

OVERVIEW of the Daf

1) Clarifying the Mishnah's first ruling (cont.)

The Baraisa cited to clarify the Mishnah's first ruling related to the owner's right to sanctify his animal that will be killed also presents a dispute whether a watchman can release himself from responsibility by returning the animal after the verdict was reached.

An explanation for the dispute is suggested.

Rabbah rejects this explanation and offers his own explanation.

The rationale behind both positions is presented.

2) Giving the animal to a watchman

A Baraisa is cited that elaborates on the Mishnah's ruling that a watchman bears liability for the animal under his watch.

The Gemara clarifies the Baraisa.

This clarification is challenged.

Two solutions, one from R' Huna bar Chinana and the second from Abaye, are presented.

R' Elazar rules that an unpaid watchman is liable if the animal damages others but is exempt if it is damaged by others.

Rava explains the rationale behind this ruling.

3) MISHNAH: The Mishnah presents a dispute regarding what is considered sufficient guarding for a watchman to be exempt from liability.

4) Elaborating on the dispute

The Gemara presents the rationales for R' Meir and R' Yehudah's respective positions.

The explanation for R' Yehudah's position is unsuccessfully challenged.

A Baraisa is cited that presents a fourth opinion of guarding necessary to be exempt from damages.

The rationale behind this position is explained.

R' Ada bar Ahava clarifies R' Yehudah's opinion.

Rav states that it is possible for an animal to be מועד for its right horn but not for its left horn.

The Gemara explains that this ruling is consistent with R' Yehudah's position but disagrees with R' Ada bar Ahava's qualification of that position. ■

Distinctive INSIGHT

Bringing an animal to court for judgment

דאמר ליה אי אהדרתיה ניהלי הוה מערקנא ליה לאגמא, השתא אתפשתי לתוראי בידא דלא יכלמנא לאשתעויי דינא בהדיה

A Baraisa discusses a case of an ox which killed a person, where the law is that the ox must be brought to court where it will be destroyed (executed). If the animal is in the possession of a שומר, and the guard wishes to return the animal to its owner, the Baraisa states that he may do so, if the animal has not yet been judged for death. If the animal has already been sentenced to be destroyed, there is a disagreement in the Baraisa whether the שומר can simply give the animal back to its owner and be credited with having returned the animal he was given. Tanna Kamma holds that this is not considered an adequate return, while R' Yaakov disagrees and says that this, too, is acceptable.

The Gemara explains that Tanna Kamma holds that in this second case, where the animal was brought to court by the שומר, the owner could argue that the שומר should not have allowed the animal to be brought before the court for judgment. Since the verdict can only be rendered in court in the presence of the owner, the owner can claim that he would have taken the animal and let it run away to the marsh, so that it would not have been brought to justice and sentencing. By bringing it to court, the שומר is directly responsible for the material loss to the owner.

Chasam Sofer (O.C. 105) points out that the Gemara in Chullin teaches that if a chicken kills a person (by pecking on the head of a child), it must be brought to court and the mandate to "remove evil from our midst" be fulfilled. Rashi explains that it is a mitzvah for anyone who can do so to bring the chicken to the court so that it be destroyed. Why, then, should the שומר in our Gemara be held accountable for bringing the ox to the court where it was sentenced? Is it not a mitzvah to destroy a dangerous animal?

Chasam Sofer answers that the only time we declare that there is a mitzvah for anyone to bring a dangerous animal to court is in reference to an ownerless animal, such as in the case of the chicken. However, in the case of the ox which is a מועד, which has an owner, no one else has permission nor an obligation to take the animal anywhere else other than to its owner, who then will take care of the judgment of his animal. ■

HALACHAH Highlight

Killing an animal that is invested with the sanctity of shevi'is

משנגמר דינו וכו' שחטו בשרו אסור

Once the verdict was issued ... if it was slaughtered the meat is prohibited

Poskim discuss whether an animal that acquired the sanctity of shevi'is is put to death in the event that it killed a person. The reason for the uncertainty is that there is a prohibition against destroying items that acquired the sanctity of shevi'is. In the Torah Journal Kol Torah¹ it was suggested that once the Torah indicated that the animal should not be eaten, since an animal that kills a person must be put to death, it follows that it has lost any shevi'is sanctity. In other words, only an item that could be consumed will retain the sanctity of a shevi'is item but items that, for some reason, may not be consumed do not retain the shevi'is sanctity. Consequently, once the verdict to execute the animal is given it may no longer be consumed and thus it loses its shevi'is sanctity. A similar question is recorded in Yerushalmi² regarding a first-born donkey. R' Yirmiyah asks whether a first-born donkey that kills someone is killed by stoning, the punishment for killing a person, or by decapitating it, the method of execution normally used to kill a first-born donkey. The question³ there also seems to relate to whether a firstborn donkey that kills loses its unique status as a first-born donkey and will be killed in the method that other animals that kill people are put to death or whether it retains its status of a firstborn donkey.

Another reason to kill the animal is mentioned in the sefer

STORIES Off the Daf

Three-Quarters of the Damage

"... מועד לקרן ימין אינו מועד לקרן שמאל

The hallmark of a Torah giant is his ability to apply everything he learns to real-life situations. An educator who can train our youth in such remarkable skills is even more precious.

The administrators of Yeshivas Eitz Chaim quickly realized that Rav Shmuel Aharon Yudelevitz, zt"l, was a very rare find, a gadol baTorah in the true sense of the term. They decided to hire Rav Yudelevitz to test the children and hone their learning as only he could. After the first test, the teachers requested a copy of

the questions he would ask so they could have a few days to think about it. Shortly thereafter, they requested the answers to the questions as well. They were very penetrating and demonstrated the difference between knowing the material and truly understanding the halachic ramifications of what they had learned.

On one occasion Rav Yudelevitz was slated to test a shiur on **פרק שור שנגח ד'** **וה**. He immediately asked a very difficult question as was his wont. "Is there any situation in our perek that would call for the owner of an animal which gored to pay three-quarters of the damage?"

The members of the shiur were taken aback at the question. After much deliberation they replied that there was no such case. "Clearly, either an ox is a tam in

which case the owner pays half damage, or it is a **מועד** for which the owner is responsible for full damage. The owner can never be required to pay three-quarters of the damage."

But Rav Yudelevitz disagreed. "You are all wrong. On daf 45 we find that an ox which gored with one horn three times is a **מועד** to gore only with that horn. If it gored a fourth time with both horns, the owner pays full damage for the damage caused by one horn, and half for the damage caused by the other. In other words, three-quarters of the damage!"

But the students disagreed with this novel approach, and so did the Rebbe. So they went to Rav Tzvi Pesach Frank, zt"l, for a final decision. "Rav Shmuel Aharon is absolutely correct!" he ruled.¹ ■

מעילו של שמואל עמ' שכ"ט

REVIEW and Remember

1. What is the point of dispute between Rabanan and R' Yaakov?
2. Who is obligated to perform a **שמירה מעולה**?
3. Is a **שומר חנם** liable to pay if the ox he is watching is damaged by others?
4. What is the point of dispute between R' Meir and R' Yehudah?

נפש כל חי⁴. He writes that if a verdict was issued to kill an animal it is best to kill the animal rather than lock the animal up in a pen so that it should die of hunger and suffer - **צער בעלי חיים**. A source for this principle is found in Tosafos in Sanhedrin⁵. In the Gemara there R' Yehudah discusses an ox that was sentenced to be stoned that became intermingled with other oxen. R' Yehudah ruled that all the animals should be placed in a pen to die. Tosafos wonders why the animals should be placed into a pen and starved, thus experiencing the pain of starvation, rather than just killed with a knife. From Tosafos' question it is evident that it is better to kill an animal than to allow it to starve. ■

1. קול תורה תשרי תשס"ד
2. ירושלמי פסחים פ"ב ה"א
3. ע' קרבן העדה שם
4. ספר נפש כל חי סי' ט' סע' ו'
5. תוס' סנהדרין פ' ■