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Rabbi Tarfon and the Chachamim

[The Gemora had asked: 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 maintain 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!]

Rabbi Elazar said in the name of Rav: The Mishnah in its entirety is in accordance with the opinion of Rabbi Tarfon. The first clause deals with premises set aside for the keeping of the damaged party’s produce, whereas both plaintiff and defendant may keep there their oxen. In respect of shein the premises are considered [in the eye of the law] belonging to the damaged party, whereas in respect of keren they are considered public domain.

Rav Kahana said: I said this over before Rav Zevid from Nehardea. He said to me: Is it really possible to establish the entire Mishnah according to Rabbi Tarfon? Doesn’t the Mishnah say that “shein” -- “teeth” are considered mu’ad to eat what is fitting for it to eat? This implies that it is mu’ad to eat only what is fitting (i.e. fruit), not what is inappropriate (i.e. clothes). However, Rabbi Tarfon holds that for an abnormal keren (tam) in the damaged party’s domain, the damager must pay full damages! [Rashi explains that

whether an animal would eat what is appropriate or not, it is still classified as the domain of the damagee, and according to Rabbi Tarfon, he (the owner of the damaging animal) would be liable for full damages.]

Rather, the Mishnah is authored by the Chachamim. It (the Mishnah) is as if there are missing words, and it means the following: There are five tam ways of damaging (i.e. goring etc.) which can become mu’ad. Shein and regel are considered mu’ad from the start. Where do they (teeth and feet) become mu’ad? In the domain of the person they damaged (the first time).

Ravina asked: The Mishnah later asks: What is the case of an ox that damaged in the domain of the damaged party? If you will say our Mishnah is referring to the opinion of Rabbi Tarfon that regarding such a damage, the owner is required to pay full damages, this is why it would say, “What is the case?” But if you will say that our Mishnah never refers to Rabbi Tarfon’s opinion, why would it ask “What is the case?” [It never previously discussed the opinion!]

Rather, Ravina answers: The Mishnah is as if there are missing words, and means the following: There are five tam ways (i.e. goring etc.) which can become mu’ad. Shein and regel are considered mu’ad from the start. The five ways are all included in the category of a mu’ad ox (explicitly mentioned in the Torah). The law regarding an ox that damages in the domain of the damaged party is an argument between Rabbi Tarfon and the Chachamim. There are other animals who can similarly be a mu’ad such as: A wolf, lion, bear, leopard, bardelas and a snake.

The following *Baraisa* supports Ravina's answer: There are five *tam* ways (i.e. *goring etc.*) which can become *mu'ad*. *Shein* and *regel* are considered *mu'ad* from the start. The five ways are all included in the category of a *mu'ad* ox (explicitly mentioned in the Torah). An ox that damages in the domain of the damaged party is an argument between Rabbi Tarfon and the *Chachamim*. There are other animals who can similarly be a *mu'ad* such as: A wolf, lion, bear, leopard, *bardelas* and a snake.

Some ask this as a question. The *Mishnah* says: There are five *mu'ads* and five *tams*. The *Gemora* asks: Are there no more? Doesn't the *Mishnah* say: A wolf, lion, bear, leopard, *bardelas* and a snake? Ravina answers: The *Mishnah* is as if there are missing words, and means the following. There are five *tam* ways (i.e. *goring etc.*) which can become *mu'ad*. *Shein* and *regel* are considered *mu'ad* from the start. The five ways are all included in the category of a *mu'ad* ox (explicitly mentioned in the Torah). An ox who damages in the domain of the damaged party is an argument between Rabbi Tarfon and the *Chachamim*. There are other animals who can similarly be a *mu'ad* such as: A wolf, lion, bear, leopard, *bardelas* and a snake. (15b4 - 16a2)

Trampling

The *Mishnah* had stated: [An animal is not a *mu'ad* to gore,] nor to squat. Rabbi Elazar says: The *Mishnah* stated that it is a *tam* only regarding trampling big vessels. However, it is absolutely normal for it to trample small vessels (and the owner will be liable to pay full damages).

Let us say that the following proves Rabbi Elazar's point. The *Baraisa* says: An animal is *mu'ad* to go in its normal way, and break and crush people, animals, and vessels. [In order that the *Baraisa* should not contradict the *Mishnah*, we must say this is talking about small vessels, as per the law of Rabbi Elazar.]

The *Gemora* rejects this proof, as it is possible the *Baraisa* is not referring to trampling, but rather to crushing things from the side (between its body and a wall).

Other say Rabbi Elazar said the following. Do not say that the *Mishnah* stated that it is a *tam* only regarding trampling big vessels, but it is absolutely normal for it to trample small vessels. Rather, it is abnormal even to trample small vessels.

The *Gemora* asks a question from a *Baraisa*. The *Baraisa* states: [An animal is *mu'ad* to go in its normal way,] and break and crush people, animals, and vessels. [This implies that it is normal to crush small things.]

Rabbi Elazar answers: It is possible the *Baraisa* is not referring to trampling, but rather to crushing things from the side (between its body and a wall).

Some ask the question from the *Mishnah* to the *Baraisa*. The *Mishnah* says, "And not to trample," but the *Baraisa* says "[An animal is *mu'ad* to go in its normal way,] and break and crush people, animals, and vessels."

Rabbi Elazar answers: The *Mishnah* is referring to big vessels, while the *Baraisa* is referring to small vessels. [This in accordance with the first way we explained Rabbi Elazar above.] (16a2 – 16a3)

Bardelas

The *Mishnah* had stated: The wolf, the lion etc.

The *Gemora* asks: What is a "*bardelas*?" Rav Yehudah says: It is a *nafreza*. The *Gemora* asks: What is a *nafreza*?

Rav Yosef says: It is an *appa*. [Some say that this is a *polecac*. Others say that it is a *viper*. There are those who say that it is a *hyena* or a *cheetah*.]

The *Gemora* asks a question on this from a *Baraisa*. The *Baraisa* states: Rabbi Meir says: Even a *tzavoa* is a *mu'ad*.



Rabbi Elazar says: Even a snake. Rav Yosef explains that when Rabbi Meir said a *tzavoa*, he was referring to an *appa*. [This means that a *bardelas* is not an *appa*!?!]

The *Gemora* answers: This is not difficult, as the *Mishnah* is referring to a *bardelas* that is a male *tzavoa*, while Rabbi Meir in the *Baraisa* is referring to a female *tzavoa*. For it was taught in a *Baraisa*: A male *tzavoa* after seven years becomes a bat; a bat after seven years becomes an *arpad* (another type of bat); an *arpad* after seven years becomes a nettle; a nettle after seven years becomes a thorn; and a thorn after seven years becomes a demon. The spine of a deceased person becomes a snake after seven years, if he does not bow down for the *modim* prayer (see *Maharsha* as to the meaning of this entire statement). (16a3 – 16a4)

Snake

The *Gemora* had stated above: Rabbi Meir says: Even a *tzavoa* is a *mu'ad*. Rabbi Elazar says: Even a snake.

The *Gemora* asks: Didn't our *Mishnah* state that Rabbi Elazar holds that any domesticated animal is not a *mu'ad*, but a snake is always a *mu'ad*?

The *Gemora* answers: It must be that Rabbi Elazar did not say, "Even a snake," but rather simply "a snake" (is always a *mu'ad*, but no others). (16a4 – 16b1)

Lion

Shmuel says: If a lion pounced and ate from an animal when it was in the public domain, he (*the owner*) is exempt from paying. If it tears the animal and ate it in the public domain, the owner is obligated to pay. When it pounces and eats, the owner is exempt because it is normal behavior (*for a lion is not afraid that other animals will take its prey; it therefore has no need to kill it and take it away before it eats it*) like eating fruits and vegetables, which falls into the category of *shein*. Such damage is exempt when done in the public domain. However, if the lion tears and eats it, it is abnormal

(it is therefore regarded as *keren* and the owner is therefore obligated to pay half damages).

The *Gemora* asks: Does this mean that it is not normal for a lion to tear its prey and eat it? Doesn't the verse state: *A lion tears its prey for its cubs*?

The *Gemora* answers: It normally kills for its cubs (*since it has to wait until the cubs are ready to eat*).

The *Gemora* asks: Doesn't the verse continue: *And it chokes for its lionesses*?

The *Gemora* answers: It normally kills for its lionesses.

The *Gemora* asks: Doesn't the verse continue: *It will fill up its (storage) holes with its torn prey*?

The *Gemora* answers: It normally kills to fill up these holes (*not to eat immediately*).

The *Gemora* asks: Doesn't the verse continue: *And its den is filled with the torn (seemingly indicating that this is its normal behavior)*?

The *Gemora* answers: It (*also*) normally kills for (*filling up*) its den.

The *Gemora* asks: Doesn't the *Baraisa* say that if a wild beast went into someone's domain and tore an animal and ate it, he (*the owner*) should pay full damages? [*Does the Baraisa not refer to a lion as well?*]

The *Gemora* answers: The *Baraisa* is discussing a case where the lion tore it and left it for later.

The *Gemora* asks: Doesn't the *Baraisa* explicitly say that it ate the animal?

The *Gemora* answers: The case is when it changed its mind and ate (*after it apparently was going to leave it*).



The *Gemora* asks: How do we know what it thinks? Additionally, perhaps Shmuel refers to a case where the lion changed its mind?

Rav Nachman bar Yitzchak answers: The *Baraisa* was teaching two different cases. If it killed in order to leave it or it pounced upon the animal and ate it, the owner pays full damages.

Ravina answers: Shmuel was discussing a domesticated lion, and he is following Rabbi Elazar's opinion that a domesticated lion does not normally attack.

The *Gemora* asks: If so, a domesticated lion should also be liable if it pounces upon an animal and eats it?

Rather, the *Gemora* answers: Ravina was not referring to Shmuel's statement, but rather that of the *Baraisa*. The *Baraisa* was discussing a domesticated lion, and it is following Rabbi Elazar's opinion that a domesticated lion does not normally attack.

The *Gemora* asks: If so, he should pay half damages (*for it is not usual to damage in such a manner*)?

The *Gemora* answers: The case is where the lion became a *mu'ad*.

The *Gemora* asks: If so, it should not be discussed under the category of *shein* (*which is normal damages*), but rather under the category of *keren*? The *Gemora* remains with this question. (16b1 – 16b3)

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 (*aliyah*) his choice property. (16b3)

Aliyah

The *Gemora* asks: What is "*aliyah*"?

Rabbi Elazar says: This refers to the best of one's property.

This is as the verse states, "*And Chizkiah went to rest (i.e. died) with his fathers, and he was buried 'b'ma'aleh*" -- "*in the best*" burial plots of the sons of David." Rabbi Elazar says: This refers to the best of the family, meaning David and Shlomo. (16b3)

Rabbi Elazar and Rabbi Shmuel bar Nachmeini

It is written: "*And they buried him (King Asa) in the graves which he dug in the city of David, and they laid him in a bed filled with besamim and zanim.*"

What are *besamim* and *zanim*?

Rabbi Elazar says: It means many types of fragrant spices.

Rabbi Shmuel bar Nachmeini says: It refers to spices that whoever smells them falls into the trap of immorality.

It is written: "*Because they dug a pit to capture me (the prophet Yirmiyah), and made traps for my feet.*"

Rabbi Elazar says: They suspected him (*i.e. spread rumors*) of cohabiting with a prostitute. Rabbi Shmuel bar Nachmeini says: They suspected him of cohabiting with a married woman.

The *Gemora* asks: It is understandable that they suspected him of cohabiting with a prostitute. This is as the verse states, "*for a prostitute is a deep pit*" (*and the word "pit" above describes the entrapment*). However, where do we see that this refers to a married woman?



The *Gemora* answers: Is a married woman who has an affair not worthy of the term “zonah”?

The *Gemora* asks: It is understandable that they suspected him of cohabiting with a married woman. This is as the verse states, “*And You, Hashem, You know of all their plots to kill me.*” [The penalty for being with a married woman is death, while this penalty is not meted out to someone who is with a prostitute.] However, how can we understand this verse in regards to a prostitute?

The *Gemora* answers: This verse is referring to their throwing him into a pit of plaster (*not their rumors about him having relations*).

Rava expounds the following verse: *But let them be made to stumble before You; deal with them in the time of Your anger.* Yirmiyah addressed the Holy One, blessed be He: Master of the Universe! Even when they (*the people of Anasos*) are prepared to do charity, cause them to stumble by people who are unworthy (*of receiving charity*), so that they won't receive and reward for that charity. (16b3 – 16b4)

DAILY MASHAL

Spine Turns into a Snake I

The *Gemora* cites a *Baraisa*: The spine of a deceased person becomes a snake after seven years, if he does not bow down for the *modim* prayer.

Tosfos explains that this is measure for measure. Rav Sheishes (Brochos 12b) said that when he bowed down during *Shemoneh Esrei*, he would bow like a rod (*in one swift motion*), and when he straightened up, he would straighten up like a snake (*which raises its head first and then slowly raises the rest of its body*). A person's punishment is that his spine turns into a snake.

What is behind the bowing down like a rod and straightening up like a snake?

Kollel Iyun HaDaf explains this based upon the Maharsha and the Maharal: The point of "Modim" is to show one's humility before Hashem, Who grants a person everything he needs for his daily life. The *Gemora* in Sotah (9b) teaches us that Hashem originally made the snake the king of the beasts, but the snake was not grateful and it became arrogant and wanted even more. Hashem punished the snake, saying, “I originally created you to walk with an upright stature, but now that you did not humble yourself, you will walk upon your stomach.” The snake, therefore, is a symbol of the punishment that befalls a person who does not humble himself and does not recognize that everything he has is a gift from Hashem. When a person bows down, he should bow like a rod, reminding himself that there is a Master in Heaven Whose word he must obey (*for a king rules with his stick; see Sotah 40a and Shabbos 52b*).

Spine Turns into a Snake II

When a person rises after bowing, he must remember that even when standing erect, he should not do so in an arrogant manner. The *Gemora* here teaches us that if a person does not bow during Modim and thereby commits the sin of the snake, by standing erect and not recognizing Hashem's dominion; after he dies, his spine that did not bend, will turn into a snake.

Tosfos brings another explanation: The Midrash says that there is a vertebra in the spine of a person from which he is resurrected in the World to Come. This bone is so strong and hard that fire cannot consume it. And now, when that bone becomes a snake, he will not be resurrected and will therefore not live in the World to Come.

Tosfos rejects this explanation, for it is not logical to say that one will be punished so harshly for committing this minor transgression, for we have learned that all of Israel has a share in the World to Come.

Rav Shamshon Raphael Hirsch wrote in a letter: Anyone who reads this *Gemora* finds it laughable, but Pliny says the same statement almost word for word, “After a number of years the human spine turns into a snake” Chazal, however, used this to teach a *mussar* lesson. To any mind it is clear that every similarly surprising statement of Chazal, if we look into it, was accepted as true by the scholars of the time.

A Worm That Turns into a Bat

We learn from our daf that some animals periodically undergo a transformation. The hyena, for instance, goes through seven cycles of seven years each. For its first seven years it is a hyena, then it becomes a bat, and so on. The Gemara also says that the punishment for a person who does not bow in modim is that “after seven years his spine turns into a snake.”

Many commentators have endeavored to make sense of this. Does a hyena really change into a bat, or is the Gemara alluding to esoteric metaphysical concepts of which we have no real knowledge?

The Rav Pe’alim (on our sugya) explains that the Gemara does not mean that the hyena, or a person’s backbone, changes form. Worms that transform into bats emerge from the dust of a dead hyena’s bones, and worms shaped like snakes emerge from the body of someone who did not bow in modim.

HaRav Ya’akov Emdin (on our sugya) adds that anyone who is familiar with the miraculous growth of the silkworm—which transforms from a larva into a pupa and then into a butterfly—will not find this so incredulous. We can see the metamorphosis of the silkworm with our own eyes.

Predicting the Behavior of Venomous Snakes

Snake behavior, as it applies to the laws of nezikin and tefillah, has been a topic of discussion among the poskim of various generations.

According to R. Elazar in our Mishnah, a lion, a tiger, a bear or any other animal that has been tamed is considered tam. If such animals cause damage or harm after being domesticated, the owner must pay 50% of the cost of the damage, but if it has caused damage or injury three times, the owner must pay 100%. However, a tamed snake is always considered mu’ad [liable to attack], and even if it bites only once, its owner must fully compensate the victim for the resulting expenses.

R. Elazar’s ruling suggests that a snake is the most dangerous animal on land. Even a domesticated snake remains irascible and retains its predatory instinct. The Gemara (Berachos 33a), however, seems to indicate that snakes are not particularly dangerous. If a snake coils around someone’s ankle in the middle of praying shemoneh esreh he may move away to make the snake fall off (O.C. 104:3, see Biur Halacha for another interpretation), but he is not allowed to interrupt his prayer with a call for help since snakes rarely harm people (Rambam Commentary on the Mishnah, *ibid.*). On the other hand, if an approaching ox is spotted during shemoneh esreh he may interrupt his prayer. A comparison of these two cases seems to indicate that snakes are less dangerous than oxen.

HaRav Yosef Shaul Natenzon zt”l (Responsa Shoel U’Meishiv, Mahadura Kamma §6) addresses this apparent contradiction and offers a solution. According to R. Elazar, a domesticated snake, unlike other domesticated animals, is still mu’ad vis-a-vis other animals and is always prone to attack whenever it comes into contact with them; however, its inherent fear of humans prevents it from attacking them. On the other hand, an ox is not afraid of people and greater precautions must be taken.

Why is it impossible to tame a snake? The Radbaz (Responsa V §14) explains that a snake cannot be taught to control its

striking instinct. Other animals only kill their prey to satisfy their hunger, and once they have been conditioned to eat in a “cultured” manner, they stop attacking. The snake is different. It cannot taste food and does not strike only when it is hungry. Therefore no amount of training can uproot its predatory instinct.

The Seder HaMishnah (5:1) also distinguishes between snakes and other animals, saying although snakes pose a serious danger, since a person can tell when a snake is about to bite he shouldn't stop praying the moment he sees one. However, an ox does not give any warning signs before charging, therefore one should stop praying on sight.

The Nischu'i Bone

In our sugya (16b s.v. vehu delo kara) the Tosafos cites the Medrash (Bereishis Rabba, Parshah 28:3), which mentions a bone in the human spine—the nischu'i or luz—that never decays. The regeneration of those who are destined to merit Techiyas Hameisim [the Resurrection of the Dead] will begin with this bone. The nischu'i is hard and durable. The Medrash Rabba writes that the Roman emperor Adrianus tried to destroy it by grinding it with a grindstone, burning it, and dissolving it in water, but was unsuccessful. He even tried to hammer it on an anvil, but it remained intact and the anvil broke.

What is a melaveh malkah for? The Beis Yosef (O.C. 300:1), quoting early commentators, writes that the nischu'i bone derives its nourishment from no other food besides the melaveh malkah meal on Motzei Shabbos. The Chasam Sofer (Respona II Y.D. §337) explains that this bone remains intact even after the body decays, because it did not benefit from the fruit of the Etz Hadaas [Tree of Knowledge] when Adam and Chava ate from it on Erev Shabbos when the world was created (Sanhedrin 38b). Therefore the nischu'i was not included in the curse of “to dust shall you return” (Bereishis 3:19). The Kaf HaChaim (311:8, citing the Holy Zohar and the Ari z'l) writes at length about this topic and notes that the nefesh of the departed resides in this bone until the

Resurrection. The fact that this bone never disintegrates has certain halachic implications.

Pesach Sheini because of the nischu'i bone: The Gemara (Sukkah 25b) cites an opinion that Pesach Sheini was enacted for Mishael and Elzaphan after they became tamei when they buried Nadav and Avihu, who had been burned alive (Vayikra 10:4). Many commentaries ask how they could become tamei according to the view that Nadav and Avihu were completely burned (Sanhedrin 52b) since ashes do not transfer tuma. The Paneach Raza (Bamidbar 17:2, p. 52) answers that although their bodies were burned, this specific bone was not, and rendered them tamei [see Tosafos (ibid, s.v. hahi) who explain that their skeletons remained intact].

Indeed the Lechem HaPanim [the son-in-law of the Magen Avraham] writes (Kuntres Acharon Y.D. 364:4) that in cases where the body of a person was burned, G-d forbid, efforts should be made to bury the ashes, since that bone remains intact (for another opinion see She'eilas Yaavetz II:169).