

OVERVIEW of the Daf

1) Damages involving a Cuthean (cont.)

Abaye resolves the challenge to R' Avahu's resolution of the contradictory statements from R' Meir regarding the status of Cutheans.

2) **MISHNAH:** The Mishnah discusses issues related to damages involving a deaf-mute, an insane person or a minor. The Mishnah rules that an ox of the arena is not liable to death.

3) Appointing an agent

A contradiction is noted whether an agent is appointed to represent minors in cases involving a תם.

Rava offers a resolution to this contradiction.

R' Yochanan and R' Yosi bar Chanina disagree who is liable to pay, the orphans or the agent, if the animal of the orphans causes damage after becoming a מועד.

R' Yochanan's position that collection comes from the property of the orphans is successfully challenged.

It is suggested that we should reverse the opinions.

Rava protests reversing the opinions and offers an alternative resolution to the contradiction.

It is suggested that there is a dispute amongst Tannaim whether an agent is appointed to collect half damages from the animal's body.

This suggestion is accepted and the Gemara explains the second dispute between these Tannaim.

4) The ox of a deaf-mute, an insane person or a minor

R' Yaakov rules in a Baraisa that a deaf-mute, an insane person or a minor must pay half-damages if their תם ox gores.

Rava suggests an explanation of this ruling.

Abaye unsuccessfully challenges this ruling.

The Gemara explains, according to Abaye's question, what is the point of dispute between R' Yehudah and R' Yaakov.

R' Acha bar Abaye challenges Rava's explanation. ■

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 ר' משולם פייש בן ר' יהוסף, ע"ה

Distinctive INSIGHT

The exemption for an animal owned by a חרש שוטה וקטן שור של פקח שנגח שור של חרש שוטה וקטן חייב

The law is that payment for damages must be made by the owner of an ox even if his animal gores an ox owned by an incompetent person (חרש שוטה וקטן). The commentators deal with the problem that this law in the Mishnah does not seem to be teaching any novel concept. Why would we have thought that someone should be exempt just because the owner of the animal which was damaged is unaware of the significance of what happened?

ר"י מלוני"ל explains that we see that we might have thought that when damage occurs, some element of responsibility should be placed upon the owner of the ox that was gored, as he should have seen to it that his animal does not wander into risky terrain. Accordingly, where the owner is incompetent we might have thought that some exemption should apply. Nevertheless, the Mishnah teaches that the full responsibility to guard one's animal not to damage is placed upon the owner of the damaging animal, as he is fully competent, and he is expected to have prevented this mishap.

אליה רבה also mentions that we might have thought that we cannot be responsible for damage done to an animal owned by a child, as the child is certainly unable to exercise proper care for his animals. Nevertheless, the law is that payment must, in fact, be made.

Sefer כובע ישועה writes that this part of the Mishnah does not contain any novel teaching, but it is simply brought as an introduction to the next part of the Mishnah where the animal of an incompetent person causes damage to the property of others (where no payment is due).

חזון יחזקאל explains that the insight of the Mishnah is in a case where two animals scuffle, and both are injured. The standard halacha in this case is that we calculate the damage each caused to the other, and the difference must be paid to the owner of the animal who sustained the greater damage. We also calculate the effects of whether each animal was a תם or מועד. Yet, if one of the animals was owned by a competent person, and the other was owned by an incompetent person, we only evaluate the damage done to the animal owned by the incompetent person, and no payment is made for the other animal. No adjustments are made for the animal of the חש"ו, as its owner is totally exempt even in this case. ■

HALACHAH Highlight

Is it permitted to attend a bull fight?

שור האיצטדין שנגח אדם ומת אינו חייב מיתה

A stadium bull that gores and kills a person is not put to death

Rav Ovadiah Yosef¹ was asked whether it is permitted for a person to attend a bull fight. He began his response by noting that the concept of bull fighting is inconsistent with Torah principles since Jews are identified (Yevamos 79a) as compassionate. Additionally, the prohibition against causing an animal pain is Biblical and is derived from the mitzvah to unload the overbearing burden that is on one's friend's donkey. We also find that the concern that Chazal had for suffering animals allows for certain leniencies that we don't find for other mitzvos. For example, if an animal falls into an irrigation canal on Shabbos and one is unable to feed the animal while there, it is permitted to put pillows and mattresses under the feet of the animal so that it could escape. Although throwing the pillows under the feet of the animal involves the prohibition of rendering a utensil unusable, nevertheless, Chazal permitted it in order to alleviate the animal's suffering. In contrast Chazal did not permit a person to violate a Rabbinic ordinance to be able to perform a bris on Shabbos. This indicates that Chazal were more concerned with the suffering of an animal than they were with the fulfillment of a mitzvah.

Based on this and other considerations Rav Ovadiah Yosef explains that someone who participates in bullfighting,

STORIES Off the Daf

The trained ox

שור אצטדין אינו חייב מיתה

When discussing the insidiousness of the yetzer hara, Rav Shach, zt"l, would say: "The Makneh explains that when Chazal say that one's yetzer is renewed each day, this means that as one grows older his yetzer gets stronger and stronger. This is the meaning of the verse, *יצר לב אדם רע מנעוריו*. From its youth, the yetzer naturally gets worse and worse. Now we can understand the words of the Mishnah at the end of Kinim: "The older an ignoramus gets, the more foolish he becomes."

Rav Shach would explain, "This does not mean that one literally has a new yetzer each day, since with what new action can a yetzer entice a very old man? This means that since one has a yetzer from a young age and has done nothing much to combat it, it becomes an eighty year old yetzer. If the yetzer which is bad enough at twenty is left unchecked, what do you suppose he will be like at eighty?"¹

Interestingly, the Ohr Hachaim Hakadosh, zt"l, learns an inspiring lesson from this seemingly bleak fact. "On Bava Kamma 39 we find that an ox that is trained to gore in a stadium is not put to death for goring a man to death. This is learned from the phrase 'כי יגח—

if he will gore'—on his own, but not if others force him to gore. Similarly, a man has a yetzer from the moment he emerges from the womb, way before he has enough understanding to be disgusted by evil. His yetzer leads him from the beginning. By the time he is grown up he is already used to doing evil, much like the goring ox is used to attacking. Like the ox, it is not entirely his fault. But although this point diminishes the punishment, a man must not remain the same. Surely the difference between man and animal is that man can use his innate understanding to curb his desires and change!"² ■

1. לולי תורתך ח:כ"א
2. אור החיים הקדוש בראשית ח:כ"א

REVIEW and Remember

1. Is a minor responsible if his ox gores another person's ox?
2. Under what conditions is it permitted to collect debts from the property of minors?
3. Does a change of ownership change an animal's status?
4. Explain צד תמות במקומה עומדת.

whether by simply watching, and certainly if someone pays admission to watch a bullfight, is in violation of the restriction against assisting a sinner commit a transgression (מדוייע לעוברי עבירה). Moreover, the Gemara Avodah Zarah (18b) comments that people who go to stadiums (איצטדין) are considered to be sitting together with scoffers (הרי זה) (מושב לצים). Rashi² explains that a stadium is a place where bulls are incited to gore people. This explanation is consistent with our Mishnah that teaches that if a שור האצטדין goes and kills a person the ox is not liable to death. The rationale, the Mishnah explains, is that an animal is liable only when it gores of its own volition but if an animal kills because it was trained to kill the animal is not liable for that death. ■

1. שו"ת יחוה דעת ח"ג סי' ס"ו

2. רש"י ע"ז י"ח ד"ה לאיצטדינין ■

