

26 Tishrei 5776  
Oct. 28, 2016



Bava Metzia Daf 32

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

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

### **Mishna**

If he found an animal in a barn, he is not obligated to return it. If he found it in the public domain, he is obligated to return it.

If an animal was in a cemetery, he may not become *tamei* because of it. If his father said to him (*a Kohen*), “Become *tamei* and return it,” or if he said to him, “Do not return it,” he must not listen to him.

If one unloaded and loaded and unloaded and loaded, even four or five times, he is still obligated, as it is written: *Help, you shall help him*. If the owner went and sat down, and said, “Since the commandment is incumbent upon you, if you desire to unload, unload,” he is exempt, for it is written: *with him (only if the owner will be helping as well)*. If, however, the owner were an elderly man or sick, one is obligated to do it.

It is a Torah commandment to unload, but not to load. Rabbi Shimon says: To load also. Rabbi Yosi HaGelili says: If the animal had upon it more than its load, he has no obligation towards him, for it is written: *Under its burden, a burden that it is able to stand*. (32a)

### **Found in the Barn**

Rava explains that the barn which the *Mishna* is referring to is one that does not spur the animal to run away (*for*

*otherwise, it would be regarded as “lost”*), but also, it is not one that protects the animal from escaping (*for otherwise, the Mishna would not be teaching us anything*).

The *Mishna* had stated: If he found an animal in a barn, he is not obligated to return it.

Rabbi Yitzchak said: This is only if it was found within the *techum* boundary of the town (*otherwise, it would be regarded as “lost”*). The *Gemora* notes: It can be inferred from here that when the animal is found in the public domain, it is regarded as “lost” even when it is within the *techum* boundary.

Others taught this with respect to the *Mishna’s* latter ruling. The *Mishna* had stated: If he found an animal in the public domain, he is obligated to return it.

Rabbi Yitzchak said: This is only if it was found outside the *techum* boundary of the town (*otherwise, it would be regarded as “lost”*). The *Gemora* notes: It can be inferred from here that when it is found in the barn, it is not regarded as “lost” even when it is outside the *techum* boundary. (32a)

### **A Mitzvah not to Listen**

The *Mishna* had stated: If an object was in a cemetery, he may not become *tamei* because of it.

The *Gemora* cites a *braisa*: One might have thought that the *mitzvah* of honoring one's father and mother overrides *Shabbos* (*if a parent would instruct his son to violate the Shabbos, he would be obligated to listen*); the Torah writes [Vayikra 19:3]: *Every man: Your mother and father shall you revere, and My Shabbos' shall you observe, I am HaShem your G-d*. We infer from here: Everyone is obligated to honor *HaShem*, including the father and the mother.

The *Gemora* asks: The fact that we needed a verse to teach us that he should not obey his parent's command indicates that a positive commandment can override a positive and a negative commandment (*returning a lost object and not looking away*)!? But we know that this is not the case!?

The *Gemora* answers: I would have thought that the *mitzvah* of honoring one's parents is different, for it is compared to the honoring of the Omnipresent – perhaps therefore one should listen to his father in this case. The verse teaches us that this is not the *halachah*. (32a)

### **Causing an Animal Distress**

The *Mishna* had stated: It is a Torah commandment to unload, but not to load.

The *Gemora* explains this to mean that it is a *mitzvah* to help someone unload his animal for free, but he is not obligated to help him load for free; if he wishes, he may charge him for this. Rabbi Shimon holds that it is a *mitzvah* to help him load for free as well.

The *Gemora* cites a *braisa* which corroborates this explanation.

The *Gemora* explains the rationale for their respective opinions based on the Scriptural verses.

Rava notes: It is evident from these *Tannaim* that they both hold that there exists a Biblical prohibition against causing an animal distress, for they stated the following *kal vachomer*: If the Torah would have taught the *halachah* (*of helping out*) only by loading the animal, I would certainly have known the *halachah* by unloading as well, for there is suffering to the animal and there is a monetary loss to the owner (*and the extra verse is necessary to teach the halachah of payment*).

The *Gemora* rejects this proof, for perhaps the *kal vachomer* is based solely upon the fact that loading an animal does not involve any monetary loss (*but not because of the animal's distress*)!?

The *Gemora* answers that this cannot be the case, for the *mitzvah* of loading an animal also involves a monetary loss in cases where the owner wishes to sell his merchandise in the market (*and he will be prevented from doing so if his wares cannot be loaded*), or on the account of thieves stealing the merchandise lying on the ground.

The *Gemora* attempts to prove from our *Mishna* that it is Biblically prohibited to cause an animal distress, for Rabbi Yosi HaGelili said: If the animal had upon it more than its load, he has no obligation to help unload, for it is written: *Under its burden*, a burden that it is able to stand. Obviously, the *Tanna Kamma* disagrees and holds that one is obligated to unload the animal even in this case, proving that it is Biblically prohibited to cause an animal distress.

The *Gemora* rejects this proof, for perhaps they are merely arguing as to the correct interpretation of the verse.

The *Gemora* attempts to prove from our *Mishna* that it is not Biblically prohibited to cause an animal distress, for the *Mishna* states: If the owner went and sat down, and said, "Since the commandment is incumbent upon you, if

you desire to unload, unload,” he is exempt, for it is written: *with him (only if the owner will be helping as well)*. Now, if there would be a Biblical concern for causing an animal distress, what difference would it make if the owner is helping him or not?

The *Gemora* rejects this proof, for perhaps the *Mishna* is saying that only in such a case, he is not obligated to help him for free – he is obligated to unload the animal (*for it is a Biblical concern to cause an animal distress*), but he may charge the owner for his efforts.

The *Gemora* attempts to prove from different *braisos* whether there lies a Biblical concern for causing an animal distress, or not.

| Proof that causing an animal distress is ... | Case of the <i>braisa</i>  | Explanation                               | Rejection of proof                                  |
|--|--|---|---|
| <b>A Biblical concern</b>                    | One must unload an idolater’s animal                                     | If not, why would there be an obligation? | It is in order to prevent animosity                 |
| <b>Not a Biblical concern</b>                | Exempt from helping when it is an idolater’s animal and the Jew’s burden | If yes, why is there an exemption?        | It is referring to loading                          |
| <b>Not a Biblical concern</b>                | Enemy’s animal to be loaded takes precedence                             | If yes, shouldn’t unloading come first?   | It is more important to subdue his Evil Inclination |

|                               |   |                                    |                            |
|-------------------------------|---|------------------------------------|----------------------------|
|                               | over your friend’s animal to be unloaded          |                                    |                            |
| <b>Not a Biblical concern</b> | Exempt from helping an enemy if he is an idolater | If yes, why is there an exemption? | It is referring to loading |

(32a – 32b)

### DAILY MASHAL

#### A TELEPHONE IS THE ANSWER

One might have thought that the *mitzvah* of honoring one’s father and mother overrides Shabbos (*if a parent would instruct their son to violate the Shabbos, he would be obligated to listen*); the Torah writes [Vayikra 19:3]: *Every man: Your mother and father shall you revere, and My Shabbos’ shall you observe, I am HaShem your G-d*. We infer from here: Everyone is obligated to honor *HaShem*, including the father and the mother.

Tha Maharatz Chyus asks: Why should we think that the son is obligated to obey the father; the *Gemora* in Bava Metzia (62) teaches us that one is only obligated to honor his father if he is an “*oseh ma’aseh amcha*,” not if he is one that is not observing the *mitzvos* of *HaShem*?

The Ostroftzer Rebbe was once in Warsaw by one of his chasidim. The chasid proudly showed the Rebbe the new invention that was just installed in his house, a telephone.

The Rebbe took the telephone in his hands and 'sanctified' it with words of Torah.

He said: The Meiri in Yevamos asks: Why is a verse required to teach us that a son may not listen to his father when he instructs him to perform an *aveira*; the father is a *rosha* and the son is thus excluded from honoring him based on the *Gemora* in Bava Metzia that a father who is not "*oseh ma'aseh amcha*," one is not required to obey?

The Rebbe answered: It is referring to a case where the father calls the son on the telephone. The father is in one time zone, and it is already Motzei Shabbos, and the son is in a different time zone, where it is still Shabbos. One might think that the son is required to 'listen' to his father and answer the phone, the verse teaches us that everyone is obligated to honor *HaShem* and therefore the son should not obey the father.

## INSIGHTS TO THE DAF

### ***Causing an Animal Distress***

The *Gemora* discusses if there is a Biblical concern for causing an animal distress, or not. There are various sources for this prohibition.

Rashi in shabbos (128b) writes that the prohibition is derived from the verse *azov taazov imo*, you shall surely help out your friend whose animal is overburdened by a load.

The Rosh <sup>1</sup> writes that causing an animal distress is derived from the verse quoted by Rashi. The Meiri, Rabbeinu Nisim Gaoin, and the Ra"n all concur with this view.

Rabbeinu Peretz and the Ritva<sup>2</sup> write that the injunction is a *a halachah lemoshe misinai*, a *halachah* taught to Moshe by Hashem at Sinai.

The Raavad<sup>3</sup>, Rabbeinu Yehonasan<sup>4</sup> and the Baal HaShelamah write that the injunction against causing an animal distress is derived from the verse of *lo sachsom*, do not muzzle an animal while it is threshing. This is also implied for the words of the Meiri.

The Rambam<sup>5</sup> and the Sefer Chasidim<sup>6</sup> write the source for the injunction against causing an animal distress is derived from Balaam, who the angel said, "why are you hitting your donkey?"

The Rambam<sup>7</sup> and the Chinuch<sup>8</sup> also write that the prohibition is derived from the mitzvah of *shiluach haken*, sending the mother bird away when taking its young, and from the injunction of *oso v'es beno*, slaughtering a mother and its child on the same day. These two injunctions are both based on the prohibition of causing an animal distress.

The Chasam Sofer writes a novel source for this injunction deriving it from the verse in Tehillim *vraahmav al kol masav*, and His mercy is on all of His creations.

In the Sefer Yom Teruah<sup>9</sup> it is written that the injunction against causing an animal distress is rabbinical, and is alluded to in the verse *vhishkisa es haedah ves beiram*, where Hashem told Moshe to give to drink the congregation and their animals.

<sup>1</sup> Siman 3; Bava Metzia second Perek, 29

<sup>2</sup> Bava Metzia 33 Yeshanim edition

<sup>3</sup> Ibid quoted in Shita Mekubetzes

<sup>4</sup> Ibid 90a

<sup>5</sup> Moreh Nevuchim 3:17

<sup>6</sup> 666

<sup>7</sup> Ibid

<sup>8</sup> Mitzvah 540

<sup>9</sup> from the Maharam ben Chaviv