

3 Tammuz 5776  
July 9, 2016



Bava Kamma Daf 39

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

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**

If the ox of a competent person gored the ox of a deaf-mute, a deranged person, or a minor, he is liable. And if the ox of a deaf-mute, a deranged person, or a minor gored the ox of a competent person, he is exempt. If the ox of a deaf-mute, a deranged person, or a minor gored, *Beis Din* appoints for them a guardian and testimony concerning their oxen is given before the guardian. If the deaf-mute regained his faculties, the deranged person regained his sanity, or the minor became of age, it returns to the status of *tam*; this is the opinion of Rabbi Meir. Rabbi Yosi says: It retains its status. A bull-fighting ox is not liable to be put to death, as it is written: *If it gores*, and not if it was made to gore. (39a)

### **Guardian for a Tam**

The *Gemora* asks: Is not the text of the *Mishna* in contradiction with itself? The *Mishna* stated: If the ox of a deaf-mute, a deranged person, or a minor gored the ox of a competent person, he is exempt, implying that a guardian is not appointed in the case of a *tam* to collect the payment of half damages out of its body. But let us consider the next *halachah* stated: following clause: If the ox of a deaf-mute, a deranged person, or a minor gored, *Beis Din* appoints for them a guardian and testimony concerning their oxen is given before the guardian. Now, does this not prove that a guardian is appointed in the case of *tam* to collect the payment of half damages out of its body?

Rava replied that the *halachah* of the *Mishna* should be understood in the following manner: If the oxen are established to be gorers, then a guardian is appointed and witnesses will give evidence for the purpose of having the oxen declared *mu’ad*, so that should another goring take place, the full damages would have to come from the choice property. [*It emerges that a guardian is not appointed in the case of a tam to collect the payment of half damages out of its body; he is, however, appointed to render the ox into a mu’ad.*]

The *Gemora* asks: From whose choice property do we take the payment from? Rabbi Yochanan said: From the orphan’s property. Rabbi Yosi bar Chanina said: From the guardian’s property.

The *Gemora* asks: But did Rabbi Yochanan really say that? Has it not been stated that Rav Yehudah said in the name of Rav Assi: *Beis Din* does not collect from the estate of the orphans unless interest payments are consuming it, and Rabbi Yochanan said: Unless there is a document bearing interest or to a woman for her *kesuvah*, so as to save her property from her support payments. [*How can Rabbi Yochanan say here that we use the orphan’s property to pay for the damages?*]

The *Gemora* answers: The names must be reversed to read as follows: Rabbi Yochanan said: From the guardian’s property. Rabbi Yosi bar Chanina said: From the orphan’s property.

Rava, however, challenged this: Because there is a contradiction between what Rabbi Yochanan in one place and Rabbi Yochanan in another place, are you to attribute to Rabbi Yosi bar Chanina an erroneous view? Was not Rabbi Yosi bar Chanina a judge, able to penetrate to the depths of the law?

Rather, we will not reverse the names, and the contradiction between the two views of Rabbi Yochanan can be reconciled by the consideration that a case involving damages is altogether different (*and is treated stringently – we do collect from the orphan's property*).

The *Gemora* explains: Rabbi Yochanan stated that the payment must be made out of the choice property of the orphans, because if you were to say that it is to be out of the choice property of the guardians, they will refuse and not become guardians in the first place. Rabbi Yosi bar Chanina stated that the payment must be made out of the choice property of the guardians, and then we will collect from the orphans when they become adults.

The *Gemora* notes that it is actually a *Tannaic* dispute whether a guardian is appointed in the case of a *tam* to collect the payment of half damages out of its body or not, for we learned in a *braisa*: In the case of an ox whose owner has become a deaf-mute, or whose owner became deranged or whose owner has gone abroad, Yehudah ben Nekusa said in the name of Sumchos that it would remain a *tam* until witnesses could give evidence in the presence of the owner. The *Chachamim*, however, say that a guardian should be appointed in whose presence the evidence may be given.

The *braisa* continues: If the deaf-mute recovers his faculty of hearing and speech, or the deranged person became sane, or the minor became of age, or the owner returned from abroad, Yehudah ben Nekusa said in the name of Sumchos that the ox would revert to the state of *tam* until witnesses would give evidence in the presence of the

owner, whereas Rabbi Yosi said that it would remain in its *mu'ad* state.

Now, what did Sumchos mean when he said (*in the first ruling*) that it would remain a *tam*? It cannot mean that the ox cannot become *mu'ad* at all, for since the next clause of the *braisa* had stated: the ox would revert to the state of *tam*, it is implied that it had formerly been *mu'ad*. What then did he mean when he said: it would remain a *tam*? Rather, it must mean that it remains *bitmimuso* – complete, that is, we do nothing to cause a loss to the damager's property, which would, of course, show that Sumchos holds that no guardian is appointed in the case of *tam* to collect payment out of its body. 'The *Chachamim*, however, say that a guardian should be appointed in whose presence evidence may be given, from which it follows that they maintain that a guardian may be appointed in the case of *tam* to collect payment out of its body.

The *Gemora* asks: And what is the point at issue in the concluding clause?

The *Gemora* answers: The point at issue there is whether or not a change of jurisdiction (*if the owner becomes an adult, it leaves the control of the guardian and returns to the owner*) should cause a change in the status of the ox. Sumchos maintains that a change in jurisdiction causes a change in the status of the ox (*and it reverts to being a tam*), whereas Rabbi Yosi holds that a change of jurisdiction does not cause a change in the status of the ox (*and it remains a mu'ad*). (39a – 39b)

## DAILY MASHAL

### Conclusion of Story

As soon as his family had finished dipping their fingers into the spilled wine and sprinkling drops into their pockets as a *segulah* for affluence, R. Shmuel motioned



for them to sit down and began to recount the events of the previous night.

Sitting around the big table, his family was overcome with mixed emotions—fear and gladness, sorrow and apprehension. R. Shmuel reminded them that everything comes from Hashem, reinforcing his words of encouragement with *mussar* and famous sayings by Chazal. He assured them that there was no reason to worry for Hashem provides for all, and by leaving the money he had carried out His will.

When R. Shmuel finished speaking, the family sat in silence. Staring at the walls, quietly contemplating what the future held in store, they tried to chase away thoughts about how their lives would soon change forever.

R. Shmuel's chair scraped loudly, startling his children. He walked quickly to the coat rack, put on his coat and adjusted his hat. As he stood in the doorway he turned around and said, "We must try something. I'm going to see what happened to the money!"

The family members remained at the table. They sat and mulled over their fate, worried that their father would soon come home bitterly discouraged. But R. Shmuel set out with an air of nonchalance, exuding the same cheerfulness that had accompanied him throughout the Shabbos.

The erect figure of R. Shmuel was clearly silhouetted against the backdrop of the yellow streetlight streaming in through the windows. This was the figure of a stoic man, an honest individual who trusted in his G-d with boundless faith.

R. Shmuel approached the spot where he had shaken his coat to remove the money. There, on that busy street corner, in the exact same place, the bundle of money lay untouched.

R. Shmuel lifted his face to Heaven and thanked the Creator for granting him the strength to face such a test, and for guarding his money throughout the entire Shabbos. He picked up the bundle of money and placed it back in the bank—his coat pocket—and then turned toward home, reciting *Tehillim* as he walked. When he stepped into the house, upon spotting the bulge in his coat pocket and the bright smile on his face, his morose family immediately burst into cries of joy.

HaRav Moshe Turk *shlita*, who heard this story from his mother-in-law, the eldest daughter of R. Yaakov Rozenheim, and R. Shmuel Strauss' granddaughter, provided a brief epilogue as well: The next day the District Treasurer, who had heard that an honest and trustworthy Jew ran a local bank, happened to pass through the neighborhood. On the spot he decided that all of the funds in the state treasury would be deposited in R. Shmuel Strauss' bank. Word of the trust the government placed in the Strauss Bank spread quickly, and within a few years R. Shmuel had amassed a small fortune. R. Shmuel used the money to pay for the famous Strauss Courtyard, which became the home of great *tzaddikim* and *talmidei chachamim*, including, R. Itzeleh Blazer and R. Naftali Amsterdam *zt'l*.

"I think," concluded R. Moshe Turk *shlita*, "that this story speaks for itself. The lesson should be obvious." Indeed it is.