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The Stringencies of Each

The *Gemora* cites a *Baraisa*: "Ox" is stricter than "pit" in some aspects, and "pit" is stricter than "ox" in other aspects. "Ox" is stricter than "pit" in the following aspects: If an ox gores and kills a person, the owner must pay *kofer*; if an ox kills a Canaanite slave, the owner must pay thirty *shekels*; when an ox's judgment for killing is completed, it becomes forbidden for any pleasure; and it is in its habit to go and do damage, whereas all this does not apply by "pit."

"Pit" is stricter than "ox" in the following aspects: "Pit" is made for damage from the onset and it is a *mu'ad* in the beginning, whereas all this does not apply to "ox."

"Ox" is stricter than "fire" in some aspects, and "fire" is stricter than "ox" in other aspects. "Ox" is stricter than "fire" in the following aspects: If an ox gores and kills a person, the owner must pay *kofer*; if an ox kills a Canaanite slave, the owner must pay thirty *shekels*; when an ox's judgment for killing is completed, it becomes forbidden for any pleasure; if the ox is given over to a deaf-mute, a deranged person or a minor (*and the ox damages*), the owner will be liable, whereas all this does not apply by "fire."

"Fire" is stricter than "ox" in the following aspects: "Fire" is *mu'ad* from the onset, whereas "ox" is not.

"Fire" is stricter than "pit" in some aspects, and "pit" is stricter than "fire" in other aspects. "Pit" is stricter than "fire" in the following aspects: "Pit" is made for damage from the onset and if the ox is given over to a deaf-mute, a deranged person or a minor (*and the ox damaged*), the owner will be liable, whereas all this does not apply by "fire."

"Fire" is stricter than "pit" in the following aspects: It is normal for "fire" to go and damage and it is *mu'ad* to consume objects that are fit for it, and even for objects that are not fit for it, whereas all this does not apply to "pit."

The *Gemora* asks: Why didn't the *Baraisa* say the following: "Ox" is stricter than "pit," for if an ox damages utensils, the owner will be liable, whereas the owner of the pit will be exempt from liability if utensils are damaged in a pit? The *Gemora* answers: The *Baraisa* is in accordance with Rabbi Yehudah, who holds that the owner of the pit will be liable if utensils are damaged in a pit.

The *Gemora* asks: If the *Baraisa* reflects Rabbi Yehudah's opinion, how can the end of the *Baraisa* be explained? The *Baraisa* states: "Fire" is stricter than "pit" in the following aspects: It is normal for "fire" to go and damage and it is *mu'ad* to consume objects that are fit for it, and even for objects that are not fit for it, whereas all this does not apply to "pit." What are items fit for "fire"? Wood. What are items not fit for it? Utensils. And nevertheless, the *Baraisa* states that the owner of a pit will be exempt from liability if his pit damages items that are not fit for it. That would seem to be saying that there is no liability for utensils damaged in a pit!?

The *Gemora* answers: It must be that the *Baraisa* is in accordance with the Rabbis (*who hold that there is no liability for utensils damaged in a pit*), and the *Tanna* omitted this stringency (*of "ox" over "pit"*) because it omitted other things as well.

The *Gemora* asks: What else was left out? The *Gemora* answers: The *Tanna* omitted the *halachah* of items that were hidden (*where the exemption applies only to "fire"*).

Alternatively, the *Gemora* answers: The *Baraisa* is in accordance with Rabbi Yehudah, and when the *Baraisa* states that "fire" is *mu'ad* to consume objects even for objects that are not fit for it, he was not referring to utensils; rather, he was referring to a case where the fire licked a plowed field or singed his stones.

Rav Ashi asked: Why not include, in the excess of liability for "ox" over [that for] "pit," [the fact] that "ox" is [also] liable for damage done to consecrated animals that have become unfit [for the altar], whereas this is not so in the case of "pit"? No difficulty arises if you assume that the Baraisa is in accordance with the Rabbis; just as it had omitted that point, it omitted this point too. But if you maintain that the Baraisa is in accordance with Rabbi Yehudah, what else did it omit that it omits this [one] point? -It omitted ["ox"] trampling upon newly broken land. [No! this is no argument,] for as to ["ox"] trampling upon newly broken land there is no omission there, for this [is included in that which] has already been stated: It is in its habit to move about and do damage. (9b3 – 10a2)

Partial Damage

The *Mishnah* had stated: If I caused part of its damage, I am obligated to pay for it as if I prepared the entire damage.

The *Gemora* cites a *Baraisa*: If I caused part of its damage, I am obligated to pay for as if I prepared the entire damage. What is the case? If one dug a *bor* nine *tefachim* deep and another person came and dug a tenth *tefach*, the last one is liable.

It must be that we are not following the opinion of Rebbe, for it was taught in a Baraisa: If one dug a *bor* nine *tefachim* deep and another person came and dug a tenth *tefach*, the last one is liable. Rebbe says: If an animal dies in this pit, the last one is liable (*for only a bor ten tefachim deep can cause an animal to die*). If an animal gets injured in this pit, they both will be liable (*for a bor nine tefachim deep can cause an injury*). [*This is not like the Tanna of our Mishnah who holds that the second person is always liable.*]

Rav Pappa says: The *Mishnah* can be discussing a case where an animal dies, and everyone will hold that the second person is liable.

There are others who say: Let us say that the Mishnah is not following the opinion of Rebbe? Rav Pappa said: The *Mishnah* can be discussing a case where an animal dies, and it will be according to everyone.

Rabbi Zeira asks: Are there no other cases where a partial damage is regarded as a complete damage? But there is the case where an ox was handed over to the care of five people and one of them was negligent, so that the ox did damage; that one is liable!

The *Gemora* shows why this case does not reflect the *Mishnah's halachah*: What are the circumstances? If without the care of that one, the ox could not be guarded, is it not obvious that it is the one who was negligent that caused the entire damage? If, even without the care of that one, the ox could be guarded, what, if anything at all, has that one caused?

Rav Sheishes, however, asked: Behold there is [the case] where a man adds a bundle [of dry twigs to an existing fire]! — But in what circumstances? If without his cooperation the fire would not have spread, is it not obvious [that he is totally to blame]? If [on the other hand] even without his cooperation the fire would have spread, what, if anything at all, has he perpetrated?

Rav Pappa asks: But behold there is the following case which is taught in a *Baraisa*: Five people were sitting upon one bench and did not break it, and then one person came along and sat upon it and broke it, the last one is liable (*for the*

entire damage). Rav Pappa said: The *Baraisa* is referring to a person such as Pappa bar Abba (*who was extremely heavy*).

The *Gemora* shows why this case does not reflect the *Mishnah's halachah*: What are the circumstances? If without him, the bench would not have broken, is it not obvious that he is totally at fault? If, without him, it would also have broken, what, if anything at all, has that one caused?

The *Gemora* asks: In any event, how can the *Baraisa* be justified? The *Gemora* answers: It could be discussing a case when without the last fellow the bench would have broken after two hours, whereas now it broke in one hour. The other fellows therefore can say to him: "If not for you we would have remained sitting a little while longer and would then have got up before any damage occurred."

The *Gemora* asks: But why should he not say to them: "Had you not been sitting there, through me alone, the bench would not have broken?"

The *Gemora* answers: The *Baraisa* is discussing a case where he merely leaned upon them (*and he prevented them from getting up*) and the bench broke. [*They did not contribute to the damage, for he prevented them from rising.*]

The *Gemora* asks: Is it not obvious that he is liable? The *Gemora* answers: You might have thought that damage done by a man's force is not comparable with damage done directly by his body. The *Baraisa* teaches us that a man is responsible for his force just as he is liable for his body, for whenever he would be liable for his body breaking something; he would be liable if his force caused the damage.

The *Gemora* asks: But behold there is the following case which is taught in a *Baraisa*: When ten people beat a man with ten sticks, whether simultaneously or successively, so that he died, they are all exempt from the death penalty. Rabbi Yehudah ben Beseirah says: If they hit successively, the last one is liable, for he hastened his death. [*According to Rabbi Yehudah, the last one did a partial damage, and it is regarded as if he did the complete damage!?*] The *Gemora* answers: The *Baraisa* does not deal with cases of murder.

Alternatively, you may say that the *Baraisa* does not discuss disputed cases.

The *Gemora* asks: Are they not? Didn't we suggest that the *Mishnah* is not in accordance with Rebbe?

The *Gemora* answers: That the *Mishnah* is not in accordance with Rebbe, but in accordance with the Rabbis, we may suggest; whereas that it is in accordance with Rabbi Yehudah ben Beseirah, and not in accordance with the Rabbis, we will not suggest. (10a2 – 10b2)

Carcass

The *Mishnah* had stated: I am obligated to pay for the entire damage.

The *Gemora* notes: It would seem from the language of the *Mishnah* (*which uses a word that means "complete"*), that this is the same as that which we have learned in the following *Baraisa*: It is written: *Payment for the damage*. This indicates that the owner (*the damaged party*) must retain the carcass as part of the payment. [the owner must take the carcass and sell it, and then he will receive compensation for the difference between the animal's worth while alive and the value of the carcass.]

From where is this derived from? Rabbi Ami said: Scripture states: He that kills an animal shall pay for it. Do not read yeshallemennah ['he shall pay for it'], but yashlimennah ['He shall complete its deficiency'].

Rav Kahana infers it from the following: If it shall be torn to death, let him bring a witness; for a torn animal he does not pay. 'Up to' the value of the torn animal's carcass he must pay, but for the animal itself he does not pay.

Chizkiyah infers it from the following: And the carcass shall be his own, which refers to the plaintiff. It has similarly been taught in the school of Chizkiyah: And the carcass shall be his own, refers to the plaintiff. You say 'the plaintiff'. Why not the defendant? You may safely assert: 'This is not the case.' Why is this not the case? — Abaye said: If you assume that the carcass must remain with the defendant, why didn't the Merciful One, stating 'he shall surely pay ox for ox,' stop at that? Why write at all 'and the carcass shall be his own'? This shows that it refers to the plaintiff.

And all these verses serve each its specific purpose. For if the Merciful One had laid down [this ruling only in] the verse 'He that kills an animal shall pay for it,' the reason of the ruling would have been assigned to the infrequency of the occurrence, whereas in the case of an animal torn in pieces [by wild animals] which is [comparatively] of frequent occurrence, the opposite view might have been held; hence special reference is essential. If [on the other hand] this ruling had been made known to us only in the case of an animal torn in pieces, it would have been explained by the fact that the damage there was done by an indirect agency, whereas in the case of a man killing an animal, where the damage was done by a direct agency, the opposite view might have been held. Again, were this ruling intimated in both cases, it would have been explained in the one case on account of its infrequency, and in the other account of the indirect agency, whereas in the damage to which 'and the carcass shall be his own' refers, which is both frequent and direct, an opposite view might have been taken. If [on the other hand] this ruling had been intimated only in the case referred to by 'and the carcass shall be his own, it would have been explained by the fact of the damage having been done only by man's possession, whereas in cases where the damage resulted from man's himself an opposite view might have been taken. Hence all verses are essential.

Rav Kahana said to Rav: The reason [for the ruling] is that the Merciful One says 'and the carcass shall be his own', and but for this I might have thought that the carcass shall remain with the defendant [yet how can this be]? If, when there are with him several carcasses he is entitled to pay him with them, for the master stated: He shall return, includes payment in kind, even with bran, what question would there then be regarding the carcass of his own animal? — No, the verse is required only for the law regarding the decrease of the value of the carcass.[1]

May we say that the decrease of the value of the carcass is a point at issue between Tannaim? For it has been taught in a Baraisa: If it shall be torn to death, let him bring a witness: Let him (the paid custodian) bring witnesses that it had been torn to death in an unavoidable mishap and free himself. Abba Shaul says: Let him [in all cases] bring the carcass to the court. - Now isn't the following the point at issue: The latter maintains that a decrease in value of the carcass will be sustained by the plaintiff, whereas the former view takes it to be sustained by the defendant? — No, it is unanimously held that the decrease will be sustained by the plaintiff. Here, however, the trouble of [providing for bringing up] the carcass [from the pit] is the point at issue, as [indeed] taught in a different Baraisa: Others say: From where [could it be derived] that it is upon the owner of the pit to bring up the [damaged] ox from his pit? We derive it from the text: Money shall he return to the owner and the carcass.

Abaye said to Rava: What does this trouble about the carcass mean? If the value of the carcass in the pit is one zuz, whereas on the banks its value will be four [zuz], is he not taking the trouble [of bringing up the carcass] solely in his own interests? — He [Rava], however, said: No, it applies when in the pit its value is one zuz, and on the banks its value is similarly one zuz. - But is such a thing possible? Yes, as the popular adage has it: A beam in town is sold for a zuz and a beam in a field is sold for a zuz. (10b2 – 11a1)

[1] That is to he sustained by the plaintiff, since it becomes his from the moment of the goring.

INSIGHTS TO THE DAF

Deriving Benefit from a Corpse

Tosfos asks: Why do we need a special verse to exempt a person who is killed by falling in a pit? It should be included in the exposition of "*and the corpse shall belong to him*"!? This means that the owner of the pit is only liable when the corpse can belong to the owner of the animal. Just as we exclude an animal that is a disqualified sacrifice, which cannot belong entirely to its owner (*since certain restrictions apply to it even after it is redeemed*), we should exclude man as well, since it is forbidden to derive pleasure from a corpse!?

Tosfos answers that from this verse alone, I would have said that the owner of the pit is liable for damaging a gentile, since one is permitted to derive pleasure from his corpse, so we need a verse to exempt the pit owner for the death of all people.

Shulchan Aruch (Y.D. 349:1) writes that it is forbidden to derive benefit even from a gentile corpse. The Nekudas Hakesef quotes this from a Teshuvas Harashba. But, the Nikudas Hakesef points out that both our Tosfos and the Magid Mishnah hold that only a Jewish corpse is forbidden to derive pleasure from.

The Vilna Gaon proves that Tosfos is correct from David who used the foreskins from the Philistines to betroth the daughter of King Shaul. He also points out that the Rashba in his commentary on the Daf says like Tosfos.

However, the Pischei Teshuva reconciles Tosfos and the Rashba by saying that it is not Biblically forbidden, and that is why a special verse is needed to exempt the pit owner when a person is killed in a *bor*, but it is Rabbinically forbidden to derive pleasure from any corpse.

DAILY MASHAL

Who Pays for the Traffic Violation?

Our *daf* says that if a man is sitting on a bench and then someone else sits down next to him, eventually causing the bench to collapse, both of them must pay for the damage. The first person cannot claim that the second one is more responsible since he could have stood up when the second person came along. His decision to remain seated makes him equally liable for the damage.

Mishpetei HaTorah (I §34) cites a case in which a number of workers wanted to ride home at the end of a day's work using the transportation service provided by the factory. The problem was that the number of passengers exceeded the legal limit. The driver refused to take more people because he was afraid he would receive a fine. Only after the workers assured him that they would pay if necessary did the driver turn on the engine and start rolling. Sure enough, a few minutes later a policeman stopped them and gave the driver a heavy fine.

A debate broke out among the workers over who should pay. Those who boarded first argued that the workers who came later should pay the fine, since the number of passengers only exceeded the limit once they had boarded. But the workers who boarded later countered that since ostensibly the transport is provided for all employees, it should make no difference who boards first. When the first workers saw that the number of passengers was beyond the limit, they could have gotten out.

According to our *sugya* the workers who got in last are indeed justified in their claim: the fine should be divided among all the passengers since they were all equally responsible.