

The Ox Baraita

	ת"ש: שור שעלה ע"ג חבירו להורגו, ובא בעל התחתון ושמט את שלו ונפל עליון ומת - פטור	דחפו לעליון ומת – חייב
R. Nachman	<p>Assumption: the top ox is a שור and the owner would have to pay נזק שלם full compensation if it kills a fourth time. It's a case in which, if the bottom ox owner went to court, there would be no loss. Even so, the owner of the bottom ox is exempt for the death of the attacking ox. He can take the law into his own hands</p>	<p>אי הכי אימא סיפא</p> <p>If you were right that the case is one of a שור תם, and it was a case of loss if the owner went to court – then why is the bottom ox owner חייב if he pushes the top ox off? He should be פטור!</p> <p><i>Tosafot : The Gemara, representing R. Bachman at this point thinks that the seifa of the Baraita works well for R Nachman: Although one who is not about to suffer any loss, even in the eventuality of the bottom ox getting killed, should be held to a high standard – in which he should act calmly when taking the law into his own hands. But Rav Yehudah, who claims that the ox here is a שור תם, and that the owner stands to lose, should not be held to as high a standard and should be exempt even if he pushes the top ox off.</i></p>
R. Yehuda	<p>The case of the Baraita is one of a שור תם and the owner would only have to pay חצי נזק - ½ compensation if the bottom ox was killed. The reason the owner of the bottom ox is exempt is that he took the law into his own hands in a case of loss.</p>	<p>שהיה לו לשמטו ולא שמטו</p> <p>I still maintain the case was one of שור תם, and that there was a loss that justifies the owner of the bottom ox to take the law into his own hands. That said, he doesn't have a blank check to do what he wants! He must use minimal force. If he doesn't, he is חייב</p>