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The Mishna had said that if there is doubt whether the cow gave birth before or after it gored the ox, the victim claims half the damages from the cow and a quarter of the damages from the calf.

The Gemara asks: why is the victim allowed to take three quarters of the damage, he should only be eligible for half the damages?

Abaye answers that the Mishna is declaring the damages in the context of half the total damages, so when the Mishna says half the damages are paid from the value of the cow, it means a quarter, and when it says a quarter of the damages are paid from the value of the calf, it means an eighth. If the cow and calf belong to the same person, the victim can still claim a full half of the total damages because regardless of whether the goring took place before or after the cow gave birth, the owner of the cow would be liable. However, our Mishna is referring to a case where the cow and calf have different owners. Furthermore, if the victim first presents his claim to the owner of the cow, he can still claim a full half of the damages because he can say that he knows the cow definitely caused damage, and if the owner of the cow wants to claim that he has a partner in the damages, i.e. the owner of the calf, it is incumbent on the owner of the cow to litigate to retrieve half the damages from the owner of the calf. The scenario discussed in our Mishna is where the victim first approaches the owner of the calf. In this case the cow's owner has the ability to claim that the ox's owner has demonstrated his acceptance that there are two partners to the damages, and he is therefore only responsible for half of the half-damage liability, i.e. a quarter of the damage.

There is an alternate opinion that even if the ox's owner approaches the cow's owner first, the cow's owner can still claim that he knows he is only one of the two partners responsible for the damage and is therefore only liable for a quarter of the damages.

Rava disagrees with Abaye because the Mishna does not say they payments made are a quarter and an eighth, the Mishna says the payments are a half and a quarter. Rather he explains that the Mishna is referring to two different scenarios. If the cow is still extant, the victim can claim half the damages from the cow. If the cow is not extant, the victim can claim a quarter of the damages from the calf.

The Gemora infers: Now the reason this is so is because it was not known whether the calf was still part of the cow at the time she gored or whether it was not so, but were we certain that the calf was still part of the cow at the time of the goring, the whole payment of the half damages would be made from the body of the calf.

The Gemora notes: Rava here adopts the same line of reasoning [as in another place], as Rava has indeed stated: Where a cow has done damage, payment can be collected out of the body of its calf, the reason being that the latter is a part of the body of the former, whereas in the case of a chicken doing damage, no payment will be

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made out of its eggs, the reason being that they are a separate body. (46b – 47a)

Rava further said: [Where an ox has gored a cow and caused miscarriage] the valuation will not be made for the cow separately and for the calf separately, but the valuation will be made for the calf as at the time when it formed a part of the cow; for if you do not adopt this rule, you will be found to impair the damager (by making the defendant suffer unduly).

Rava continues: The same method is followed in the case of the cutting off the hand of his fellow's slave; and the same method is followed in the case of damage done to his fellow's field.

Rav Acha the son of Rava said to Rav Ashi: If justice demands, why shouldn't the damager be impaired?

Rav Ashi replied: Because he (the damager) is entitled to say to him (the one who was damaged): "Since it was a pregnant cow that I deprived you of, it is a pregnant cow which should be taken into valuation."

The Gemora notes: It is obvious that where the cow belonged to one owner and the calf to another owner, the value of the fat condition of the cow will go to the owner of the cow. But what of the value of its expansion (due to pregnancy)?

Rav Pappa said: It will go to the owner of the cow. Rav Acha the son of Rav Ika said: It will be shared [by the two owners].

The Gemora rules: The law is that it will be shared [by the two owners]. (47a)

If a potter brings his pots into the courtyard of another person without permission, and the animal of the owner of the courtyard breaks them, there is no liability. Additionally, should the animal be injured by them, the owner of the pottery is liable [to pay damages]. If, however, he brought [them] in with permission, the owner of the courtyard is liable.

Similarly if a man brings his produce into the courtyard of another person without permission and the animal of the owner of the premises consumes it, there is no liability. If it was harmed by it, the owner would be liable. If, however, he brought them In with permission, the owner of the premises would be liable.

So also, if a man brings his ox into the courtyard of another without permission and the ox of the owner of the premises gores it or the dog of the owner of the premises bites it, there is no liability. Additionally, should it gore the ox of the owner of the premises its owner would be liable. If it (the trespassing ox) falls [there] into a pit of the owner of the premises and makes the water in it foul, there would be liability. So also if [it kills] the owner's father or son [who] was inside the pit, there would be liability to pay kofer. If, however, he brought it in with permission, the owner of the yard would be liable.

Rebbe, however, says: In all these cases the owner of the premises would not be liable unless he has accepted it upon himself to watch [the articles brought into his premises]. (47a – 47b)

The Gemora notes: The reason why [the potter would be liable for damage occasioned by his pottery to the animal of the owner of the premises] is because the entry was without permission, which shows that were it with permission the owner of the pots would not be liable for the damage done to the animal of the owner of the premises, and we do not say that the owner of the pots has by implication accepted to watch the cattle of the owner of the premises. Whose opinion is this? It is [the opinion of] Rebbe, for he has said that without express stipulation, no acceptance to watch is undertaken.

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The Gemora asks: Now look at the latter clause: If, however, he brought [them] in with permission, the owner of the courtyard is liable. Here we have arrived at the view of the Rabbis, who said that even without express stipulation, he accepts upon himself responsibility for watching.

And furthermore, [it was further stated]: Rebbe, however, says: In all these cases the owner of the premises would not be liable unless he has accepted it upon himself to watch [the articles brought into his premises]. Are we to say that the opening clause and the concluding clause are in accordance with Rebbe, while the middle clause is in accordance with the Rabbis?

Rabbi Zeira said: The contradiction [is obvious]; he who taught one clause cannot have taught the other clause.

Rava, however, said: The entire [first part of the Mishnah] is in accordance with the Rabbis, for where the entry was with permission the owner of the premises undertook the safeguarding of the pots even against breakage by the wind. (47b)

The Mishna had stated: If a man brings his produce into the courtyard of another person etc.

Rav said: This rule applies only where the animal [was injured] by slipping on them, but if the animal ate them [and was thereby harmed], there would be exemption on the ground that it should not have eaten them

Rav Sheishes said: I say that it was only when he was drifting into sleep that Rav could have made such a statement, for it was taught in a braisa: If one places deadly poison before the animal of another he is exempt from the laws of man, but liable under the laws of Heaven. Now, that is so only in the case of deadly poison which is not usually consumed by an animal, but in the case of products that are usually consumed by an animal, there appears to be liability even by the laws of man. But why should this be so? [Why not argue:] It should not have eaten them?

They say: I may reply that strictly speaking even in the case of produce there should be exemption by the laws of man, and there was a special purpose in enunciating this ruling with reference to deadly poison, namely that even where the article was one not usually consumed by an animal, there will still be liability by the laws of Heaven.

Or, if you wish you may say that by the deadly poison mentioned was meant afrazta (hypericum), which like a fruit [is eaten by animals].

An objection could be raised [from the following]: If a woman enters the premises of another person to grind wheat without permission, and the animal of the owner consumes it (the wheat), there is no liability; if the animal is harmed, the woman would be liable. Now, why not argue: It should not have eaten?

They said: In what respect is this braisa beyond that of the Mishnah, which was interpreted [to refer to damage occasioned by] the animal having slipped over them?

The Gemora asks: What then was in the mind of the one who made the objection?

The Gemora answers: He might have said to you: Your explanation is satisfactory regarding the Mishnah where it says: if it was harmed by it [which admits of being interpreted] that the animal slipped over them. But here [in the braisa] it says: if the animal is harmed, without the words 'by them,' so that surely the consumption [of the wheat] is what is referred to.

The Gemora asks: And the other?

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The Gemora answers: He can contend [that the omission of these words] makes no difference.

Come and hear (a proof from the following braisa): If a man brought his ox into the courtyard of another person without permission, and it ate there wheat and got diarrhea from which it died, there would be no liability. But if he brought it in with permission, the owner of the courtyard would be liable. Now why not argue: It should not have eaten?

Rava said: How can you raise an objection from a case where permission was given against a case where permission was not given? Where permission was given, the owner of the premises assumed liability for safeguarding the ox even against its choking itself.

They inquired: Where the owner of the premises has assumed responsibility to safeguard [the articles brought in to his premises], what is the legal position? Has the obligation to safeguard been assumed by him [only] against damage from his own animals, or has he perhaps also undertaken to safeguard from damage in general?

Come and hear (a proof): Rav Yehudah bar Simon taught the following braisa in the [Tractate] Nezikin of the School of Karna: If a man brings his produce into the courtyard of another without permission, and an ox from elsewhere comes and consumes it, there is no liability. But if he brought it in with permission there would be liability. Now, who would be exempt and who would be liable? Does it not mean that the owner of the premises would be exempt and the owner of the premises would be liable?

They say: This is not so; it is the owner of the ox who would be exempt and the owner of the ox who would be liable.

The Gemora asks: But if it refers to the owner, what has permission or absence of permission to do with the case?

They say: Where the produce was brought in with permission, the case would be one of (an animal damaging through) the tooth in the plaintiff's premises, and (an animal damaging through) the tooth in the plaintiff's premises entails liability, whereas in the absence of permission it would be a case of (an animal damaging through) the tooth in public ground, and (an animal damaging through) the tooth in public ground entails no liability. (47b – 48a)

INSIGHTS TO THE DAF

Killing Insects on Shabbos

Many *poskim* discuss whether it is permitted to spread poisonous bait to kill flying and crawling insects and pests that sting or annoy people, and have offered varying opinions and lines of reasoning. The *Shvus Ya'akov* (II, §45) cites a leading Torah scholar who suggests that it would be permitted to do so based on our *daf*, but his proof was dismissed outright when it became clear that the *Rishonim* explain the *sugya* differently.

The Gemara cites a *beraisa* saying, "One who sets poison before someone else's animal is exempt from paying according to *dinei adam* [*beis din*], but according to the *dinim* of Heaven, he is obligated to pay." The Gemara explains that the *beis din* does not require him to pay since the animal "should not have eaten." Apparently this indicates that the act of eating the poison, which caused the animal's death, cannot be attributed to the person who placed the poison before the animal. The animal ate of its own volition. Although the person who placed the poison near the animal acted inappropriately, he is exempt from paying for the loss.

The Torah prohibits "removing a *neshamah,*" i.e. killing an animal, on Shabbos (*Shabbos* 73a). Is it forbidden to spread poison in front of insects on Shabbos? Since consuming it would kill the insects, perhaps this constitutes "removing a *neshamah*." Or perhaps the person who placed the poison has not transgressed any prohibition since, as our *daf* says, "it should not have eaten."

However, the *Shvus Ya'akov* refutes this logic for a number of reasons, and actually eliminates the basis for this proof. He cites the *Sma* (*C.M.* 393 S.K. 4), who indicates that it would be unthinkable for a person who placed poison in front of someone else's animal to be absolved from payment. In the case presented in our *sugya*, the owner is standing nearby. The person who placed the poison claims that the owner had an opportunity to prevent the damage, which absolves him from having to pay for killing the animal. When the owner is not present, placing poisonous foods in front of an animal is a common way of killing it, and is certainly forbidden on Shabbos (at least rabbinically).

Today's insecticides are sprayed in the air to kill insects when they breathe in the poison. *Shmiras Shabbos Kehilchasa* (25:5) cites the *Chazon Ish* (in the addenda to *Menuchah Nechonah*), who allows spraying in a room if the windows are open. Since the insects can fly away one need not be concerned that they will die because of the spraying. Nonetheless, it should only be done for children or sick people.

The *Ktzos HaShulchan* (122:11) writes that spraying a room with an insecticide should be avoided because if there are many insects in the room, the spray is bound to strike at least one insect directly, which would be like killing it with his own hands (see Responsa *Tzitz Eliezer* IX §22).

DAILY MASHAL

Learning while Sleeping

Rav Sheishes said: I say that it was only when he was drifting into sleep that Rav could have made such a statement. The commentators ask: How could Rav Sheishes talk about Rav in such a demeaning way? Doesn't it say in Koheles [9:17]: The words of the wise are heard when spoken softly, more than the shout of a ruler of fools? The Mishna in Pirkei Avos [2:10] says: Rabbi Eliezer said: Let the honor of your fellow be as precious to you as your own. Why did Rav Sheishes degrade Rav in such a manner?

The Chavos Yair (152) answers: Rav Sheishes understood that Rav was a tremendous Torah scholar, and it wasn't possible for him to err unless he was drifting into sleep.

In Margaliyos Hashas it is written, and in a slightly different version, it is cited in Parshablog: "There was an incident in which my teacher, zal {=the Arizal} was sleeping and Rabbi Avraham HaLevi entered and found that he was moving his lips. After a while, the rav awoke. [He {=Rabbi Avraham} said to him, 'may my master forgive me for waking him from his slumber.] He {=Rabbi Avraham} asked him, 'what was my master mumbling in his sleep?' He {=the Arizal} said to him, 'I was just now engaged in the *yeshiva* above in *parashat Balak* and *Bilaam*, wondrous things.' And he said to him, 'let the loftiness of the honor of his Torah say from these lofty words. He said to him, 'If I were to expound for 80 consecutive **years**, day and night, that which I just now heard, I would not be able to complete it.' And so was his custom, za"l, that when he would sleep they would bring him before etc. [it is written there the name of the angel] the Sar HaPanim, and he would ask him which *yeshiva* he wished to go to, and they would convey him. And sometimes he would choose the *yeshiva* of Hakadosh Baruch Hu, sometimes the *yeshiva* of Rabbi Akiva, sometimes the *yeshiva* of Moshe Rabbenu, and sometimes the *yeshiva* of Rabbi Meir. And so, in this manner, in any place he would want to go."

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