DAF Notes
Insights into the Daily Daf
Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

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An agent's liability with regard to *kofer*, the purpose of *kofer* and how it is assessed.

The Rabbis taught in a Baraisa: An agent appointed as custodian of a minor orphan must pay for the damages inflicted by the minor's animals, but he is exempt from paying *kofer* if the animal kills someone.

The Gemara asks: Who is the Tanna who is of the opinion that *kofer* is an atonement, and since orphans do not require atonement, the agent is exempt from this payment?

Rav Chisda answers: It is R' Yishmael the son of R' Yochanan ben Berokah. As a Baraisa teaches: The verse states "And he (the owner of the ox) shall give a ransom for his life" (Shemos 21:30) – this refers to the value of the victim. R' Yishmael the son of R' Yochanan ben Berokah says: This refers to the value of the damager. The Gemara assumes that the point of contention between these two opinions is that the Rabbis holds that *kofer* is a compensatory payment, whereas R' Yishmael holds it is an atonement.

Rav Pappa disagrees with Rav Chisda and says that everyone agrees *kofer* is an atonement, and the point of contention is only that the Rabbis hold that we assess the value of the victim and R' Yishmael holds we assess the value of the damager.

The Gemara elaborates: The Rabbis derive their opinion from a *gezeirah shavah*. The verse uses the word "*shisa*" in the verse discussing *kofer* and also uses the word *"shisa"* in a verse that discusses the payment made for causing a miscarriage. Just as the payment for a miscarriage is assessed based on the value of the victim, so too is the payment for *kofer* assessed based on the value of the victim.

R' Yishmael disagrees and derives his opinion from the verse by *kofer* that states: "And he (the owner of the ox) shall give a ransom for his life," which indicates the payment is based on his own value.

The Rabbis would rejoin that although this verse indicates the atonement is his, the assessment is based on the value of the victim.

***Kofer* paid by partners, and obtaining a security**

Rava praised Rav Acha bar Yaakov to Rav Nachman, saying that he is a great person. Rav Nachman replied that he would like to meet Rav Acha. When they met, Rav Nachman asked him to pose to him a question. Rav Acha asked him the following: If an ox belonging to two partners kills someone, how do they settle their *kofer* obligation? If each partner pays the full amount, they would be making a double payment which is unwarranted, and if each pays half, neither is fulfilling the obligation?

As Rav Nachman was pondering the question, Rav Acha proceeded to ask him a second question. The Mishna in Arachin says: The Temple treasurer would extract a security from someone who owed an *Erech* pledge, but not from someone who owed a *chatas* or *asham* offering. Should we extract a security from someone who owes a *kofer* payment to the heirs of the victim? Do we say that since *kofer* is an atonement, it is more similar to a *chatos* or *asham* and a security is not necessary? Or is a security still necessary since it is not owed to the Temple, but to a private individual. Alternatively, since the owner did not commit any wrongdoing personally and it was only his animal that inflicted the damage, he does not take this too seriously, and a security is still necessary?

Rav Nachman replied: Enough, I am already silenced by your first question.

A borrowed *tam* turns out to be a *muad*

A Baraisa states: If someone borrows an ox, assuming it is a *tam,* but it was actually a *muad*, and it gores, the owners and the borrower each pay half the damages.

If someone borrows an ox that is a *tam* and it is rendered into a *muad* while in his care, and then after it is returned to its owner it gores another animal, the owners must pay half of the damages and the borrower is exempt from any payment.

The Gemara asks on the first ruling: Why is the borrower liable for the full payment, let him tell the owner that he only intended to borrow a regular animal, and was not prepared to undertake the responsibility to guard an aggressive animal?

Rav answers: The borrower was aware that the animal had an aggressive nature, even though he did not know it was a *muad*.

The Gemara asks: The borrower can still claim that he did not accept responsibility to provide the level of guarding that is required for a *muad*?
The Gemara answers: The owner can respond that even if the animal had been a *tam*, the borrower would still be liable to pay half of the damages, which is exactly what he is being held liable for.

The Gemara asks: The borrower can reply that had the animal been a *tam* as he had thought it to be, the damages would have been paid from the ox itself, whereas now that it turned out to be a *muad*, the payment is a lien against all assets.

The Gemara answers: The owner can reply that if the borrower had used the ox to make the payment, he would have then been responsible to repay that value to the owner.

The Gemara attempts to exonerate the borrower from a different angle and asks: The borrower could claim that had the animal been a *tam*, he would have been able to admit to his liability and thereby been exempt. Even according to the opinion that the half-payment of a *tam* is not a *kenas*, he would still be able to claim that he could have hidden the animal in a meadow, since the payment is only taken from the animal itself.

The Gemara replies: We must be discussing a case where the court had seized the animal, negating these two possibilities.

The Gemara asks: If so, why are the owners liable for half of the damages, let them claim to the borrower

that by allowing the court to seize the animal, he caused them the loss of the animal, as they are unable to win a dispute against the court.

The Gemara answers: The borrower can reply that had he returned the ox to the owners, the court would have seized it from them instead, so he is not responsible for their loss.

The Gemara asks: The owners can still argue that they would have hidden the animal in a meadow?

The Gemara answers: This argument is ineffective, because since the animal was a *muad*, the court would have seized a different asset in its place.

The Gemara retorts: That would be true if the owners had other assets, but if the owners did not have any other assets, why can they not claim the full damages from the borrower?

The Gemara's final answer is that the borrower can reply that since he owes the animal to the owners, and the owners in turn owe damages to the victim, the borrower effectively owes the animal to the victim. This is a concept taught by R' Nosson. As we learn in a Baraisa: R' Nosson says; From where do we know that is A owes money to B, and B owes money to C, that C can claim the money directly from A? From the verse "And he shall give it to the one to whom he is guilty" (Bamidbar 5:7).

Does a change of ownership reset a *muad's* status?

The Gemara revisits the second ruling taught in the Baraisa quoted above: If an ox is rendered a *muad* while it is in the care of the borrower, then it is returned to the owner, and then it gores an animal, the owners must pay half of the damages and the borrower is exempt.

The Gemara asks: It is implicit in this ruling that a change of ownership resets the animal's status from *muad* back to *tam*. However, the first ruling of the Baraisa teaches that it does not, since the borrower and owners must between them pay for the full damages, despite the ox having been transferred from the owners to the borrower's domain?

R' Yochanan responds: These two rulings are irreconcilable, and must be from two different authors.

Rabbah says: Both rulings are based on the opinion that a change of ownership will not reset the animal's status back to *tam*, and the reason why in the second ruling the owner only pays half of the damages is because he can claim that the borrower does not have the ability to render his animal into a *muad*.

Rav Pappa says: Both rulings are based on the opinion that a change of ownership will reset the animal's status back to *tam*, and the reason why in the first ruling the ox retains its status as a *muad* is because it is not a complete of change of ownership, since it retains its identity as belonging to the owners even when in the care of the borrower.

May an arena ox be brought as a sacrifice?

The Mishna had stated: An ox of the arena is not liable to being put to death.

The Gemara inquires: Is an arena ox valid to be brought as a sacrifice?

Rav says that it is valid, since it was coerced into killing. Shmuel says that it is invalid since a sin has been committed with it.

The Gemara quotes a lengthy Baraisa to challenge Shmuel. The Baraisa states: We expound a verse to exclude multiple categories from being brought as a sacrifice. "From the animals" – excludes an animal that perpetrated, or was subjected to, an act of bestiality. "From the cattle" – excludes an animal that was worshipped. "From the flock" – excludes an animal that had been designated as a sacrifice to an idol. "And from the flock" – excludes an animal that gored and killed someone.

R' Shimon said: Why do we need two separate exclusions for an animal that was involved in an act of bestiality and an animal killed someone? Since each of these two categories have their own stringency. The animal involved in an act of bestiality is subject to the same penalty regardless of whether it was a willing participant or whether it was coerced, whereas an animal that gores is only liable to be killed if it was not coerced. On the other hand, if an animal gores and kills someone, its owner must pay *kofer*. Therefore neither category can be implied from the other, and each must be stated independently.

The Gemara now presents its challenge to Shmuel from the rule stated that the judgment on an animal that gores and kills someone depends on whether it was coerced or not, and the Gemara assumes this is in the context of whether it is valid to be used as a sacrifice?

The Gemara replies that the distinction is only in the context of whether the ox is liable to be killed, but has no bearing on its eligibility to be a sacrifice.

The Gemara brings a support to this understanding of the Baraisa. The Baraisa had stated: "Regarding an animal that gored and killed, the Torah did not treat an act of coercion like an act committed by choice". This cannot be referring to its eligibility to be a sacrifice since those laws are never explicitly mentioned in the Torah, and therefore the context of the Baraisa must be its liability to be killed.

DAILY MASHAL

Man Influences Animals

It is written (Yeshaya: 11, 6): (In the days of Mashiach) And the wolf will live with the sheep. The Baalei Mussar say: When humans act properly, so will the animals.

They say: A slight proof can be brought to this from our Gemora: If an ox is rendered a *muad* while it is in the care of the borrower, then it is returned to the owner, and then it gores an animal, the owners must pay half of the damages (as it reverts to being a tam) and the borrower is exempt. And Rav Pappa had stated: This ruling is based on the opinion that a change of ownership will reset the animal's status back to *tam*.

Behold, we see that when two people make an acquisition of this animal, the ox changes its nature from a muad to a tam. In the future, when all of mankind will be conducting themselves properly, the animals will as well and they will all get along with each other.

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H