

## We derived it from 'his ox'

## משורו למדנו –

### OVERVIEW

The גמרא states that אבנו סכינו ומשאו, which were placed in the רה"ר and caused damage, the owner is liable, for we derive it from שור, according to רב. Just as he is liable for the damages of his שור, which is his property, similarly he is liable for any damage his property causes, including damages cause by אסו"מ. Our תוספות will first explain what is meant by שור and will then discuss how אסו"מ can be derived from שור, despite the apparent differences between them.

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משורו למדנו explains that תוספות

**היינו קרן דשן ורגל פטורין ברשות הרבים<sup>1</sup> -**

**Refers to קרן; for שן ורגל are פטור in the רה"ר.** We are discussing here אסו"מ that were placed in the רה"ר; if they were a תולדה of שו"ר they would be פטורין.

תוספות responds to an anticipated difficulty: If we derive אסו"מ שלא הפקירן from קרן, it should have the same דין as קרן, which pays (initially) only a חצי נזק. He should not pay more than a ח"נ (for the first three times) by אסו"מ as well.<sup>2</sup> תוספות responds:

**ובאבנו וסכינו אין לחלק בין תמות למועדות דלא שייך לחלק אלא בבעלי חיים<sup>3</sup> -**

**For by או"ס there can be no distinction between תמות and מועדות, for this distinction is only applicable by live animals.**

תוספות asks:

**ואם תאמר היכי גמר משור מה לשור שכן בעל חי וכוונתו להזיק -**

**And if you will say; how can we derive אסו"מ from שור? We know why a שור is חי; because it is alive and its intention (by קרן) is to do damage.** However אסו"מ are not alive and the idea of having intention to do damage is totally inapplicable; so how can we derive אסו"מ from שור?!

**ומפרש רבינו שמואל בן מאיר דאתי מבור ושור ממה הצד<sup>4</sup> -**

**And the רשב"ם explained: we derive אסו"מ from בור and שור together through a מה הצד.**

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<sup>1</sup> See 'Thinking it over' # 1.

<sup>2</sup> See מהרש"א (הארוך). Alternately, it would seem that we found a case of בורן לאו כיוצא בהן. By קרן there is a חיוב, and by אסו"מ, which is a תולדה of קרן, there is no ח"נ. תוספות rejects this concept.

<sup>3</sup> See 'Thinking it over' # 2.

<sup>4</sup> If you ask that שור is a בעל חי and להזיק, כוונתו להזיק, we will answer that בור יוכיח; for בור is not a בעל חי and להזיק, כוונתו להזיק. If we will say שור יוכיח for שור עשייתו לנזק, אין תחילת עשייתו לנזק. The צד השהוה is that it is דרכן להזיק; therefore we can also be אסו"מ which are מרבה אסו"מ. See 'Thinking it over' # 4.

anticipates a possible difficulty and forewarns it:

ולקמן<sup>5</sup> גבי הצד השוה דקאמר אביי לאתויי אבנו וסכינו -

**And later concerning the צד השוה of the משנה, which אביי explains that it comes to include או"ס** which he placed on his roof and they fell and caused damage (afterward) -

לא גרס אי לרב דאמר כולם משורר למדנו היינו שור -

**The text does not read; 'if it is according to רב who maintains that we derive all types of damages, which have an owner, from שור, so אסו"מ are שור';** and there is no need for the צד השוה of the משנה, since we can derive אסו"מ directly from שור, without a צד השוה.<sup>6</sup>

דלרב אתי שפיר דבמה הצד אתיא כדפרשית -

**For according to רב the צד השוה of the משנה as אביי explained it, is proper; for we indeed derive אסו"מ from א מה הצד (from שור ובור) as we have just explained.**

asks:

אבל קשה כיון דמבור נמי יליף לפטרו בהו כלים כבור<sup>7</sup> -

**However there is a difficulty** with this explanation that we derive אסו"מ from א ( צד of) השוה שור ובור; **since we derive אסו"מ from בור as well (as שור), they should be exempt** from paying damaged for **utensils just as בור** is exempt from כלים. We cannot say that this indeed is the case -

ולקמן בהמניח (דף כח,א) מחייב בהו רב כלים<sup>8</sup> גבי נשבר<sup>9</sup> כדו:

**For later in המניח רב, פרק המניח רב, obligates payment for כלים, which were damaged (by אסו"מ), in the case regarding where his pitcher broke.** תוספות does not answer this question.<sup>10</sup>

## SUMMARY

אסו"מ are derived through a צד השוה from קרן and בור (but it pays a ש"נ initially). It is not understood why it is חייב for כלים.

<sup>5</sup> דף ו,א.

<sup>6</sup> The גמרא there challenges אביי, who maintains that אסו"מ are derived from the צד השוה of the משנה. The גמרא claims that a צד השוה is not necessary. Others were גורס that the גמרא stated, 'if the owner was not אסו"מ, there is no need for the צד השוה (according to רב) for we can derive it directly from שור. תוספות negates this answer.

<sup>7</sup> See 'Thinking it over' # 3.

<sup>8</sup> In fact it seems the reason רב derives אסו"מ דלא הפקירן שור is explicitly for the purpose that they should be חייב for כלים. See the סוגיא there (on כח,ב).

<sup>9</sup> The משנה there states that if a pitcher broke in the רה"ר and another person slipped on the water (or was damaged by the shards), the owner of the pitcher is liable. רב explains that he is liable if his clothes were ruined in the water, etc. Clothes are כלים, and nevertheless he is חייב on the כלים that were ruined by his מים, which is similar to אסו"מ שלא הפקירן. According to רב, this case of כדו נשברה must be discussing a situation where לא הפקירן; for if he was מפקיר the water it is surely בור; and then he is certainly פטור for כלים.

<sup>10</sup> See also תוספות ה,ב ד"ה להלכותיהן.

## THINKING IT OVER

1. פטור says that שור cannot be referring to ורגל; for then אסו"מ should be צד השוה of ברה"ר.<sup>11</sup> Eventually תוספות will maintain that we derive אסו"מ through a צד השוה of שור and בור. Why cannot we say that שור refers to שו"ר and there is a חיוב ברה"ר since we derive it from בור as well.<sup>12</sup> (In addition; why does not אסו"מ derive רב from שו"ר and they will be ברה"ר?!) פטור

2. אסו"מ states that the concept of תמות ומועדות is not applicable by אסו"מ.<sup>13</sup> Seemingly, we can apply the תמות ומועדות to the owner of אסו"מ. For the first three times we deal leniently with him and he pays a חצי נזק, and on the fourth time he pays a נזק שלם.<sup>14</sup>

3. In a צד השוה there (usually) are two מלמדים (teachers) and one למד (the derived law). We cannot refute a צד השוה by citing a difference (חומרא) that only one מלמד has and the למד does not, for we say that the other מלמד is יוכיח (this is the whole idea of a צד השוה). It would seemingly follow that we cannot impose the rules of one of the מלמדים on the למד, unless the rules apply to both מלמדים. Why does תוספות ask,<sup>15</sup> that אסו"מ should be פטור for כלים (like בור)?! חייב is קרן?! נזקי כלים for חייב is קרן?! Only the rules and limitations of both מלמדים jointly should be placed on the למד; not those that apply to only one מלמד!<sup>16</sup>

4. According to תוספות that we derive אסו"מ through a צד השוה from שור and בור;<sup>17</sup> why does the גמרא state כולם משורר ומבורן למדנו; it should say; כולם משורר ומבורן למדנו!

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<sup>11</sup> See footnote # 1.

<sup>12</sup> See פני יהושע and אמ"ה (footnote # 710).

<sup>13</sup> See footnote # 3.

<sup>14</sup> See רש"ש.

<sup>15</sup> See footnote # 7.

<sup>16</sup> See אמ"ה (footnote # 86).

<sup>17</sup> See footnote # 4.