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Mishnah

If he found an animal in a barn, he is not obligated to return it. If he found it in the public domain, he is obligated to return it.

If an animal was in a cemetery, he may not become *tamei* because of it. If his father said to him (*a Kohen*), “Become *tamei* and return it,” or if he said to him, “Do not return it,” he must not listen to him.

If one unloaded and loaded and unloaded and loaded, even four or five times, he is still obligated, as it is written: *Help, you shall help him*. If the owner went and sat down, and said, “Since the commandment is incumbent upon you, if you desire to unload, unload,” he is exempt, for it is written: *with him (only if the owner will be helping as well)*. If, however, the owner were an elderly man or sick, one is obligated to do it.

It is a Torah commandment to unload, but not to load. Rabbi Shimon says: To load also. Rabbi Yosi HaGelili says: If the animal had upon it more than its load, he has no obligation towards him, for it is written: *Under its burden*, a burden that it is able to stand. (32a1 – 32a2)

Found in the Barn

Rava explains that the barn which the *Mishnah* is referring to is one that does not spur the animal to run away (*for otherwise, it would be regarded as “lost”*), but also, it is not one that protects the animal from escaping.

It does not cause it to stray, since it is taught: He has no responsibility towards it [to return it]; nor is it guarded, since it is necessary to teach: He has no responsibility toward it. For should you think that it is guarded; seeing that if he finds it outside he takes it inside; if he finds it inside, is it necessary to state [that he is not bound to return it]? But it must follow that it is unguarded. This proves it. (32a2)

The *Mishnah* had stated: If he found an animal in a barn, he is not obligated to return it. Rabbi Yitzchak said: This is only if it was found within the *techum* boundary of the town (*otherwise, it would be regarded as “lost”*). The *Gemara* notes: It can be inferred from here that when the animal is found in the public domain, it is regarded as “lost” even when it is within the *techum* boundary.

Others taught this with respect to the *Mishnah’s* latter ruling. The *Mishnah* had stated: If he found an animal in the public domain, he is obligated to return it. Rabbi Yitzchak said: This is only if it was found outside the *techum* boundary of the town (*otherwise, it would be regarded as “lost”*). The *Gemara* notes: It can be inferred from here that when it is found in the barn, it is not regarded as “lost” even when it is outside the *techum* boundary. (32a2 – 32a3)

A Mitzvah not to Listen

The *Mishnah* had stated: If an object was in a cemetery, he [a Kohen] may not become *tamei* because of it.

The *Gemara* cites a *Baraisa*: One might have thought that the *mitzvah* of honoring one’s father and mother overrides *Shabbos* (*if a parent would instruct his son to violate the Shabbos, he would be obligated to listen*); the Torah writes



[Vayikra 19:3]: *Every man: Your mother and father shall you revere, and My Shabbos shall you observe, I am HaShem your G-d.* We infer from here: Everyone is obligated to honor HaShem, including the father and the mother.

The *Gemara* asks: The reason is because the Merciful One wrote: *My Shabbos shall you observe*; otherwise, I would have thought that he should listen to him. But why? This (obeying his father's command) is a positive commandment, and this (*returning a lost object and not looking away*) is a negative and a positive commandment, and we know that a positive commandment cannot override a negative and a positive commandment!?

The *Gemara* answers: It is necessary. I would have thought that the *mitzvah* of honoring one's parents is different, for it is compared to the honoring of the Omnipresent, for it is said: Honor your father and your mother; while elsewhere it is said: Honor God with your property; therefore, he must obey him. Hence we are informed that he must not obey him. (32a3)

Causing an Animal Distress

The *Mishnah* had stated: It is a Torah commandment to unload, but not to load.

What is meant by — 'but not to load'? Shall we say, not to load at all; why does unloading differ, because it is written: You shall surely help him? Yet in respect to loading, too, it is said: You shall surely help him to lift them up again? But [it means this:] It is a Biblical obligation to unload without remuneration, but not to load without payment, except only for remuneration. Rabbi Shimon said: To load too without payment.

We have [thus] learned here what our Rabbis taught in a Baraisa: Unloading [must be done] without pay; unloading,

¹ If the Torah would have taught the *halachah* (of helping out) only by loading the animal, I would certainly have known the *halachah* by unloading as well, for there is suffering to the

for pay. Rabbi Shimon said: Both without payment. What is the reason of the Rabbis? — For should you think it is as Rabbi Shimon, let Scripture state loading, and unloading becomes unnecessary; for I would reason: If one is bound to load, though no suffering of animals nor financial loss is involved; how much more so unloading, seeing that both suffering of animals and financial loss are involved! Then for what purpose is it written? To teach you that unloading must be performed without payment, but loading only for payment. And what is Rabbi Shimon's reason? — Because the verses are not explicit. - And the Rabbis? — Why [say,] the verses are not explicit? Here it is written: [If you see the donkeys . . .] lying under his burden; while there it is said: [You shall not see your brother's donkey or his ox] fall down by the way, which implies, both they and their burdens are cast on the road. And Rabbi Shimon? — 'Fall down by the way' implies they themselves [the animals], their load being still upon them.

Rava notes: It is evident from these *Tannaim* that they both hold that there exists a Biblical prohibition against causing an animal distress, for even Rabbi Shimon said [this] only because the verses are not clearly defined. But if they were, we would infer a *kal vachomer*.¹ On what grounds: Surely we infer it on the grounds of the suffering of animals?

The *Gemara* rejects this proof, for perhaps the *kal vachomer* is based solely upon the fact that loading an animal does not involve any monetary loss (*but not because of the animal's distress*), and this then is how we would say (the *kal vachomer*): If one is obligated to load, though no financial loss is involved; how much more so to unload, seeing that financial loss is involved.

The *Gemara* answers: But is there no financial loss involved when loading [is required]; may not the circumstances be (where the *mitzvah* of loading an animal also involves a monetary loss) in a case where the owner wishes to sell his

animal and there is a monetary loss to the owner (*and the extra verse is necessary to teach the halachah of payment*).



merchandise in the market (*and he will be prevented from doing so if his wares cannot be loaded*), or on the account of thieves stealing the merchandise lying on the ground.

The *Gemara* attempts to prove from our *Mishnah* that it is Biblically prohibited to cause an animal distress, for the end of the *Mishnah* stated: Rabbi Yosi HaGelili said: If the animal had upon it more than its load, he has no obligation to help unload, for it is written: *Under its burden*, a burden that it is able to stand. Obviously, the *Tanna Kamma* disagrees and holds that one is obligated to unload the animal even in this case. What is the reason for that? It is because it is Biblically prohibited to cause an animal distress. — [No] Perhaps they differ as to [the connotation of] ‘under its burden,’ Rabbi Yosi maintaining that we interpret ‘under its burden,’ a burden under which it can stand; while the Rabbis hold that we do not interpret ‘under its burden’ [thus.]

The *Gemara* attempts to prove from our *Mishnah* that it is not Biblically prohibited to cause an animal distress, for the *Mishnah* states: If the owner went and sat down, and said, “Since the commandment is incumbent upon you, if you desire to unload, unload,” he is exempt, for it is written: *with him (only if the owner will be helping as well)*. Now, if there would be a Biblical concern for causing an animal distress, what difference would it make if the owner is helping him or not? — In truth, [relieving] the suffering of an animal is Biblically mandated; for do you think that ‘exempt’ means entirely exempt? Perhaps he is exempt [from doing it] without payment, yet he is bound [to unload] for payment, the Merciful One ordering thus: When the owner joins him, he must work alongside him for nothing; when the owner abstains, he must work for him, but he may charge for it. Yet, after all, [relieving] the suffering of an animal is Biblically mandated. (32a3 – 32b2)

The *Gemara* attempts to prove from different *Baraisos* whether there lies a Biblical concern for causing an animal distress, or not. [A mnemonic: Animal, animal, friend, enemy, habitually lying down.]

Shall we say that the following supports him? One must busy himself with an animal belonging to an idolater just as with one belonging to a Jew. Now, if you say that [relieving] the suffering of an animal is a Biblical requirement, it is well; for that reason he must busy himself with it as with one belonging to a Jew. But if you say that [relieving] the suffering of an animal is not Biblically mandated, why must he busy himself with it as with a Jew’s animal? — There it is on account of enmity. Logic too supports this, for it states: If it is laden with forbidden wine, he has no obligation towards it. Now if you say that [relieving the suffering of an animal is not Biblically mandated, it is well - therefore he has no obligation toward it. But if you say it is Biblically mandated, why does he not have obligation toward it? — It means this: but he has no obligation to load it with forbidden wine.

Come and hear: In the case of an animal belonging to an idolater bearing a burden belonging to a Jew, ‘you may refrain.’ But if you say that [relieving] the suffering of an animal is Biblically mandated, why may you refrain? Surely ‘You shall surely help with him’ is applicable! — After all, [relieving] the suffering of an animal is Biblically [mandated]; the reference there is to loading. — If so, consider the second clause: In the case of an animal belonging to a Jew and a load belonging to an idolater, ‘you shall surely help.’ But if this refers to loading, why [apply] ‘you shall surely help him’? — On account of the inconvenience of the Jew. - If so, the same applies in the first clause? — The first clause refers to an idolater driver, the second of a Jew driver. - How can you make a general assumption? — As a rule, one goes after his donkey. - But both ‘and you may refrain’ and ‘you shall surely help’ refer to unloading! — Well [answer thus:] Who is the authority of this? Rabbi Yosi HaGelili, who maintained that [relieving the suffering of an animal is not Biblically [mandated].

Come and hear: If a friend requires unloading, and an enemy loading, one’s [first] obligation is towards his enemy, in order to subdue his evil inclinations. Now if you should think that [relieving the suffering of an animal is Biblically [mandated],

[surely] the other is preferable! — Even so, [the motive] ‘in order to subdue his evil inclination’ is more compelling.

Come and hear: The enemy spoken of is a Jew enemy, but not an idolater enemy. But if you say that [relieving] the suffering of an animal is Biblically [mandated], what is the difference whether [the animal belongs to] a Jew or an idolater enemy? — Do you think that this refers to ‘enemy’ mentioned in Scripture? It refers to ‘enemy’ spoken of in the Baraisa.

Proof that causing an animal distress is ...	Case of the Baraisa	Explanation	Rejection of proof
A Biblical concern	One must unload an idolater’s animal	If not, why would there be an obligation?	It is in order to prevent animosity
Not a Biblical concern	Exempt from helping when it is an idolater’s animal and the Jew’s burden	If yes, why is there an exemption?	It is referring to loading
Not a Biblical concern	Enemy’s animal to be loaded takes precedence over your friend’s animal to be unloaded	If yes, shouldn’t unloading come first?	It is more important to subdue his Evil Inclination
Not a Biblical concern	Exempt from helping an enemy if he is an idolater	If yes, why is there an exemption?	It is referring to loading

(32b2 – 32b5)

DAILY MASHAL

A TELEPHONE IS THE ANSWER

One might have thought that the *mitzvah* of honoring one’s father and mother overrides Shabbos (*if a parent would instruct their son to violate the Shabbos, he would be obligated to listen*); the Torah writes [Vayikra 19:3]: *Every man: Your mother and father shall you revere, and My Shabbos’ shall you observe, I am HaShem your G-d.* We infer from here: Everyone is obligated to honor *HaShem*, including the father and the mother.

Tha Maharatz Chyus asks: Why should we think that the son is obligated to obey the father; the *Gemara* in Bava Metzia (62) teaches us that one is only obligated to honor his father if he is an “*oseh ma’aseh amcha*,” not if he is one that is not observing the *mitzvos* of *HaShem*?

The Ostroftzer Rebbe was once in Warsaw by one of his chasidim. The chasid proudly showed the Rebbe the new invention that was just installed in his house, a telephone.

The Rebbe took the telephone in his hands and ‘sanctified’ it with words of Torah.

He said: The Meiri in Yevamos asks: Why is a verse required to teach us that a son may not listen to his father when he instructs him to perform an *aveira*; the father is a *rosha* and the son is thus excluded from honoring him based on the *Gemara* in Bava Metzia that a father who is not “*oseh ma’aseh amcha*,” one is not required to obey?

The Rebbe answered: It is referring to a case where the father calls the son on the telephone. The father is in one time zone, and it is already Motzei Shabbos, and the son is in a different time zone, where it is still Shabbos. One might think that the son is required to ‘listen’ to his father and answer the phone, the verse teaches us that everyone is



obligated to honor *HaShem* and therefore the son should not obey the father.

INSIGHTS TO THE DAF

Causing an Animal Distress

The *Gemara* discusses if there is a Biblical concern for causing an animal distress, or not. There are various sources for this prohibition.

Rashi in shabbos (128b) writes that the prohibition is derived from the verse *azov taazov imo*, you shall surely help out your friend whose animal is overburdened by a load.

The Rosh² writes that causing an animal distress is derived from the verse quoted by Rashi. The Meiri, Rabbeinu Nisim Gaoin, and the Ra"n all concur with this view.

Rabbeinu Peretz and the Ritva³ write that the requirement is a *halachah lemoshe misinai*, a *halachah* taught to Moshe by Hashem at Sinai.

The Raavad⁴, Rabbeinu Yehonasan⁵ and the Baal HaShelamah write that the requirement against causing an animal distress is derived from the verse of *lo sachsom*, do not muzzle an animal while it is threshing. This is also implied for the words of the Meiri.

The Rambam⁶ and the Sefer Chasidim⁷ write the source for the requirement against causing an animal distress is derived from Balaam, who the angel said, "why are you hitting your donkey?"

The Rambam⁸ and the Chinuch⁹ also write that the prohibition is derived from the mitzvah of *shiluach haken*,

sending the mother bird away when taking its young, and from the requirement of *oso v'es beno*, slaughtering a mother and its child on the same day. These two requirements are both based on the prohibition of causing an animal distress.

The Chasam Sofer writes a novel source for this requirement deriving it from the verse in Tehillim *vraahmav al kol masav*, and His mercy is on all of His creations.

In the Sefer Yom Teruah¹⁰ it is written that the requirement against causing an animal distress is rabbinical, and is alluded to in the verse *vhishkisa es haedah ves beiram*, where Hashem told Moshe to give to drink the congregation and their animals.

² Siman 3; Bava Metziah second Perek, 29

³ Bava Metziah 33 Yeshanim edition

⁴ Ibid quoted in Shita Mekubetzes

⁵ Ibid 90a

⁶ Moreh Nevuchim 3:17

⁷ 666

⁸ Ibid

⁹ Mitzvah 540

¹⁰ from the Maharam ben Chaviv