

## OVERVIEW of the Daf

### 1) Goring a minor (cont.)

The Gemara continues to cite the Baraisa that discusses liability for an ox goading a minor.

2) **MISHNAH:** The Mishnah rules that an animal that kills someone unintentionally is not executed.

### 3) The exemption for unintentional killing

Rav and Shmuel disagree whether the owner of an animal that kills unintentionally is liable to pay **כופר**.

Shmuel's position is clarified.

A Baraisa is cited that supports Shmuel's position and poses a challenge to Rav's position.

The same Baraisa presents a dispute between R' Yehudah and R' Shimon whether one is obligated for unintentional damages caused by one's animal.

The Gemara explains the rationale behind each Tanna's position and why he rejects the other's rationale.

### 4) Intent to kill one person and instead killed another

The Gemara infers from the Mishnah that if the animal intended to kill one person and instead killed another it would be liable to death.

It is noted that this inference is inconsistent with R' Shimon.

The rationale behind R' Shimon's position is explained as well as the reason Rabanan reject his position.

5) **MISHNAH:** The Mishnah discusses cases where an animal that kills a person is put to death and presents R' Yehudah's disagreement in some of those cases.

### 6) Clarifying the Mishnah

A Baraisa is cited that elaborates on the dispute between Tanna Kamma and R' Yehudah.

R' Huna asserts that R' Yehudah exempts a sanctified or ownerless ox from death even if it is sanctified or declared ownerless after it gores.

A Baraisa is cited that supports this position.

A point in this Baraisa is clarified.

7) **MISHNAH:** The Mishnah begins with a discussion concerning when an animal's owner still has the right to his animal that was killed. The Mishnah concludes with a ruling that a watchman is responsible to assure that the animal under his watch does not cause damage.

### 8) Clarifying the Mishnah's first ruling

A Baraisa is cited that elaborates on the Mishnah's first ruling. ■

## Distinctive INSIGHT

### Payment for damages caused to children

תלמוד לומר או בן יגח או בת יגח לחייב על הקטנים כגדולים

The Baraisa informs us that the verse teaches that payment must be made when an ox injures children, just as payment must be made when an ox injures adults. The question is why we might have thought that one would be exempt for damages to children, and why it is necessary for the Torah to teach us this lesson. Ramban (Shemos 21:31) explains that an earlier verse (ibid., v. 29) taught that the Torah equates a woman to a man in terms of liability for all damages. This means that damages must be paid by anyone who causes or is responsible for injury to a woman, just as we find when damage is done to a man. In case we might have thought that this only applies for damage done to adults, the Torah here teaches that we must pay for damage even when it is done to children.

Ramban elaborates, explaining that an ox which overpowers an adult is certainly a wild and dangerous animal. If such an animal continues to be a menace and develops into a **מועד** to kill people, its owner is certainly negligent and is liable for payment of **כופר**. However, an animal which gores small children is not necessary such a threat to society. Animals are generally not inhibited by small children, and even simple movements on the animal's part can cause harm to unwitting children who are themselves not too careful to protect themselves. Nevertheless, in order to teach this point, the Torah rules that "this same law shall be done for them," and payment is made for damages and injuries done by animals to children.

ריב"א notes that it might have been sufficient for the Torah to teach that payments are to be made for damage to children, and we would have determined from this that payment would certainly have to be made for injuries caused to adults. An animal which attacks an adult represents a much more violent act on the part of an animal, and is therefore a situation about which the Torah would expect an owner to guard against. The רד"א answers that we might have thought that an owner of an ox would have to pay for injuries to children, as they are more susceptible to harm, but adults would be expected to fend for themselves and protect themselves. This is why the Torah teaches both cases. ■

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 לע"נ מרת שרה בת ר' משה יוסף ע"ה

By her children

Mr. and Mrs. Robert Hartman

## HALACHAH Highlight

### Prohibitions that are in their place

וכל קבוע כמצחה על מחצה דמי

Any doubt that relates to something in its place is treated as though the probability is fifty-fifty

There is a famous question presented by Rav Yehonason Eibshutz<sup>1</sup> regarding the principle of **כל קבוע כמצחה על מחצה דמי**—Any doubt that relates to something in its place is treated as though the probability is fifty-fifty. Sefer Kereisus cited by Pri Chadash suggests that it should be prohibited to plant or work any land in Eretz Yisroel. The rationale behind this suggestion is that in the parsha of eglah arufah the Torah states (Devarim 21: 4) **ולא יזרע**—It cannot be sown, which according to the Gemara in Sotah (46a), teaches that one is not permitted to plant in the place where the eglah arufah ceremony was performed. Since we cannot identify where the ceremony was held it should be prohibited to work any land because even if we assume that the majority of land was not used for the eglah arufah ceremony it should still be prohibited since the land that is prohibited is in its place - **קבוע**—and as such it should be treated as fifty-fifty and we should be strict.

Sefer Kereisus answers that the principle of **כל קבוע** applies only in a circumstance when the prohibited item is recognizable in its place—**ניכר האיסור במקומו**—but when an item is not recognizable in its place, like the place where the eglah arufah ceremony was held, the principle of **כל קבוע** does not apply. Pri Chadash cites a Tosafos in Nazir<sup>2</sup> that echoes this qualification to the principle of **קבוע**. The

## REVIEW and Remember

1. What are the sources that a תם animal is executed if it kills a minor?  
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2. What is the point of dispute between Shmuel and Rav?  
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3. What is the point of dispute between R' Yehudah and R' Shimon?  
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4. Is it possible to consecrate an ox that is being taken to be stoned?  
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Gemara there (11b-12a) relates that if a man instructs an agent to betroth a woman on his behalf and the agent dies before he returns and identifies the woman he betrothed; the principal is prohibited to marry any woman since any woman may be a relative of the one who was betrothed. Tosafos explains that the prohibition that restricts the principal from marrying is only Rabbinic because we can use the principle of **רוב**—majority to say that any woman he chooses to marry is not related to the woman he betrothed. Tosafos then suggests that the prohibition should be a Biblical prohibition since the principle of **כל קבוע**—should mandate that we treat the uncertainty as if it is fifty-fifty. He answers that the principle of **כל קבוע**—applies only when the prohibited item and the permitted item are recognizable but when the prohibited item is not recognizable the principle does not apply. ■

1. פלתי סי' ק"י ס"ק י"ב

2. תוס' נזיר י"ב ד"ה אסור בכל ■

## STORIES Off the Daf

### Innocent damage?

בן ובת שיפה כחם בנוזיקין

On today's daf we find that a minor who causes damage need not pay.

A young mother was once walking with her son through the streets of Bnei Brak. Like many children, the boy was in his own little imaginary world. While his mother took little notice, he stooped and picked up a stone. Still in the thrall of his very active imagination, he threw

the stone in a random direction. Sadly, the stone broke a hole in an expensive shop-window.

The woman went with the shopkeeper to Rav Avraham Yitzchak Gershonovitz, ז"ל, for adjudication and the Rav ruled that she was obligated to pay. She agreed to pay the damages.

Later, when she mentioned this ruling to her husband he was furious. "It is clear from Bava Kamma that if a minor damaged, neither he nor his parents need pay."

When the husband confronted Rav Gershonovitz with this proof, he said, "I

can see that whatever I tell you won't move you. Let's go to the Chazon Ish, ז"ל, and see how he rules in this case."

The two went to the Chazon Ish and to the father's shock he also ruled that the mother must pay for the damage her son had incurred. "A parent is not responsible to pay for the damage caused by his child when the child is unsupervised. In our case, the boy's mother was with him and she should have kept careful watch that her son cause no damage. Since she failed to do so, she is responsible to pay for the damage he caused."<sup>1</sup> ■

מעשה איש חלק ג' עמ' ר"ו