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If an ox causes a miscarriage, is the owner liable to pay for the offspring?

It was taught in a different Baraisa: A verse states “The owner of the ox is absolved” (Shemos 21:28). Rabbi Yosi HaGelili expounds this to mean that the owner a *tam* is exempt from paying for the offspring if his ox attached a woman and causes her to miscarry. Rabbi Akiva said to him: Why would we need an extra verse to teach is this law, we already know this from the verse in Shemos 21:22 that discusses the damages awarded for causing a miscarriage “If men were fighting” which implies that the payment is only applied when the perpetrator was a man, not an ox? The Gemara concurs with Rabbi Akiva’s question.

Rav Ulla the son of Rav Iddi answers: It (the exposition of Rabbi Yosi HaGelili) is necessary, for otherwise, you might have thought to say the following: ‘Men (are obligated to pay the value of the fetus) but not oxen’ [exclusively to such] oxen as are comparable to men: Just as men are *mu’ad*, so also here the oxen referred to are *mu’ad*, whereas in the case of *tam* there should be liability. The Merciful One has therefore stated: The owner of the ox shall be absolved, implying exemption [also in the case of *tam*].

Rava finds this answer untenable: The citizen is on the ground and the stranger is in the high heavens!?! [A *muad* always incurs a greater liability than a *tam*!?!]

Rather, Rava says that it is necessary, for otherwise, you might have thought to say the following: ‘Men but not

oxen’ only to oxen which could be compared to men — just as men are *mu’ad* so the oxen here referred to are *mu’ad* — and to have extended the exemption to cases of *tam* by a *kal vachomer* argument. Therefore, the Merciful One purposely states [further]: The owner of the ox shall be absolved [to indicate that only] in the case of *tam* will there be exemption whereas in the case of *mu’ad* there will be liability.

Abaye asks Rava: According to your approach, we should apply the same logic to the payments awarded for humiliating someone, and say as follows: ‘Men’, excluding oxen which could be compared with men: just as the men are *mu’ad* so the oxen [thus exempted] must be *mu’ad*, and a *kal vachomer* exemption is extended to cases of *tam*. Thereupon the Merciful One on another occasion purposely states: The owner of the ox shall be absolved, [to indicate that only] in the case of *tam* will there be exemption, whereas in the case of *mu’ad* there will be liability [for humiliation]? Now you could hardly say that this is indeed the case, for if so why not teach that, ‘the owner of the ox shall be absolved’ [means], according to Rabbi Yosi HaGelili, absolved from compensating [both in the case of *tam* killing] for the value of the offspring and [in the case of it having caused] humiliation?

Abaye and Rava provide a final explanation of Rabbi Yosi HaGelili: The verse that discusses the miscarriage requires a monetary payment for the offspring only if the mother survives the attack, however if the mother dies, the attacker is exempt from monetary payments because of the rule that a more severe punishment always mitigates



a lesser punishment. If not for the exposition of Rabbi Yosi HaGelili, we would have said that the exclusion of an ox would be applied to this specific law, and we would have imposed the monetary payment on the owner of the ox even if the mother dies. However, per Rabbi Yosi HaGelili, we expound the verse “The owner of the ox is absolved” to teach that the owner of the ox is exempt from monetary payments if his ox causes a miscarriage.

Rav Ada bar Ahavah objects to the initial assumption based on the concept (discussed in Sanhedrin 79a) that a death penalty is only imposed in a case where there was intent to kill victim. Since in this scenario, the two men who were fighting were intent on harming each other, and not the pregnant woman who intervened, there should be no death penalty, and consequently no exemption from the monetary payment.

Rav Ada bar Ahavah therefore provides a new understanding, as follows: ‘Men’ - if it was one of the quarreling men that killed the woman, their intent matters so that if the woman was killed inadvertently they would still be liable to the monetary payment for the offspring, and the exemption is only if she was killed deliberately. ‘But not oxen’ - the exclusion of the ox from this verse would indicate that the owner of the ox is always liable for the monetary payment, even if the woman was the intended victim. However, now that Rabbi Yosi HaGelili expounded the verse “The owner of the ox is absolved”, the owner of the ox is exempt from the monetary payment. Rav Chagai journeyed from the south and related a Baraisa that is in accordance with Rav Ada bar Ahavah. (42a1 – 42a3)

If an ox kills a slave, does the owner have to pay the thirty-shekalim fine?

A Baraisa expounds the same verse differently: “The owner of the ox is absolved”, Rabbi Akiva derives from here that if an ox kills a slave, the owner is exempt from the thirty-shekalim fine.

The Gemara asks: Why does Rabbi Akiva not counter his own statement with the argument he presented to Rabbi Eliezer (on 41b) in the context of the *tam*'s exemption from paying half of *kofer* that since an ox is put to death, and the owner of a *tam* only pays from the value of the ox, the owner is automatically exempt from making a monetary payment.

Rav Shmuel bar Rav Yitzchok answers: The teaching of Rabbi Akiva is relevant for a scenario where the owner pre-empted the court and slaughtered his ox. You might suggest in that case that payment should be made out of the body; we are therefore told that since the ox [as such] had been liable [to be stoned] to death, no payment could be made out of it even where it was slaughtered [before the passing of the sentence].

The Gemara asks: Why did Rabbi Akiva not use this answer – that the owner pre-empted the court and slaughtered his ox - when he challenged Rabbi Eliezer?

The Gemara answers that indeed Rabbi Akiva would have accepted this answer, and when he challenged Rabbi Eliezer, he was asking if perhaps Rabbi Eliezer had an alternative answer.

The Gemara asks: Let Rabbi Eliezer provide this answer that the owner pre-empted the court and slaughtered his ox?

The Gemara answers: Rabbi Eliezer was addressing a scenario where the ox intended to kill an animal, and inadvertently killed a human. In that case, since the ox is not put to death I might have thought the owner should be liable, hence the need for the verse to teach us that the owner is exempt from the *kofer* liability. In contrast to our case where the ox intentionally killed the slave, and is therefore put to death, there is no reason to assume an exemption for monetary payments, even if the owner pre-empted the court and slaughtered his ox.



The Gemara concurs with this logic and asks how Rabbi Akiva can argue.

Rav Assi relates that he heard an explanation of Rabbi Akiva's statement from a great person, Rabbi Yosi bar Chanina, who explained as follows: You might have thought that since Rabbi Akiva is of the opinion that a *tam* that damages a person, its owner is liable to pay for the damages in full, there is reason to assume that the payment must also be made from other assets, hence the need for the verse to teach us that the owner is exempt from this thirty-shekalim fine.

Rabbi Zeira objects to Rav Assi: Why, Rabbi Akiva has already blunted the force of his ruling, for it has been taught in a Baraisa: Rabbi Akiva said: I might have thought that he (a person who wounded another man) should pay from choice property, the Torah therefore states: Similar to this judgment should be done to him. Even though the *tam* pays full damages, the payment is still only taken from the value of the ox, and not from other assets.

Rather, Rava answers that the verse is still necessary; I need to be stricter in the case of [killing] a slave than in the case of a free man — for in the case of a free man worth one sela the payment will be one sela, and of one worth thirty the payment will be thirty, whereas in the case of a slave even where he was worth one sela the payment will have to be thirty — there should be compensation for [the killing of] a slave even out of his choice property, the Merciful One therefore states: The owner of the ox should be absolved, [implying that this is not the case].

A Baraisa was taught that supports Rava's explanation. The verse states: "The owner of the ox is absolved". Rabbi Akiva expounds this to teach us that the owner of the ox is exempt from the thirty-shekalim fine levied for the

killing of a slave. You might ask that this exposition is unnecessary, since there is liability [to pay compensation] for [the killing of] a slave and there is liability [to pay compensation] for [the killing of] a free man; just as where there is liability [to pay compensation] for [the killing of] a free man a distinction has been made by you between *tam* and *mu'ad*, why then in the case where compensation has to be paid for [the killing of] a slave should you similarly not make a distinction between *tam* and *mu'ad*? Furthermore, we can apply the following kal vachomer: since in the case of the killing of a free man the owner must pay the full value of the victim to satisfy the *kofer* liability, yet nevertheless there is a distinction between *tam* and *mu'ad* (by *tam* he is exempt), when a slave is killed, and the owner of the ox need pay only thirty shekalim, even if the slave was worth more than that, so certainly we should exempt the *tam* from this liability? To this the Baraisa responds that the logic is the reverse. Since I am stricter in the case of [killing] a slave than in that of [killing] a free man. For in the case of a free man, where he was worth one sela the compensation will be one sela, [where he was worth] thirty the compensation will be thirty, whereas in the case of a slave even where he was worth one sela the compensation has to be thirty. This might have inclined us to think that [even in the case of *tam*] there should be liability. It was therefore [further stated]: The owner of the ox shall be absolved, implying that he is absolved from compensation for [the killing of] a slave. (42a4 – 42b3)

DAILY MASHAL

Compensation Following a Plane Crash

A *shochet* from Yerushalayim perished in a tragic plane crash during a flight to Argentina, where he was scheduled to slaughter cows. Since the *shochet* had been killed on his way to work, the management of the meat company wanted to send a large compensation payment to Eretz Yisrael, and HaRav Yitzchak Weiss *zt'l* was asked how to divide the money among the various family

members. Specifically, they wanted to know whether the money should go to the widow or the sons, or whether the laws of inheritance would apply since the money was provided by the late father's employers, in which case the first-born son would be entitled to twice the portion his brothers received.

Our *daf* teaches us that the owner of an ox prone to kill people *shor mu'ad*] pays the *kofer* money designated as an atonement for causing the death] to the heirs of the deceased, based on his value. [The Tannaim disagree on this point, see 41a above.] The Gemara also notes that Reish Lakish uses the verse, "It killed a man or woman" (*Shemos* 21:29), to derive the halacha that when an ox kills a married woman, the *kofer* does not go to her husband, as in the case of other inheritances, but to the sons, and if there are no sons, to the other heirs.

The *Hafla'ah* (*Kuntrus Acharon E.H.* 90:7) questions the need for this *derashah* since a later passage in our *sugya* says the husband only inherits property already in his wife's possession at the time of her death. The husband has no claim to property his wife acquired posthumously, e.g. inheritances from relatives who died later or payments on loans she gave before her marriage. Only the other inheritors have a right to such assets (*E.H.* 90:1). The obvious question is why does the Gemara need to cite a special verse to demonstrate that the husband does not receive the *kofer* money, which is not in her possession at the time of death?

The *Minchas Chinuch* (*Mitzvah* 51) explains that, on the contrary, if the Torah had not informed us that the *kofer* money is not intended for the husband, we would have thought he is entitled to it.

The husband is, in fact, the rightful heir to his wife's estate—except for property acquired posthumously. *Kofer* money, however, is not a posthumously acquired asset, but a new debt that never belonged to the wife and

never could have come into her possession. It is not an inheritance at all, yet the Torah determined that the ox owner must award this money in the form of a gift to the deceased's inheritors. Therefore, one would expect this gift to go to the husband, which is why Reish Lakish needed a special *derashah* to demonstrate that this sum is not given to the husband either.

Thus the *Minchas Yitzchak* (VII §137) writes that in the case above involving the *shochet*, since the compensation package never belonged to the deceased, the halachos of inheritance do not apply. What remains to be clarified is the custom in such cases. Is such money given only to the widow, or is it given to all of the family members. At any rate, the money is not considered an inheritance.