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Utensils in a Pit

The *Mishna* (52a) stated that if an ox loaded with utensils fell into a pit and the utensils broke, the owner of the pit is liable to pay for the damages done to the animal, but he is not liable to pay for the damages done to the utensils.

The *Gemora* notes that the *Mishna* is not following the opinion of Rabbi Yehudah, for he said that one would be liable to pay for utensils.

The *Gemora* cites the Scriptural source for the *Chachamim*. When the Torah states the rules of a pit, the Torah says *v'nafal shama shor o chamor – and an ox or a donkey shall fall into it*. The *Chachamim* say that the Torah listed *shor - ox* to exclude a person who's killed by a pit, and *chamor - donkey* to exclude utensils. Rabbi Yehudah says that the extraneous word *o-or* includes utensils. The *Chachamim* say that the word is needed to separate ox and donkey – without that word, I may have thought damages are only incurred if both fall in. Rabbi Yehudah learns this from the singular form of the verb used (*v'nafal – and it fell*), but the *Chachamim* say that the same form can be used for multiple subjects. (53b – 54a)

Explaining the Verses

The *Gemora* asks: Perhaps the expression *And shall fall* is intended as a generalization (*referring to all types of animals*), while *an ox or a donkey* is a specification, and where a generalization is followed by a specification, the generalization does not apply to anything except what is enumerated in the specification, so that only in the case of an ox or a donkey should there be liability, but not for any

other animal? [*How do we know that there is liability for all types of animals that fall into a pit?*]

The *Gemora* answers: The verse, *The owner of the pit shall pay* generalizes again. Now where there is a generalization followed by a specification which, in turn, is followed by another generalization, only such cases that are similar to the specification are included. Therefore we learn as follows: Just as the specification refers to living things, so too, all living things will be included (*and the owner of the pit will be liable for them*).

The *Gemora* asks: But why not say since the specification refers to living things whose carcass would cause *tumah* whether by touching or by carrying, perhaps we should only include living things whose carcass would similarly cause *tumah* whether by touching or by carrying, so that birds would therefore not be included (*for they convey tumah only to the person who swallows it*)?

The *Gemora* answers: If so, the Torah would have mentioned only one object in the specification.

The *Gemora* asks: But which of the two (*ox or donkey*) should the Torah have mentioned? If it would have mentioned only 'ox,' I might have said that only an animal which can be sacrificed upon the Altar should be included, but that which cannot be sacrificed upon the Altar should not be included. If the Torah had only stated 'donkey,' I might have thought that an animal which was subject to the consecration of the firstborn should be included, but that which was not subject to the consecration of the firstborn should not be included. [*Therefore it was necessary for the Torah to write both an ox*



and a donkey. And perhaps the Torah is excluding birds from liability?]

The *Gemora* answers: It is written: *And the carcass shall be his*. This implies (*that one would be liable to pay for*) all things that are subject to death. [Accordingly, we can derive from the verse that one would not be liable to pay for people or utensils.]

The *Gemora* asks: If so, whether according to the *Chachamim* who exclude utensils or according to Rabbi Yehudah who includes utensils, are utensils objects that are subject to death?

The *Gemora* answers: It may be said that their breaking is their death.

The *Gemora* asks: But according to Rav who holds that the liability of an owner of a pit is due to the foul airflow encountered by an animal while falling (*hevel*), but not due to the impact of the animal when reaching the bottom of the pit (*chavat*), would either the *Chachamim* or Rabbi Yehudah maintain that utensils could be damaged by foul air?

The *Gemora* answers: It may be said that this could happen with new utensils that burst in foul air.

The *Gemora* asks: But was not this verse *And the carcass shall be his* required for Rava's? For Rava said: Where an animal which was a *pesulei hamukdashim* (a sacred ox which had become disqualified for the Altar) fell into a pit, the owner is not liable, for it is written "*hameis yihye lo*" – *the carcass will be his* (the owner of the dead ox). [In the case of *pesulei hamukdashim*, the carcass is not usable by the owner, since it cannot be redeemed at that point, and must be buried, and therefore, the owner of the pit doesn't pay damages.]

The *Gemora* answers: It is written: *He should give the money to the owner*. This implies that everything which has an owner is included (*which includes all other animals*).

If so, the *Gemora* asks, why not also include even utensils and human beings?

The *Gemora* answers: It is because the Torah says specifically 'an ox,' implying and not 'a man,' and 'a donkey,' implying and not 'utensils.'

The *Gemora* asks: Now according to Rabbi Yehudah who included utensils, we understand the term 'ox' because it was intended to exclude 'man,' but what does he exclude from the term 'a donkey'?

Rava said: The term 'donkey' in the case of pit, according to the view of Rabbi Yehudah, as well as the term 'sheep' which the Torah stated by the passages dealing with lost property according to all opinions remains difficult to explain. (54a)

Deaf, Insane or Young Ox

The *Mishna* (52a) had stated: If an ox – deaf, insane or young fell into a pit, the owner is liable.

Rabbi Yochanan explains: The *Mishna* is referring to an ox which is deaf, insane or young.

The *Gemora* asks: Does this mean to say that the pit owner would not be liable if the ox was an intelligent one?

Rava answers: The owner would be exempt, for an intelligent ox should have been more careful as it was walking. [Tosfos explain that an animal looks down while it is walking; it therefore can examine the road. A person, on the other hand, walks upright, and therefore he is not responsible to look down at the road while he is walking.]

The *Gemora* cites a *braisa* which supports this explanation: If an ox which was deaf, insane, young, blind, or one which was walking at night time falls into a pit, the owner would be liable, whereas if it was intelligent and it was walking during

the day, the owner would be exempt from any liability. (54a – 54b)

Mishna

[The Mishna teaches us that although the Torah speaks of 'an ox' or 'a donkey' concerning pit damages, the law applies to all animals, as well as to wild animals and birds; this is also the case for other halachos as well.] One would be liable for an ox as well as for any domestic animal that falls into a pit, and for keeping away from Mount Sinai (at the time of the Giving of the Torah, as it is written: whether it will be an animal or man, it shall not live; although the Torah only mentioned an animal, wild beasts and birds were also included), and for two-fold payment (*kefel*; a thief will always be obligated to pay double), and for returning a lost article, for unloading, for muzzling (regarding the prohibition against muzzling an animal while it is working), for *kilayim* (mating or plowing with diverse species together), and for the Shabbos (one's animal cannot work for him). Similarly, a wild animal and a bird have the same *halachos* as a domestic animal. If so, why did the Torah write "an ox or a donkey"? It is because the Torah speaks of a usual case. (54b)

All Types of Animals

The *Gemora* cites the Scriptural sources for all the *halachos* mentioned in the *Mishna*.

The last *halachah* mentioned in the *Mishna* is that one is prohibited from having any of his animals work for him on *Shabbos*.

The *Gemora* asks: From where is this derived?

The *Gemora* cites a *braisa*: Rabbi Yosi says in the name of Rabbi Yishmael: In the first Commandments (in *Shmos*), it is written: *Your slave, your maidservant, and your animal (should not so work for you on Shabbos)*. However, in the second Commandments (in *Devarim*), it is written: *Your ox, your donkey and your every animal*. Now, aren't 'ox' and

'donkey' included in 'your animals'? Why then were they singled out? It is to tell us that just as in the case of the 'ox' and 'donkey' mentioned here, wild animals and birds have the same *halachos* as domestic animals, so too, also, in any other case where 'ox' and 'donkey' are mentioned, all animals and birds have the same *halachos* as them.

The *Gemora* asks: But may we not say that 'your animal' in the first Commandments is a generalization, and 'your ox and donkey' in the second Commandments is a specification, and where a generalization is followed by a specification, the generalization does not apply to anything except what is enumerated in the specification, so that the prohibition would only apply in the case of an ox or a donkey, but not for any other animal?

The *Gemora* answers: The words 'and any of your animals' in the second Commandments generalizes again. Now where there is a generalization followed by a specification which, in turn, is followed by another generalization, only such cases that are similar to the specification are included. Therefore we learn as follows: Just as the specification refers to living things, so too, all living things will be included (*in this prohibition*).

The *Gemora* asks: But why not say since the specification refers to living things whose carcass would cause *tumah* whether by touching or by carrying, perhaps we should only include living things whose carcass would similarly cause *tumah* whether by touching or by carrying, so that birds would therefore not be included (*for they convey tumah only to the person who swallows it*)?

The *Gemora* answers: If so, the Torah would have mentioned only one object in the specification.

The *Gemora* asks: But which of the two (*ox or donkey*) should the Torah have mentioned? If it would have mentioned only 'ox,' I might have said that only an animal which can be sacrificed upon the Altar should be included, but that which cannot be sacrificed upon the Altar should not be included.

If the Torah had only stated 'donkey,' I might have thought that an animal which was subject to the consecration of the firstborn should be included, but that which was not subject to the consecration of the firstborn should not be included. [Therefore it was necessary for the Torah to write both an ox and a donkey. And perhaps the Torah is excluding birds from this prohibition?]

The Gemora answers: It is derived from the fact that the Torah wrote your **every** animal. This includes all things (even birds, which are not similar to that which was written in the Torah).

The Gemora asks: Does this mean to say that wherever the Torah uses the word *kol* (every), it is an inclusion (and not merely a generalization)? What about by *ma'aser sheini* (a tenth of one's produce that he brings to Yerushalayim and eats there in the first, second, fourth and fifth years of the Shemittah cycle; it can also be redeemed with money and the money is brought up to Yerushalayim, where he purchases animals for korbanos) where the word 'kol' occurs and we nevertheless expound it as an instance of generalization and specification? For it was taught in a braisa: (And you shall turn that money into whatever your soul desires; cattle, sheep, new wine or old wine, or whatever your soul desires, and you shall eat there before Hashem, your God, and you shall rejoice, you and your household.) And you shall turn that money into whatever your soul desires is a generalization. Cattle, sheep, new wine or old wine is a specification. Or whatever your soul desires is a closing generalization. This generalization - specification - generalization (the Rosh says that a specification - generalization - specification is basically the same as a generalization - specification - generalization) teaches us that one may only purchase items with *ma'aser sheini* money that are products of things themselves produced by the earth (this would include birds, but it would exclude fish, which does not get its nourishment from the ground, and it would also exclude water and salt, which is not produced from other foodstuff). [Does this not prove that the

expression 'kol' is used as a generalization, and not as an inclusion?]

The Gemora answers: The expression 'bechol' (in any) is but a generalization, whereas 'kol' would be an inclusion.

Alternatively, I may say that the term 'kol' is also a generalization, but in this case, 'kol' is an inclusion. For the torah could have written 'your animals,' just as it was written in the first Commandments. Why did the Torah write 'your every animal'? It must be that it was meant to be an inclusion! (54b)

DAILY MASHAL

Cup should be Whole

The Gemora explains: It is written: *And the carcass shall be his*. This implies (that the pit owner would be liable to pay for) all things that are subject to death. The Gemora asks: If so, whether according to the Chachamim who exclude utensils or according to Rabbi Yehudah who includes utensils, are utensils objects that are subject to death? The Gemora answers: It may be said that their breaking is their death.

It is written in the Sefer Hayashar in the name of the Gaonim that a cup of blessing (the cup of wine over which *Birchas Hamazon* is recited) must be whole; it cannot be broken. It cannot be chipped at all. This is what the Gemora Brochos (51a) means when it states that the cup of blessing must be *chai* (alive). "Alive" means that it is whole. This is based upon our Gemora which states that the breakage of a utensil is equivalent to its death.

The Olas Tamid, however, disagrees and holds that as long as the cup can stand on its base, it is qualified to be used, save for the fact that there is a *mitzvah* to beautify the *mitzvah* (and because of that, it is preferable not to have any cracks in it whatsoever).