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Kodoshim Damaging

The *Gemora* discusses a previous statement: “And he will sin against Hashem (by swearing falsely that he does not have something that was deposited with him),” includes *kodshim kalim* (sacrifices of a secondary category of holiness), as they are his money (not similar to *hekdesh*). These are the words of Rabbi Yosi HaGelili. Ben Azzai says: This verse includes a *shelamim* (but not other *kodshim kalim*, such as a *bechor*). Abba Yosi ben Dostai says: Ben Azzai made his statement only regarding a *bechor*.

The master had stated: Ben Azzai says: This verse includes a *shelamim*. What does this exclude? If it excludes a *bechor*, we will say the following. If a *shelamim*, which requires *semichah* (the owner lean on the animal before it is brought), libations, and the waving the chest and thigh (of the animal after it is slaughtered), is considered to be the owner’s money, certainly a *bechor* should be considered the owner’s money!

Rather, Rabbi Yochanan said: He is coming to exclude *ma’aser*. This is as the *Baraisa* states: Regarding a *bechor* the verse says: “You should not redeem.” When it has no blemishes, it is sold when it is alive, and when it has a blemish, it can be sold both alive and already slaughtered. Regarding *ma’aser* the verse says: “It should not be redeemed.” It cannot be sold alive or slaughtered whether it is with or without a blemish. [This shows that *ma’aser* is not really “owned” as a person does not have rights to sell it. Accordingly, it does not fit the description of something

about which one would bring a *korban* if he swore falsely that he did not have a deposit of *ma’aser*.]

Ravina understood that these last comments were referring to the last part of the *Baraisa* which stated: “Abba Yosi ben Dostai says: Ben Azzai made his statement only regarding a *bechor*.” What does this exclude? If it excludes a *shelamim*, this is difficult. If a *bechor* which is holy when it is born, is considered one’s money, then certainly a *shelamim* should be considered one’s money!

Rather, Rabbi Yochanan says: He is coming to exclude *ma’aser*. This is as the *Baraisa* states: Regarding a *bechor* the verse says: “You should not redeem.” When it has no blemishes, it is sold when it is alive, and when it has a blemish, it can be sold both alive and already slaughtered. Regarding *ma’aser* the verse says, “It should not be redeemed.” It cannot be sold alive or slaughtered whether it is with or without a blemish.

The *Gemora* asks: Didn’t Abba Yosi say “only for a *bechor*?” This remains difficult.

Rava says: What does the *Mishnah* mean when it says “possessions that are not subject to *me’ilah*?” It means they do not have a law regarding *me’ilah*. What is this referring to? It refers to a regular person’s possessions (excluding *kodshei kodashim* and *kodshim kalim*). -nWhy didn’t it just say “possessions of a regular person?” This is difficult.

Rabbi Abba says: If *shelamim* damage, one collects from their meat (*which is eaten*) and not from their limbs (*which is burnt on the mizbe'ach*).

The *Gemora* asks: This is obvious, as their limbs are destined to be burned on the *mizbe'ach*!

The *Gemora* answers: This is needed to teach that the collection of its meat is done, but the half of the limbs that would normally be collected are not collected. [Accordingly, if a *shor tam* gored another ox and each was worth two hundred *zuz*, if the ox that gored was a *shelamim*, only fifty *zuz* of meat is collected.]

The *Gemora* asks: Who is this according to? If it is the *Chachamim*, this is obvious!? They say that when (*there are two parties that cause damage*) one cannot be collected from, the other is not responsible for the rest! If it is in accordance with Rabbi Nassan, doesn't he say that if one cannot collect from one, he collects from the other? [In this case, he should collect the full amount from the meat!]

The *Gemora* answers: It could be in accordance with Rabbi Nassan, and alternatively, it could be according to the *Chachamim*. It could be according to the *Chachamim*, for they might hold like this only when there are two separate entities causing the damage. However, when it is one entity, we might have thought that the one damaged could say that he will collect from whatever part of the ox he wants. [Rabbi Abba teaches that the collection is half limbs and half meat.]

Alternatively, it could be Rabbi Nassan. In the case of Rabbi Nassan (*where an ox pushed another ox into a pit*), the owner of the damaged ox can say to the owner of the pit that he found his ox in his pit. Accordingly, whatever he cannot collect from the owner of the other ox he should be able to collect from him. However, here, the owner of the damaged ox cannot claim that the meat

damaged, but the limbs didn't. This is why he loses half of the value (*which the limbs damaged*).

Rava says: If an animal designated to be a *korban todah* damages, one can collect from its meat but not from its bread (*forty loaves*).

The *Gemora* asks: Isn't this obvious (*for the bread did not damage*)?

The *Gemora* answers: This is required for the end of his statement. The one who was damaged eats the meat of the *korban*, while he eats the bread.

The *Gemora* asks: Isn't this obvious as well (*who would we think brings the bread*)?

The *Gemora* answers: Being that the bread is something which is needed to bring the *korban*, the one who damaged might claim that why should I bring the bread in order that you should be able to eat the meat? Rava therefore teaches us that this is not a proper claim, as the bringing of the bread is based on the owner (*not who is eating the meat*). (13a1 – 13b1)

Explaining the Mishnah

The *Gemora* asks: When the *Mishnah* says, "possessions owned by people of the covenant," who was it excluding? If it was excluding gentiles, it says this in a *Mishnah* later: If the ox of a Jew gores the ox belonging to an idolater, its owner is exempt!?

The *Gemora* answers: It says it here, but then (*in the Mishnah*) later explains it.

The *Gemora* asks: What is the *Mishnah* excluding when it says, "exclusive possessions?"

Rav Yehudah answers: This excludes a case of one person (*Reuven*) saying that it was your ox (*Shimon's*) that damaged, and the other one (*Shimon*) says that it was your ox (*Reuven's*) that damaged. [*“Exclusive possessions” means that it must be clear that this particular person owned the ox that damaged.*]

The *Gemora* asks: Isn't this law explicitly stated in a *Mishnah* later: There were two oxen chasing after one ox (and one of them injured it), and one said, "It was your ox that did the damage," and the other said, "It was your ox that did the damage," they are both exempt!?

The *Gemora* answers: It says it here, but then (*in the Mishnah*) later explains it.

The *Baraisa* states: This excludes possessions that are ownerless. What is the case? If it is that a Jew's ox gored an ownerless ox, this is obvious!? Who is going to claim the damages? Rather, it must be that an ownerless ox gored his ox. If this is so, why doesn't he just seize the ox as payment? Rather, it must be that after it gored, someone else seized it and acquired it.

Ravina says: This excludes a case of an ox that gored and then was declared to be *hekdes* or ownerless.

This *Baraisa* supports Ravina as well: Moreover, Rabbi Yehudah said: An ox that gored and then was declared to be *hekdes* or ownerless is exempt from payment. This is as the verse states: "And its owners had been warned...and it killed a person (it should be killed and its owners...)." This implies that when it is killed and brought to court, it must be alike, in that it has the same owner the entire time.

The *Gemora* asks: Doesn't the owner have to be the same for the verdict as well? The verse, "the ox should be killed" is referring to the verdict!?

The *Gemora* answers: Indeed, when it is killed and brought to court and has a verdict, it has to be alike. (13b1 – 13b3)

The *Mishnah* had stated: He is not liable when his animal damages in his domain.

The *Gemora* states the reason for this: If the damage occurs in the exclusive domain of the damager, he is exempt from payment, as he can claim, "What is your ox doing in my domain?"

The *Mishnah* had stated: He is not liable when his animal damages in both the damaged party and the damager's domain.

Rav Chisda says in the name of Avimi: A jointly owned yard can still have damages collected from one partner by the other due to *shein* and *regel* (of his animals that damaged the property of the other partner). The *Mishnah* means to say that besides a domain that is exclusive to the damager, which is exempt from such payments (as he can claim to the one damaged that he should not have been in his yard). When the *Mishnah* says that "when he damages, the one who damaged must pay," it means that if it is in both of their domains, the one who damaged is liable.

Rabbi Elozar says he is exempt from *shein* and *regel*, and this is what the *Mishnah* meant: Except for the case of the domain that is exclusive to the damager, and except for the case of the domain that belongs to the damaged party and the damager - in both of the cases, the damager is exempt. When the *Mishnah* says that "when he damages, the one who damaged must pay," it means to include damages due to *keren*.

The *Gemora* asks: This is understandable according to Shmuel. However, according to Rav, who says that when the *Mishnah* says "ox," it means all damages of an ox,



what does the *Mishnah* mean when it says “when he damages, the one who damaged must pay?”

The *Gemora* answers: It includes that which we learned in the following *Baraisa*: “When he damages, the damager must pay.” This includes a person who watches an item for free, a borrower, a paid custodian, and a renter. If an animal they have damages, if it is a *tam*, the owner pays half of the damages, and if it is a *mu’ad*, the owner pays full damages. If a wall enclosing the animal became broken, or thieves broke it, and it proceeded to go out and damage things, they are exempt. (13b3 – 13b4)

INSIGHTS TO THE DAF

A Korban Damaging

Rabbi Abba says: If *shelamim* damage, one collects from their meat (*which is eaten*) and not from their limbs (*which is burnt on the mizbe’ach*).

The *Ketzos Hachoshen* asks: Why, even according to Rabbi Yosi HaGelili, who holds that *kodshim kalim* are not the property of the High, should one be liable to pay for the damages? It is forbidden to derive pleasure from this animal, and something that is forbidden to derive benefit from is regarded as if it is ownerless!?

The *Minchas Chinuch* notes that this question is only according to the *Rishonim*, who maintain that something that is forbidden to derive benefit from is regarded as if it is ownerless. However, there are *Rishonim* who hold that one is considered the owner on things that are forbidden for benefit; it is just that it is not regarded as being under his domain. Accordingly, one would still be liable if his *korban shelamim* damaged.

Reb Shimon Shkop distinguishes between two types of items that are forbidden for pleasure. There are things that the Torah requires one to destroy. Such items are

considered ownerless, and one cannot betroth a woman with those items. However, there are other items that are forbidden to derive benefit from because they are designated for a *mitzvah*, such as a *sukkah* during the holiday of *Sukkos*, *tefillin* and *korbanos* – these items are regarded as his. One would be allowed to sell them, for that does not retract from the *mitzvah* – it does not contradict that which it was designated for. One would be permitted to betroth a woman with a *korban*. This is why he would be liable if his *shelamim* damaged.

DAILY MASHAL

Rav Chaim Shmuelevitz, zt”l, recounted that when Rav Yisrael Salanter, zt”l, heard that a group of local businessmen planned to begin learning *Masseches Shabbos*, he commented, “They should first learn *Bava Kama*. That way, they will learn how to be vigilant in avoiding causing damage to others!” Rav Chaim emphasized that when one learns *Bava Kama* he should toil to be sensitive to his friend by avoiding any word, action, or even gesture that may anger or trouble him.