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Bava Kamma Daf 34

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

A Bull Market (Price)

The *braisa* states: If an ox worth two hundred (*zuz*) gored an ox of similar value, and caused fifty *zuz* of damage, and then, the value of the damaged ox rose to four hundred, and if the damage had not been done, it would have risen to eight hundred, the *halachah* is as follows: The owner of the ox that gored must pay what he was obligated to pay when the damage occurred (*twenty-five - if his ox was a tam*). If it lessened in value from the time of the goring, the payment is determined from the value at the time of trial. If the damaging animal went up in value after the trial, the owner of the ox that was damaged receives payment based only on the time of the damage (*and cannot claim his share in the animal went up*). If the damaging animal lost value from the time of the goring, the payment is determined from the value at the time of trial.

The *braisa* said: If the damaging animal went up in value after the trial, the owner of the ox that was damaged receives payment based only on the time of the damage (*and cannot claim his share in the animal went up*).

The *Gemora* asks: Who is the author of this opinion?

The *Gemora* answers: It is Rabbi Yishmael, who says that the owner of the ox that was damaged is a creditor

of the owner of the damaging ox, and is owed money (*not a “share” in the ox*).

The *Gemora* asks: The second part of the *braisa* says that if the damaging animal lost value from the time of the goring, the payment is determined from the value at the time of trial. This seems to follow the opinion of Rabbi Akiva, who says that they are partners in the ox (*with the owner of the one damaged owning a share of the ox, which is why it can lose value*). Can it be that the first part of the *braisa* is in accordance with Rabbi Yishmael, and the second part in accordance with Rabbi Akiva?

The *Gemora* answers: No, the entire *braisa* is Rabbi Akiva. The (*first*) case here is when the ox that damaged was fattened up by its owner, and that is why the owner of the damaged ox has no share in the increase in value.

The *Gemora* asks: If this was the case, the earlier law that if the damaged ox rose in value, the payment remains as it was when the damage occurred seems obvious!

Rav Pappa answers: The first case is whether he fattened it up or it happened by itself (*that it increased in value*). The law needs to be stated when it happened by itself. The second case is only if he fattened it up.



The *braisa* said: If it lessened in value from the time of the goring, the payment is determined from the value at the time of trial.

The *Gemora* asks: Why did it lessen in value? If it was due to being overworked, he should claim, "You overworked the animal and I should pay for it"!?

Rav Ashi answers: The case is where it kept decreasing in value due to the injury. The owner of the damaged ox can claim, "The horn of your ox is buried in my ox." (34a)

Mishna

An ox worth two hundred gored (*to death*) an ox of similar value, and the carcass is not worth anything. Rabbi Meir says: Regarding such a case the verse states: *And they will sell the live ox and split its value*. Rabbi Yehudah says: While this is clearly the law, and you have seemingly upheld the verse: *And they will sell the live ox and split its value*, you have not upheld the next part of the verse: *And also the dead one they will split*. What is the case (*of the entire verse*)? An ox worth two hundred gored (*to death*) an ox of similar value, and the carcass is worth fifty. Each one takes half of the live animal and half of the dead animal. (34a)

Payments of a Tam and Mu'ad

The *braisa* states: An ox worth two hundred gored (*to death*) an ox of similar value, and the carcass is worth fifty. Each one takes half of the live animal and half of the dead animal. This is the case of goring oxen referred to in the Torah; these are the words of Rabbi Yehudah. Rabbi Meir says: This is not the case referred to by the Torah. Rather, the case is where an ox worth two hundred gored (*to death*) an ox of similar value,

and the carcass is not worth anything. Regarding such a case the verse states: *And they will sell the live ox and split its value*. What do I do with the verse: *And also the dead one they will split*? It teaches us that one takes the value that it is worth when it is dead and the value of how much it was worth when it was alive, and the owner of the damaging ox pays half of that difference in value (*if it is a tam*).

The *Gemora* asks: After all is said and done, everyone agrees that each side will take one hundred and twenty five zuz (*in Rabbi Yehudah's case*). What is the practical difference between their opinions?

Rava answers: The difference is lessening the amount that the one who damaged must pay because of the amount that the carcass is worth. Rabbi Meir holds that the value of the carcass belongs to the owner of the dead ox, while Rabbi Yehudah holds that they split the value of the carcass.

Abaye asks: If so, Rabbi Yehudah holds that there is a stringency regarding a *tam* (*that the owner owns half of the dead animal*) over a *mu'ad* (*where the owner of the dead ox owns the entire carcass, as stated earlier on 10b*). If you will say this is indeed so (*that he holds a tam can have stricter laws than a mu'ad*), as the *Mishna* says that Rabbi Yehudah says that there is a case where a *tam* would be obligated to pay when a *mu'ad* would not (*see Rashi*), that is only regarding the type of guarding that must be done to ensure they do not damage. This is because this is indicated in the verses themselves. However, did he ever say that their calculations regarding damages should differ (*in the mu'ad's favor*)? Didn't the *Mishna* quote Rabbi Yehudah as saying: Would one think that an ox worth a *maneh* (*equal to twenty-five sela*) that gored an ox worth five *sela*, and the carcass is worth a *sela*, should

result in the owners splitting the live and dead animals? [Obviously not, as why should the owner of the live animal give up twelve and a half sela when his total damages are two sela if his ox is a tam.] Is a *mu'ad* a separate category in order to be more stringent or more lenient? I would say it is to be more stringent. Accordingly, if a *mu'ad* pays based only on what she damages, a tam (*who pays half*) should certainly pay based only on what she damages!?

Rather, Rabbi Yochanan says: Their argument is regarding the improvement in value of the carcass. Rabbi Meir holds it belongs to the one who was damaged, and Rabbi Yehudah holds it is split by them. Accordingly, this is Rabbi Yehudah's difficulty in a *braisa* quoted later (*not the one above*). Now that you will say that the Torah had pity on the one whose ox damaged and gave him half of the improvement of the carcass, if an ox worth five sela gored an ox worth a *maneh* and the carcass improved to be worth fifty zuz, does it make sense that they should split the bodies of the live and dead animals? Where do we find a similar case where a person benefits because he damaged someone? Additionally, the verse says: *He shall surely pay*, implying he only gives, he does not receive.

The *Gemora* asks: Why did he quote this additional proof?

The *Gemora* answers: Perhaps one will say that this is only where the one who was damaged loses, not where he gains. If an ox worth five sela gores an ox worth five sela, and the carcass goes up to being worth thirty zuz, perhaps one would think the one who damaged should get some of the improved value. [This is why he needed the additional proof] that the verse says: *He shall surely pay*, meaning that one who damages only pays, and never receives money due to his damaging.

Rav Acha bar Tachlifa said to Rava: If so, Rabbi Yehudah holds that a tam possibly pays more than half of the damages. The Torah says: *And they will sell the live ox and divide the money*. [See Rashi for the case where this would occur.]

The *Gemora* answers: It must be that he also holds that one takes the value that it is worth when it is dead and the value of how much it was worth when it was alive, and the owner of the damaging ox pays half of that difference in value (*if it is a tam*). How does he know this? It must be from the verse: *And also the dead (ox) they will split*.

The *Gemora* asks: Didn't we say earlier that Rabbi Yehudah derived from here that they split both the live and dead ox?

The *Gemora* answers: If it taught only this lesson, it should have said: *And the dead (ox) they will split*. Why did it add *also*? It must be to teach both lessons. (34a – 34b)

Mishna

There is a person who is liable for his ox's actions and exempt for his own actions, and the opposite can happen as well. What is the case? If one's ox embarrasses someone, he does not have to pay, whereas if he embarrasses someone, he does have to pay. If his ox blinds the eye or knocks out the tooth of his Canaanite slave, he does not go free. However, if he does so, his slave does go free. If his ox damaged his father or mother, he must pay. If he did so, he does not have to pay (*as he is liable for the death penalty, and therefore does not pay as explained in the Gemora*). If his ox causes a fire that burns grain on *Shabbos*, he

must pay. However, if he does this on *Shabbos*, he is exempt from paying, because he is liable to be killed. (34b)

Destruction on Shabbos

Rabbi Avahu taught before Rabbi Yochanan: For all acts of destruction on *Shabbos*, one is exempt, except for one who injures a person or burns something on *Shabbos*.

Rabbi Yochanan said: Go teach this outside (*somewhere else*). This teaching regarding injuring a person or burning something is not a reliable teaching (*as they are also exempt*). And even if it is, it could be in a case only when one inflicts a wound in order to give his dog blood, or when he burns something because he needs the ashes. [*He would be liable in such a case for there is a purposeful intent to his destructive act.*]

The *Gemora* asks on Rabbi Yochanan from our *Mishna*: If his ox causes a fire that burns grain on *Shabbos*, he must pay. However, if he does this on *Shabbos*, he is exempt from paying. Now are these two cases similar to each other? Just as when the ox burns the grain, it does not have use for the ashes, so too, when he burns the grain, he does not need the ashes. And yet, the *Mishna* rules that he is not liable to pay, for he is punished with death!?

The *Gemora* answers: The *Mishna* is referring to a case where the ox needs the ashes.

Rav Avya explained it as follows: We are dealing with an intelligent animal which, owing to a bite in the back, was anxious to burn the grain, so that it might roll in the ashes in order to be healed.

The *Gemora* asks: But how could we know that it had such an intention?

The *Gemora* answers: We saw that after the grain had been burnt, the animal actually rolled in the ashes.

The *Gemora* asks: Did that ever happen?

The *Gemora* answers: Ye sit did! For there was the ox which had been in the house of Rav Pappa, and which, having a severe toothache, went and removed the lid that covered a barrel of beer and drank from the beer until it was healed.

The *Gemora* asks: If the *Mishna's* cases are similar, how will you explain the case where an ox intended to embarrass its victim?

The *Gemora* answers: It is sufficient if it intended to inflict damage, for we learned that one is liable for humiliation if he intended to inflict damage, even if he did not intend to humiliate. (34b – 35a)

INSIGHTS TO THE DAF

Who Collects First From a Bankrupt Debtor?

HaRav Nissim Chaim Moshe Mizrachi *zt'l* (d. 5509/1749 CE) the *Rishon LeTziyon* [Separdic Chief Rabbi] of Yerushalayim, and his brother, HaRav Yisrael Meir, were widely known as “the great luminaries.” HaRav Nissim was asked to rule in a case where a wealthy merchant had gone bankrupt and his creditors were demanding that outstanding loans be paid.

According to our *daf*, when someone owes money to several creditors but lacks the resources to repay all of the debts, the earlier creditors take preference over

the later ones. In this case, however, one of the later creditors claimed that he should collect first, arguing that among the merchant's assets were goods for which he had not yet received payment. It would be unfair, the creditor maintained, for other lenders to collect goods that he had provided.

The *Bach* and other *poskim* disagreed over this question. According to the *Bach* (*Tur*, C.M. 96:23), the creditor was indeed justified in his claim. The merchandise is subjugated to the supplier until payment is received, and he has priority over other creditors. On the other hand, the *Chida* (*Responsa Chaim Sha'al* I §74) cites many *poskim* who disagree with the *Bach*, claiming that after the merchandise is sold, the sum owed is listed just like any other debt. The seller has no remaining tie to his former merchandise and has the same status as the other creditors.

Another halacha brought in our *sugya* states that if one of the creditors went ahead and collected his debt out of turn, it is confiscated from him and divided according to *din Torah*. The *Shulchan Aruch* (C.M. 104:1) rules that this halacha applies only to land, but if he collected moveable goods they are not confiscated from him because moveable goods are only subjugated as long as they are in the debtor's possession.

DAILY MASHAL

Egyptian governor forcibly collected debts

A Jew from Baghdad wanted to rely on this halacha when he and his associates loaned large sums of money to an Egyptian Jew who failed to repay the debt on time. Afraid of losing his money, the creditor sent an emissary to the Egyptian Governor, who then forcibly collected his loan from the borrower. When the other

creditors heard about the intervention on the part of the Egyptian Governor, they said that the Baghdad Jew had not acted in accordance with halacha. They claimed that the money collected should have been divided among all of the creditors. The Baghdad Jew countered that once he had already taken possession of the money, the halacha states that it cannot be taken away from him. In this case the *Tzedakah U'Mishpat* (C.M. §8) upheld the other creditors' claim, since the Baghdadi lender had violated halacha by asking the Egyptian Governor to intervene. The governor's actions were based on *arka'os* [rulings issued by non-Jewish courts] rather than *din Torah*. Consequently his means of obtaining the money was not recognized as a legitimate acquisition, and therefore the money should be divided among all of the creditors.