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Arachin, Movable Items

The *Mishna* said that the “*arachin* – formal values that are movable” are judged by three.

The *Gemora* asks what this category means, and offers three possibilities:

1. Rav says that it refers to one who resolved to consecrate the formal value of a vessel. Although the Torah only defines formal values of people, the resolving person knew that, and was therefore obligating himself to consecrate the market value of the vessel. The *Mishna* is saying that appraisal of the market value must be done by three. The *Gemora* clarifies that according to this explanation, we must amend the text of the *Mishna* to read “formal value of movable items.”

2. Rav Chisda says in the name of Avimi that the *Mishna* is referring to one who obligated himself his own formal value, and then consecrated movable items as payment. If he wishes to redeem these movable items, he must appraise them by three. The *Gemora* clarifies that according to this explanation, we must amend the text of the *Mishna* to read “movable items of formal values.”

3. Rabbi Avahu says that the *Mishna* is referring to one who obligated himself his formal value, and wishes to pay this obligation with movable items. The *Mishna* is saying that three are needed to appraise these items. The *Gemora* explains that just as one who wishes to

redeem something that is consecrated needs three judges, to ensure that he does not underpay, so one who wishes to use movable items as payment for a consecrated amount needs three judges, to ensure he does not overestimate the movable items used, effectively underpaying. (14b – 15a)

Who can be an Appraiser?

The *Mishna* cited Rabbi Yehudah, who says that one of the three appraisers must be a *Kohen*.

Rav Pappa said to Abaye that the verse which refers to a *Kohen* who will make an estimation for a formal value is understandable according to Rabbi Yehudah as indicating that at least one of the three must be a *Kohen*. However, according to the Sages, why does the verse mention a *Kohen*, if none is needed? The *Gemora* leaves this as an unresolved difficulty.

The *Mishna* stated that to appraise real estate that is consecrated, ten people are needed, one of which must be a *Kohen*.

Shmuel explains that the section in the Torah discussing consecration mentions an appraising *Kohen* ten times. Each mention of a *Kohen* is an exclusion of a non *Kohen*. All but the first mention are therefore redundant exclusions, which become inclusions of non *Kohen* appraisers.



The *Gemora* challenges this reasoning, since after changing a redundant exclusion into an inclusion, the next exclusion is necessary. Therefore, we should consider each pair to be one exclusion followed by a redundant inclusion, leaving five *Kohanim* and five non *Kohanim*. The *Gemora* leaves this as an unresolved difficulty. (15a)

A Person

The *Mishna* said that a person is equivalent to real estate. Although a person cannot be consecrated, Rabbi Avahu explains that the *Mishna* is referring to one who consecrated his market value.

The *braisa* explains that such a person must pay his market value as if he was sold as a slave. Since a slave is equated to real estate in judicial matters, this market value must be appraised by ten, just like real estate.

Rabbi Avin asked whether a person's hair which is long enough to be cut is considered attached or not. If it is attached, it is like real estate, and must be estimated by ten, but if it is detached, it may be estimated by three.

The *Gemora* resolves from a *braisa* that this is a dispute of *Tannaim*. One who uses consecrated property for his own use is liable for the punishment of *me'ilah* – embezzlement, but *me'ilah* does not apply to real estate. The *braisa* cites a dispute about *me'ilah* on a consecrated slave. The Sages say there is no *me'ilah* at all, while Rabban Shimon ben Gamliel says there is *me'ilah* on his hair. The *Gemora* explains that they differ about hair which is long enough to cut. The Sages say that such hair is considered attached, and not subject to *me'ilah*, while Rabban Shimon ben Gamliel considers it detached, and subject to *me'ilah*. The same dispute would apply to Rabbi Avin's question as well.

The *Gemora* suggests that this dispute is equivalent to a dispute about grapes on a vine which are ready to harvest. If one partially denies one's claim of a loan, he must swear to his position. However, if the property being litigated is real estate, he does not swear. Rabbi Meir says that if one claims that he owes ten fully ripened vines, and he says that he only owes five, he must swear, since the ripe grapes, which are ready to harvest, are considered detached, while the Sages say that he does not swear, since they are still considered attached. The *Gemora* suggests that this is equivalent to hair which is ready to be cut.

The *Gemora* deflects this by stating that grapes ready for harvest depreciate when not harvested, and are more likely to be considered detached, while hair that is not cut appreciates when not cut. Therefore, Rabbi Meir may agree to the Sages' position in the case of the slave's hair. (15a)

Judging Animals

The *Mishna* said that capital cases are judged by a court of twenty-three. This includes an animal that sodomized a person, or was sodomized by a person.

The *Gemora* notes that the *Mishna* includes an animal that sodomized a woman or a man. The verse explicitly mandates killing an animal that sodomized a woman together with the death of the woman, indicating that a similar court judge both. Killing an animal that sodomized a man is learned from the redundant verse mandating that anyone who lies with an animal shall be killed. The Torah already mandated that a man who sleeps with an animal must be killed, so it must be that this extra verse is stated to include a man who was sodomized by an animal. Since the verse refers to him as one who sleeps with an animal, it is indicating that the animal is killed by a court of twenty-three, just like an



animal that is sodomized by a man, which is compared to the man who sodomized it.

The *Mishna* stated an ox that killed and is punished by stoning must be judged by a court of twenty-three.

The *Gemora* explains that the verse says that the ox should be stoned, and also its owner should be put to death. The juxtaposition of the two statements teaches that just as its owner would be put to death by a court of twenty-three, so the ox is stoned by a court of twenty-three.

Abaye asked Rava that perhaps the verse is only teaching that the owner must also be killed.

Rava answered that in that case the verse should have simply said “and its owner.” The extra clause, “shall be put to death,” teaches the comparison of the courts.

Abaye responded that if the verse only said “and its owner,” we may have that he must be stoned.

The *Gemora* challenges that we would not have thought that he is stoned, since one who actually murders is executed by the less severe method of decapitation. Rather, we may have thought that he is killed by strangulation, if we follow the position that strangulation is less severe. Although the verse allows the owner to pay for the death, while a murderer may not pay to avoid execution, we would have considered this a leniency, since only his property killed.

The *Gemora* finally resolves the question from the *braisa* of Chizkiyah, which says that the verse that states that a murderer should be killed because *rotzaiach hu – he is a murderer*, indicates that one is killed only for *his* act of murder, not for a murder done by his property.

The *Gemora* asks how many judges were needed to kill an animal which crossed the boundary of Mount Sinai at the time of the giving of the Torah. The *Gemora* explains that the issue is whether we learn the rules for a death penalty which was temporary (*at the giving of the Torah*) from the death penalty mandated forever (*for a goring ox*).

Rami bar Yechezkel taught a *braisa* that says that an animal which crossed the boundary needed a court of twenty-three, since the verse states *im behaima im ish – animal or man [who crosses] will not live*, equating an animal’s judgment to a person’s.

The *Mishna* explained that not only an ox, but any wild animal that killed, is judged by a court of twenty-three. Rabbi Eliezer says that there is no need to wait for a court to judge them, but rather whoever kills such wild animals first has merited.

Rish Lakish says that Rabbi Eliezer says this only if they killed, since these animals can be domesticated, and are therefore the property of their owner. Rabbi Yochanan says that Rabbi Eliezer says this even if they did not kill, since they cannot be domesticated, and are not legally owned. According to Rabbi Yochanan, Rabbi Eliezer means that the one who kills the animal has merited the skins, since they are not owned. However, according to Rish Lakish, Rabbi Eliezer cannot mean this, since once the animal killed, it is forbidden to benefit from the animal. Rather, Rabbi Eliezer means that he merits to a heavenly reward for his good deed.

The *Gemora* cites a *braisa* that supports Rish Lakish. The *braisa* states that any animals that killed are judged in a court of twenty-three. Rabbi Eliezer then says that an ox that killed is judged by a court of twenty-three, while

other animals that killed may be killed by anyone, and whoever kills it merits a heavenly reward for his good deed.

The *Mishna* continued with Rabbi Akiva's position that even wild animals must be judged by a court of twenty-three. The *Gemora* explains that Rabbi Akiva still differs with the first opinion, since he agrees with Rabbi Eliezer in the case of a snake. (15a – 15b)

A Tribe

The *Mishna* said that a tribe is judged by the supreme *Sanhedrin* of seventy-one judges.

The *Gemora* asks what this refers to. It cannot mean that the tribe violated *Shabbos*, since there is no precedent for a distinction between individuals or a group in punishing such a violation. It may mean a tribe that performed idolatry, since we do find a distinction between individuals and a city (*ir hanidachas*) in punishing this violation. However, the definition of a city is either from ten to a hundred inhabitants (*according to Rabbi Yoshiyah*), or from a hundred to the majority of the tribe (*according to Rabbi Yonasan*). All agree that a whole tribe that worshipped idols is not treated as a city, but as individuals.

The *Gemora* offers a number of possible explanations:

1. If the leader of the tribe is liable for a capital offense, he is judged by the supreme *Sanhedrin*, since the verse says that Moshe, who is parallel to the supreme *Sanhedrin*, will judge any *gadol* - big case, and the leader is a *gadol* – *person of large stature* (Rav Masna)

2. An issue of inheritance, which is similar to the tribes' division of *Eretz Yisroel*. Just as that division was done with the supreme *Sanhedrin*, all inheritance cases

must be judged by the supreme *Sanhedrin*. The *Gemora* rejects this, since we do not require a lottery and *urim and tumim*, which were used in the original division, indicating that we do not compare inheritance cases to the original division. (Rabbi Elozar)

3. A full tribe that performed idolatry. Although they are not *killed* in a supreme *Sanhedrin* of seventy-one, since they are not included in the category of *ir hanidachas*, they are *judged* in a supreme *Sanhedrin* of seventy-one. Ravina proves this from the verse that says that the *man or woman* who performed idolatry should be tried by a local court, implying that any larger group should be tried in a larger court. (15b – 16a)

INSIGHTS TO THE DAF

Wild Animals

The *Gemora* discusses the opinions in the *Mishna* regarding wild animals, citing three opinions:

1. The Sages say that all animals, wild or not, are killed only if they kill, and then only in a court of twenty-three.
2. Rabbi Eliezer says that wild animals should be killed by anyone, without waiting for a court.
3. Rabbi Akiva says that only a snake should be killed by anyone, without waiting for a court, but all other animals must be killed only by a court of twenty-three.

Rish Lakish and Rabbi Yochanan differ on the terms of Rabbi Eliezer's and Rabbi Akiva's exceptions. Rish Lakish says these animals are only killed when they kill, while Rabbi Yochanan says that these animals are killed under any circumstances, since they are inherently dangerous.

Tosfos (15b v' Rabbi Yochanan) compares our *Mishna* to the *Mishna* in Bava Kamma (15b), which discusses which animals are presumed to be accustomed to damage, and therefore must pay full damages in all cases. The *Mishna* says that the Sages consider all wild animals to be accustomed to damage, while Rabbi Elozar says that they can be domesticated. However, all agree that a snake is considered accustomed to damaging. [*Tosfos points out that Rabbi Elozar in the Mishna in Baba Kama is not identical to Rabbi Eliezer in our Mishna.*] Tosfos asks how we can reconcile the *Mishna* in Bava Kamma, in which all agree that a snake cannot be domesticated and is assumed, a priori, to be dangerous, with Rish Lakish's position in *Sanhedrin*, that all agree that a snake which has not killed may not be killed. Tosfos offers two answers:

1. In order to actually kill the snake, it must have proven its danger by killing someone. However, we assume any snake is potentially dangerous, and we therefore require the owner to guard the snake well, obligating him in full payment in the case of actual damage.

2. Rabbeinu Tam says that the *Mishna* in *Sanhedrin* refers to animals that were simply domesticated by training. All agree that a snake cannot be trained, and is still dangerous. However, the *Mishna* in *Sanhedrin* is referring to animals that have been restrained (e.g., by chains). Such protection is the subject of the dispute in the *Mishna*, and Rish Lakish's limitation.

The Rambam (*Sanhedrin* 5:2) rules like Rabbi Akiva, according to Rish Lakish's explanation.

The Rishonim point out that we rule like Rish Lakish since the *Gemora* brought a *braisa* which supports him.

The Ra'avad, however, challenges the Rambam's ruling

like Rabbi Akiva, since we generally rule like the Sages against Rabbi Akiva.

The Radvaz says that the Rambam accepted Rabbi Akiva's special treatment of a snake, since the *Mishna* in Bava Kamma (15b) explicitly states that a snake is always considered in the habit of damaging.

The Rashash explains that although Tosfos distinguished between the *Mishnayos*, we still see in the *Mishna* in Bava Kamma that a snake is treated differently than other wild animals. From that case, we extrapolate to the case of our *Mishna*.

The Kesef Mishnah says that the Rambam ruled like the majority of opinions in each case. In the case of all wild animals except for a snake, both Rabbi Akiva and the Sages rule that a court of twenty-three is needed, while in the case of a snake, both Rabbi Akiva and Rabbi Eliezer rule that anyone should kill it. [*See the Rashash for a discussion of the status of the Sages in such an analysis.*]

DAILY MASHAL

Hunting

The Noda beYehudah (Mahadura Tinyana Y"D 10) discusses whether someone may hunt for sport. He first analyzes the potential formal prohibitions, including *tza'ar ba'alei chayim* – causing pain to creatures, and *bal tashchis* – not wantonly destroying, and says that they are not applicable to such a case. However, he states that hunting for no gain (e.g., meat or hides, or for employment) is not a Torah value, with the only examples in the Torah of such behavior being Nimrod and Esav. He raises the possibility that one may hunt and kill wild animals, in accordance with Rabbi Eliezer, who says that anyone should kill wild animals, due to their danger. He rejects this on two counts:



1. This does not fit with our ruling. We rule like Rish Lakish, who limits the *Mishna* to a case where the animal already killed. Even under those circumstance, we rule like Rabbi Akiva, and not like Rabbi Eliezer.

2. The *Mishna* is only discussing wild animals who are among people, and allows one to kill them to protect the people. However, wild animals that are in their natural habitat, not threatening people, are not considered a danger to be eliminated.

Finally, he prohibits such hunting, since the sport itself is inherently dangerous, as expressed by Esav, who told Yaakov that he is going to die young, due to his sport. Although the Torah allowed one to put oneself in danger for employment, the Torah did not allow this simply for sport.

HALACHAH ON THE DAF

Mamon Hamazik

The *Gemora* explains that the difference between the *Tanna Kamma* and Rabbi Akiva (*which at first glance both Tannaim seem to be saying the same thing; a wolf, lion etc. that killed a person must be killed by a Beis Din of twenty three*), is if a snake killed a person. According to Rabbi Akiva, it is not in the same category as the wolf, lion etc. while the *Tanna Kamma* is of the opinion that it is.

Rashi explains Rabbi Akiva according to the *Mishna* in Bava Kamma (15b), where there is a dispute between the *Tanna Kamma* and Rabbi Eliezer whether a wolf, lion etc. automatically have a status of a *mu'ad* (*an animal which is established after three times that it damages*) or not, but they both agree that a snake is always considered a *mu'ad*.

The Shulchan Aruch (Choshen Mishpat 389) explains the concept, possible scenarios, and their various *halachic* outcomes.

Any creature which is owned by a person that damages, the owner is liable to pay. This does not apply to a slave (Tur). Not all damages are paid in full, rather, only damages that can occur when the creature does an action that comes naturally to it. For example, an animal that caused damage by eating someone else's hay, or if it stepped on items while walking, these types of cases would require the owner to pay in full, since the owner should have thought of that natural scenario and stopped his animal from damaging. In instances where the animal damaged in an unnatural way, for example, a cow that bit someone, then he only pays half of the damages.

Therefore if an animal damages three times in the same unnatural manner, then we say that this particular thing (*for example biting*) became natural to this animal, so the owner would have to pay for the damages in full. This is the logic behind *tam* and *mu'ad*.

However, there are six creatures (*wolf, lion etc. and snake*) which the *Chachamim* determined are naturally inclined to cause damage, even if they are domesticated, so it will make no difference as to what specific action caused the damage, for any action it does, it will have the status of a *mu'ad*, and therefore the owner is liable to pay in full.

However, the Rema disagrees and is of the opinion that only a snake has an automatic status as a creature that will damage through any action, but the other five are only a *mu'ad* for specific actions that are natural to them, for example, a lion to be *doires* and a wolf to be *toref*, but not vice versa.