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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

**Who inherits damages owed to a dead person?**

A Baraisa teaches; the verse states in Shemos 21:29 “If an ox...kills a man or a woman”. Rabbi Akiva says: This verse cannot be teaching us only the basic meaning, that the owner of an ox is responsible for his ox’s damages, regardless of the gender of the victim, as that has already been stated in the preceding verse (Shemos 21:28) “If an ox gores a man or a woman”. The novelty in this verse is that we compare a man to a woman with regard to the laws of inheritance in the context of damages. When a man who is owed money for damages dies, the damages are paid to his heirs, similarly if a woman who is owed money for damages dies, the damages are paid to her heirs, and not to her husband.

The Gemara asks: and does Rabbi Akiva indeed maintain that a husband does not inherit his wife? But it was taught in a Baraisa: “And he inherits her” - this teaches us that a husband does inherit his wife’s assets.

Rish Lakish answers that the second statement of Rabbi Akiva, that a husband inherits damages owed to his wife is limited to the payment of *kofer*. He explains that *kofer* is different than other damages since it can only be paid after the death of the victim, and is therefore considered a prospective asset rather than an asset that the wife owns at the time of her death. The law is that a husband does not take from the prospective assets of his wife’s estate as he does from the assets she actually possessed at the time of her death.

What is the reason? [Why is *kofer* assessed only after the victim’s death?] This is derived from the verse in Shemos

21:29 “...it killed a man or woman, the ox shall be stoned and even its owner shall die, when *kofer* is assessed against him”. [The verse places the reference to *kofer* after the death of the victim.]

The Gemara asks: But regarding damages, Rabbi akiva did not rule this way (that the husband does not inherit the rights to the payments that were due to his wife)? But it was taught in a Baraisa: If someone strikes a woman and causes her to miscarry, he must pay the woman for the damages and pain inflicted, and he pays the husband for the value of offspring. If the husband is not alive, the value of the offspring is paid to the husband’s heirs. If the woman is not alive, her awards go to her heirs (and *not to her husband*). If the woman was a freed maidservant or a convert (i.e. she has no heirs), the damager keeps the damages for himself.

Rabbah answers that this Baraisa is referring to a case where the woman is divorced. And so too Rav Nachman said: This Baraisa is referring to a case where the woman is divorced.

The other sages in the Academy ask: If this is a case of a divorcee, she should also divide the value of the offspring (with her former husband; why does the husband exclusively receive the damages awarded for the value of the offspring)?

Rav Pappa answers: The Torah awards the payment of the offspring to whoever fathered the offspring (regardless of the current status of his relationship with the mother) – even if he cohabited with her out of wedlock. What is the reason? This is derived from the verse in Shemos 21:22 “He shall be punished as shall be assessed against him by the one who cohabited with the woman”.



The Gemara asks: But why shouldn't Rabbah refer the ruling to the case where the payment of the compensation had been collected in money, and Rav Nachman to the case where it had been collected out of land? For did Rabbah not say that where an outstanding debt had been collected out of land, the firstborn son would take in it [a double portion], but where it had been collected in money the firstborn son would not [take in it a double portion]? Or again did Rav Nachman not say that [on the contrary] where the debt had been collected in money the firstborn would take [in it a double portion], but where it has been collected out of land, the firstborn son would not [take in it a double portion]?<sup>1</sup>

The students of the academy answered that these views apply according to the view of the Westerners according to the Rabbis, and our Baraisa, however, is in accordance with the opinion of Rebbe (who does not consider the damages to be prospective assets). (42b3 – 43a2)

#### **Is the owner of an ox liable for its unintentional damages?**

Rabbi Shimon ben Lakish says: If an ox killed a slave inadvertently, the owner is exempt from the thirty-shekalim fine, as it is stated: thirty silver shekels shall he give to his master, and the ox shall be stoned; where the ox would be liable to be stoned the owner is to pay thirty shekels, but where the ox would not be liable to be stoned the owner need not pay thirty shekels.

Similarly, Rabbah stated: If an ox kills a freeman by mistake, the owner is exempt from *kofer*. This is derived from the verse in Shemos 21:29 "...it killed a man or woman, the ox shall be stoned and even its owner shall die, when *kofer* is assessed against him". When the ox must be stoned the

owner pays *kofer*, when the ox is not stoned the owner does not pay *kofer*.

Abaye challenged Rabbah from a Mishnah: If a man voluntarily confesses to Beis Din that his ox killed someone, or an ox belonging to someone else, he pays on the basis of his admission. Abaye presents this as referring to *kofer*, and even though the ox is not put to death, nevertheless there is still an obligation to pay *kofer*?

Rabbah responded that this Mishnah is not referring to *kofer*, it is referring to the damages that must be paid in lieu of *kofer*.

Abaye asks: The latter section of the Mishnah says that if the owner confessed that his ox had killed a slave, he (*is exempt for*) he does not pay on the basis of his admission. If this Mishnah is referring to monetary compensation for damages, why would he be exempt?

Rabbah said to him: I could have answered you that the first section of the Mishnah is referring to the monetary compensation and the latter section is referring to the thirty-shekalim fine, however I will not answer you with a forced answer. Rather, I prefer to answer that both sections are referring to the monetary compensation, and the difference is that the first section is discussing a freeman, whereas the latter section is discussing a slave.

And what are the circumstances of the case? The distinction is that the payment for the death of a freeman, i.e. *kofer*, would be paid through his own admission, in a scenario where witnesses testify that the ox killed someone but they don't know if it was a tam or muad and the owner volunteers the information that it was a *muad*. Therefore, in a case where there are no witnesses, the monetary compensation

needed to extract the payment from the damager which would change the status of the liabilities to be prospective assets rather than possessed assets, and that would be the reason why the husband does not inherit these liabilities from his wife?

<sup>1</sup> There is a dispute in Bava Basra 124b with Rabbah saying that when court extracts cash it would be considered a prospective asset, and Rav Nachman saying that when the court extracts real estate, it would be considered a prospective asset. Why did we not explain that this Baraisa is referring to a case where the court



in lieu of *kofer* is also paid through his own admission. As opposed to the killing of a slave, where in a parallel case where there are witnesses testifying to the killing of the slave but it is the owner who informs us that it was a *muad*, the owner would be exempt from the thirty-shekalim fine, similarly in a case where there are no witnesses, the owner would still be exempt from the payments made in lieu of the fine.

Rav Shmuel bar Yitzchok challenges Rabbah from a Baraisa: Whatever one would be liable for if his ox kills a freeman, he would be liable for if his ox kills a slave, both with regard to *kofer* and to the killing of the ox. Now, is there *kofer* by the killing of a slave? [No, there isn't.] So the Baraisa must be referring to the monetary compensations paid in lieu of *kofer* (and yet we see there is no distinction between a freeman and a slave)?

Some say Rav Shmuel bar Yitzchok asked this question and answered it himself, and others say that Abaye answered: The meaning of that Mishnah is that just like when an ox kills a freeman with intent and in front of witnesses, its owner would pay *kofer*, so too if it kills a slave with intent and in front of witnesses, its owner would pay the thirty-shekalim fine. Additionally, just like when an ox kills a freeman without intent in front of witnesses, its owner must compensate the heirs for the value of the damages in lieu of *kofer*, so too if it kills a slave without intent in front of witnesses, its owner must compensate the owner for the value of the damages in lieu of the fine. (43a2 – 43b2)

### **If someone lights a fire and it kills, should he be liable for damages?**

[The rule that when *kofer* is not assessed, there would be a liability for damages in lieu of *kofer*, is an innovation of Rabbah.] Rava asks him that according to that rule, if someone's fire kills a person without his intent, he should also be liable to compensate for the damages.

The Gemara asks: How does Rava know that he is indeed not liable in this case? Perhaps you will say that the source is the following Mishnah: If someone set fire to a haystack and there was a young goat tied up nearby or a slave in the vicinity, and they were killed by the fire, the one who ignited the blaze is liable. However, if the slave was tied up and the young goat was in the vicinity, unbound, and they were killed, he is exempt. [Evidently, he is not obligated to pay any damages even though his fire caused the death of the slave.]

The Gemara rejects this suggestion because Rish Lakish says this Mishnah is referring to a case where the owner of the fire set fire to the slave directly, and since he is subject to the death penalty for the crime of murder, we exempt him from the lesser punishment. [We do not have a proof regarding a case where he is not liable to death.]

The Gemara then suggests a different source from a Baraisa that says: The damages category of fire can be more stringent than the damages category of a pit, because the fire owner is liable for damages, whether the items damaged are typically damaged by fire or not, as opposed to the owner of the pit who is only liable if the items damaged in the pit are items that are typically destroyed by a pit.

Nevertheless, the Mishnah does not mention the distinction that fire damages would create a liability even if the damage was unintentional, which is not true by pit.

The Gemara objects: Perhaps the author of that Mishnah left out a number of additional solutions, and it's not necessary for the Mishnah to detail all of them.

The Gemara responds that Rava was not questioning Rabbah, he was merely inquiring what the law would be in the case where his fire killed someone unintentionally.

The Gemara elaborates: Do we say that an ox's owner pays *kofer* if it kills deliberately, therefore the owner would still be liable for the value of the damages if it killed unintentionally, whereas if a fire kills intentionally, its owner does not pay *kofer*, therefore if it kills unintentionally, the

owner would not be liable for the damages. Alternatively, do we compare the fire to the ox and say that just like an ox that kills unintentionally, although there is no *kofer*, its owner must pay the value of the damages, so too by a fire – although with intent he will not pay *kofer*, but when done unintentionally, he nevertheless should be liable to damages.

And we do not know the resolution. This inquiry is left unresolved. (43b2 – 43b3)

#### **Other opinions about *kofer* for unintentional killing by an ox**

When Rav Dimi arrived in Babylon from Israel, he quoted in the name of Rabbi Yochanan: The verse could have sated “*Kofer* should be assessed”, why does it say “if *kofer* is assessed”? The unusual wording in the verse is teaching us that even if the ox killed unintentionally, the owner is still liable for *kofer*.

Abaye asked Rav Dimi that the verse discussing the thirty-shekalim fine imposed when an ox kills a slave also uses the same unnecessary wording of “If a slave is gored by an ox...”. And this (the extra word “if”) comes to include liability for the thirty-shekel fine for an unintentional killing of a slave, just as there is for an intentional killing of a slave. And if you will say that this (that there is liability for this fine if an animal kills a slave unintentionally) is indeed so, yet Rish Lakish said: In a case of an ox unintentionally killing a slave, the owner of the ox is exempt from the thirty-shekel fine?

Rav Dimi answered that Rish Lakish and Rabbi Yochanan disagreed on this matter, and you cannot ask a question on Rabbi Yochanan from Rish Lakish.

Indeed, when Ravin arrived in Babylon from Israel, he quoted from Rabbi Yochanan: “A slave” (it could have said); why did the Torah say: If (the ox shall gore) a slave? This includes that if an ox kills a slave unintentionally, the owner

is liable for the fine, just as if the slave had been killed intentionally.

Now as regards Rish Lakish [who was of a different view in this respect] shall we also assume that just as he drew no lesson from the distinction between ‘a slave’ and ‘if a slave’, so he drew no lesson from the distinction between ‘*kofer*’ and ‘if *kofer*’? — I may say that this was not so. From the distinction between ‘a slave’ and ‘if a slave’ he did not draw a lesson, whereas from the distinction between ‘*kofer*’ and ‘if *kofer*’ he did draw a lesson. - Why this difference? The expressions ‘a slave’ and ‘if a slave’ do not occur in the context dealing with payment, whereas the expressions ‘*kofer*’ and ‘if *kofer*’ do occur in a context dealing with payment. (43b3 – 43b4)

#### **DAILY MASHAL**

##### **What Inspired the Kotzker Rebbe?**

The *tzaddik* R. Ze’ev of Strikov, the son of the *gaon* and *tzaddik*, R. Avraham of Tzechnov, was an ardent Kotzker Chassid. During a private conversation, the Kotzker Rebbe *zy’a* once asked him, “R. Ze’ev, please tell me how your father behaved after your mother, his *Rebbetzin a”h*, passed away.”

R. Ze’ev replied: “Her departure distressed my father greatly, but the first thing he did, immediately following her passing, was to open the wardrobe where her clothes hung, take out a garment and place it in his closet. ‘The Torah says, “He shall inherit her” (*Bamidbar* 27:11),’ he explained, ‘and I want to fulfill the mitzvah.’”

“Who can compare to such a holy person?” the Rebbe remarked.