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Bava Kamma Daf 37

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### **Mishna**

An ox that is a *mu’ad* to damage other oxen but not other animals, or if it is a *mu’ad* to gore people but not animals, or if it is a *mu’ad* for children but not for adults, for whatever it is a *mu’ad*, he (its owner) pays full damages, and for whatever it is a *tam*, he pays half damages.

They asked Rabbi Yehudah: What happens if an animal is a *mu’ad* for *Shabbos* and not for the weekdays? Rabbi Yehudah told them: For damages done on *Shabbos*, he pays full damages, and for damages done during the week, he pays half of the damages. When does it become a *tam* again (after being a *mu’ad* for *Shabbos*)? It becomes a *tam* if it does not damage for three *Shabbosos* in a row. (37a)

### **Becoming a Mu’ad**

The following argument (regarding the question asked to Rabbi Yehudah in the Mishna) was taught. Rav Zevid says: The Mishna states: And it is not a *mu’ad*. Rav Pappa states: The Mishna means, “It is not a *mu’ad*.” [The Rashash understands that the argument is regarding the meaning, not the actual text which everyone agrees includes the “and.”] According to Rav Zevid, the Mishna indicates that it is assumed to be a *mu’ad* during the week unless proven otherwise. [This is why they specifically asked about a case where we know it is not a *mu’ad* during the week.] According to Rav Pappa, it is not.

Rav Zevid deduces this from the second part of the Mishna, while Rav Pappa deduces this from the first part. Rav Zevid deduces from the Mishna’s statement: Or if it is a *mu’ad* for children and not for adults. It is understandable that the word “and” is used, as the Mishna is telling us that otherwise, it is considered a *mu’ad* for both adults and children. However, if the word “and” is not in this sentence, if the beginning of the Mishna stated that one could even differentiate between types of small animals (such as young oxen versus young horses), certainly we would say that one would differentiate between small and large types of the same breed (animals or people)!

The Gemora asks: What does Rav Pappa answer?

The Gemora says that he would answer that this is a necessary teaching. One might think that once an animal is a *mu’ad* for a certain species, it does not make a difference whether the particular specimen is an adult or a minor. This is why the Mishna tells us that we do differentiate.

Rav Pappa deduces his position from the first part of the Mishna. The Mishna says that a *mu’ad* for a person is not a *mu’ad* for animals. It is understandable that the Mishna would tell us that a *mu’ad* for a person is assumed not to be a *mu’ad* for animals. [Rashi explains that a person can more easily avoid being damaged, as they are more knowledgeable, and even so, we say that if the animal can damage people, they are not *mu’ad* for (simple) animals.] However, if you will say that it should read “and,”



implying that a regular *mu'ad* for people is a *mu'ad* for animals, if an animal is presumed a *mu'ad* for other species (*if the first case of the Mishna does not have the word "and"*), why would the *Mishna* have to tell me that he is assumed a *mu'ad* for goring animals when he gores people?

The *Gemora* asks: How does Rav Zevid answer this question?

The *Gemora* says that Rav Zevid will answer as follows: The first part of the *Mishna* is discussing a case where the animal was a *mu'ad* for both people and animals, and it became a *tam* again for animals, as it was by animals three times and did not gore. One might think that because it did not show this retraction for people, its retraction for goring animals should not count. This is why the *Mishna* says that the retraction for animals is still considered valid.

The *Gemora* asks a question from a *braisa*. Sumchos states: A *mu'ad* for a person is a *mu'ad* for an animal. If an animal is a *mu'ad* for a person, it will certainly be a *mu'ad* for an animal! This implies that the *Tanna Kamma* holds that a *mu'ad* for a person is not a *mu'ad* for an animal!

Rav Zevid answers: Sumchos is referring to the case of retraction (*mentioned above*). He means the following. Your statement that the retraction for animals is valid is incorrect, as it is a *kal vachomer* from people. If he did not retract from people, it certainly did not retract from animals!

Rav Ashi attempts to bring a proof from the *Mishna*. The *Mishna* states: They asked Rabbi Yehudah: What happens if an animal is a *mu'ad* for *Shabbos* and not for the weekdays? Rabbi Yehudah told them: For damages done on *Shabbos*, he pays full damages, and for damages done during the week, he pays half of the damages. If the word

"and" is used, it is understandable that they are asking him a question, and he is answering them. However, if the word "and" is not being used, are they teaching Rabbi Yehudah (*as it is merely a statement*)? Additionally, what would be his answer?

Rabbi Yannai adds that this position is indicated by the first part of the *Mishna*. The *Mishna* states: "For whatever it is a *mu'ad*, it pays full damages, and for whatever it is a *tam*, it pays half damages." If the word "and" is being used, it is an explanation (*of the case which receives this answer*). However, if the word "and" is not used it is a statement. Why, then, would the *Mishna* "answer" that "For whatever it is a *mu'ad* it pays full damages, and for whatever it is a *tam* it pays half damages"? We already know that a *tam* pays half damages and a *mu'ad* pays full damages!

The *Gemora* continues: If you will say that the law follows Rav Pappa, if an ox gored an ox, donkey, and camel he becomes a *mu'ad* for everything (*as he gored three different types*).

The *braisa* states: If it saw an ox and gored, and then saw another ox and did not gore, and this pattern repeated itself three times, it is considered a *mu'ad* for every other ox.

The *braisa* states: If it saw an ox and gored, a donkey and did not gore, a horse and gored, a camel and did not gore, a mule and gored, and an alligator and did not gore, it is a *mu'ad* for every other animal.

The *Gemora* inquires: What happens if it gores three oxen in a row, and then gores a donkey and a camel? Is the last ox considered to be only part of the pattern of oxen, and only counts to make it a *mu'ad* for oxen? Or do we put it together with the donkey and camel and say it is a *mu'ad* for all types? Additionally, what would be the *halachah* if it gores a donkey, camel, and then three oxen in a row?



Do we say that the first ox is part of the pattern involving the donkey and camel and it is therefore a *mu'ad* for all animals? Or do we say it is part of the oxen pattern, and the ox therefore is not a *mu'ad* for all types? Additionally, What if it gores three *Shabbosos* in a row, and then gores on the following Sunday and Monday? Do we say that the last *Shabbos* is part of the *Shabbos* pattern and it is only a *mu'ad* for *Shabbosos*? Or do we say that it is part of the Sunday and Monday pattern, and it is therefore a *mu'ad* for all days? Additionally, what would be the *halachah* if it gores Thursday, Friday and three subsequent *Shabbosos*? Do we say that the first *Shabbos* is part of the Thursday and Friday pattern, and therefore it is also a *mu'ad* for during the week? Or do we say that it is part of the *Shabbos* pattern, and it is only a *mu'ad* for *Shabbosos*? The *Gemora* does not resolve these questions.

If it gores on the fifteenth of one month, the sixteenth of the next month, and the seventeenth of the third month, this is an argument between Rav and Shmuel. It was taught: If a woman saw menstrual blood on the fifteenth of one month, the sixteenth of the next month, and the seventeenth of the third month, Rav says she has established a time (*when she expects her period*). Shmuel says: She has to see one more time (*the eighteenth of the fourth month, for then there would have been three intervals forming a pattern*) until this is established.

Rava says: If an ox heard a sound of a *shofar* three times and gores each time, he is a *mu'ad* for damaging after *shofar* blasts.

The *Gemora* asks: This is obvious!?

The *Gemora* answers: One might think the first *shofar* blast merely scared him, and that was why he originally damaged. This is why Rava tells us that it counts as one of three times to make him a *mu'ad*. (37a – 37b)

### **Mishna**

If the ox of a Jew gores an ox belonging to *hekdesch*, or visa versa, nothing is obligated to be paid. This is as the verse states: *Your friend's ox*, indicating that this does not apply to cases involving oxen of *hekdesch*. If an ox of a Jew gores the ox of a gentile, he is exempt from paying. If the ox of a gentile gores the ox of a Jew, whether it is a *tam* or *mu'ad*, he is liable for all of the damages. (37b)

### **Your Friend's Ox**

The *Gemora* asks that our *Mishna* is unlike the opinion of Rabbi Shimon ben Menasya. The *braisa* states: If the ox of a Jew gores an ox belonging to *hekdesch*, or visa versa, nothing is obligated to be paid. This is as the verse states: *Your friend's ox*, indicating that this does not apply to cases involving oxen of *hekdesch*. Rabbi Shimon ben Menasya says: If an ox of *hekdesch* gores an ox of a regular Jew, *hekdesch* is exempt from paying. If the opposite happens, whether the ox is a *tam* or *mu'ad*, he must pay full damages.

The *Gemora* asks: What is Rabbi Shimon ben Menasya's logic? If the verse "*Your friend*," is to be taken literally, even the ox of a Jew that gores the ox of *hekdesch* should be exempt! If "*Your friend*" is not to be taken literally, even the ox of *hekdesch* that gores the ox of a regular Jew should have to pay! You might want to say it should be taken literally, and the reason the ox of a regular Jew must pay when it gores a *hekdesch* ox is because of a *kal vachomer* from a regular ox. Just as if he gores a regular ox he must pay, he should certainly be required to pay when it gores a *hekdesch* ox! If so, we can only derive what we see by the source of the law. If he would only pay half damages to a regular person, he should only have to pay half damages to *hekdesch*!

Rish Lakish answers: Rabbi Shimon holds that the starting point of the Torah's laws is that all oxen really should pay full damages. The Torah then made an exception that



“Your friend’s” *tam* oxen pay half. This implies that when it is not your friend’s oxen, the entire sum of damages must be paid, whether the ox is a *tam* or *mu’ad*. [See Rashi at length why an ox of *hekdesh* that damages should not pay at all.] For otherwise, the Torah should have written “Your friend” by *mu’ad*. (37b – 38a)

## INSIGHTS TO THE DAF

### *Mu’ad for Shabbos*

They asked Rabbi Yehudah: What happens if an animal is a *mu’ad* for *Shabbos* and not for the weekdays? Rabbi Yehudah told them: For damages done on *Shabbos*, he pays full damages, and for damages done during the week, he pays half of the damages.

Rashi explains the rationale as follows: Since the animal does not work on *Shabbos*, we may assume that it becomes arrogant and therefore it acts upon its destructive urges and begins to gore.

Tosfos cites a *Yerushalmi* which explains differently: The animal’s Jewish owners tend to wear different clothing on *Shabbos*. The ox, unable to recognize its owner, becomes confused and decides to gore.

According to both of the above reasons, it would emerge that this *halachah* is only applicable if the animal gores three times on *Shabbos*. However, if it would gore on three consecutive Tuesdays, where there is no rationale to explain its behavior, it would become a *mu’ad* for all the days of the week.

The *Shitah Mekubetzes*, however, writes that the *Mishna’s halachah* would apply during an ordinary day of the week as well.

He explains that the only reason the *Mishna* chose the case of *Shabbos* is because that is a more probable case.

Accordingly, if the animal would gore on *Yom Tov*, the owner would not pay full damages, for that is a different day of the week, and it is the day of the week that causes it to become *mu’ad*.

The *Reshash* writes that it would be *mu’ad* for *Yom Tov* as well, for on *Yom Tov*, the animal is idle from work and the owner dons special clothing.

It emerges from his line of reasoning that if it is *mu’ad* for *Shabbos*, it will not be *mu’ad* for the other days of the week, but if it gores three consecutive Tuesdays, it will not be a *mu’ad* at all, for there is no logic to explain its behavior.

### Can an Ox Distinguish Between *Shabbos* and *Yom Tov*?

In our *Mishnah*, R. Yehudah rules that if an ox gores three times on *Shabbos*, it is *mu’ad* [prone to gore] on *Shabbos* and henceforth the owner must pay full damages, but if this ox were to gore during the week, the owner is required to pay for only half of the damage. The *Rambam* rules accordingly (*Mishneh Torah, Hilchos Nizkei Mamon* 6:8).

Rashi (s.v. *harei hu*) explains that an ox can be *mu’ad* on *Shabbos* alone because it does not work. Rest and idleness make the ox haughty, stirring an inclination to gore. On the other hand, the *Tosafos* (s.v. *harei hu*), citing the *Yerushalmi*, explain that when the ox sees people wearing their *Shabbos* clothes it fails to recognize them and may gore. This dispute between *Rashi* and *Tosafos* has an important halachic implication.

**If the ox gores on *Yom Tov*:** Is an ox that is *mu’ad* on *Shabbos* also considered *mu’ad* on *Yom Tov*, or does *Yom Tov* have the same status as weekdays, when such an ox is considered *tam* [not prone to gore] and the owner only pays for half of the damages?

According to Rashi, an ox that is *mu'ad* on Shabbos is not necessarily *mu'ad* on Yom Tov since it might not be idle: the Remo (246:3) rules that on Yom Tov the owner is permitted to rent out his ox to a non-Jew. (Even if he did not rent out the ox, it does not have the halachic status of an idle ox.) According to *Tosafos*, however, who attribute the behavioral change to festive clothing, the ox is *mu'ad* on Yom Tov as well (*Sho'el U'Meishiv Mahadurah* II §66, s.v. *vehineih derech*). Note that the *Yam Shel Shlomo*, *Magen Avraham* and the Vilna Gaon maintain that it is forbidden to rent out an animal to a non-Jew on Yom Tov as well. See *Mishnah Berurah* (ibid., S.K. 19).]

**Someone who cannot remember whether he prayed the Shabbos prayers:** The halacha states that when someone prays *Shemoneh Esrei* on Rosh Chodesh and immediately following the *tefillah* is unable to remember whether he inserted *ya'aleh veyavo*, he must repeat the *tefillah* (*Mishnah Berurah* 422:10). Presumably he recited the same prayers he says every day, forgetting to insert the additional prayer. However, the *Tzitz Eliezer* (XIII §25) suggests that the halacha is different on Shabbos when someone cannot recall whether he recited the Shabbos or the weekday prayers. If even an ox can detect a change on Shabbos, surely a person immersed in an atmosphere of Shabbos can sense the difference. Thus it may be assumed that he prayed the *tefilla* for Shabbos instead of for weekdays. Indeed, the author of the *Mirkeves HaMishnah* (*Shulchan Atzei Shitim* §6) adopts this line of reasoning in his ruling.

However, the *Mishnah Berurah* (268:9) maintains that in such a case the prayer must still be repeated. The following interpretation was offered in our Beis Medrash to explain why: the first three *berachos* of *Shemoneh Esrei* for Shabbos are identical to those of the weekday, and therefore, having begun the regular prayers, one is liable to continue according to the standard *Shemoneh Esrei*.

## DAILY MASHAL

### Shabbos Clothing & the Coat-Pocket Banker

All his life R. Shmuel Strauss was a man of great faith who strove to carry out his Maker's will and to accumulate as many mitzvos and good deeds as he could. At the request of R. Yisrael of Salant *zt'l*, the founder of the Mussar Movement, he donated the houses in Yerushalayim's famous Strauss Courtyard. Many people are familiar with this site, but few know that Mussarah, the neighborhood surrounding the Strauss Courtyard, got its name from the Arabs who conquered the area and named it after the Mussar giants who once lived there.

How did R. Shmuel become so wealthy that he could afford to donate an entire courtyard? We heard the story of his rise to fortune from R. Moshe Turk *shlita*, a renowned educator and the grandson of R. Ya'akov Rozenheim *z'l*, founder of Agudath Israel, who was R. Shmuel's son-in-law.

R. Shmuel lived in Karlsruhe, Germany, a city on the French border. He managed a small bank that his rich father-in-law had set up following his marriage. In Germany of 120 years ago only three things were needed to run a small bank: a license from the government, official receipts, and a coat with at least two pockets to hold the deposits.

People trusted R. Shmuel and many deposited their hard-earned savings with him, providing him with an ample livelihood.

One Friday morning R. Shmuel donned his Shabbos clothes and went to a *bris* held by one of his relatives. After the *bris* he attended to business matters for a few hours.

That night, after *Ma'ariv*, as R. Shmuel started walking home he noticed that his coat pockets were bulging. Suddenly he recalled having wrapped up all the bank's deposits that afternoon and stashing them away in his pockets.

He stopped short and his heart began to race. R. Shmuel's whole future depended on his next move. Throwing away that bundle of money was tantamount to throwing away his future. He could already imagine the many customers—farmers, small businessmen, people who scraped and saved to buy *tefillin* for their son—all gathered outside his house in protest. Shouting "Thief!" and "Criminal!" within a few minutes the angry mob would break down the door, pillage his house and throw him and his family out into the street.

He stood on the busy street corner, wondering what to do. Soon his decision had been made. His hands didn't tremble and a sensation of tranquility settled over him. R. Shmuel shook his coat pockets, glanced casually as the bundle of money fell out onto the ground and turned toward home. Walking along casually he resisted the urge to look back and see what had become of his lost treasure. He figured that within a few minutes the life of some lucky passerby would change dramatically.

The Shabbos candles flickered as brightly as usual. A wide smile spread across his face, and after wishing his family a cheerful "*Gutten Shabbos*," R. Shmuel began to sing "Shalom Aleichim" in a full, strong voice.

That night and the next day, R. Shmuel sang every Shabbos song in his repertoire. His family had no inkling of what had happened to him on the way home, and infected by his high spirits, joined in as well.

After Shabbos had ended, R. Shmuel picked up the silver wine cup, and began to recite *Havdalah*: "...Who separates between holy and the mundane, between light

and dark, between Israel and the nations, between the seventh day and the six days of labor..."

In his heart he thanked Hashem for filling his soul with a desire to guard the sanctity of the Shabbos without dwelling on the great losses he would soon have to face.

To be cont.....