



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

Bava Metzia Daf Lamed Beis

MISHNA

- If someone found an animal in a barn, he is not chayuv to take it and return it (it is not assumed to be lost). If the animal was found on public property, he would be chayuv to take it and return it.
- If the finder was a Kohen and the lost item was in a cemetery, he may not become tamei so that he can retrieve the item. If his father told him to become tamei and get the item, or if a father tells his son not to return a lost item, the son should not listen to his father.
- If a person helped to unload an animal that had collapsed, and he then reloaded it, and it then collapsed again so he helped to unload it and reload it again, even 4 or 5 times, he is still chayuv to do so again, based on the pasuk of "azov taazov".
 - If the owner of the animal sat down and told the person "you have the mitzvah to unload this animal, so do so, but I will not help", the person is patur from unloading the animal, based on the pasuk that says "imo". However, if the owner was elderly or sick and therefore cannot help to unload the animal, the person would be chayuv to unload the animal.
- It is a mitzvah in the Torah to unload an animal, but there is no mitzvah to load an animal. **R' Shimon** says there is even a mitzvah to load the animal. **R' Yose Haglili** says, if the animal was loaded with a load that was too heavy for it, the person does not need to help unload the animal, based on the pasuk "tachas masa'o", which teaches that it must be a load that the animal should be able to carry.

GEMARA

- **Rava** said, the barn that is referenced in the Mishna is one that would not cause the animal to run away, but is also not guarded (to prevent the animal from leaving). It must be that it would not cause the animal to run away, because the Mishna says the person would not be chayuv to take the animal and return it. It must be that it is not guarded, since the Mishna found it necessary to say that he is not chayuv to do so. If it was guarded, he surely would not have to take it and return it!

MATZA B'REFES EINO CHAYUV

- **R' Yitzchak** said, this is only if the barn is within the techum (however, if it was outside the techum, he would have to assume it was lost). This would suggest that if the animal was found on public property, even within the techum, he would be chayuv to return it.
 - **Others** learn that the statement was made on the end of the Mishna. When the Mishna says that if it is found on public property he is chayuv to return it, **R' Yitzchak** said this is only when the animal was found outside the techum. This would suggest that if it was found in a barn he would not be chayuv to return it even if it was outside the techum.

B'BEIS HAKVAROS LO YITAMEI LAH

- A Braisa says, how do we know that if one's father tells him to become tamei (if he is a Kohen) or if he tells him not to return a lost item that he should not listen to his father? The pasuk says "ish imo v'aviv tira'u v'es Shabsosai tishmoru Ani Hashem". This teaches that Hashem is saying "you are all chayuv in My Honor", and therefore the father should not be listened to when he says to do something improper.
 - **Q:** If not for the Braisa we would say that we should listen to him? Listening to a father is an assei, and returning a lost object is an assei and a lo saasei, and surely an assei does not override an assei and a lo saasei!? **A:** We would think that since the honoring of one's parents is compared to the honoring of Hashem, he should listen to his father. The pasuk therefore teaches that he should not.

- **Q:** What is meant that there is no mitzvah to load an animal? It can't mean there is no mitzvah at all, because the pasuk says "hakeim takim imo"!? **A:** Rather the Mishna means that there is no mitzvah to load the animal for free. **R' Shimon** argues and says, that just as one must unload an animal for free, he must also load an animal for free.
 - This explanation of the Mishna is a proof to a Braisa that clearly says that one need not load an animal for free, but must unload an animal for free. **R' Shimon** says both must be done for free.
 - The **Rabanan** hold that loading must be different than unloading, because if not, there would be no need to write both of these halachos – unloading could be learned from loading, because unloading involves pain for the animal and a loss for the owner, whereas loading has neither of these aspects. **R' Shimon** says both needed to be written, because if only one was written, we would not know if it was referring to loading or unloading.
 - **Rava** said, from both shittos we can see that the issur of "tzaar baalei chayim" is D'Oraisa, because **R' Shimon** says we couldn't learn a kal v'chomer, because we wouldn't know what the one pasuk was referring to. However, if we would know, there would be a kal v'chomer, presumably based on the fact that unloading is more stringent because it involves tzaar baalei chayim.
 - **Q:** It may be that the kal v'chomer is based on the fact that unloading also involves a loss to the owner, whereas loading does not. Therefore, there is no proof from the proposed kal v'chomer! **A:** Loading also involves loss to the owner, because he cannot take his items to market and is exposed to thieves. Therefore, this could not be the basis of a kal v'chomer.
 - **Q:** Maybe we can prove that tzaar baalei chayim is D'Oraisa according to the **Rabanan and R' Shimon**, based on the end of the Mishna. The Mishna said that **R' Yose Haglili** says, if the animal was loaded with a load that was too heavy for it, the person does not need to help unload the animal, based on the pasuk "tachas masa'o", which teaches that it must be a load that the animal should be able to carry. This suggests that the **Rabanan and R' Shimon** (who argue on **R' Yose Haglili**) hold that a person would have to unload even in this situation, and the reason for that would presumably be based on tzaar baalei chayim! **A:** It may be that they all agree that tzaar baalei chayim is only D'Rabanan, and the machlokes here is whether we darshen "tachas masa'o" or not.
 - **Q:** We can prove that tzaar baalei chayim is not D'Oraisa from the Mishna, where it says that if the owner of the animal sat down and told the person "you have the mitzvah to unload this animal, so do so, but I will not help", the person is patur from unloading the animal, based on the pasuk that says "imo". Now, if tzaar baalei chayim is D'Oraisa, why would he be patur if the owner is not helping him out!? **A:** It may be that tzaar baalei chayim is D'Oraisa, and when the Mishna says he would be patur in this case, it means he would be patur from unloading the animal for free, and could instead charge for his unloading of the animal.
 - **Q:** Maybe we can prove that tzaar baalei chayim is D'Oraisa from a Braisa. The Braisa says, one must unload the animal of a goy just like he must do for the animal of a Yid. It must be that he must do so for a goy, because tzaar baalei chayim is D'Oraisa!? **A:** It may be that the reason he must do so is to prevent hatred from the goyim. In fact, this must be the case, because the Braisa then says that he would not have to unload a goy's animal that was carrying wine (which is assur for a Yid, and which the **Rabanan** therefore presumably made assur for a Yid to touch as well).
 - The end of the Braisa is no proof, because it may be saying that a Yid is assur to *load* the animal of a goy with the goy's wine.
 - **Q:** Maybe we can prove that tzaar baalei chayim is not D'Oraisa from a Braisa. The Braisa says that if a goy's animal is loaded with a Yid's packages, one need not help the goy unload the animal. Now, if tzaar baalei chayim is D'Oraisa, why

shouldn't he have to help!? **A:** It may be that tzaar baalei chayim is D'Oraisa, and the Braisa is referring to loading the animal, not unloading it.

- **Q:** The end of the Braisa says, if the animal is owned by a Yid and the packages belong to a goy, one must help unload the animal. Now, if the Braisa is referring to loading the animal, why must one help the goy load the animal!? **A:** The reason he must help is because the Jewish owner is in tzaar, waiting for help to load his animal.
 - **Q:** If so, the same should be true in the first case of the Braisa!?
A: The beginning of the Braisa is referring to a donkey driver who was a goy, and the Jewish owner of the packages was not there. The later part of the Braisa is discussing where the donkey driver was a Yid.
 - **Q:** The pasuk quoted by the Braisa was the pasuk of *unloading* the animal, not loading it!? **A:** This Braisa follows **R' Yose Haglili**, who clearly holds that tzaar baalei chayim is not D'Oraisa.
- **Q:** Maybe we can prove that tzaar baalei chayim is not D'Oraisa from a Braisa. The Braisa says, if a person's friend's animal needs to be unloaded, and his enemy's animal needs to be loaded, he should first help his enemy, so as to win over his yetzer harah. Now, if tzaar baalei chayim is D'Oraisa, it should be more important to unload the animal first!? **A:** Even if it is D'Oraisa, the Braisa holds that it is more important to win over the yetzer harah and help his enemy first.
- **Q:** Maybe we can prove that tzaar baalei chayim is not D'Oraisa from a Braisa. The Braisa says, the "enemy" that is discussed in the pasuk (that requires you to help him unload his animal) is a Jewish enemy, not a non-Jewish enemy. Now, if tzaar baalei chayim is D'Oraisa, he should have to help a non-Jewish enemy as well!? **A:** The Braisa is not referring to the "enemy" mentioned in the pasuk that discusses unloading, it is referring to the "enemy" in the previous Braisa, which discusses loading.
- **Q:** Maybe we can prove that tzaar baalei chayim is not D'Oraisa from a Braisa. The Braisa says, the word "roveitz" in the pasuk teaches that one need not unload an animal that often lies down under its packages, and that one need not help unload an animal that is still standing, although struggling, under its packages. The words "tachas masa'o" teach that one need not help to load an animal, and that he need not help unload a package that was too big for the animal to carry in the first place. Now, if tzaar baalei chayim is D'Oraisa, even if it often lies down, and even if it is standing and struggling, one should have to help unload it!? **A:** This Braisa follows **R' Yose Haglili**, who holds that tzaar baalei chayim is D'Rabanan. In fact, this must be so, because the Braisa says that one need not help if the package was too heavy to begin with. This was the statement made by **R' Yose Haglili** in the Mishna.
 - **Q:** The Braisa said that one need not help to load an animal. Now, this must mean that he need not do so for free, but rather may get paid for doing so. This can't be following **R' Yose Haglili**, because he was not the one to say that in the Mishna!? **A:** It may be that regarding getting paid for loading an animal, **R' Yose Haglili** holds like the **Rabanan**.
- A Braisa says, the pasuk regarding unloading says "ki sir'eh". One might think this means even if he sees the animal from far he must go there and help out. The pasuk therefore says "ki sifgah", that the obligation is only when you are close by to the animal. If it only said "ki sifgah" one would think that the obligation is only when he actually meets up with the animal. The pasuk therefore says "ki sir'eh", that from a small distance he would have to come and help. The **Rabanan** said that if he is the distance of a "ris" (which is 1/7.5 of a mil) he would be chayuv to go and help.
- A Braisa says, after helping an animal, the person must walk along with the animal for a parsah, to make sure that it is okay.
 - **Rabbah bar bar Chana** said, he may take payment for walking along with the animal.