

9 Tammuz 5776
July 15, 2016



Bava Kamma Daf 45

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Mishna

If an ox has been sentenced to death, and its owner consecrates it, it is not consecrated. If he slaughters it, its meat may not be eaten.

If the verdict had not yet been reached when its owner consecrates it, it would be consecrated. If he slaughters it, it may be eaten.

If an ox is entrusted to the care of an unpaid guardian, a borrower, a paid guardian, or a renter, the guardian stands in the place of the owners, so that if it is a *muad*, he must pay for the damages in full, and if it is a *tam*, the guardian must pay half of the damages.

Sentencing an ox in absentia

A Baraisa states: An ox that kills a person, but the verdict has not yet been reached, if its owner sells it, the sale is valid. If he consecrates it, it is consecrated. If he slaughters it, the meat may be eaten. If it was in the care of a guardian and the guardian returns it to the owner, he has fulfilled his obligation. However, once the guilty verdict has been reached, if the owner sells it, the sale is not valid. If he consecrates it, it is not consecrated. If he slaughters it, its meat may not be eaten. If it was in the care of a guardian and he returned it to the owner, it is not deemed as if it was returned. R' Yaakov disagrees with the last point, and says that it is still deemed returned.

The Gemara suggests that the point of contention is whether an item that is physically extant but halachically forbidden to be benefitted from may be used to satisfy an obligation.

Rabbah contended that they all agree that an item that is forbidden to be benefitted from may be used to satisfy an obligation, because if not, they would also have disagreed about *chometz* that was stolen before *Pesach*, whether it may be returned after *Pesach*.

Rather, he holds the point of contention is whether an ox can be sentenced to death if it is not in the presence of the court. The Rabbis that represent the first opinion in the Baraisa say that the ox must be present, so the owner can claim that the guardian caused him a loss by handing the ox over to the court. If the guardian would have returned the ox to him, he would have hidden it in a meadow and prevented the court from sentencing it to death. Whereas R' Yaakov holds that the ox would have been sentenced to death even if it was hidden in a meadow, and the guardian caused the owner no loss by handing it over to the court.

The Rabbis derive their opinion from the verse in Shemos 21:29 "The ox shall be stoned and also its owner shall be put to death". This teaches us that the legal process for sentencing the ox must be similar to the sentencing of a human that murders. Just as a human must be present for his sentencing, so too an ox cannot be sentenced in absentia. R' Yaakov argues that a human needs to be present so that he is given the opportunity to present a defense, but an ox is not capable of defending itself and need not be present at its sentencing.

The guardian's liability

A Baraisa states: Four categories of people stand in place of the owner to be liable for the damages of their animals; an

unpaid guardian, a borrower, a paid guardian, and a renter. If an ox in their care kills a person, if it is a *tan*, the ox is put to death, and the guardian is exempt from paying *kofer*. If it was a *muad*, the ox is put to death, and the guardian is liable to pay *kofer*. All except the unpaid guardian must reimburse the owner for the value of the ox.

The Gemara asks: What was the scenario? If the guardian fulfilled his responsibility and guarded the ox, they should all be exempt from reimbursing the owner. If he didn't, they should all, including the unpaid guardian, be liable?

The Gemara answers that he provided a lesser level of guarding. An unpaid guardian is not required to provide more than that and is therefore exempt, but the other guardians are required to provide a superior level of guarding.

The Gemara asks: If this is in accordance with R' Meir, who says in the upcoming Mishna that a *muad* requires a superior level of guarding, then the renter should also be exempt from reimbursing the owner, as that is the opinion of R' Meir in Bava Metzia 80b. And if this Baraisa is the opinion of R' Yehuda who categorizes a renter together with a paid guardian, they should all be exempt from *kofer* if it was a *muad*, as per R' Yehuda's opinion in the upcoming Mishna?

Rav Huna bar Chinana answers: This Baraisa is the opinion of R' Eliezer who holds that even a superior level of guarding is insufficient for a *muad*, and he also agrees with R' Yehuda that a renter has the same level of responsibility as a paid guardian.

Abaye answers: This Baraisa is actually authored by R' Meir, and this is in accordance with the opinion of Rabbah bar Avuha who reverses the opinions in the dispute in Bava Metzia, so that R' Meir is the one who holds that the renter has the same level of liability as a paid guardian.

An aggressive ox is not expected to be on the receiving end of a goring

R' Elazar said: If an ox is entrusted to an unpaid guardian, if it damages others the guardian is liable. If it is damaged, he is exempt from reimbursing the owner.

The Gemara asks: If the guardian accepted responsibility for damages, he should be liable to compensate the owners if it was damaged, and if he did not, he should be exempt from liability for damages it inflicts on others?

Rava answers: The guardian did accept responsibility for its damages but since he was aware that it was an ox with a history of damaging, he assumes it may damage others, and accepts to guard it from inflicting damage. He does not expect it to be damaged by another ox, and therefore did not include that eventuality in his commitment.

Mishna

R' Meir says: If an ox owner tied it with its reins, or locked the gate in front of it properly, yet it escaped and damaged, whether it was a *tam* or *muad*, the owner is liable.

R' Yehuda says: If it was a *tam*, the owner would be liable, but if it was a *muad*, he is not. This is derived from the verse that says in the context of the liability for a *muad* in Shemos 21:36 "Its owner did not guard it" and this ox was guarded.

R' Eliezer says: There is no level of guarding that is sufficient for a *muad*, short of putting it to death.

Why does a *muad* require less guarding than a *tam*?

The Gemara explains the reasoning of R' Meir. He holds that a typical ox would not be guarded by its owner. When the Torah imposes liability for damages committed by a *tam*, it teaches us that a *tam* requires a lower level of guarding. Then the Torah adds a requirement for a higher level of guarding for a *muad*, and we extend that requirement to a *tam* through a *gezeirah shavah*.

Whereas R' Yehuda holds that a typical ox would be guarded by its owner. When the Torah imposes liability for the



damages inflicted by a *tam*, it teaches us that a *tam* requires a superior level of guarding. Then when the Torah adds a further liability for the damages inflicted by a *muad*, it constitutes an expansion after an expansion, which is therefore intended to be the opposite and limit the level of responsibility for a *muad* so that only a lesser level of guarding is required. We do not extend this to a *tam* because the verse limits it to a *muad* by saying “It is not guarded”.

The Gemara asks: This verse is needed to teach us the initial exposition?

The Gemara answers that the same teaching would have been apparent even if the verse had only stated “and he did not guard”. The extra wording of “and he did not guard *it*” implies the exposition is limited to this case, of a *muad*.

A fourth opinion

R’ Eliezer the son of Yaakov says: An ox that had been provided with a lesser amount of guarding, whether it is a *tam* or a *muad*, the owner is exempt. This is because he agrees with R’ Yehuda that a *muad* only requires a lesser level of guarding, however he does apply the *gezeirah shavah* to extend it back to a *tam*.

Is a *muad* still partially a *tam*?

Rav Ada bar Ahavah says: When R’ Yehuda said the owner of a *muad* ox only requires a lesser level of guarding, he was applying that only to the *muad* aspect of the ox, but its initial state of *tam* is still in its place and requires the superior level of guarding.

Rav says: An ox that is has been rendered a *muad* with regard to its right horn, is still a *tam* with regard to its left horn.

The Gemara asks: Rav could not have been making his statement in accordance with R’ Meir, as R’ Meir holds that both a *tam* and a *muad* require a superior level of guarding

so there would be no difference in the liability. But if this statement is in accordance with R’ Yehuda, why is it only the left horn that has a status of a *tam* to require a higher level of guarding, according to Rav Ada bar Ahavah even the right horn still has its status as a *tam* that remains in place to require a higher level of guarding?

The Gemara answers: Rav holds like R’ Yehuda but does not agree with Rav Ada bar Ahava’s interpretation of R’ Yehuda. His point is that only in the case where only the right horn has been rendered a *muad* that you can find one ox that has both statuses of *tam* and *muad* combined.

DAILY MASHAL

Rabbi A. Leib Schainbaum quotes Rav Matsiyahu Solomon who related that he heard a penetrating perspective from Rav Chaim Shmuelwitz. A generation that has lost its spiritual leadership is referred to as a *dor yasom*, an orphaned generation.

Rav Chaim explained that an orphan seems to have someone to address his needs. There is either a surrogate, a guardian or an orphanage. There is someone who cares about him and who will continue to take care of him. A *yasom*, however, is a person whose needs are not really known to us. Even the individual that cares for him has no clue as to what the orphan’s needs actually are. Only a father and mother know what their child needs. Only parents fight with *mesiras nefesh*, self-sacrifice, to see to it that their child’s needs are provided for. They know, and they provide. When a child becomes orphaned, he loses the people who understand his needs. A generation who has lost its elders has lost the individuals who had been acutely aware of its needs. The elders are Klal Yisrael’s guardians, who understand their character and the true nature of their needs. A simple person provides; a *gadol* knows what to provide.