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Women are Included

The *Mishnah* had stated that women are included in the *halachos* of damages.

What is the source for this? Rav Yehudah said in the name of Rav, and it was also taught like this in the Beis Medrash of Rabbi Yishmael: It is written: *A man or woman who will commit any of the sins of a person*. This teaches us that all punishments that are mandated by the Torah for sinners are for both men and women alike.

In the Beis Medrash of Rabbi Eliezer they taught: It is written: *that you shall place before them*. This teaches us that all monetary laws in the Torah are for both men and women alike.

In the Beis Medrash of Chizkiyah and Rabbi Yosi HaGelili they taught: It is written: *and the ox killed a man or a woman*. This teaches us that all killings in the Torah are for both men and women alike (*it makes no difference who was killed*).

The *Gemora* notes that all three of these inclusions are necessary (*and any two of them cannot be derived from the other one*). If we would know only the first one, we would have said that it is only there that it applies to women as well, for the Torah had compassion on her with respect to atonement, but regarding monetary laws, which are more applicable to a man, for it is he who is involved in business activities, perhaps a woman is not included in them. And if we would know only the second one, we would have said that it is only there that it applies to women as well, for it greatly affects her life (*for otherwise, everyone would steal from her and she would steal from others*), but regarding

redemption (*the payment for an ox killing a person*), which is more applicable to a man, for it is he who is obligated in *mitzvos*, perhaps a woman is not included in them. And if we would know only the last one, we would have said that it is only there that it applies to women as well, for the Torah had compassion on her because of the loss of life, but regarding the other two, perhaps a woman is not included in them. Therefore, all three are necessary. (15a1 – 15a2)

Half Damages

The *Mishnah* had stated: The damagee and the damager are involved in the payments.

It was stated: Concerning the payment of half damages (*which are paid when a tame ox gores another animal; if the ox did not gore three times, it is regarded as an abnormal act and the animal was not intending to inflict damage; this is called a tam*), Rav Pappa says: This is regarded as a compensation payment. Rav Huna the son of Rabbi Yehoshua says: The half damages are considered a fine.

The *Gemora* explains: Rav Pappa says that the half damages are regarded as a compensation payment, for an ordinary ox is not considered guarded in respect to these types of ‘abnormal’ damages and the owner should really be liable to pay completely for its damages. The Torah had compassion on him since his ox was not yet warned (*three times*) and ruled that he is only required to pay for half the damage (*hence the half damages that he does pay is considered compensation*). Rav Huna the son of Rabbi Yehoshua says that the half damages are considered a fine, for an ordinary ox is considered guarded in respect to these types of ‘abnormal’ damages and the owner should really be exempt

completely from paying for its damages. The Torah penalized him and ruled that he is required to pay half in order that he will watch his ox better in the future (*hence the half damages are considered a fine*).

The *Gemora* attempt to provide proof that the half damages are regarded as a compensation and not as a fine. We learned in our *Mishnah*: The damagee and the damager are involved in the payment. Now according to the one who holds that liability for half damages is a compensation payment, it is understandable why the *Mishnah* states that the damagee is involved in the payment (*since he is losing half of the damages which is really due to him*), but according to the one who maintains that liability for half damages is regarded as a fine, we may ask: If he receives that which he does not rightfully deserve, how can it be said that he is involved in the payment (*he is gaining, not losing*)?

The *Gemora* answers: The *Mishnah* is actually referring to a different case altogether. It is discussing a case where the animal's carcass decreased in value after its death, but before the case was presented to the *Beis Din*. (*This loss is borne by the damagee, as the damager is required to pay only half the difference between the value of the live animal and the carcass as it was on the day of the accident.*)

The *Gemora* asks: The depreciation of the carcass!? But this was taught in an earlier *Mishnah*? When the *Mishnah* states 'the payment of damages' it means the owner (of the dead animal) must deal with the carcass.? - One refers to a case of a *tam* and the other refers to a case of a *mu'ad* (*an ox that gored three times*). And they are both necessary, for were the ruling laid down only in the case of *tam*, it might have been accounted for by the fact that the animal has not yet become *mu'ad*, whereas in the case of *mu'ad* I might have thought that the law is different; if on the other hand the ruling had been laid down only in the case of *mu'ad*, it might have been explained as due to the fact that the damage is compensated in full, whereas in the case of *tam* I might have thought that the law is otherwise. The independent indications were thus essential.

The *Gemora* cites another *Mishnah*: What is the difference between a *tam* and a *mu'ad*? A *tam* pays half damages from the body of the animal that damaged (*the owner is not obligated to pay more than his ox was worth, even if that is less than the half damages*), but a *mu'ad* is required to pay full damages from his choice property. The *Mishnah*, however, did not state the following distinction: A *tam* would not pay by his own admission, but a *mu'ad* will. (*This proves that the half damages are a compensation payment and not regarded as a fine.*)

The *Gemora* rejects this proof, by saying that the *Tanna* of the *Mishnah* listed only some of the differences between a *tam* and a *mu'ad*; he did not list them all. - But what else did it omit that the omission of that particular point should be justified? — It also omitted the payment of half-kofer [for manslaughter]. The absence of half-kofer [for manslaughter], however, is no omission, as the *Mishnah* may be in accordance with Rabbi Yosi HaGelili who maintains that *tam* is not immune from half-liability for kofer [for manslaughter].

The *Gemora* cites a *Mishnah*: If one says, "My ox killed So-and-so," or "My ox killed the ox of So-and-so," he is obligated to pay by his own admission. Is the *Mishnah* not referring to a *tam*, and nevertheless, the *Mishnah* states that he is obligated to pay by his own admission?

The *Gemora* rejects this proof by saying that the *Mishnah* is referring to a *mu'ad*, and that is why he would be required to pay even by his own admission. - But what is the law in the case of *tam*? Would it really be the fact that no liability is established by admission? If this be the case, why state in the concluding clause: "My ox killed So-and-so's slave," no liability is created by this admission? Why indeed not indicate the distinction in the very same case by stating: the rule that liability is established by mere admission is confined to *mu'ad*, whereas in the case of *tam* no liability is created by mere admission? — The *Mishnah* all throughout deals with *Mu'ad*.



The *Gemora* cites another statement from that *Mishnah*: This is the general rule: Whoever pays more than what he damaged is not required to pay by his own admission. We can infer from there that if he is paying less than he damaged (such as by a *tam*), he would pay even by his own admission. (This proves that the half damages are regarded as a compensation payment and not as a fine.)

The *Gemora* objects to this proof: We can only infer from the *Mishnah* that if he pays as much as he damaged, that is considered a compensation payment.

The *Gemora* persists: If it would be correct that one who pays less than he damaged would be required to pay even by his own admission, then why does the *Mishnah* state: This is the general rule: Whoever pays more than what he damaged is not required to pay by his own admission; the following is what the *Mishnah* should have stated: This is the general rule: Whoever does not pay as much as he damaged is not required to pay by his own admission, for by saying it in this manner, it would suggest both less and more (by the fact that the *Mishnah* does not state the rule in this manner, it proves that one who pays less than what he damaged is considered a compensation payment).

The *Gemora* concludes: This is indeed a refutation of the opinion who maintains that the half damages are a fine.

The *Gemora* states: The *halachah* is that the half damages are regarded as a fine.

The *Gemora* asks: If we refuted that opinion, how can the *halachah* follow that viewpoint?

The *Gemora* answers: Yes! It is because we can answer the refutation. What did we ask? If it would be correct that one who pays less than he damaged would be required to pay even by his own admission, the following is what the *Mishnah* should have stated: This is the general rule: Whoever does not pay as much as he damaged is not

required to pay by his own admission. We could not have said it in that manner because it is not an absolute rule, for there is a case of half damages of *tzroros* (a case where an animal walks and shoots pebbles from under its feet causing damage to utensils), which we have learned through an Oral Tradition (*halacha l'Moshe mi'Sinai*) that they are a compensation payment. (Even if the half damages by the *tam* will be regarded as a fine, the half damages of *tzroros* is considered a compensation payment.)

The *Gemora* states: Now that you have concluded that liability for the half damages is a fine, the case of a dog that ate sheep or that of a cat that ate big hens is one of unusual occurrence (and the owner would pay half damage just like a *tam*) and the payment would not be collected in Bavel (since fines may be imposed in Eretz Yisroel only by a judge who is specially ordained for the purpose; no such judges lived in Bavel). If, however, the sheep or hens were small, this is regarded as a usual occurrence and the payment would be collected in Bavel. Should the plaintiff, however, seize the property of the defendant (in a case of a fine that could not be collected in Bavel), they cannot be taken away from him. Furthermore, if he asks for a date to present his case to a *Beis Din* in Eretz Yisroel, we set it up for him, and if the defendant does not go with him, we place a ban upon him.

Either way, however, the defendant is to be placed under the ban, for we tell him: Remove your damaging animal. This follows the opinion of Rabbi Nosson, for we learned in the following *Baraisa*: Rabbi Nosson said: How do we know that a man may not raise a vicious dog in his house, nor shall he place a shaking ladder in his house? It is written [Devarim 22:8]: *You shall not place blood in your house.* (15a2 – 15b3)

Mishnah

There are five cases of *tam* and five cases of *mu'ad*. An animal is not *mu'ad*, not for goring, and not for pushing, and not for biting, and not for pouncing, and not for kicking. The tooth (*shein*) is *mu'ad* for eating what is fit for it; the foot



(regel) is *mu'ad* for breaking as it walks along; and the *mu'ad* ox; and the ox causing damage in the domain of the damaged party; and the man.

The wolf, the lion, the bear, the leopard, the *bardelas* and the snake are *mu'ad*. Rabbi Eliezer says: When they are domesticated, they are not *mu'ad*, but the snake is always a *mu'ad*. (15b2 – 15b3)

Explaining the Mishnah

The *Gemora* asks: From the fact that the *Mishnah* stated that *shein* is *mu'ad* to eat, evidently, the *Mishnah* is discussing the yard of the damagee. And yet, the *Mishnah* ruled with respect to *keren* that the owner pays only half damages. This reflects the opinion of the *Chachamim*, who hold that for an abnormal *keren* (*tam*) in the damaged party's domain, the damager pays only half damages. But let us consider that which is stated in the latter portion of the *Mishnah*: and the *mu'ad* ox; and the ox causing damage in the domain of the damaged party; and the man. This reflects the opinion of Rabbi Tarfon, for he said that for an abnormal *keren* (*tam*) in the damaged party's domain, the damager must pay full damages!?

The *Gemora* answers: Yes, for Shmuel said to Rav Yehudah: Sharp one! Let the *Mishnah* be (*do not try to explain it according to one Tanna*) and come after me. The first rule of the *Baraisa* is in accordance with the *Chachamim* and the last rule is in accordance with Rabbi Tarfon. (15b4)

INSIGHTS TO THE DAF

IS IT NATURAL FOR AN OX TO GORE?

It was stated: Concerning the payment of half damages (*which are paid when a tame ox gores another animal; if the ox did not gore three times, it is regarded as an abnormal act and the animal was not intending to inflict damage; this is called a tam*), Rav Pappa says: This is regarded as a

compensation payment. Rav Huna the son of Rabbi Yehoshua says: The half damages are considered a fine.

The *Gemora* explains: Rav Pappa says that the half damages are regarded as a compensation payment, for an ordinary ox is not considered guarded in respect to these types of 'abnormal' damages and the owner should really be liable to pay completely for its damages. The Torah had compassion on him since his ox was not yet warned (*three times*) and ruled that he is only required to pay for half the damage (*hence the half damages that he does pay is considered compensation*). Rav Huna the son of Rabbi Yehoshua says that the half damages are considered a fine, for an ordinary ox is considered guarded in respect to these types of 'abnormal' damages and the owner should really be exempt completely from paying for its damages. The Torah penalized him and ruled that he is required to pay half in order that he will watch his ox better in the future (*hence the half damages are considered a fine*).

Reb Dovid Pervarsky writes that this is not a factual dispute if ordinary oxen are accustomed to gore or not. Rather, the argument can be explained as follows: Rav Pappa maintains that it is inherent in the nature of an ox to gore. Sometimes it will not gore because it does not feel the desire to gore at that time. When the animal does gore, it is not considered an abnormality at all. Rav Huna the son of Rabbi Yehoshua holds that it is not natural for an ox to gore at all; when it does gore, it is regarded as an abnormality.

Reb Dovid is not comfortable with this explanation of the argument, for the *Gemora's* language is that an ordinary ox is not considered guarded; if the animal is not goring (*for whatever reason*), it should be considered "guarded"!?

He therefore concludes that this is the explanation: Rav Huna the son of Rabbi Yehoshua holds that it is not natural for an ox to gore at all; if it does gore, it cannot be labeled as a "damager," since the ox was considered guarded. Rav Pappa, however, maintains that it is in the nature of an ox to gore, and when it gores, it can be labeled a "damager." This

is what obligates the owner to watch his animal even though it is not accustomed to goring.

YAAKOV'S ACQUISITION OF CATTLE

It is written [Breishis 30:43] regarding Yaakov Avinu: *And the man increased exceedingly, and had large flocks (sheep), and maid-servants and men-servants, and camels and donkeys.* It is not mentioned in the Torah that Yaakov had cattle. Why not? We see that Yaakov sent to Esav cattle, as it is written [ibid, 32:6]: *And I have oxen, and donkeys and flocks, and men-servants and maid-servants; and I have sent to tell my lord, that I may find favor in your sight.* A few verses later, we also see that Yaakov had cattle. It is written [ibid, v. 8]: *And he divided the people that were with him, and the flocks, and the herds, and the camels, into two camps.* Yaakov sent cattle to Esav, as it is written later in the same Perek. Perhaps one can answer that Yaakov acquired the cattle afterwards; if so, the question may be asked: Why didn't he acquire cattle beforehand?

The *Gemora* in *Yevamos* (16a) relates the following incident: Yonasan the son of Hurkenas met Rabbi Akiva. He questioned him and silenced him. He asked him, "Are you the Akiva whose name is known from one end of the world to the other? You are fortunate indeed to have merited such a name, but you have not yet reached the level of an oxherd." Rabbi Akiva replied (*with humility*), "I have not even reached the level of shepherds."

It is evident from here that it is more difficult to be an oxherd than a shepherd. One does not need to be so careful when watching sheep – he has to watch that the sheep do not graze in other people's fields. When one is watching cattle, he must be concerned that the cattle do not damage other animals or people. This is not a simple task, as the *Gemora* states: Rav Pappa says that the half damages that an ox-owner is required to pay if his animal gores are regarded as a compensation payment, for an ordinary ox is not considered guarded in respect to these types of 'abnormal' damages and the owner should really be liable to pay

completely for its damages. The Torah had compassion on him since his ox was not yet warned (*three times*) and ruled that he is only required to pay for half the damage (*hence the half damages that he does pay is considered compensation*).

If one takes the animals that he is entrusted to watch into a desert, a place where there are no private fields, watching sheep there is almost effortless; he does not need to be cautious at all. However, he still must be vigilant in his guarding of the cattle, lest they damage other animals or people, for it is common for there to be other animals and people in a desert.

Yaakov did not want to watch Lavan's cattle, for he was worried that the cattle will cause damage and Lavan would not be willing to pay for the damages. He was able to tell Lavan that he does not possess the expertise necessary to watch cattle. This excuse was only possible if he did not have cattle of his own. He did not acquire cattle until after he departed Lavan's house, for now, if his cattle would damage, he would be liable, and he would certainly compensate anyone for any damages caused by his animals. (Igrah d'kallah)

DAILY MASHAL

When the Alexander Rebbe, R' Chanoch Henoah, started his tenure as Rebbe, some women wanted to gain admittance to receive blessings from him. Initially, the Gaboim refused to allow them in, as the custom in other Chassidic courts, such as Peshischa, Kotzk and Ger, was that women were not granted private audiences with the Rebbe. However, the new Rebbe instructed his Gaboim to allow the women to see him.

He explained his decision somewhat tongue in cheek with a reference to our Gemara. He said that his appointment to the position of Rebbe was a Heavenly punishment for him, and our Gemara says that when we are discussing punishments, men and women are equal.