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Mishnah

The *Mishnah* states: If one says, “I seduced the daughter of So-and-so,” he is obligated to pay for the embarrassment and depreciation by his own admission, but he does not pay the fine (*based on the principle that one who admits to a fine is not required to pay, but if he admits to a compensatory damage, he will be obligated to pay*). If one says, “I stole,” he is obligated to pay the principal by his own admission, but he does not pay the double payment, fourfold or fivefold payments (*if he states that he slaughtered the sheep or the ox*). If one says, “My ox killed So-and-so,” or “My ox killed the ox of So-and-so,” he is obligated to pay by his own admission. If one says, “My ox killed the servant of So-and-so,” he is not required to pay by his own admission (*since the thirty-shekel payment is deemed a fine and not a compensatory damage*). This is the general rule: Whoever pays more than what he damaged is not required to pay by his own admission. (41a1)

The *Gemora* asks: Why didn’t the *Tanna* teach the case where one said, “I violated (the daughter of So-and-so)” as well?

The *Gemora* answers: The *Mishnah* is written in the “it is not necessary” format, as follows: It is not necessary to state the case where he said, “I violated (the daughter of So-and-so),” where he did not discredit her (in a serious manner; this is in contrast to the case where he claims that he seduced her, when she was a willing participant) – that the halachah is that he is obligated to pay for the embarrassment and depreciation by his own admission (for in this case, the court readily accepts his statement), but in a case where he said,

“I seduced (the daughter of So-and-so),” where he did discredit her (in a serious manner; for he is claiming that she was a willing participant) – perhaps the halachah is that he is not obligated to pay for the embarrassment and depreciation by his own admission; the *Mishnah* therefore teaches us that this is not the case (and he is obligated to pay in both cases). (41a1)

Reputation Suffering

The *Gemora* comments: Our *Mishnah* is not in accordance with the following *Tanna*, for it was taught in a *Baraisa*: Rabbi Shimon ben Yehudah said in the name of Rabbi Shimon: Even the payments for embarrassment and depreciation, one is not obligated to pay by his own admission since he is not trusted to blemish the daughter of So-and so.

Rav Pappa asked Abaye: What if the girl is willing to have her reputation suffer in exchange for the profit from the embarrassment and depreciation payments? Would he then be believed?

The *Gemora* answers: Perhaps her father is not willing to have the family’s reputation suffer.

The *Gemora* asks: What if the father is also willing?

The *Gemora* answers: We still will not believe his admission because others members of her family may not be willing to have their reputation suffer.

The *Gemora* asks: What if all the family members are willing?

The *Gemora* answers: There will always be one family member someplace that will not be willing. (41a1 – 41a2)

Half-damages; Fine or Compensation?

The Mishnah had stated: If one says, "I stole," he is obligated to pay the principal, etc. (by his own admission, but he does not pay the double payment, fourfold or fivefold payments - if he states that he slaughtered the sheep or the ox).

The *Gemora* states: Concerning the payment of half-damages (*which are paid when a tame ox gores another animal; if the ox did not gore three times, it is regarded as an abnormal act and the animal was not intending to inflict damage; this is called a tam*), Rav Pappa says: This is regarded as a compensation payment. Rav Huna the son of Rabbi Yehoshua says: The half-damages are considered a fine.

The *Gemora* explains: Rav Pappa says that the half-damages are regarded as a compensation payment, for an ordinary ox is not considered guarded in respect to these types of 'abnormal' damages and the owner should really be liable to pay completely for its damages. The Torah had compassion on him since his ox was not yet warned (*three times*) and ruled that he is only required to pay for half the damage (*hence the half-damages that he does pay is considered compensation*). Rav Huna the son of Rabbi Yehoshua says that the half-damages are considered a fine, for an ordinary ox is considered guarded in respect to these types of 'abnormal' damages and the owner should really be exempt completely from paying for its damages. The Torah penalized him and ruled that he is required to pay half in order that he will watch his ox better in the future (*hence the half-damages are considered a fine*). (41a2)

[A mnemonic: damage, what, and he killed, rule. (the word representing the mnemonic will be bolded)] The *Gemora* attempt to provide proof that the half-damages are regarded as a compensation and not as a fine. We learned in

the following *Mishnah* (Bava Kamma 14a): The damaged party and the damager are involved in the payment. Now according to the one who holds that liability for half-damages is a compensation payment, it is understandable why the *Mishnah* states that the plaintiff is involved in the payment (*since he is losing half of the damages which is really due to him*), but according to the one who maintains that liability for half-damages is regarded as a fine, we may ask: If he receives that which he does not rightfully deserve, how can it be said that he is involved in the payment (*he is gaining, not losing*)?

The *Gemora* answers: The *Mishnah* is actually referring to a different case altogether. It is discussing a case where the animal's carcass decreased in value after its death, but before the case was presented to the *Beis Din*. (*This loss is borne by the plaintiff, as the defendant is required to pay only half the difference between the value of the live animal and the carcass as it was on the day of the accident.*)

The *Gemora* asks: But the law regarding depreciation of the carcass was already taught in the (first part of that very) *Mishnah*: The damager is obligated to pay compensation for the damage, and this teaches us that the owner (of the carcass) must deal with the carcass. [He is the one who must take the carcass and sell it, and he will be compensated only for the difference between what the animal was worth while it was alive and how much the carcass is worth now on account of the goring.]

The *Gemora* explains that it is necessary to teach this *halachah* by a *tam* and by a *mu'ad* (*an ox that gored three times*). For if it was referring to a *tam* only, I might have said that it applies to that alone because the animal has not yet been warned (it did not become a *mu'ad* yet, and perhaps the Torah was lenient on the damager and did not make him liable for the depreciation of the carcass), but regarding a *mu'ad*, since the owner has been duly warned, I might not say this (and perhaps the damager will be liable for the depreciation of the carcass). And if it was taught only regarding a *mu'ad*, I might have said that it (the leniency)

applies to this case alone because the owner pays full compensation (and therefore he will not be obligated to care for the carcass and be liable for its depreciation), but regarding a tam, I might not say this (and perhaps the damager will be liable for the depreciation of the carcass). Both rulings were consequently required. (41a2 – 41a3)

The *Gemora* cites another *Mishnah*: What is the difference between a *tam* and a *mu'ad*? A *tam* pays half-damages from the body of the animal that damaged (*the owner is not obligated to pay more than his ox was worth, even if that is less than the half-damages*), but a *mu'ad* is required to pay full damages from his choice property. The *Mishnah*, however, did not state the following distinction: A *tam* would not pay by his own admission, but a *mu'ad* will. (*This proves that the half-damages are a compensation payment and not regarded as a fine.*)

The *Gemora* rejects this proof, by saying that the *Tanna* of the *Mishnah* listed only some of the differences between a *tam* and a *mu'ad*; he did not list them all.

The *Gemora* asks: What else did the *Tanna* omit that you may therefore assert that it omitted this difference as well?

The *Gemora* answers: He left out the case of half-kofer (where if a tam kills a person, the owner does not pay half the ransom amount; this is in contrast to a *mu'ad*, where the owner pays full ransom).

The *Gemora* asks: On account of half-kofer, this is not regarded as an omission, for we can say that the *Mishnah* is following the opinion of Rabbi Yosi HaGelili, who maintains that a tam does indeed pay half-kofer. (41a3 – 41b1)

The *Gemora* cites our *Mishnah*: If one says, “My ox killed So-and-so,” or “My ox killed the ox of So-and-so,” he is obligated to pay by his own admission. Is our *Mishnah* not referring to a *tam*, and nevertheless, the *Mishnah* states that he is obligated to pay by his own admission?

The *Gemora* rejects this proof by saying that our *Mishnah* is referring to a *mu'ad*, and that is why he would be required to pay even by his own admission.

The *Gemora* asks: And what would be the law regarding a tam? He would not pay based on his own admission (for the half-damages are considered a fine). If so, then let us consider the latter part of the *Mishnah* which states: If one says, “My ox killed the servant of So-and-so,” he is not required to pay by his own admission (*since the thirty-shekel payment is deemed a fine and not a compensatory damage*). Why didn't the *Mishnah* differentiate and teach the same difference with regard to the first case, and say as follows: When are these words true (that he does pay by his own admission)? That is regarding a *mu'ad*, but if it would be by a tam, he would not pay by his own admission!?

The *Gemora* answers: The *Mishnah* was referring to cases of *mu'ad* alone. (41b1)

The *Gemora* cites another statement from our *Mishnah*: This is the general rule: Whoever pays more than what he damaged is not required to pay by his own admission. We can infer from there that if he is paying less than he damaged (*such as by a tam*), he would pay even by his own admission. (*This proves that the half-damages are regarded as a compensation payment and not as a fine.*)

The *Gemora* objects to this proof: We can infer from the *Mishnah* only that if he pays as much as he damaged; that is considered a compensation payment.

The *Gemora* persists: If it would be correct that one who pays less than he damaged would be required to pay even by his own admission, the following is what the *Mishnah* should have stated: This is the general rule: Whoever does not pay as much as he damaged is not required to pay by his own admission, for by saying it in this manner, it would suggest both less and more (*by the fact that the Mishnah does not state the rule in this manner, it proves that one who*

pays less than what he damaged is considered a compensation payment).

The *Gemora* concludes: This is indeed a refutation of the opinion who maintains that the half-damages are a fine.

The *Gemora* states: The *halachah* is that the half-damages are regarded as a fine.

The *Gemora* asks: If we refuted that opinion, how can the *halachah* follow that viewpoint?

The *Gemora* answers: It is because we can answer the refutation. What did we ask? If it would be correct that one who pays less than he damaged would be required to pay even by his own admission, the following is what the *Mishnah* should have stated: This is the general rule: Whoever does not pay as much as he damaged is not required to pay by his own admission. We could not have said it in that manner because it is not an absolute rule, for there is a case of half-damages of *tzroros* (a case where an animal walks and shoots pebbles from under its feet causing damage to utensils), which we have learned through an Oral Tradition (*halachah l'Moshe misinai*) that they are a compensation payment. (Even if the half-damages by the *tam* will be regarded as a fine, the half-damages of *tzroros* is considered a compensation payment.)

The *Gemora* states: Now that you have concluded that liability for the half-damages is a fine, the case of a dog that ate sheep or that of a cat that ate big hens is one of unusual occurrence (and the owner would pay half-damage just like a *tam*) and the payment would not be collected in Bavel (since fines may be imposed in Eretz Yisroel only by a judge who is specially ordained for the purpose; no such judges lived in Bavel). If, however, the sheep or hens were small, this is regarded as a usual occurrence and the payment would be collected in Bavel. Should the plaintiff, however, seize the property of the defendant (in a case of a fine that could not be collected in Bavel), they cannot be taken away from him. Furthermore, if he asks for a date to present his

case to a *Beis Din* in Eretz Yisroel, we set it up for him, and if the defendant does not go with him, we place a ban upon him. Either way, however, the defendant is to be placed under the ban, for we tell him: Remove your damaging animal. This follows the opinion of Rabbi Nosson, for we learned in the following *Baraisa*: Rabbi Nosson said: How do we know that a man may not raise a vicious dog in his house, nor shall he place a shaking ladder in his house? It is written [Devarim 22:8]: *You shall not place blood in your house.* (41b1 – 41b4)

WE SHALL RETURN TO YOU, EILU NA'AROS

INSIGHTS TO THE DAF

IS IT NATURAL FOR AN OX TO GORE?

The *Gemora* states: Concerning the payment of half-damages (which are paid when a tame ox gores another animal; if the ox did not gore three times, it is regarded as an abnormal act and the animal was not intending to inflict damage; this is called a *tam*), Rav Pappa says: This is regarded as a compensation payment. Rav Huna the son of Rabbi Yehoshua says: The half-damages are considered a fine. The *Gemora* explains: Rav Pappa says that the half-damages are regarded as a compensation payment, for an ordinary ox is not considered guarded in respect to these types of 'abnormal' damages and the owner should really be liable to pay completely for its damages. The Torah had compassion on him since his ox was not yet warned (*three times*) and ruled that he is only required to pay for half the damage (hence the half-damages that he does pay is considered compensation). Rav Huna the son of Rabbi Yehoshua says that the half-damages are considered a fine, for an ordinary ox is considered guarded in respect to these types of 'abnormal' damages and the owner should really be exempt completely from paying for its damages. The Torah penalized him and ruled that he is required to pay half in order that he will watch his ox better in the future (hence the half-damages are considered a fine).

Reb Dovid Pervarsky writes that this is not a factual dispute if ordinary oxen are accustomed to gore or not. Rather, the argument can be explained as follows: Rav Pappa maintains that it is inherent in the nature of an ox to gore. Sometimes it will not gore because it does not feel the desire to gore at that time. When the animal does gore, it is not considered an abnormality at all. Rav Huna the son of Rabbi Yehoshua holds that it is not natural for an ox to gore at all; when it does gore, it is regarded as an abnormality.

Reb Dovid is not comfortable with this explanation of the argument, for the *Gemora's* language is that an ordinary ox is not considered guarded; if the animal is not goring (*for whatever reason*), it should be considered "guarded"!? He therefore concludes that this is the explanation: Rav Huna the son of Rabbi Yehoshua holds that it is not natural for an ox to gore at all; if it does gore, it cannot be labeled as a "damager," since the ox was considered guarded. Rav Pappa, however, maintains that it is in the nature of an ox to gore, and when it gores, it can be labeled a "damager." This is what obligates the owner to watch his animal even though it is not accustomed to goring.

DAILY MASHAL

YAAKOV'S ACQUISITION OF CATTLE

It is written [Breishis 30:43] regarding Yaakov Avinu: *And the man increased exceedingly, and had large flocks (sheep), and maid-servants and men-servants, and camels and donkeys.* It is not mentioned in the Torah that Yaakov had cattle. Why not? We see that Yaakov sent to Esav cattle, as it is written [ibid, 32:6]: *And I have oxen, and donkeys and flocks, and men-servants and maid-servants; and I have sent to tell my lord, that I may find favor in your sight.* A few verses later, we also see that Yaakov had cattle. It is written [ibid, v. 8]: *And he divided the people that were with him, and the flocks, and the herds, and the camels, into two camps.* Yaakov sent cattle to Esav, as it is written later in the same Perek. Perhaps one can answer that Yaakov acquired the cattle afterwards; if so, the question may be asked: Why didn't he acquire cattle beforehand?

The *Gemora* in *Yevamos* (16a) relates the following incident: Yonasan the son of Hurkenas met Rabbi Akiva. He questioned him and silenced him. He asked him, "Are you the Akiva whose name is known from one end of the world to the other? You are fortunate indeed to have merited such a name, but you have not yet reached the level of an oxherd." Rabbi Akiva replied (*with humility*), "I have not even reached the level of shepherds." It is evident from here that it is more difficult to be an oxherd than a shepherd. One does not need to be so careful when watching sheep – he has to watch that the sheep do not graze in other people's fields. When one is watching cattle, he must be concerned that the cattle do not damage other animals or people. This is not a simple task, as the *Gemora* (*Kesuvos* 16a) states: Rav Pappa says that the half-damages that an ox-owner is required to pay if his animal gores are regarded as a compensation payment, for an ordinary ox is not considered guarded in respect to these types of 'abnormal' damages and the owner should really be liable to pay completely for its damages. The Torah had compassion on him since his ox was not yet warned (*three times*) and ruled that he is only required to pay for half the damage (*hence the half-damages that he does pay is considered compensation*).

If one takes the animals that he is entrusted to watch into a desert, a place where there are no private fields, watching sheep there is almost effortless; he does not need to be cautious at all. However, he still must be vigilant in his guarding of the cattle, lest they damage other animals or people, for it is common for there to be other animals and people in a desert. Yaakov did not want to watch Lavan's cattle, for he was worried that the cattle will cause damage and Lavan would not be willing to pay for the damages. He was able to tell Lavan that he does not possess the expertise necessary to watch cattle. This excuse was only possible if he did not have cattle of his own. He did not acquire cattle until after he departed Lavan's house, for now, if his cattle would damage, he would be liable, and he would certainly compensate anyone for any damages cause by his animals. (Igrah d'kallah)