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Three Days and Three Times**Mishnah**

What is a *tam* and what is a *mu’ad*? A *mu’ad* is an animal that was testified about three days in a row, and (it reverts to being) a *tam* when it stopped goring for three days. This is the opinion of Rabbi Yehudah. Rabbi Meir says: A *mu’ad* is an animal that was testified about three times (even on the same day), and (it reverts to being) a *tam* when the children play with it and it does not gore them. (23b3)

What is the reason of Rabbi Yehudah? — Abaye said: [The verse states: Or, if it be known from yesterday, and the day before yesterday, that he is a goring ox, and yet his owner does not keep him in ...]: ‘Yesterday’, denotes one day; ‘from yesterday’ — two; and ‘the day before yesterday’ — three [days]; ‘and yet his owner does not keep him in’ — refers to the fourth goring.

Rava said: ‘Yesterday’ and ‘from yesterday’ denote one day; ‘the day before yesterday’ — two, and he [the owner] does not keep him in,’ then, [to prevent a third goring,] he is liable [in full].

What then is the reason of Rabbi Meir? — As it was taught in a *Baraisa*: Rabbi Meir said: If the animal spread out its gorings (over three days), it is regarded

as a *mu’ad*, then certainly it should be a *mu’ad* if it concentrated its gorings (on one day)!

They, however, said to him: A *zavah* (a woman who sees blood during the eleven days which followed her seven days of *niddah*; if she sees for three days in a row, she is a major *zavah* and she must count seven clean days and becomes *tahor* after immersing in a *mikvah*; if she sees for less than three days, she is ruled to be a minor *zavah* and she observes one day of cleanliness and then she is *tahor*) disproves your argument, as by spreading out her discharges at long intervals (three times in three days), she becomes *tamei*, whereas by concentrating her discharges at short intervals (i.e. three times on the same day), she is *tahor* (she does not have to observe seven clean days).

Rabbi Meir answered them: Behold, it is written: *And this shall be his tumah when he discharges*. The Torah has made the *halachos* of *zav* (a man who has an emission similar but not identical to a seminal discharge) dependent upon the number of times that he discharged, and *zavah* upon that of days.

But from where is it certain that ‘and this’ is to exempt *zavah* from being affected by cases of ‘discharging’? Say perhaps that it meant only to exempt *zav* from being affected by the number of ‘days’? — The verse says: And of he that has a discharge, of the man, and of the woman. Male is thus made comparable to female:

just as female is affected by [the number of] 'days' so is man affected by 'days'. - But why not make female comparable to male [and say]: just as male is affected by cases of 'discharging', so also let female be affected by cases of 'discharging'? — But the Merciful One has [emphatically] excluded that by stating: And this. - On what ground, however, do you say [that the Scriptural phrase excludes the one and not the other]? — It only stands to reason that when cases of 'discharging' are dealt with, cases of 'discharging' are excluded; [for is it reasonable to maintain that] when cases of 'discharging' are dealt with, 'days' should be excluded? (23b3 – 24a2)

The *Gemora* cites a *Baraisa*: What is a *mu'ad*? A *mu'ad* is an animal that was testified about three days in a row, and (*it reverts to being*) a *tam* when the children play with it and it does not gore; these are the words of Rabbi Yosi. Rabbi Shimon says: A *mu'ad* is an animal that was testified about three times (*even on the same day*), and they mentioned three times only in regards to reverting (*it reverts to being a tam when it does not gore for three days*).

Rav Nachman quoting Rav Adda bar Ahavah said: The halachah is in accordance with Rabbi Yehudah regarding *mu'ad*, for Rabbi Yosi agrees with him. But the halachah is in accordance with Rabbi Meir regarding *tam*, since Rabbi Yosi agrees with him [on this point]. Rava, however, said to Rav Nachman: But let the master say that the halachah is in accordance with Rabbi Meir regarding *mu'ad* for Rabbi Shimon agrees with him, and the halachah is in accordance with Rabbi Yehudah regarding *tam*, since Rabbi Shimon agrees with him [on this point]? He answered him: I side with Rabbi Yosi, because the reasons of Rabbi Yosi are generally sound. (24a2)

The *Gemora* inquires: Are the three days needed to make the ox a *mu'ad* (*and it will only become a mu'ad if it gored on three different days*) or to make the owner a *mu'ad* (*the owner must be warned on three different days that his animal gored*)?

The *Gemora* notes that the practical difference between them becomes evident when three sets of witnesses appear on the same day (*and they each testify regarding three cases of goring that occurred previously on three different days*). If the three days are needed to make the ox a *mu'ad*, the ox would be a *mu'ad*, but, if the three days are needed to make the owner a *mu'ad*, the ox would not be a *mu'ad*, as the owner may say: "They have only just now testified against me (*while the law requires that I should be warned on three different days*). What is the *halachah*?

The *Gemora* attempts to bring a proof from the following *Baraisa*: An ox cannot be declared a *mu'ad* until they testify against it before the owner when he is in the presence of *Beis Din*. If they testify against it in the presence of *Beis Din* while the owner is absent, or, on the other hand, in the presence of the owner, but outside *Beis Din*, the ox will not be declared a *mu'ad* unless they testify against it before *Beis Din* and before the owner. If two witnesses offer evidence of the first time of goring, and another two of the second time, and another two of the third time, they are considered three independent testimonies. They are, however, regarded as one testimony with respect to *hazamah* (*when witnesses offer testimony and other witnesses refute them claiming that the first set of witnesses could not possibly testify regarding the alleged crime since they were together with them at a different location at the precise time that they claimed to witness the crime somewhere else; The Torah teaches us that we believe the second pair in this instance; the first*

witnesses are called "eidim zomemim" "scheming witnesses," and they receive the exact punishment that they endeavored to have meted out to the one they accused). Were the first set found to be zomemim, the remaining two sets would be unaffected; the defendant would be exempt from paying full damages (for there was not valid testimony on three incidents of goring) and the zomemim would not have to pay him (for conspiring to make him pay the extra half damage, for they are not liable to pay unless all three sets were found to be zomemim). If the second set was also found to be zomemim, the remaining testimony would be unaffected; the defendant would be exempt from paying full damages and the zomemim would not have to pay him. If the third set was also found to be zomemim, they would all have to share the liability (for conspiring to make him pay the extra half damage), for it is with reference to such a case that it is stated: *Then you shall do unto him as he had planned to have done unto his brother.*

Now if it is suggested that the three days are needed to make the ox a *mu'ad* (whereas the owner may be warned in one day) the ruling is understandable (as the three pairs may have given evidence in one day; and since they were summoned by the third victim, it is evident that their objective in giving evidence was to render the ox a *mu'ad*; therefore, they will be liable to pay for the extra half damage that they intended the ox owner to pay). However, if it is suggested that the three days are needed to make the owner a *mu'ad* (and they obviously all came on three different days), why can't the first set say: "Could we have known that after three days, there would appear other sets of witnesses to come and render the ox a *mu'ad*?"

Rav Ashi said: I said over this argument to Rav Kahana, and he said to me: And even if the three days are

needed to make the ox a *mu'ad*, is the explanation satisfactory? Why can't the last set say: "How could we have known that all those present at the *Beis Din* had come to give evidence against the same ox? Our intention was only to make the defendant liable for half damages!"

The *Gemora* answers: We may be dealing with a case where all the sets were signaling to one another (evidently conspiring to act in tandem with each other).

Rav Ashi further said that we may deal with a case where all three sets appeared in *Beis Din* simultaneously.

Ravina said: We can be dealing with a case where the witnesses know only the owner but could not identify the ox (and therefore, they were obviously not intending to make the owner pay for half damages, for a tam only pays from the body of the animal itself, and if we cannot identify the animal, he would not be liable to pay at all).

The *Gemora* asks: How then can they render it a *mu'ad*?

The *Gemora* answers: They can say: "You have in your herd an ox prone to goring; it is your responsibility to guard the entire herd." (24a2 – 24b2)

Inciter

They inquired: In the case where one fellow incites a neighbor's dog on a third person, what is the *halachah*? The inciter cannot be held to be liable (for he did not directly cause the damage), but what about the owner of the dog? Do we say that the owner is entitled to plead: "What have I done to you?" Or may we tell the



owner: "Since you were well aware that your dog could easily be incited and do damage, you ought not to have kept it."

Rabbi Zeira attempts to bring a proof from our *Mishnah*: A *mu'ad* reverts to being a *tam* when children play with it and it does not gore. We can infer from here that if it were to gore as a result from the children playing, there would be liability (*even though it was caused by incitement*)!

Abaye however said: Does it state that if it would gore, there is liability? Perhaps it only meant that if it does gore, it will not revert to the status of *tam*, however, regarding that particular goring, no liability will be incurred.

The *Gemora* attempts to bring a proof from the following *Mishnah*: If someone incited a snake or a dog to attack someone, he is exempt for paying for the damages. This implies that while the inciter is exempt (*for he did not directly cause the damage*), the owner of the dog is responsible for the damages done by his animal.

The *Gemora* rejects the proof: The *Mishnah* may mean that the inciter is also exempt.

Rava said: Assuming that in the case where one fellow incites a neighbor's dog on a third person, the owner of the dog is liable, if the incited dog turns upon the inciter, the owner is exempt from liability on the grounds that where the plaintiff himself has acted irregularly, the defendant who follows suit and equally acts irregularly against the former, he could not be made liable to him.

Rav Pappa said to Rava: A statement was made in the name of Rish Lakish agreeing with yours, for Rish Lakish said: If there are two cows in the public domain, one lying down and one walking, and the one walking kicks the one lying down, it is exempt. If the one lying down kicks the one walking, it is liable.

Rava, however, said to him: In the case of the two cows, I would rule that the walker is liable, for we may say to the walker: "Your cow may be entitled to walk upon my cow, but she has no right to kick her." (24b2 – 24b3)

INSIGHTS TO THE DAF

Using a Dog to do Melachos on Shabbos

The poskim discuss whether it is permitted to order a trained dog to turn on lights or to perform other melachos on Shabbos. This question is actually quite involved, requiring an analysis of the background information first.

According to our sugya a person who sets someone else's dog on a third party is not liable for the damages incurred since he merely awakened the dog's attack instinct; the dog itself attacked. Such damage is defined as grama [caused damage] and the beis din does not require the mazik [the damager] to pay (Rashi, s.v. patur meshaseh) although according to Heavenly judgment he is held responsible (C.M. 395).

In terms of the laws of Shabbos, a man who orders a dog to do a melachah is not even considered to be the "cause" of the melachah, although in terms of damages his action is defined as grama. The following distinction must be drawn between Shabbos desecration and causing damage to others: a person is considered a mazik if he is responsible for the damage done,



whereas a Shabbos profaner only transgresses when he actually does a melachah. Therefore using a dog to perform a melachah on Shabbos is not even considered grama. Yet the poskim discuss whether there are other reasons to prohibit the use of animals to carry out melachos on Shabbos.

HaRav Tzvi Pesach Frank zt'l (Responsa Har Tzvi, O.C. I §174), writes that the answer is clear regarding the dog's owner. Based on the injunction (Shemos 23:12), "so that your ox and donkey rest," clearly the owner of the dog is forbidden to tell his dog do any melachah. On the other hand, there is no commandment to allow someone else's animal to rest. Therefore the question remains whether one may use another person's dog to do a melachah.

HaRav Frank rules that it is forbidden to use any dog to do a melachah on Shabbos, which would constitute an act of mechamer, i.e. driving a loaded donkey, which includes performing any melachah using animals. Although the positive mitzvah of allowing one's animal to rest is only incumbent upon the owner, many Rishonim hold that the prohibition against working an animal on Shabbos is incumbent on every Jew (see *Minchas Chinuch*, end of Mitzvah 32).

The prohibition of *mechamer* does not apply when the animal benefits from its own actions. Encouraging a dog to hunt another animal, for instance, would not fall under the prohibition of *mechamer* because the dog enjoys hunting (*Magen Avraham* 316:4, *Eglei Tal*, *melech chosh* 12:6). Some were of the opinion that a trained dog also enjoys carrying out the tasks it has been taught to perform. HaRav Frank, however, rules that when a dog responds to the trainer's commands it is not doing *melachos* for the dog's own benefit but is

fulfilling its master's bidding, and therefore ordering it to do a *melachah* is forbidden.

DAILY MASHAL

Rote

The Tur (OC 114) rules as follows: When a person (during Shemoneh Esreh) is in doubt about whether he said "Morid ha'Geshem" (He brings forth the rain) in the wintertime (when he is supposed to say it), in the first thirty days, we must assume that his tongue said what it was accustomed to saying (and he did not mention "geshem"), and thus he must repeat the Shemoneh Esreh; after thirty days, we can assume that he said it correctly. This halachah applies as well during the first thirty days after the beginning of Pesach, when his tongue is still accustomed to saying "Morid ha'Geshem."

The **MAHARAM MI'ROTEBURG** proposes that there is a way to accustom one's tongue to saying the appropriate words even before thirty days have passed. By repeating the appropriate phrase of Shemoneh Esreh ninety times, his tongue will become accustomed to saying that phrase.

He bases his logic on our Gemora -- events that occur in proximity affect a person's habits more than events that are separated by time.

RABEINU PERETZ who disagrees with the Maharam for a different reason: even if we accept Rebbi Meir's principle, it might not apply to accustoming one's tongue to pray in a certain way, since time is an important factor and has more of an effect on accustoming a person to say something by rote.