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### Explaining the Mishnah

The *Gemora* asks: Let us see: the verses do not fit precisely with the explanation of this master, nor with the explanation of this master; accordingly, why didn't Rav explain *maveh* like Shmuel?

The *Gemora* answers: When the *Tanna* said “ox,” he was referring to all types of damages done by an ox (*including shein*).

The *Gemora* asks: And according to Shmuel, indeed the *Tanna* already taught “ox”?

Rav Yehudah answers: The *Mishnah* said ox to teach the laws of *keren* (*goring*), and the *Mishnah* said *maveh* to teach the laws of *shein* (*eating*). And the following is the explanation of the next part of the *Mishnah*: The characteristic of *keren*, that it does not derive physical pleasure from its damage, is not the same as the characteristic of *shein*, where it does derive physical pleasure from its damage (*and therefore, if the Torah would write that one is liable only for keren, we would not necessarily know that one is liable for shein*). And the characteristic of *shein*, that it does not intend to damage, is not the same as the characteristic of *keren*, where it does intend to damage (*and therefore, if the Torah would write that one is liable only for shein, we would not necessarily know that one is liable for keren*).

The *Gemora* challenges this explanation: Is it not a *kal vachomer* (*literally translated as light and heavy, or lenient and stringent; an a fortiori argument; it is one of the thirteen principles of biblical hermeneutics; it employs the following reasoning: if a specific stringency applies in a usually lenient*

*case, it must certainly apply in a more serious case*): If one is liable for *shein*, when it does not intend to inflict damage, then he should certainly be liable for *keren*, when it does intend to inflict damage!?

[*The Gemora attempts to answer this question, and then refutes it.*] — Explicit [Scriptural] warrant for the liability of *keren* is, nevertheless, necessary, as otherwise you might have possibly thought that I assume [immunity for *keren* on] an analogy to the case of a slave and slavewoman. Just as a slave and slavewoman, although prompted by the intention to do damage, do not devolve any liability [upon their masters], so is the law here [in the case of *keren*]. - Rav Ashi, however, said: Isn't the immunity in the case of damage done by a slave and slavewoman due to the special reason that, but for this, a slave provoked by his master might go on burning down another's crops, and thus make his master liable to pay sums of money day by day?

Rather, this is the meaning of the *Mishnah*: The characteristic of *keren*, that it intends to cause damage, is not the same as the characteristic of *shein*, where it does not intend to cause damage (*and therefore, if the Torah would write that one is liable only for keren, we would not necessarily know that one is liable for shein*). And the characteristic of *shein*, that it derives physical pleasure from its damage, is not the same as the characteristic of *keren*, where it does not derive physical pleasure from its damage (*and therefore, if the Torah would write that one is liable only for shein, we would not necessarily know that one is liable for keren*). (3b3 – 4a2)

[*Rav Yehudah had explained according to Shmuel that the Mishnah said ox to teach the laws of keren (goring), and the*

*Mishnah said maveh to teach the laws of shein (eating).] The Gemora asks: Why didn't the Mishnah mention regel (trampling) as well? — [The generalization,] whenever damage has occurred, the offender is liable, includes regel. - But why has it not been stated explicitly?*

Rava explains the *Mishnah* according to Shmuel differently: The *Mishnah* said ox to teach the laws of *regel*, and the *Mishnah* said *maveh* to teach the laws of *shein*. And the following is the explanation of the next part of the *Mishnah*: The characteristic of *regel*, that its damage is common, is not the same as the characteristic of *shein*, where its damage is not common (and therefore, if the Torah would write that one is liable only for *regel*, we would not necessarily know that one is liable for *shein*). And the characteristic of *shein*, that it derives physical pleasure from its damage, is not the same as the characteristic of *regel*, where it does not derive physical pleasure from its damage (and therefore, if the Torah would write that one is liable only for *shein*, we would not necessarily know that one is liable for *regel*).

The *Gemora* asks: Why didn't the *Mishnah* mention *keren* (goring) as well?

The *Gemora* answers: When the *Mishnah* had stated "if they damage, their owner is obligated to pay for the damages," it was including *keren*.

The *Gemora* asks: Why wasn't it mentioned explicitly?

The *Gemora* answers: The *Mishnah* mentioned only the damages that are *mu'ad* from the beginning. However, those damagers that initially are *tam*, and they only become a *mu'ad* at the end, the *Mishnah* does not explicitly mention. (4a2)

The *Gemora* asks: Why doesn't Shmuel explain *maveh* like Rav (that it refers to a man damaging)?

The *Gemora* answers: If you would think it refers to a man damaging, it is mentioned in the latter part of the *Mishnah*,

which states: A *mu'ad* ox, an ox that damages in the property of the damaged party, and man.

The *Gemora* asks: Why isn't it mentioned in the first part of the *Mishnah*?

The *Gemora* answers: The first part of the *Mishnah* is dealing only with cases when a person's property damages; it is not speaking about cases where the person commits the damage himself.

The *Gemora* asks: And according to Rav, doesn't the *Mishnah* mention "man" in the latter part of the *Mishnah* (why does it say it in the first part as well)?

The *Gemora* answers: It is mentioned only in the latter part of the *Mishnah*, for the *Mishnah* wants to include it in the "mu'ad damagers."

The *Gemora* asks: And how does Rav explain when the *Mishnah* states: the ox is not like ...?

The *Gemora* answers: It is as follows: The nature of ox, that it pays *kofer* (if the ox kills a person, the owner is liable to pay a *kofer* payment), is not the same as the nature of a person, who does not pay *kofer* (and therefore, if the Torah would write that one is liable only for an ox, we would not necessarily know that one is liable for his own damaging). And the nature of man, that he pays an additional four things when damaging (besides for compensation for the damage itself, he is required to pay for pain, doctor bills, loss of work, and embarrassment), is not the same as the nature of an ox, where it does not pay these additional four things (and therefore, if the Torah would write that one is only liable for man's damaging, we would not necessarily know that one is liable for his ox).

The *Gemora* asks on Rav from the concluding statement of our *Mishnah*: "The common characteristics of all of them are that they normally damage" – does an ox (which according to Rav refers to *keren*) normally damage?



The *Gemora* answers: It may be referring to an ox which is a *mu'ad* (where it already gored three times). – And is it the way of a *mu'ad* to damage? - Yes - at that stage, it can be said that it normally damages.

The *Gemora* asks: And does man normally damage?

The *Gemora* answers: When a man sleeps, he bends and he stretches. – And is it the way of man to damage when he sleeps? - Yes - he bends and he stretches then, so it is then normal for him to cause damage.

[The Mishnah had stated:] And the obligation of watching them is upon you. Isn't the responsibility of watching a man's body [exclusively] upon himself (and the Mishnah seems to be saying that it is man's responsibility to watch over some other object)? – But according to your reasoning, behold Karna taught: The principal categories of damage are four and man is one of them. [Now] isn't the responsibility of watching a man's body [exclusively] upon himself? You must therefore say with Rabbi Avahu who said to the teacher of Baraisos: 'the responsibility of watching a man's body [exclusively] upon himself,' that here also it is to be understood that the control of man's body is his own (and the obligation of watching another object refers to the other three types of damages). (4a2 – 4b1)

Rav Mari, however, asked: Say perhaps mavah denotes water [doing damage], as it is written: As when fire burns meltables, as water tiv'eh [causes to bubble] fire? – Is it written: 'Water bubbles fire'? It is written: 'Fire bubbles water.'

Rav Zevid asked: Say then that maveh denotes fire, as it is fire to which the act of 'tiv'eh' in the text is referred? – If this be so what is then the explanation of 'the maveh and the fire'? If you suggest the latter to be the interpretation of the former, then instead of 'four' there will be 'three'? If however, you suggest that ox constitutes two [kinds of damage], then what will be the meaning of [that which the

Mishnah states]: Nor are the aspects of either of them [ox and maveh] in which there is life? Is there any life in fire? Again, what will be conveyed by [the concluding clause] 'as those of the fire'? (4b1)

#### **4, 13 and 24 Main Categories**

Rabbi Oshaya taught the following *Baraisa*: There are thirteen main categories of damage: The unpaid custodian, the borrower, the paid custodian, and the renter; damages, pain, healing, loss of work, and embarrassment; and the four main categories enumerated in the *Mishnah*, thus making a total of thirteen.

The *Gemora* asks: Why did our *Tanna* mention only four, and not the others?

The *Gemora* notes: According to Shmuel, this presents no difficulty, as the *Mishnah* mentions only damage committed by one's property, and not that committed by one's self. However, according to Rav, let the *Mishnah* also mention the others?

The *Gemora* answers: When the *Mishnah* mentions "man," it includes all kinds of damage committed by man.

The *Gemora* asks: But doesn't Rabbi Oshaya also mention "man"?

The *Gemora* answers: There are two kinds of damage that could result from man: He taught the case of a man injuring another man, and he taught the case where a man damaged property belonging to another.

The *Gemora* asks: If so, let Rabbi Oshaya similarly mention ox twice, as two kinds of damage could result also from an ox; an ox damaging property and an ox damaging a man?

The *Gemora* answers: Is that a comparison? It is understandable to mention man twice, as man damaging property pays only for the damages, while man damaging



another man may also be required to pay for the four additional payments, but how can an ox be mentioned twice, when the liability for damage done by it to either man or property is alike and the owner pays for damages alone?!

The *Gemora* asks: But the cases of the unpaid custodian, the borrower, the paid custodian, and the renter are also cases where a man damages property, and yet, Rabbi Oshaya mentioned them as well?

The *Gemora* answers: He mentions cases where man damages property directly, and he mentions cases where man damages property indirectly (*by not guarding it properly, they indirectly caused damage to those objects*). (4b1 – 4b3)

Rabbi Chiya taught the following *Baraisa*: There are twenty-four main categories of damage: Double payment (*as a penalty for stealing*), fourfold or fivefold payment (*for one who steals and slaughters or sells a sheep or an ox*), a thief (*secretly*), a robber (*one who uses force to steal*), *zomemim* witnesses (*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.*), the rapist, the seducer (*in certain cases, he must pay fifty shekalim*), the defamer (*a husband who falsely claims that his wife was not a virgin and that she committed adultery; he is required to pay one hundred shekalim to her father*), one who is *metamei* someone else's produce (*he touches a dead sherez on someone's terumah*), one who mixes *terumah* into someone's *chullin* (*thus restricting this mixture to be eaten only by Kohanim*), one who makes someone's wine into *nesech* (*by pouring the wine as a libation to idolatry, which renders all the wine in the barrel forbidden for any use*

*whatsoever*), and the thirteen enumerated above by Rabbi Oshaya, thus making the total twenty-four.

The *Gemora* asks: Why didn't Rabbi Oshaya list these?

The *Gemora* answers: He was reckoning only compensation payments; he was not discussing fines.

The *Gemora* asks: But he could have mentioned the thief and the robber, which are compensation payments?

The *Gemora* answers: He already mentioned the case of the unpaid custodian (*and if he would claim that it was stolen from him, and we find out that he himself stole it, he is treated exactly like a thief*) and the borrower.

The *Gemora* asks: And according to Rabbi Chiya, it was also taught the cases of the unpaid custodian and that of the borrower?

The *Gemora* answers: In one case (*by the custodian*), the money came into his hands in a permissible manner, and in the other case, the money came into his hands illegally. (4b3 – 4b4)

## INSIGHTS TO THE DAF

### **The Kofer Payment**

The *Gemora* explained the *Mishnah* according to Rav as follows: The nature of ox, that it pays *kofer* (*if the ox kills a person, the owner is liable to pay a kofer payment*), is not the same as the nature of a person, who does not pay *kofer* (*and therefore, if the Torah would only write that one is liable for an ox, we would not necessarily know that one is liable for his own damaging*).

Tosfos asks: Why is the fact that an ox pays *kofer* regarded as a stringency? The reason why a person does not pay *kofer* when he kills someone is because of the principle of *kim leih bid'rabbah minei* - (*whenever someone is deserving of two*

*punishments, he receives the one which is more severe*). And since a man is executed for killing another man, he is not required to pay the *kofer* payment. It emerges that not paying the *kofer* is not a leniency, but rather, it is due to a stringency, namely – that he is put to death!?

The Riva answers that a person would not pay *kofer* even if he would not be executed. This would be in a case of an accidental killing.

The Darchei Dovid explains: Although this is also a type of *kim leih bid'rabbah minei*; whenever someone accidentally does something - and this same action, if it would have been done intentionally, would have exempted him from a monetary payment – it exempts him from the payment in this case as well; nevertheless, it must be regarded as a lenient ruling, for the bottom line is that he is not executed and he is not obligated to pay anything.

Alternatively, Tosfos answers that he is not exempt from the *kofer* payment due to *kim leih bid'rabbah minei*.

The Maharam explains: The principle of *kim leih bid'rabbah minei* only applies when he committed an action that he deserves to be executed for, and simultaneously, he does something else that he is required to pay money for. However, in our case, where a man killed someone, the punishment of execution and the *kofer* payment are both coming for the same reason. *Kim leih bid'rabbah minei* will not apply here.

The Reshash explains Tosfos to mean that the principle of *kim leih bid'rabbah minei* does not apply in this case because the *kofer* payment serves as an atonement for the killing. *Kim leih bid'rabbah minei* exempts a money obligation which is a payment because of compensation; however, it does not exempt payments on account of forgiveness.

## DAILY MASHAL

The Gemora mentioned that “embarrassment” is regarded as a type of damage.

An elderly widow approached R' Chaim Ozer Grodzenski and described to him how when her husband had been alive, she had been able to support his Yeshiva, but since she had been widowed, she no longer had anything to contribute. As a result, she tended to avoid the vicinity of the Yeshiva, out of embarrassment. Today, however, she had forced herself to come by, and was shocked at the lack of decent straw available for the bochorim's sleeping arrangements. How could such a situation be permitted? R' Chaim Ozer agreed, and told her, “Do you think that only one who contributes money is obligated in Tzedakah? Concern and involvement are even more valuable!” With that, R' Chaim Ozer gave her money with which to buy straw, encouraging her and others like her, to donate their time for the welfare of the Yeshiva.