



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

Mishnah

If an ox has been sentenced to death, and its owner consecrates it, it is not consecrated. If he slaughters it, its meat may not be eaten.

If the verdict had not yet been reached when its owner consecrates it, it would be consecrated. If he slaughters it, it may be eaten.

If an ox is entrusted to the care of an unpaid guardian, a borrower, a paid guardian, or a renter, the guardian stands in the place of the owners, so that if it is a *muad*, he must pay for the damages in full, and if it is a *tam*, the guardian must pay half of the damages. (44b4 – 44b5)

Sentencing an ox in absentia

A Baraisa states: An ox that kills a person, but the verdict has not yet been reached, if its owner sells it, the sale is valid. If he consecrates it, it is consecrated. If he slaughters it, the meat may be eaten. If it was in the care of a guardian and the guardian returns it to the owner, he has fulfilled his obligation. However, once the guilty verdict has been reached, if the owner sells it, the sale is not valid. If he consecrates it, it is not consecrated. If he slaughters it, its meat may not be eaten. If it was in the care of a guardian and he returned it to the owner, it is not deemed as if it was returned. Rabbi Yaakov disagrees with the last point, and says that it is still deemed returned.

The Gemara suggests that the point of contention is as follows: The Rabbis maintain that one cannot say with items that are halachically forbidden to be benefitted from, “Behold, what is yours is before you,” and Rabbi Yaakov holds that one may say with items that are halachically forbidden to be benefitted from, “Behold, what is yours is before you.”

Rabbah said that they all agree regarding items that are halachically forbidden to be benefitted from, “Behold, what is yours is before you,” because if not, they would also have disagreed about *chometz* that was stolen before *Pesach*, whether it may be returned after *Pesach*.

Rather, he holds the point of contention is whether an ox can be sentenced to death if it is not in the presence of the court. The Rabbis that represent the first opinion in the Baraisa say that the court cannot adjudicate the case of an ox if it is not present, so the owner can say to the guardian, “Had you returned the ox to me, I would have driven it out to a swamp (and prevented the court from sentencing it to death); whereas now you have allowed my ox to fall into the hands of those against whom I am unable to bring any action.” And Rabbi Yaakov holds that the court can adjudicate the case of an ox even if it is not present, so the guardian can say to the owner, “In any case the sentence would have been passed on the ox.”

What is the reason of the Rabbis? “The ox shall be stoned and also its owner shall be put to death”. This teaches us that the legal process for sentencing the ox must be similar to the sentencing of a human that murders. Just as



a human must be present for his sentencing, so too an ox cannot be sentenced in absentia. Rabbi Yaakov argues that it is understandable that a human needs to be present so that he is given the opportunity to present a defense, but an ox is not capable of defending itself and need not be present at its sentencing. (44b5 – 45a2)

The guardian's liability

The Mishnah had stated: If an ox is entrusted to the care of an unpaid guardian, a borrower etc.

A Baraisa states: Four categories of people stand in place of the owner to be liable for the damages of their animals, and they are these: An unpaid guardian, a borrower, a paid guardian, and a renter. If an ox in their care kills a person, if it is a *tam*, the ox is put to death, and the guardian is exempt from paying *kofer*. If it was a *muad*, the ox is put to death, and the guardian is liable to pay *kofer*. All except the unpaid guardian must reimburse the owner for the value of the ox.

They said: What was the scenario? If the guardian fulfilled his responsibility and guarded the ox, they should all be exempt from reimbursing the owner. If he didn't, they should all, including the unpaid guardian, be liable?

They said: here we are dealing with a case where he provided a lesser level of guarding, and did not guard it with a superior guarding. An unpaid guardian – his obligation has been discharged (as he is not required to provide more than that and is therefore exempt), but the other guardians – their obligations have not been discharged (as they are required to provide a superior level of guarding).

They said: In accordance with whose opinion is this? If this is in accordance with Rabbi Meir, who maintained that a renter is subject to the same law as unpaid custodian, why is it not taught above 'with the exception of unpaid

custodian and a renter'? If [on the other hand the view followed] was that of Rabbi Yehudah who maintained that a renter is subject to the same law as a paid custodian, why was it not taught 'with the exception of unpaid custodian,' and then state: 'whereas in the case of muadin they all would be exempt from kofer'?

Rav Huna bar Chinana answers: This Baraisa is the opinion of Rabbi Eliezer who holds that the only precaution for it [muad] is the slaughter knife, and who regarding a renter agrees with the view of Rabbi Yehudah that a renter should be subject to the same law as paid custodian.

Abaye answers: This Baraisa is actually authored by Rabbi Meir, and this is in accordance with the opinion of Rabbah bar Avuha who reverses the opinions as follows: A renter, how does he pay? Rabbi Meir says that he has the same level of liability as a paid custodian. Rabbi Yehudah says that he has the same level of liability as an unpaid custodian. (45a2 – 45b1)

An aggressive ox is not expected to be on the receiving end of a goring

Rabbi Elazar said: If an ox is entrusted to an unpaid guardian, if it damages others the guardian is liable. If it is damaged, he is exempt from reimbursing the owner.

They said: What are the circumstances? If the guardian accepted responsibility for damages, he should be liable to compensate the owners if it was damaged, and if he did not, he should be exempt from liability for damages it inflicts on others?

Rava answers: The guardian did accept responsibility for its damages but the case here is one where he had known the ox to be a gorer, and it is natural that what he did undertake was to prevent the ox from going and doing



damage to others, but he did not think of the possibility of others coming and injuring it. (45b1)

Mishnah

Rabbi Meir says: If an ox owner tied it with its reins, or locked the gate in front of it properly, yet it escaped and damaged, whether it was a *tam* or *muad*, the owner is liable.

Rabbi Yehudah says: If it was a *tam*, the owner would be liable, but if it was a *muad*, he is not. This is derived from the verse that says in the context of the liability for a *muad* in Shemos 21:36 “Its owner did not guard it” and this ox was guarded.

Rabbi Eliezer says: There is no level of guarding that is sufficient for a *muad*, short of putting it to death. (45b2)

Why does a *muad* require less guarding than a *tam*?

What is the reasoning of Rabbi Meir? He holds that a typical ox would not be guarded by its owner. When the Torah imposes liability for damages committed by a *tam*, it teaches us that a *tam* requires a lesser level of guarding. Then the Merciful One stated further in the case of *muad*: And his owner has not guarded it, to show that [for this] really superior guarding is required; and the goring mentioned in the case of *tam* is now derived through a *gezeirah shavah* from the goring mentioned in the case of *muad*.

Whereas Rabbi Yehudah holds that a typical ox would be guarded by its owner. When the Merciful One imposes liability for the damages inflicted by a *tam*, it teaches us that a *tam* requires a superior level of guarding. Then the Merciful One, however, goes on to say: And his owner has not guarded it, in the case of *muad*. [This would imply] that there should be there precaution of a superior degree. [These words, however, constitute] an

amplification following an amplification, and as the rule is that an amplification following an amplification intimates nothing but a limitation, Scripture has thus reduced the superior degree of the required precaution. And should you object to this that goring is mentioned in the case of *tam* and goring is mentioned in the case of *muad* [for a *gezeirah shavah*, the answer is that in this case] the Merciful One has explicitly restricted [this ruling by stating] And his owner has not guarded it, [the word ‘it’ confining the application] to this one but not to another.

The Gemara asks: This verse is needed to teach us the initial exposition?

The Gemara answers that the same teaching would have been apparent even if the verse had only stated “and he did not guard”. The extra wording of “and he did not guard *it*” implies the exposition is limited to this case, of a *muad*. (45b2 – 45b3)

A fourth opinion

It was taught in a Baraisa: Rabbi Eliezer the son of Yaakov says: An ox that had been provided with a lesser amount of guarding, whether it is a *tam* or a *muad*, the owner is exempt. What is the reason for this? He agrees with Rabbi Yehudah that a *muad* requires only a lesser level of guarding, however he does apply the *gezeirah shavah* to extend it back to a *tam*. (45b3)

Is a *muad* still partially a *tam*?

Rav Adda bar Ahavah says: When Rabbi Yehudah said the owner of a *muad* ox only requires a lesser level of guarding, he was applying that only to the *muad* aspect of the ox, but its initial state of *tam* is still in its place and requires the superior level of guarding.

Rav says: An ox that has been rendered a *muad* with regard to its right horn, is still a *tam* with regard to its left horn.

They said: In accordance with whose view was this stated? Rav could not have been making his statement in accordance with Rabbi Meir, as Rabbi Meir holds that both a *tam* and a *muad* require a superior level of guarding so there would be no difference in the liability. But if this statement is in accordance with Rabbi Yehudah, why is it only the left horn that has a status of a *tam* to require a higher level of guarding; according to Rav Adda bar Ahavah even the right horn still has its status as a *tam* that remains in place to require a higher level of guarding?

They said: Rav holds like Rabbi Yehudah but does not agree with Rav Adda bar Ahava's interpretation of Rabbi Yehudah. And this is what he's saying: It was only in such an instance (where only the right horn has been rendered a *muad*) that there would be in one ox part *tam* and part *muad*, but in the case of an ox which was altogether *muad*, no element of *tam* could be found in it at all. (45b3 – 46a1)

DAILY MASHAL

Rabbi A. Leib Schainbaum quotes Rav Matisyahu Solomon who related that he heard a penetrating perspective from Rav Chaim Shmuelwitz. A generation that has lost its spiritual leadership is referred to as a *dor yasom*, an orphaned generation.

Rav Chaim explained that an orphan seems to have someone to address his needs. There is either a surrogate, a guardian or an orphanage. There is someone who cares about him and who will continue to take care of him. A *yasom*, however, is a person whose needs are not really known to us. Even the individual that cares for him has no clue as to what the orphan's needs actually are. Only a

father and mother know what their child needs. Only parents fight with *mesiras nefesh*, self-sacrifice, to see to it that their child's needs are provided for. They know, and they provide. When a child becomes orphaned, he loses the people who understand his needs. A generation who has lost its elders has lost the individuals who had been acutely aware of its needs. The elders are Klal Yisrael's guardians, who understand their character and the true nature of their needs. A simple person provides; a *gadol* knows what to provide.