תם<sup>14</sup>.

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<sup>14</sup> If this were the reason for אביי, then it would be much clearer why according to רבא it can be on the same day.