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Bava Kamma Daf 44

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Daf Notes is currently being dedicated to the neshamot of

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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

The Mishna had stated: The same judgment (that the ox is executed and the owner of a *muad* pays *kofer*) applies in the case of a (minor) boy or in that of a girl.

The Gemora cites a braisa: [The verse written by a *muad*]: *Whether it gored a boy or it gored a girl* implies that there is liability in the case of minors just as in that of adults.

The braisa asks: But surely this is only logical (and a verse is not necessary)! For since there is a liability in the case of a person killing another person, and there is similarly a liability in the case of an ox killing a person; just as where a person killed another person, no distinction is made between [the victims being] minors or adults, so also where an ox killed a person, no distinction should be made between [the victims being] minors or adults? Additionally, there is a *kal vachomer* argument [to the same effect]; for if in the case of a person killing another person, where the Torah did not make [murderers who are] minors liable as [it did make] adults, it nevertheless imposed there liability for minors as for adults, now in the case of an ox killing a person, where the Torah made minor oxen [liable] as [it did make] adult oxen, should it not stand to reason that there is liability for minors as there is for adults!?

The braisa answers: No, for it could have been argued that if you stated this ruling in the case of a person killing another person, perhaps it is because [where a person injured another person] there was liability for the four [additional] things (besides damages), but how would you be able to prove the same ruling in the case of an ox,

where there is no liability for the four [additional] things? Therefore the Torah states: *Whether it gored a boy or it gored a girl* to impose liability for minors as for adults.

The braisa continues: So far I know this only in the case of *muad*; from where do I know it in the case of *tam*? We derive it by analogy: Since there is liability (for an ox) for killing a man or a woman, and there is similarly liability for killing a boy or a girl; just as regarding the liability for a man or a woman you made no distinction between a *tam* and a *muad*, so also regarding the liability for a boy or a girl, you should make no distinction between a *tam* and a *muad*. Furthermore, there is a *kal vachomer* argument [to the same effect]; for if in the case of a man and a woman who are in a disadvantageous position when damages had been done by them (that they are liable), you have nevertheless made there no distinction between a *tam* and a *muad*, in the case of a boy and a girl who are in an advantageous position when damage has been done by them (for they are not liable, as they are minors), should it not stand to reason that you should make no distinction between a *tam* and a *muad*?

The braisa answers: No, you cannot argue like that (the analogy): Can we draw an analogy from a more serious to a lighter case so as to be more severe [with regard to the latter]? If the Torah is strict with a *muad*, which is a more serious case, how can you argue that it ought to be equally strict with a *tam*, which is a lighter case?

And furthermore (with regard to the *kal vachomer*), you could also argue that the case of a man and a woman is



stricter, since they are under obligation to observe the Torah's commandments, but how can you draw an analogy to the case of a boy and a girl, seeing that they are exempt from the commandments? It was therefore necessary to state: *Whether it gored a boy or it gored a girl*; [the repetition of the word 'gored' indicates that no distinction should be made between] goring in the case of a tam and goring in the case of a muad, between goring in the case of killing and goring in the case of mere injury. (43b – 44a)

If an ox by rubbing itself against a wall caused it to fall upon a person [and kill him], or if an ox while trying to kill an animal killed a person [by accident], or while aiming at a Canaanite killed a Jew, or while aiming at a nonviable infants killed a viable one, there is no liability.

Shmuel said: There is exemption [for the ox in these cases] only from [the penalty of being stoned to] death, but there is liability [for the owner] to pay kofer. Rav, however, said: There is exemption here from both liabilities.

The Gemora asks (on Shmuel): But why [kofer]? Wasn't the ox a tam?

The Gemora answers: Just as Rav said (regarding a different Mishna) that the ox was a muad to fall upon human beings in pits, so also [in this case we say that] the ox was a muad to rub itself against walls [which thus fell] upon human beings].

The Gemora asks: But if so, why should the ox not be liable to [be stoned to] death? It is understandable in this other case where we can explain that the ox was looking at some vegetables and so came to fall [into a pit], but here what can be said (as to why the ox was not executed)?

The Gemora answers: Here also, the ox had been rubbing itself against the wall for its own gratification (and as it did not intend to kill, it is not executed).

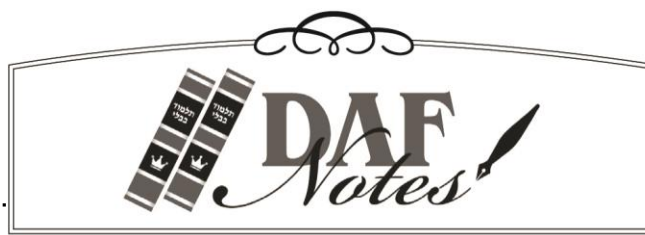
The Gemora asks: But how can we know this?

The Gemora answers: By noticing that even after the wall had fallen (and the person was already dead), the ox was still rubbing itself against it.

The Gemora asks: But granted all this, is this manner of damage not an example of tzroros (pebbles, where there would be no liability for kofer)?

Rav Mari the son of Rav Kahana said: We speak of a wall gradually brought down by the constant pushing of the ox.

A braisa has been taught in accordance with Shmuel and in refutation of Rav: There are cases where the liability is both for [stoning to] death and kofer: there are other cases, where there is liability for kofer but exemption from [stoning to] death; there are other cases where there is liability [for stoning to] death but exemption from kofer; and there are still other cases where there is exemption both from [stoning to] death and from kofer. How so? In the case of a muad [killing a person] intentionally, there is liability both for [stoning to] death and for kofer. In the case of a muad [killing a person] unintentionally, there is liability for kofer but exemption from [stoning to] death. In the case of a tam [killing a person] intentionally, there is liability [for stoning to] death but exemption from kofer. In the case of a tam [killing a person] unintentionally, there is exemption from both penalties. [This braisa clearly states that the owner is obligated to pay kofer when his muad ox kills unintentionally, although the ox will not be sentenced to death; this is a proof to Shmuel and a refutation of Rav.]



The braisa continues: Whereas in a case of injury [caused by the ox] unintentionally, Rabbi Yehudah says there is liability to pay [damages], but Rabbi Shimon says there is no liability to pay.

The Gemora explains the reasoning: What is the reason of Rabbi Yehudah? He derives [the law of damages] from that of kofer: just as for kofer there is liability even where there was no intention [to kill], so also for damages for injuries there is liability even where there was no intention [to injure].

Rabbi Shimon, on the other hand, derived [the law of damages] from that of the killing of the ox: just as the stoning of the ox is not required where there was no intention [to kill], so also damages are not required where there was no intention [to injure].

The Gemora asks: But why should Rabbi Yehudah also not derive [the ruling in this case] from [the law applying to the] killing [of the ox]?

The Gemora answers: It is logical to derive [a ruling regarding] payment from [another ruling regarding] payment, but it is not logical to derive [a ruling regarding] payment from [a ruling regarding] killing.

The Gemora asks: Why then should Rabbi Shimon also not derive [the ruling in this case] from [the law applying to] kofer?

The Gemora answers: It is logical to derive a liability regarding the ox from another liability that similarly concerns the ox, thus excluding kofer which is a liability that concerns only the owner. (44a – 44b)

The Mishna had stated: If an ox while trying to kill an animal killed a person [by accident], there is no liability.

The Gemora infers: Where, however, the ox had aimed at killing one human being and [by accident] killed another human being, there would be liability.

The Gemora notes: This implication of the Mishnah is not in accordance with Rabbi Shimon, for it has been taught in a braisa: Rabbi Shimon says: Even where [the ox] aimed at killing one person and [by accident] killed another person there would be no liability. What is the reason of Rabbi Shimon? The Torah states: *The ox shall be stoned and its owner also shall be put to death*, [implying that only] in those cases in which the owner would be subject to be put to death [were he to have committed murder], the ox also would be subject to be put to death. Just as therefore in the case of the owner the liability arises only where he was aiming at the particular person [who was actually killed], so also in the case of the ox, the liability will arise only where it was aiming at the particular person [who was actually killed].

The Gemora asks: From where do we know that this is so even in the case of the owner himself?

The Gemora answers: The Torah states: *And he ambushes him and rises up against him*, [which indicates that he is not liable] unless he had been aiming at the particular person [whom he killed].

The Gemora asks: What then do the Rabbis make of the text: *And he ambushes him*?

It was said at the School of Rabbi Yannai: This excludes [a manslaughter committed by] a stone being thrown into a crowd.

How is this to be understood? If you say that there were [in the crowd] nine Canaanites and one Jew, why not exclude the case on the ground that the majority [in the crowd] were Canaanites? And even where they

were half and half, doesn't an accused in a capital punishment case have the benefit of the doubt?

The case must be where there were nine Jews and one Canaanite. For though in this case the majority [in the crowd] consisted of Jews, still since there was among them one Canaanite, he is regarded as "in place," and any doubt in a case involving something in its place is reckoned as fifty-fifty, and where there is a doubt in a capital punishment case, the court rules leniently. (44b)

Where an ox of a woman, or an ox of [minor] orphans, or an ox of a guardian, or an ox of the wilderness, or a consecrated ox, or an ox of a convert who died without [legal] heirs, [has killed a person], it is liable to [be stoned to] death. Rabbi Yehudah says: In the case of an ox of the wilderness, a consecrated ox and an ox of a convert who died [without heirs], there would be exemption from [stoning to] death, since these have no [private] owners.

It was taught in a braisa: [The word] ox occurs seven times [in the section dealing with an ox killing a person] to include the ox of a woman, the ox of [minor] orphans, the ox of a guardian, the ox of the wilderness, the consecrated ox and the ox of a convert who died without [legal] heirs. Rabbi Yehudah, however, says: An ox of the wilderness, a consecrated ox and an ox of a convert who died without heirs are exempt from [stoning to] death, since these have no [private] owners.

Rav Huna said: The exemption laid down by Rabbi Yehudah extends even to the case where the ox gored and was only subsequently consecrated to the Temple, or where the ox gored and was only subsequently abandoned. From where do we know this? From the fact that Rabbi Yehudah specified both an ox of the wilderness and an ox of a convert who died without heirs. Now what actually is 'an ox of a convert who died'? Surely since he left no heirs the ox remained ownerless, and this [category] would include equally an ox of the wilderness

and an ox of the convert who died without heirs? We must suppose then that what he intended to tell us [in mentioning both] was that even where the ox gored but was subsequently consecrated, or where the ox gored but was subsequently abandoned, [the exemption would still apply] and this may be taken as proved.

The Gemora notes: It has also been taught in a braisa to the same effect: Rabbi Yehudah went even further, saying: Even if after having gored, the ox was consecrated or after having gored it became ownerless, there is exemption, as it has been said: *And its owners had been warned.... and it killed* (a man or a woman, the ox shall be stoned). This applies only when no change of status has taken place between the manslaughter and the appearance before the Court.

The Gemora asks: Doesn't the final verdict also need to comply with this same condition? Doesn't the same text: *The ox shall be stoned* [apply also to] the final verdict?

The Gemora answers: Rather, the braisa says as follows: That is so only when no change in status has taken place between the manslaughter, the appearance before the Court, and the final verdict. (44b)