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Killed by the Employer's Ox

The *Gemora* cites a *Baraisa*: If employees come to their employer's house to demand their wages from him and their employer's ox gores them or his dog bites them, and one of them dies, he (the employer) is exempt from paying *kofer* (*"redemption money" - money paid when a mu'ad ox kills a person*). [*This is because they had no permission to enter his home.*] Others maintain that employees have the right to come to their employer's house and demand their wages.

Now, what are the circumstances of the case? If the employer could be commonly found in the city, what is the reason of "the others"? [*They have no right to enter his home!?*] And if he could be found only at home, what is the reason of the *Tanna Kamma*?

The *Gemora* answers: The case is where the employer could sometimes be found in the city, but could not always be found there. The employees therefore called out to him by his door, and he replied, "Yes." "The others" maintain that "yes" implies "come in," and the *Tanna Kamma* holds that "yes" means "remain standing where you are."

The *Gemora* cites a *Baraisa* which supports the view that "yes" means "remain standing where you are": If an employee came to his employer's house to demand his wages from him and his employer's ox gores him or his dog bites him, and he dies, he is exempt from paying *kofer*, even though he entered with permission.

Now, why should he be exempt? It must be that the case is where he called out to him by his door, and he replied, "Yes." This proves that "yes" means "remain standing where you are." (33a1 – 33a2)

Mishnah

If two oxen, which are *tam*, injured each other (*through an act of keren*), they pay for the excess half damages. [*If "shor A" damaged "shor B" $200.00 worth of damage, and "shor B" damaged "Shor A" $80.00 worth of damage, A's owner must pay B's owner $60.00, since the difference between the damages is $120.00, and half of that is $60.00.*]

If both are *mu'ad*, they pay for the excess full damages. [*If "shor A" damaged "shor B" $200.00 worth of damage, and "shor B" damaged "Shor A" $80.00 worth of damage, A's owner must pay B's owner $120.00, since that is the difference between the damages.*]

If one is a *tam* and one is a *mu'ad*, and the *mu'ad* damaged the *tam* more than the *tam* damaged the *mu'ad*, the *mu'ad* pays for the excess full damages. [*If "mu'ad A" damaged "tam B" $200.00 worth of damage, and "tam B" damaged "mu'ad A" $80.00 worth of damage, A's owner must pay B's owner $120.00, since that is the difference between the damages.*]

If the *tam* damaged the *mu'ad* more than the *mu'ad* damaged the *tam*, the *tam* pays for the excess half damages. [*If "tam A" damaged "mu'ad B" $200.00 worth of damage, and "mu'ad B" damaged "tam A" $80.00 worth of damage, A's owner must pay B's owner $60.00, since the difference between the damages is $120.00, and half of that is $60.00.*]

And similarly, if two people injured one another, they pay for the excess full damages.

A man to a *mu'ad* and a *mu'ad* to a man, the one who damaged more pays for the excess full damages. A man to a *tam* and a *tam* to a man, and the man damaged the *tam* more than the *tam* damaged the man; the man pays for the excess full damages. If the *tam* damaged the man more than the man damaged the *tam*, the *tam* pays for the excess half damages. Rabbi Akiva says: Even a *tam* that injured a man pays for the excess full damages. (33a2 – 33a3)

Tam Damaging a Person

Our Rabbis taught in a Baraisa: [The words of the Torah] According to this law shall be done to it [imply that] the law in the case of ox damaging an ox applies also in the case of an ox injuring a man. Just as where an ox has damaged an ox half-damages are paid in the case of *tam* and full compensation in the case of *mu'ad*, so also where an ox has injured a man only half damages will be paid in the case of *tam* and full compensation in the case of *mu'ad*. Rabbi Akiva, however, says: [The words,] 'According to this law' refer to [the ruling that would apply to the circumstances described in] the latter verse and not in the former verse. - Could this then mean that the [full] payment is to be made out of the best property]? [Not so; for] it is stated: Shall be done to it, to emphasize that payment will be made out of the body of *tam*, but no payment is to be made out of any other source whatsoever. - According to the Rabbis then, what purpose is served by the word 'this'? — To exempt from liability for the four [additional] items. – From where then does Rabbi Akiva derive the exemption [in this case] from liability for the four [additional] items? — He derives it from the text: And if a man puts a blemish in his fellow [which indicates that there is liability only where] man injures his fellow but not where an ox injures his [the master's] fellow. - And the Rabbis? — Had the deduction been from that text we might have referred it exclusively to 'pain,' but as to 'healing' and 'loss of employment,' we might have held there is still a liability to pay. We are therefore told [that this is not the case]. (33a3 – 33a4)

Mishnah

If an ox worth a hundred *zuz* gores an ox worth two hundred *zuz* and the carcass is not worth anything, the damagee may take the live ox. (33a4)

Who Owns the Tam?

Who is our *Mishnah* in accordance with? It is the opinion of Rabbi Akiva, for we learned in a *Baraisa*: The damaging ox has to be assessed by *Beis Din* (*and its owner is required to pay its value*); this is the view of Rabbi Yishmael. Rabbi Akiva, however, says: The ox becomes transferred to the damagee.

The *Gemora* explains the point at issue between them: Rabbi Yishmael maintains that the damagee is but a creditor, and that he has only a claim of money against him, whereas Rabbi Akiva is of the opinion that they (*the damager and damagee*) are regarded as partners in the ox that did the damage.

The *Gemora* explains that they differ in the interpretation of the following verse: *they shall sell the live ox and split the money*. Rabbi Yishmael maintains that it is the court on which this injunction is laid by Merciful One, whereas Rabbi Akiva is of the opinion that it is the damagee and the damager on which it is laid.

The *Gemora* asks: What is the practical difference between Rabbi Yishmael and Rabbi Akiva?

The *Gemora* answers: There is a practical difference between them where the damagee consecrated the ox that did the damage (*according to Rabbi Akiva, the ox will be consecrated, for he was also an owner*).

Rava inquired of Rav Nachman: If the damager sold the live ox to another, what is the *halachah* according to Rabbi

Yishmael? Since he says that the damagee is merely a creditor and he only has a claim of money against him (*but the damager remains the sole owner of the ox*), it will be a valid sale. Or perhaps we should say that he cannot sell it, for it is under lien to the damagee.?

Rav Nachman replied to Rava: It is not a valid sale.

The *Gemora* asks: But we were taught in a *Baraisa* that it is a valid sale?

The *Gemora* answers that the damagee may collect it from the purchaser.

The *Gemora* asks: If so, for what is it considered sold?

The *Gemora* answers: If the purchaser uses the ox to plow his field with, he is not obligated to compensate the damagee.

The *Gemora* asks: Can it be proven from here that if one borrows money and then sells movable property, the creditors may seize it from the purchasers? [*This is definitely not the halachah; only land is mortgaged for a loan!?*]

The *Gemora* answers: Here it is different, for (*since the Torah allowed the damagee to collect from the tam*) it is considered as if the damager has made the ox an *apotiki*. [*A person may designate any type of property as security to the creditor without placing it in the possession of the creditor. The creditor has a lien on this property, and if the debt is not otherwise repaid, the creditor can collect his debt from the security. This security is called an apotiki.*]

The *Gemora* asks: But Rava said: If the debtor designated his slave as an *apotiki* and then he sold him, the creditor may still collect his debt from the slave. If, however, he designated his ox as an *apotiki*, he may not collect his debt from the ox?

The *Gemora* answers: The reason why the debt may be collected from his slave is because the public will hear about the slave being designated as an *apotiki* (*and the purchasers should be wary of buying the slave*); this ox, they also hear about, for people call it "an ox that gores." (33a4 – 33b1)

Rav Tachlifa the Westerner taught the following *Baraisa* in the presence of Rav Avahu: If he sold the ox, the sale is not valid, but if he consecrated it, the consecration is valid.

The *Gemora* clarifies the *Baraisa*: Who sold it? If it was the damager and the sale is not valid, this would be in accordance with the view of Rabbi Akiva that the ox becomes transferred to the damagee. However, the latter clause that if he consecrated it, the consecration is valid could follow only the view of Rabbi Yishmael, who said that the ox has to be assessed by *Beis Din*. [*Obviously, that cannot be the correct interpretation of the Baraisa.*] If you will say that the *Baraisa* is referring to the damagee, would not the first clause, where he sold the ox, the sale is not valid, be in accordance with the view of Rabbi Yishmael, while the latter clause that if he consecrated it, the consecration is valid could follow only the view of Rabbi Akiva?

The *Gemora* explains the *Baraisa*: We may still say that it was the damager who sold it, and yet it will not be sold even in accordance with Rabbi Yishmael, for the ox is under lien to the damagee. And when the *Baraisa* ruled that if he consecrated it, the consecration is valid, it may be interpreted even in accordance with Rabbi Akiva, because of Rabbi Avahu, for Rabbi Avahu stated: A decree was instituted lest people should say that consecrated items could lose their status even without any act of redemption. (33b1 – 33b2)

The *Gemora* cites a *Baraisa*: If an ox does damage while still *tam*, if it is sold before its owner stood before *Beis Din* for judgment, the sale is valid; if it is consecrated, it is consecrated; if it was slaughtered or given away as a gift, what has been done is legally effective. But, if he sold it after its owner stood before *Beis Din* for judgment, the sale is not

valid; if it is consecrated, it is not consecrated; if it was slaughtered or given away as a gift, the acts have no legal effect; if other creditors of the damager stepped in first and collected the ox as payment, whether the debt had been incurred before the goring took place or whether the goring had occurred before the debt was incurred, the seizure of the ox is not legally effective, since the compensation for the damage must be made out of the body of the ox.

The *Baraisa* continues: But in the case of *mu'ad* doing damage, there is no difference whether its owner stood before *Beis Din* for judgment or whether its owner had not stood before *Beis Din* for judgment; if it has been sold, the sale is valid; if it was consecrated, it is consecrated; if it was slaughtered or given away as a gift, what has been done is legally effective; if other creditors of the damager stepped in first and collected the ox as payment, whether the debt had been incurred before the goring took place or whether the goring had occurred before the debt was incurred, the seizure of the ox is legally effective, since the compensation is paid out of the damager's choice property (*and not specifically from the damaging ox*).

The *Baraisa* had stated: If the *tam* ox that gored was sold (*before it stood for judgment*), it is sold – that means that it was sold for plowing (*for even if the damagee collects his payment from the ox, the purchaser is not required to compensate him for the plowing*). If he consecrates it, it is consecrated – this is on account of Rabbi Avahu.

The *Baraisa* had stated: If it was slaughtered or given away as a gift, what has been done is legally effective.

The *Gemora* asks: We can quite understand that where it has been given away as a gift the act should be legally effective, in respect of the plowing [meanwhile done by the ox]. But in the case of it having been slaughtered, why should [the claimant] not come and obtain payment out of the flesh? Was it not taught in a Baraisa: [The] live [ox]: this states the rule for when it was alive; from where do we know that the same holds true even after it has been slaughtered? Because it says further: And they shall sell the ox, i.e., in all circumstances? —Rav Shizvi answers: The *Baraisa* is only referring to the depreciation which was caused due to the slaughtering.

Rav Huna the son of Rabbi Yehoshua said: This indicates that a person is not liable for damaging an object pledged as security to another. - Is this not obvious? — It might perhaps have been suggested that it was only there where the defendant could argue, "I have not deprived you of anything at all [of the quantity]," and could even say, "it is only the mere breath [of life] that I have taken away from your security" [that there should be exemption], whereas in the case of impairing securities in general there should be liability; we are therefore told [that this is not the case].

The *Gemora* persists: But didn't Rabbah teach us this exact *halachah*, for Rabbah said: One is not liable for burning his fellow's documents (*even though the fellow lost his ability to enforce the lien that was written into the documents*)?

The *Gemora* answers: It might have been suggested that it was only there that he is exempt, for the defendant could claim, "It was only a mere piece of paper of yours that has actually been burnt," whereas in the case of destroying a field which was being held as security, by digging there pits, ditches and caves there should be liability. We are therefore told that this is not so, for in the case here, the damage is similar to that of digging pits, ditches and caves, and yet Rav Huna ruled that what has been done is legally effective. (33b2 – 33b4)

The Baraisa had stated: if other creditors of the damager stepped in first and collected the ox as payment, whether the debt had been incurred before the goring took place or whether the goring had occurred before the debt was incurred, the seizure of the ox is legally effective, since the compensation is paid out of the damager's choice property (*and not specifically from the damaging ox*). - We understand this where the goring has taken place before the debt was incurred, in which case the plaintiff for damages

has priority, but [why should it be so] where the debt has been contracted before the goring took place, [seeing that in that case] the creditor for the debt has priority? Moreover, even where the goring had taken place before the debt was contracted, wasn't the creditor actually first [in taking possession of the ox]? Can it be concluded from this that where a creditor of a subsequent date has preceded a creditor of an earlier date in collecting [the property of the debtor], the collection is of no legal value? — No; I may still maintain that [in this case] the collection holds good, whereas in the case there, it is altogether different; as the plaintiff [for damages] may argue, "Had the ox already been with you [before it gored], would I not have been entitled to collect from you? For surely out of the ox that did the damage I am to be compensated." (33b4 – 34a1)

DAILY MASHAL

It's a Yerushalmi

A common criticism of yeshiva students is that they spend their days engrossed in the study of archaic and irrelevant laws such as the intricate minutiae of goring cows. In reality, the Torah is Hashem's blueprint for creating the world, and the answer to every question and problem may be found therein, as evidenced by the following amazing story.

A panic-stricken woman once approached the Rogatchover Gaon, explaining that several weeks had passed during which her newborn baby nursed properly during the week but absolutely refused to nurse on Shabbos, thereby endangering his health. The Rogatchover told her, "Go, it's a Yerushalmi."

The woman remained distraught, as she did not understand what the Gaon meant to say. Rav Chizkiyah Mishkovsky met her on the street and brought her to Reb Meir Simcha. When he heard what the Rogatchover had told her, he suggested that she should wear her weekday apparel rather than her Shabbos clothes.

Bizarre as his suggestion seemed, she followed his advice with blind faith and was amazed to discover that by donning her regular clothes the problem went away, just as the two Rabbis had predicted. To her incredulous inquiries about the source of his supernatural knowledge and abilities, it was casually explained to her that the answer to her dilemma was "explicit" in a Tosfos who cites a Yerushalmi.

The Torah differentiates between the laws governing an ox that gores only periodically, a "tam," and one which is confirmed to gore habitually, a "mu'ad." The Mishnahh in Bava Kamma (4:2) rules that an animal which has gored repeatedly – but only on Shabbos – is considered to be a "mu'ad" with respect to its actions on Shabbos but a "tam" regarding damages it may cause during the week. The Yerushalmi (19b) explains that the ox gets confused on Shabbos when it sees people wearing nice clothes to which it isn't accustomed, causing it to attack and act wildly, but during the week it recognizes its surroundings and owner and behaves normally.

Based on this, the Rogatchover deduced that the woman's nursing difficulties stemmed from the fact that her baby didn't recognize her in her Shabbos finery, and a minor wardrobe change indeed resolved the problem – archaic indeed!

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