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Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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Multiple Punishments

The Mishna had stated: If he stole and slaughtered on Yom Kippur etc.

The Gemora asks: Why (does he have to pay)? While there is no punishment of death, he still receives lashes, and we have established that if someone simultaneously is liable for lashes and payment, he does not get punished with both!?

The Gemora answers: Our Mishna must follow the opinion of Rabbi Meir, who says that one indeed is punished with both.

The Gemora asks: If our Mishna is according to Rabbi Meir, this should also be the law if he slaughtered the animal on Shabbos!? If you will suggest that Rabbi Meir holds that one is only liable for lashes and payment, but not death and payment, is that really a correct suggestion? The braisa states: If someone stole and slaughtered on Shabbos, stole and slaughtered for idolatry, stole an ox condemned to death and slaughtered it, he pays four (if it is a sheep) or five times its value. These are the words of Rabbi Meir. The Chachamim say: He is exempt (from paying). [This shows that Rabbi Meir holds the law is the same on Shabbos, and he therefore cannot be the author of our Mishna!]

The Gemora answers: This braisa is irrelevant to our discussion. It was taught regarding this braisa that Rabbi Yaakov says in the name of Rabbi Yochanan, and some say Rabbi Yirmiyah says in the name of Rabbi Shimon ben Lakish, that Rabbi Avin, Rabbi Ila, and the entire group say in the name of Rabbi Yochanan that this braisa is discussing a case where the slaughtering was done by someone else.

The Gemora asks: Is it possible that one person sins and another is guilty? [Why should the person who did not do the slaughtering need to pay four or five times the value?]

Rava answers: This case is different. The verse says, “And he slaughtered it and sold it.” Just as the selling had to involve someone else, so too the slaughtering can be done by someone else.

The house (of study) of Rabbi Yishmael taught: The verse, “Or” includes a messenger (who can do the slaughtering).

The house (of study) of Chizkiyah taught: The verse, “For it” includes a messenger (who can do the slaughtering).

Mar Zutra asked: Is there anything that if one does it himself he is not liable (does not have to pay, as in this case), but if someone else does it, he is liable?



Rav Ashi answered: He is not free of punishment because he is not liable, but rather because of the law of "kim ley b'drabah minei" (a person who becomes liable for two punishments simultaneously receives only the harsher of the two).

The Gemora asks: If the case is that someone else slaughtered the animal, why do the Rabbanan argue that he does not have to pay?

The Gemora answers: The opinion of the Chachamim is that of Rabbi Shimon, who says that a slaughtering that is not a legally effective slaughtering is not considered slaughtering.

The Gemora asks: This is understandable regarding slaughtering for idolatry and an ox that was condemned to death, as they are forbidden from benefit. However, slaughtering on Shabbos is an appropriate slaughtering (despite the fact that Shabbos is transgressed). The Mishna states: If someone slaughters on Shabbos or Yom Kippur, even though he is liable to be killed (or receive kares), the slaughtering is effective.

The Gemora answers: This is according to the opinion of Rabbi Yochanan ha'Sandlar (quoted in the following Mishna). The Mishna states: If someone accidentally cooks on Shabbos, he can eat the food. If he did so on purpose, he may not eat it (on Shabbos). These are the words of Rabbi Meir. Rabbi Yehudah says: If he did so accidentally, he can eat it after Shabbos. If he did so on purpose, he can never eat it. Rabbi Yochanan ha'Sandlar says: If he did so accidentally, he may not eat it at all, but others can eat it after Shabbos. If he did so on purpose, it may never be eaten by anyone.

The Gemora asks: What is Rabbi Yochanan ha'Sandlar's reasoning?

The Gemora answers: This is as Rabbi Chiya taught on the doorway of the Nasi's house. The verse says, "And you will guard Shabbos, as it is holy for you." Just as consecrated items are forbidden from being eaten, so too food prepared on Shabbos (through the transgressing of Shabbos) can never be eaten. If so, we should say that just as consecrated items cannot be benefited from, so too one cannot have benefit from things prepared on Shabbos? The verse therefore says, "lachem" -- "for you," indicating it is permitted to have benefit from. One might think this is even the case if he does so accidentally. This is why the verse says, "Its defilers will surely die," not those who do so accidentally.

Rav Acha and Ravina argue about this. One says that this prohibition is of Torah origin, and another says that it is Rabbinic in origin. The one who says it is of Torah origin derives this from the verses just quoted above. The one who says it is Rabbinic in nature understands that the verse, "It is kodesh" means that while Shabbos is kodesh, things prepared on Shabbos are unlike kodesh.

The Gemora asks: It (our braisa) is understandable according to the opinion that this is a Torah prohibition, as this is why the Rabbis said he is exempt. However, according to the opinion that this is only Rabbinic in nature, why did the Rabbanan say he is exempt?

The Gemora answers: They said this consecrated items regarding idolatry and the ox who is condemned to be stoned.

The Gemora asks: According to Rabbi Meir, why isn't someone who slaughters for idolatry exempt (from paying five times the amount)? Once he starts slaughtering the animal becomes forbidden. The rest of the slaughtering is slaughtering something that is already forbidden from benefit, and therefore does not even belong to the owner! [It should therefore not be considered as if he slaughtered the ox, and he should not pay five times the value.]

Rava answers: The case is where he says that the act of serving idolatry should be done at the end of the slaughtering.

The Gemora asks: A condemned ox also does not belong to the owner. [Why would he normally have to pay?]

Rava answers: The case is where he had given the ox to a guardian, and the ox proceeded to damage, became a muad, and was sentenced to death while it was in the house (domain) of the guardian. Rabbi Meir holds like Rabbi Yaakov and Rabbi Shimon. He holds like Rabbi Yaakov who says that the guardian can return the ox to the owner and say, "Here is your ox." [He will then be exempt from paying the owner for the value of the ox. This means that the ox still has some value before being slaughtered.] He also holds like Rabbi Shimon, who says that something that causes a benefit of money is considered to have monetary value. Rabbi Shimon states in a Mishna: If someone stole a korban that was a neder (the owner pledged to bring this type of korban, even if it is not this animal), he must pay the double payment. This is because he holds that something that causes a benefit of money is considered to have monetary value.

Rav Kahana said: I said this discussion over before Rav Zevid from Nehardea. He said: Can our Mishna be Rabbi Meir and not Rabbi Shimon? Doesn't the Mishna say that Rabbi Shimon says that the law in both cases is that he (the one who slaughtered the animal) is exempt? This implies that he agrees about the rest of the Mishna!

He answered: No. It just means that he admits to the first case regarding slaughtering for dogs or for healing.

The Mishna discusses someone who stole from his father and slaughtered or sold etc.

Rav asked Rav Nachman: If someone stole the ox of two partners and slaughtered it, and admitted this to one of the partners, what is the law? Do we say that the Torah says, "Five cattle," implying that the law applies only fully, not partially? [He is clearly exempt from paying the partner he admitted to for five cattle, as admitting a fine makes one exempt from the fine.] Or do we say that when the Torah said, "Five cattle," it meant even five halves?

Rav Nachman answered: It says, "Five cattle," implying not five halves.

The Gemora asks a question from a braisa. The braisa states: If someone stole from his father and slaughtered or sold the animal, and then afterwards his father died, he must pay four or five times (if it was a sheep or ox). Why? Being that he admitted, this should be like admitting to a partner. Why should he pay four or five times the value?

The Gemora answers: The case is where his father went to trial with him about it.



The Gemora asks: This implies that if his father did not go to trial, he would not have to pay so much. If so, why does the end of the braisa say that if his father died before he slaughtered or sold it that he would not have to pay four or five times the value? It should say that he pays four or five times only if he went to trial with his father, but if he did not go to trial he does not have to pay!

He answered: Being that the first part of the braisa said that stole from his father and slaughtered or sold the animal, and then afterwards his father died, the end of the braisa also discussed a case where he stole from his father, his father died, and then he slaughtered or stole.

DAILY MASHAL

Apartments for Rent in Sochatchov

In the city of Sochatchov, Poland stood an ancient, ramshackle church. The Christian community eventually sold the building to a contractor who demolished it and built a new apartment building instead, making use of the wood of the church for the new apartments. When he completed the building the contractor wanted to rent the apartments out. After the local Jews found out that two mumarim [Jews who abandon their religion] were originally partners in building the church, they refused to rent the apartments.

According to our daf, Jews are forbidden to benefit from objects used for avodah zarah. But the halacha (Y.D. §139) also states that one can benefit from an object used by a non-Jew for avodah zarah after it is destroyed, but if it belongs to a Jew, the destroyed object remains forbidden forever.

The Jews found themselves in a quagmire. In addition to the shortage of apartments available for rent, the local priest threatened to forbid his community from conducting business with them if they refused to rent these apartments.

Living in a building made of wood from a church: The local Jews turned to the Sochatchover Rebbe, the Avnei Nezer. He ruled that they were allowed to rent the apartments despite the mumarim who had been partners in the former church (Responsa C.M. §99) He relied on Rashi's approach (Gittin 47b, s.v. tevel vechulin), which states that when partners own an item of monetary value each partner has an undefined share in the entire object. Since the mumarim were a minority of those who built the church, their share was batel berov [nullified in the majority] and the wood of the previous church is permitted. However, according to other poskim who maintain that every partner does own a specific part of the object, it would be impossible to claim that the share owned by the mumarim was nullified, for somewhere they owned a share of their own. (See Responsa ibid, which describes when avodah zarah is batel berov and when it is not.)