



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Bava Kamma Daf Mem Hey

MISHNA

- If an ox was sentenced to death and is being led to be stoned, and the owner then makes it hekdesch, it does not become hekdesch. If he shechted it then, its meat is assur. However, if it was made hekdesch before the sentence was handed down, it does become hekdesch, and if it was shechted before the sentence, the meat is mutar.
- If the owner of an ox gives it to a shomer chinam, a shoel (borrower), a shomer sachar, or a socher (renter), these people take the place of the owner and are responsible for any damage the ox causes – if the animal is a muad they pay full damages and if it is a tam they pay half damages.

GEMARA

- A Braisa says, with regard to an ox that killed a person, if before the verdict was decided the owner sold it, the sale is valid. If he was makdish it, it becomes hekdesch. If he shechted it, its meat is mutar. If it killed while in the reshus of a shomer and he returned it to its owner before the verdict, it is considered as returned to the owner. Once the verdict was handed down, the sale would not be a valid sale, the animal would not become hekdesch, if it was shechted the meat would be assur, if it was in the possession of a shomer and he returned it to the owner, it is not considered as returned to the owner. **R' Yaakov** says, even after the verdict, if the shomer gave it back to the owner at that point, it is considered to be returned.
 - **Q:** Maybe we can say that they argue regarding whether a person can take something that is assur b'hana'ah and say "here is the thing that is yours" (whether the shomer can tell the owner of the ox that has become assur b'hana'ah – here is your physical ox, although it is now assur, and I have hereby returned it to you)? The **Rabanan** say that one can't do that and **R' Yaakov** says that one can? **A: Rabbah** said, all hold that one may say this, because if they argue about this, they should argue about chametz on Pesach. Rather, the machlokes is whether Beis Din can conduct the case when the ox is not present – the **Rabanan** say that the ox must be present, and therefore the owner can tell the shomer "if you would have given the ox to me I could have hid it to prevent it from becoming assur b'hana'ah", and **R' Yaakov** says that it need not be present, and the shomer can therefore say "in any case the ox would have become assur" and it was not the shomer's giving it to Beis Din that caused it to become assur.
 - The **Rabanan** darshen the pasuk of "hashor yisakel v'gam b'alav yumas" to teach that just as the owner could not be judged unless he was present in Beis Din, the same holds true for the ox. **R' Yaakov** says, a person must be present at his own court case so that he can put forth a defense. The ox is not capable of doing so, and therefore does not need to be there.

MISARO L'SHOMER CHINAM ULISHOEL...

- A Braisa says, there are 4 people that take the place of the owner with regard to being responsible for the damage of the ox: a shomer chinam, a shoel, a shomer sachar, and a socher. If, while under their watch the ox killed a person, if it was a tam, the animal is put to death and they are patur from paying kofer. If the animal was a muad, it must be put to death and kofer must be paid, and all but the shomer chinam would be chayuv to pay the value of the ox to the owner.
 - **Q:** What is the case? If the shomer guarded the ox, then all the shomrim should be patur. If they did not properly guard it, then even the shomer chinam should be chayuv!? **A:** The case is where they guarded it with a low level guarding, but not with a

high level guarding. For a shomer chinam that is considered sufficient and he is patur. For the others, it is insufficient and they are therefore chayuv.

- **Q:** Whose view does the Braisa follow? If it follows **R' Meir**, who says that a muad must be watched with a high level of watching, and that a socher is treated like a shomer chinam, then the Braisa should say "if the animal was a muad, it must be put to death and kofer must be paid, and all but the shomer chinam *and the socher* would be chayuv to pay the value of the ox to the owner"! If the Braisa follows **R' Yehuda**, who says that a low level watching suffices for a muad, then the Braisa should say that if it is a muad all the shomrim are patur from kofer (because the Braisa is discussing where a low level watching was done)!? **A: R' Huna bar Chinina** said, the Braisa follows **R' Eliezer**, who says that the only way to guard a muad is to shecht it (there is no way to guard a muad), and regarding a socher he holds like **R' Yehuda** that a socher is treated like a shomer sachar. **Abaye** said, the Braisa can even follow **R' Meir**, and we will follow the view of **R' Meir** according to **Rabbah bar Avuha**, who said that **R' Meir** is the one who said that a socher is like a shomer sachar, and **R' Yehuda** was the one who said it is like a shomer chinam.
- **R' Elazar** said, if a person gave his ox to a shomer chinam and the ox then damaged, the shomer is chayuv. If the ox was damaged by others, the shomer is patur.
 - **Q:** What is the case? If the shomer accepted responsibility for its damages, then he should be chayuv in the second case also. If he didn't, then he should be patur in the first case also!? **A: Rava** said, the case is that he accepted responsibility for its damages, but the shomer realized that this ox had a tendency to gore. In such a case we can assume that the shomer accepted responsibility for the ox damaging others, but not for others damaging the ox, because he believes the other animals will be afraid of this ox and will not damage it.

MISHNA

- If the owner tied his ox with a rein, or locked a gate properly in front of it, and the animal got loose and damaged, **R' Meir** says the owner would still be chayuv, whether the animal is a tam or a muad. **R' Yehuda** says, if the animal is a tam, the owner would be chayuv, but if it is a muad, he would be patur, because the pasuk regarding a muad says "v'lo yishmirenu b'alav", and this person did guard the muad. **R' Eliezer** says, the only way to guard a muad is to shecht it.

GEMARA

- **Q:** What is the reasoning of **R' Meir**? **A:** He holds that an ordinary ox is not in a state of being guarded, and the pasuk says that a tam is chayuv, which would teach that a low level of guarding should suffice for a tam. The pasuk regarding a muad then says "and the owner did not guard it", which teaches that it needs a high level of guarding. We then learn from a gezeirah shava on the word "negicha" that just as a muad needs a high level of guarding, a tam does as well.
 - **R' Yehuda** holds that an ordinary ox is in a guarded state. Therefore, when the Torah says that a tam must pay, it is teaching that the tam must be watched with a high level watching. When the pasuk by muad says "and the owner did not guard it", it is again teaching that a high level watching is needed, which is something that was already taught, and therefore must be coming to limit the halacha regarding a muad, and teach that a muad requires a lesser level of watching. Although **R' Meir** used a gezeirah shava to teach that it should apply to a tam as well, **R' Yehuda** will say that the pasuk says "and the owners did not watch *it*", which teaches to apply this leniency only to a muad.
- A Braisa says, **R' Eliezer ben Yaakov** says, if an animal was a tam or a muad, and it was guarded even with a lesser level guarding, he is patur.
 - His reasoning is that he holds like **R' Yehuda** that a lesser guarding is sufficient for a muad, and he also holds of the gezeira shava which compares tam to muad.
- **R' Ada bar Ahava** said, **R' Yehuda** said he is patur with a lesser guarding only with regard to the muad part of the ox. However, the tam part remains and he would be chayuv for that.
 - **Rav** said, a muad for goring with the right horn is not a muad for goring with the left horn.

- **Q:** Who does this follow? He cannot follow **R' Meir**, because **R' Meir** says that a tam and a muad need the same level of watching, so what would be the difference as to which horn is a muad (he is not teaching regarding payment for tam vs. payment for muad, because that has been taught numerous times already)? He cannot be following **R' Yehuda**, and teaching that if he did a lesser guarding he would be patur for damage of the muad horn and chayuv for damage of the tam horn, because he would still be chayuv for the tam portion of the muad horn!? **A:** He is following **R' Yehuda**, but he argues on **R' Ada bar Ahava**, and holds that the only way we can find a single animal possessing characteristics of a tam and muad is if it is a tam with one horn and a muad with the other. However, an animal that is a muad with both horns will not have any part of a tam in it.

R' ELIEZER OMER EIN LO SHMIRAH ELAH SAKIN

- **Rabbah** said, **R' Eliezer's** view is based on the pasuk of "v'lo yishmirenu", which teaches that this ox can no longer be properly guarded.
 - **Q: Abaye** asked, according to this we should similarly darshen the words "v'lo yichasenu" written regarding a bor, to mean that it can no longer be properly covered, and this would not be correct, because a Mishna says that a bor that is properly covered will be patur!? **A:** Rather, **Abaye** said, the reason of **R' Eliezer** is like **R' Nosson** of a Braisa, who says that "v'lo sasim damim biveisecha" teaches that a person may not keep a vicious dog or a rickety ladder in his house. Similarly here, the "v'lo yishmirenu" means it should not be kept and therefore should be shechted.

HADRAN ALACH PEREK SHOR SHENAGACH DALED V'HEY