

OVERVIEW of the Daf

1) Muzzling animals (cont.)

R' Yochanan and Reish Lakish attempt to prove their respective positions concerning the use of one's voice to violate the prohibition against muzzling and leading different species of animals together.

A Baraisa rules that one who muzzles an animal receives lashes and depending upon the animal must also pay a fine.

The premise that one would pay a fine and receive lashes is challenged.

Three resolutions to this challenge are presented.

Tangentially, the Gemara mentions two more halachos of R' Pappa.

2) Breeding animals

Shmuel's ruling concerning the mating of two different species of animals is unsuccessfully challenged.

R' Yehudah permits breeding animals of the same species.

This ruling is unsuccessfully challenged.

The Gemara presents a discussion concerning the permissibility of putting an animal in a pen with its own species and another species.

3) MISHNAH: The Mishnah presents a dispute concerning the type of work that permits a worker to eat from the produce of his employer.

4) Clarifying the dispute

The Gemara presents the reasoning for the respective positions of Tanna Kamma and R' Yosi the son of R' Yehudah.

Rabbah bar R' Huna presents an inquiry related to the position of R' Yosi the son of R' Yehudah, but the question remains unresolved.

R' Nachman in the name of Rabbah bar Avuha issues a ruling about when a worker may eat grapes and when he may also drink wine.

5) MISHNAH: Additional parameters regarding the right of a worker to eat his employer's produce are presented.

6) Eating from another grapevine

The Gemara inquires whether a worker may eat from a grape vine that is next to the one he is working with.

A number of unsuccessful attempts are made to resolve this inquiry. ■

Distinctive INSIGHT

Is a chicken or goose allowed to be muzzled?

דש באווזין ותרנגולים לרבי יוסי ברבי יהודה מהו?

The Mishnah presents a dispute between Tanna Kamma and R' Yose b. Yehuda. Tanna Kamma holds that if a worker is working either with his hands only (picking fruit or stalks), or with his feet only (threshing), or even if he is only carrying things on his shoulder, he is nevertheless fully eligible to eat while he works. R' Yose b. Yehuda holds that a worker may only eat if he is working with his arms and legs. R' Yose's reasoning is that he compares the law of a worker to that of an ox, and an ox works simultaneously with its forearms and its legs.

Based upon the opinion of R' Yose, Rabba bar R' Huna asks what would be the halacha where chickens or geese are used to thresh. On the one hand, they only work with their legs, but that is all that they have. Does the Torah base the animal's eligibility to eat on its using its arms and legs, so a chicken is not allowed to eat (it may be muzzled), or does eligibility depend on an animal using its full powers? Normally this would require using both arms and legs, but regarding a chicken using its legs alone should be enough. This issue is not resolved (תיקו).

The Rishonim note that the Mishnah seems to understand that according to all opinions, the Torah prohibits muzzling for all animals, and not just an ox, which is the animal mentioned in the verse (see Devarim 25:4). The reason we expand the application of this law beyond the case of an ox is obviously based upon the famous *גזירה שוה* of *שור-שור* which is mentioned in reference to Shabbos (see Bava Kamma 54b). Accordingly, all animals are to be understood to be included in this law, as the Mishnah in Bava Kamma states, "oxen, livestock, undomesticated animals, and birds are all included." Why, then, does our Gemara probe whether chickens and geese are included in this halacha, when it should be obvious that they are?

Tosafos explains that the question of the Gemara here is only according to the opinion of R' Yose b. Yehuda in the Mishnah, who holds that the only time "man" can eat while working is when he is similar to "ox," in terms of his working with both his hands and feet. R' Yose interprets "ox" as a limited category, and he does not accept the *גזירה שוה* in the Mishnah in Bava Kamma.

Tosafos HaRosh adds that it could be that R' Yose agrees with the Mishnah in Bava Kamma, but in our case of muzzling an animal, R' Yose feels that if the verse is to be interpreted to include all animals it would have written "*לא תחסום בחסימה*", without mentioning the *שור* at all. The fact the verse mentions "ox" therefore suggests that this law applies only if an animal works both with its arms and its legs. ■

HALACHAH Highlight

Seizing money that is in doubt

עושה בגנן זה מהו שיאכל בגנן אחר

If one is working on one grapevine is he permitted to eat from another grapevine?

The Gemara inquires whether an employee who is working with one grapevine is permitted to eat from a second grapevine. Rosh¹ rules that a worker is not permitted to eat from the grapevine that is next to him. The rationale behind this ruling is that since the Gemara did not reach a final conclusion on the matter the worker must adopt a stringent approach. Nevertheless, if a worker does take grapes from another grapevine the owner may not demand payment for those grapes nor is he permitted to deduct the value of the grapes from the employee's salary. The difficulty with this is that generally when there is a disagreement about a claim to money Rosh supports the position that someone who takes possession of the doubtful money may not keep it. Why then in our case does he allow the worker to keep the grapes he ate from the second grapevine?

In response to this inquiry Shach² confirms that Rosh distinguishes between a doubt that exists regarding the collection of a fine and a doubt whether a person is owed money. Rosh's position that one party is not permitted to seize money that is in doubt applies to cases involving fines. When it comes to a claim involving money Rosh agrees that if one party seizes property from the other he may keep that money. Nesivos Hamishpat³ suggests that the distinction is related to whether

REVIEW and Remember

1. What is the punishment for violating the prohibition against muzzling an animal?

2. Why does R' Yehudah permit mating two animals?

3. What is the point of dispute between Tanna Kamma and R' Yosi the son of R' Yehudah?

4. Why did Chazal permit eating while walking from one row to another?

the money in doubt is presumed to be the property of one party (חוקת מרי קמא) or not. The reason Rosh normally takes a strict approach in these matters is that the person who seizes the doubtful money is attempting to extract the disputed money from someone who has a presumption of ownership on that money. Seizure under such conditions is not allowed. In our case, however, the worker has the right to eat the produce that he works with. Due to the uncertainty about the halacha of eating from another grapevine the question is whether the employee has to reimburse his employer. Since in this case it is the employee who has presumed ownership of his money the employer cannot demand a refund since that would involve the employer taking money from its presumption of ownership. ■

1. רא"ש פ"ז סי' י"י.
2. בספרו תקפו כהן סי' כ"ו.
3. נתיבות המשפט סי' כ"ה דיני תפיסה ביאורים אות ד'.

STORIES Off the Daf

Job security

"בעבידתיה טריד..."

One baal teshuvah had always made his living teaching music in a co-ed public high school. He was an exceptionally good teacher and made a decent living. It was a school where the majority of students were non-Jews, but he had to instruct boys and girls singing together—he wondered if he was permitted to keep his job. This was especially troubling to him since finding another job with such good terms would likely be quite difficult.

When he asked his Rav about this, he replied that in Bava Metzia 91 we find

that one who is occupied with his job does not have illicit thoughts, so possibly this is permitted. But he did not want to take responsibility for this psak so he consulted with the Kinyan Torah b'Halachah, zt"l.

The Kinyan Torah b'Halachah replied, "I am sorry but this is a very serious problem. In Sotah 48 we find that women singing and men answering is like a spark in a pile of tinder. Rashi explains there that the men who answer pay attention to the women singing and this leads to sin. Clearly, the fact that the men are occupied with their part in the song does not mean that they do not have illicit thoughts. In our situation, the music teacher himself is obligated to lis-

ten carefully to the girls sing since he must correct them and help them improve. There is no greater fire in tinder than this!

"This is especially a problem since he became a baal teshvua and our sages tell us that one who is greater than his friend has an even greater yetzer hara. The very fact that as a baal teshvua he is higher than regular tzaddikim means that he has greater challenges than others and should definitely not chance this risky situation. We do not find that this is permitted in any serious source. On the contrary, this is clearly prohibited. The fact that it is difficult for him to find another source of livelihood does not mitigate the halachah even one iota."¹ ■

1. שו"ת קנין תורה בהלכה, ח"א, סי' כ' ■