

## OVERVIEW of the Daf

### 1) The stoned ox (cont.)

The Gemara continues to elaborate on the differing opinions of R' Kahana and R' Tivyomi who disagree about which of R' Eliezer's two statements was stated first.

Another Baraisa presents R' Yosi HaGalili's alternative exposition of the words **ובעל השור נקי** and R' Akiva's response to that exposition.

R' Ulla the son of R' Idi offers one explanation of the dispute. Rava rejects this explanation and offers an alternative explanation.

Abaye rejects this explanation and offers, together with Rava, another understanding of this dispute.

R' Ada bar Ahavah refutes this explanation and offers a revised version of this explanation.

Support for this explanation is cited.

R' Akiva suggests another exposition for the words **ובעל השור נקי**.

The Gemara wonders why R' Akiva did not challenge his exposition with the same argument he used to challenge R' Eliezer's exposition.

The reason R' Eliezer did not offer a possible resolution is explained.

The Gemara wonders why R' Akiva did not offer the same explanation which leads R' Assi to give another rationale for R' Akiva's exposition.

R' Zeira rejects this explanation and Rava offers another explanation.

A Baraisa is cited that supports Rava's explanation.

### 2) Bequeathing damages

A Baraisa is cited that presents R' Akiva's exposition that just as a man will bequeath the right to collect damages to his heirs so too a woman will bequeath the right to collect damages to her heirs.

Reish Lakish clarifies why her relatives inherit the **כופר** payment rather than her husband.

The assertion that according to R' Akiva a husband inherits the right to collect her damages is challenged. ■

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## Gemara GEM

### How to arrive at the value of **כופר**

אמר ריש לקיש לא אמר אלא בכופר הואיל ואין משתלם אלא לאחר מיתה והוה ליה ראוי, ואין הבעל נוטל בראוי כבמוחזק

Ra'aved notes that according to the conclusion of the Gemara, the death payment of **כופר** is the value of the person who was killed by the **מועד** ox, and it is paid by the owner of the ox (the **מוזיק**). This needs to be understood, in light of the Gemara in Arachin (20a) where we find that if someone declares about himself that he will donate his value to the Beis HaMikdash, and he then dies, the halacha is that his heirs are not obligated to redeem this pledge, as "there is no value to the dead." In other words, the value of a person is estimated at the time of payment, and if the donor has died, there is no value for him that need be given. If so, asks Ra'aved, how do we arrive at a value for **כופר** to be paid for the **ניזק**, if, by definition, he is not alive at the moment his value is to be determined?

We might suggest that since **כופר** is given as an atonement for the **מוזיק**, we do not refer to this as "value of the dead", but we rather look upon the earlier value of the **ניזק** as a gauge to provide an amount to allow the **מוזיק** to achieve atonement. Or, we could say that the Gemara in Arachin is speaking about the "slave value" of a person, which is how we evaluate **ערכין**, and this drops to zero when a person dies. Our Gemara, however, is speaking about **כופר**, which is a death payment which is defined as payment for the person when he was still alive. Nevertheless, Ra'aved rejects these approaches due to specific questions. He reports that he grappled with this question for several years until he arrived at a proper understanding.

The only context within which we find the statement "there is no value to the dead" is in reference to the role of heirs in paying the pledge of their father. The vow made by the father was never formally evaluated, as the time to determine a person's value in the case of **ערכין** is when it is about to be paid. Because the father was dead at that moment, there is therefore no value assigned for this pledge.

**כופר**, however, is not determined at the time of payment, but rather at the time when the damage occurred, which is when the **ניזק** was last alive.

Tosafos in Arachin (ibid.) explains that the fact that **כופר** is paid is due to a **הכתוב גזירת**—a scriptural enactment, even though it refers to evaluating a live person only after he has died. ■

# HALACHAH Highlight

## *Paying the value of offspring in the absence of a father*

הכה את האשה ויצאו ילדיה

*If one strikes a woman and causes a miscarriage*

The Torah states that when a man strikes a pregnant woman and she miscarries the assailant is obligated to pay the value of the offspring—דמי ולדות—to the father even if the act was done unintentionally. There is a dispute whether the assailant is obligated to pay the value of the offspring if there is no father. Shulchan Aruch<sup>1</sup> discusses a case of a pregnant woman who was struck after her husband died and rules that the value of the offspring is paid to the widow rather than to her deceased husband's heirs. The reason, explains Sema<sup>2</sup>, is that a man can not bequeath to his children something which did not yet exist at the time of his death. Accordingly, since this money was not extant at the time the husband died he can not bequeath it to his children. Once the money does not go to his heirs the widow has the right to collect the value of the offspring since the pasuk associates the fetus with her. Rema<sup>3</sup> cites authorities that disagree and maintain that if the pregnant woman was struck after her husband died his heirs will collect the value of the offspring. The rationale is that once the Torah gives the father the rights to value of the offspring it, the fetus, is considered something that already exists and he has the right to bequeath that to his children.

Another example of this case would be a Cananite maid-servant or a gentile woman who was impregnated by a Jewish man and before the assault occurred, the woman was freed from slavery or converted. Shulchan Aruch<sup>4</sup> rules that the woman will collect the value of the offspring in this case. Since kiddushin would

# REVIEW and Remember

1. Explain the phrase יציבה בארעה וגיוורא בשמי שמיא.
2. What is the significance of the word אנשים in the phrase וכי ינצו אנשים?
3. Is an animal executed if it attempted to kill an animal and mistakenly killed a person?
4. What is the source that a husband inherits his wife's property?

not have taken hold between the Jewish man and this woman who was not Jewish at the time she became pregnant, the "father" has no association with the fetus, therefore, the money is paid to the mother. Rema<sup>5</sup> cites a dissenting opinion who holds that if the father was still alive he would collect the value of the offspring and if the father is no longer alive the assailant would not make any payment. Sema explains that this opinion agrees with the earlier cited authorities and maintains that the Torah never grants the mother the right to collect the value of the offspring, therefore, in a circumstance where the father will not collect there is no payment for the assailant to make. ■

1. שו"ע חור"מ סי' תכ"ג סע' א'
2. סמ"ע שם סק"ה
3. רמ"א שם
4. שו"ע שם סע' ג' וע' בסמ"ע סק"י
5. רמ"א שם וע' סמ"ע שם סק"י"ב

# STORIES Off the Daf

## *And he shall inherit her*

וירש אותה

Chazal tell us that when a woman dies, "she is only truly dead to her husband." This means that the anguish that a bereaved husband feels is usually much greater than that of anyone else—even the close relatives on her side of the family.

Rav Shach, zt"l, once made a shivah call to a man who had lost his wife. This man was completely crushed.

"You must remember that a Jew is never alone!" Rav Shach exclaimed. To encourage him, Rav Shach told him the following Midrash:

A certain Jew was traveling on a ship

filled with gentiles. When the ship reached a strange port, the other passengers asked the Jew to go down and make purchases for the rest.

"But I know no one here," the Jew protested.

"But a Jew is surely never alone, since wherever he is his G-d is always with him," they replied.

These words comforted the forlorn widower.<sup>1</sup>

Although great anguish is certainly a natural reaction to such a loss, some very great people thought only of Hashem's will even when confronted with the most difficult tests.

The Kotzker Rebbe once asked Rav Ze'ev, the son of Rav Avraham of Tchech-nov, zt"l, "Tell me how your father reacted when your mother passed away."

Rav Ze'ev replied, "Just after she passed away, my father felt her loss very profoundly and was filled with indescribable pain. But one of the first things he did after giving her over to the chevrah kadishah was to go to her closet. He said, 'We find in Bava Kama 42 that chazal learn from the verse וירש אותה, that a husband inherits his wife's belongings.'

"He took something from her closet and held it to himself saying, 'I am fulfilling this Torah commandment.'

When the Kotzker Rebbe heard this he exclaimed, "Who can compare to such a holy man whose every move is only al pi Torah!"<sup>2</sup>

1. לולא תורתך דברים י"ג ט"ו
2. סיפורי חסידים במדבר כ"ז י"א