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If an ox causes a miscarriage, is the owner liable to pay for the offspring?

A Baraisa teaches us: A verse states “The owner of the ox is absolved” (Shemos 21:28).

R’ Yose Haglili expounds this to mean that the owner a *tam* is exempt from paying for the offspring if his ox attached a woman and causes her to miscarry.

R’ Akiva asked R’ Yose: Why would we need an extra verse to teach is this law, we already know this from the verse in Shemos 21:22 that discusses the damages awarded for causing a miscarriage “If men were fighting” which implies that the payment is only applied when the perpetrator was a man, not an ox?

The Gemara concurs with R’ Akiva’s question.

Rav Ulla the son of Rav Iddi answers: If not for the exposition of R’ Yose Haglili, we would have said that the verse that discusses the miscarriage is excluding only an ox that is a *muad*, but an ox that is a *tam* would be liable. Rabbah finds this answer untenable, as a *muad* always incurs a greater liability than a *tam*?

Rabbah then provides his own answer: If not for the exposition of R’ Yose Haglili, we would have said that the verse that discusses the miscarriage is excluding an ox that is a *muad*, and a fortiori a *tam* would certainly be exempt. However, due to the exposition of R’ Yose Haglili we limit the exemption to a *tam*, and a *muad* would be liable to pay for the offspring.

Abaye asks Rabbah: According to your approach, we should apply the same logic to the payments awarded for humiliating someone, and apply the liability for humiliation to a *muad*? (The source for exempting the owner of an ox for paying for the humiliation caused by

his ox is derived from a very similar verse, as is detailed on 87a).

Abaye and Rava provide a final explanation of R’ Yose Haglili: The verse that discusses the miscarriage requires a monetary payment for the offspring only if the mother survives the attack, however if the mother dies, the attacker is exempt from monetary payments because of the rule that a more severe punishment always mitigates a lesser punishment. If not for the exposition of R’ Yose Haglili, we would have said that the exclusion of an ox would be applied to this specific law, and we would have imposed the monetary payment on the owner of the ox even if the mother dies. However, per R’ Yose Haglili, we expound the verse “The owner of the ox is absolved” to teach that the owner of the ox is exempt from monetary payments if his ox causes a miscarriage.

Rav Ada bar Ahavah objects to the initial assumption based on the concept (discussed in Sanhedrin 79a) that a death penalty is only imposed in a case where there was intent to kill victim. Since in this scenario, the two men who were fighting were intent on harming each other, and not the pregnant woman who intervened, there should be no death penalty, and consequently no exemption from the monetary payment.

Rav Ada bar Ahavah therefore provides a new understanding, as follows: If it was one of the quarreling men that killed the woman, their intent matters so that if the woman was killed inadvertently they would still be liable to the monetary payment for the offspring, and the exemption is only if she was killed deliberately. The exclusion of the ox from this verse would indicate that the owner of the ox is always liable for the monetary

payment, even if the woman was the intended victim. However, now that R' Yose Haglili expounded the verse "The owner of the ox is absolved", the owner of the ox is exempt from the monetary payment.

Rav Chagai journeyed from the south and related a Baraisa that is in accordance with Rav Ada bar Ahavah.

If an ox kills a slave, does the owner have to pay the 30 shekalim fine?

A Baraisa expounds the same verse differently: "The owner of the ox is absolved", R' Akiva derives from here that if an ox kills a slave, the owner is exempt from the 30 shekalim fine.

The Gemara asks: Why does R' Akiva not counter his own statement with the argument he presented to R' Eliezer (on 41b) in the context of the *tam*'s exemption from paying half of *kofer* that since an ox is put to death, and the owner of a *tam* only pays from the value of the ox, the owner is automatically exempt from making a monetary payment.

Rav Shmuel bar Rav Yitzchok answers: The teaching of R' Akiva is relevant for a scenario where the owner pre-empted the court and slaughtered his ox.

The Gemara asks: Why did R' Akiva not use this answer when he challenged R' Eliezer?

The Gemara answers that indeed R' Akiva would have accepted this answer, and when he challenged R' Eliezer, he was asking if perhaps R' Eliezer had an alternative answer.

The Gemara asks why R' Eliezer didn't provide this answer?

The Gemara answers: R' Eliezer was addressing a scenario where the ox intended to kill an animal, and inadvertently killed a human. In that case, since the ox is not put to death I might have thought the owner should be liable, hence the need for the verse to teach us that the owner is exempt from the *kofer* liability. In contrast to our case where the ox intentionally killed the slave, and is therefore put to death, there is no reason to assume an exemption for monetary payments, even if the owner pre-empted the court and slaughtered his ox.

The Gemara concurs with this logic and asks how R' Akiva can argue?

Rav Assi relates that he heard an explanation of R' Akiva's statement from a great person, R' Yose bar Chanina, who explained as follows: Since R' Akiva is of the opinion that a *tam* that damages a person, its owner is liable to pay for the damages in full, there is reason to assume that the payment must also be made from other assets, hence the need for the verse to teach us that the owner is exempt from this thirty shekalim fine.

Rav Zeira objects to Rav Assi that this approach is untenable, since we have another Baraisa where R' Akiva already derived from the verse in Shemos 21:31 "Similar to this judgment should be done to him" that even though the *tam* pays full damages, the payment is still only taken from the value of the ox, and not from other assets.

Rava therefore answers that since there is a stringency when a slave is killed, in that the owner of the ox must pay a thirty shekel fine, even if the slave was only worth one shekel, I might have thought there would be another stringency to require the owner to be liable to the payment even from other assets, hence the need for the verse "The owner of the ox is absolved" to teach us that the owner is indeed exempt from this payment.

A Baraisa was taught that supports Rava's explanation. The verse states: "The owner of the ox is absolved". R' Akiva expounds this to teach us that the owner of the ox is exempt from the thirty shekalim fine levied for the killing of a slave. You might ask that this exposition is unnecessary, since by *kofer* we distinguish between a *tam* and a *muad*, so too by this payment we should also say that a *tam* is exempt and only the *muad* is liable? Furthermore, since in the case of the killing of a free man the owner must pay the full value of the victim to satisfy the *kofer* liability, yet nevertheless the *tam* is exempt, when a slave is killed, and the owner of the ox need pay only thirty shekalim, even if the slave was worth more than that, so certainly we should exempt the *tam* from this liability? To this the Baraisa responds that the logic is the reverse. Since the owner of the ox must pay thirty



shekalim even if the slave was worth less, I might have thought that the liability is applied to a *tam* as well as a *muad*, therefore the verse tells us “The owner of the ox is absolved” to teach us that the owner is indeed exempt from this fine.

DAILY MASHAL

Compensation Following a Plane Crash

A *shochet* from Yerushalayim perished in a tragic plane crash during a flight to Argentina, where he was scheduled to slaughter cows. Since the *shochet* had been killed on his way to work, the management of the meat company wanted to send a large compensation payment to Eretz Yisrael, and HaRav Yitzchak Weiss *zt”l* was asked how to divide the money among the various family members. Specifically, they wanted to know whether the money should go to the widow or the sons, or whether the laws of inheritance would apply since the money was provided by the late father’s employers, in which case the first-born son would be entitled to twice the portion his brothers received.

Our *daf* teaches us that the owner of an ox prone to kill people [*shor mu’ad*] pays the *kofer* money designated as an atonement for causing the death] to the heirs of the deceased, based on his value. [The Tannaim disagree on this point, see 41a above.] The Gemara also notes that Reish Lakish uses the verse, “It killed a man or woman” (*Shemos* 21:29), to derive the halacha that when an ox kills a married woman, the *kofer* does not go to her husband, as in the case of other inheritances, but to the sons, and if there are no sons, to the other heirs.

The *Hafla’ah* (*Kuntrus Acharon E.H.* 90:7) questions the need for this *derashah* since a later passage in our *sugya* says the husband only inherits property already in his wife’s possession at the time of her death. The husband has no claim to property his wife acquired posthumously, e.g. inheritances from relatives who died later or payments on loans she gave before her marriage. Only the other inheritors have a right to such assets (*E.H.* 90:1).

The obvious question is why does the Gemara need to cite a special verse to demonstrate that the husband does not receive the *kofer* money, which is not in her possession at the time of death?

The *Minchas Chinuch* (Mitzvah 51) explains that, on the contrary, if the Torah had not informed us that the *kofer* money is not intended for the husband, we would have thought he is entitled to it.

The husband is, in fact, the rightful heir to his wife’s estate—except for property acquired posthumously. *Kofer* money, however, is not a posthumously acquired asset, but a new debt that never belonged to the wife and never could have come into her possession. It is not an inheritance at all, yet the Torah determined that the ox owner must award this money in the form of a gift to the deceased’s inheritors. Therefore one would expect this gift to go to the husband, which is why Reish Lakish needed a special *derashah* to demonstrate that this sum is not given to the husband either.

Thus the *Minchas Yitzchak* (VII §137) writes that in the case above involving the *shochet*, since the compensation package never belonged to the deceased, the halachos of inheritance do not apply. What remains to be clarified is the custom in such cases. Is such money given only to the widow, or is it given to all of the family members. At any rate, the money is not considered an inheritance.