

שׁוֹר שְׁנָגַח אַרְבָּעָה וַחֲמִשָּׁה שְׁוֹרִים זֶה אַחֵר זֶה

An ox gored 4 or 5 times one after another (and remained a tam).

and still remained a ‘tam’. How is that possible? Isn’t the animal a ‘muad’ after goring three times?

In order for an ox to become to be a muad, the owner must:

1. Be brought to court.
2. Have witnesses testify about his animal’s bad conduct.
3. Be warned by the court.

Also, each goring must take place in a regular, predictable course, i.e., the ox must gore an animal every other opportunity or every third opportunity; random incidents of goring does not create a muad.

This is how an ox could gore 4-5 times and still not be a muad.

Whereas, usually an ox becomes a muad after only three goring incidents.

שׁוֹר שָׁנָח אַרְבָּעָה וְחֲמִשָּׁה שְׁוֹרִים זֶה אַחֲרֵי זֶה

An ox gored 4 or 5 other oxen, one after another (and remained a tam).

How is this possible? To be a muad, the ox must gore according to a pattern. The last victim is the first to be paid. This is because he becomes an owner, or he accepted the ox to guarantee his payment. Therefore, he is a ‘shomer sochor’, a “paid watch person”. He receives  $\frac{1}{2}$  the value of his ox that was gored, from the body of the ox that did the goring (See N3 36b1 Line 45) . Each successive victim, fearing that the owner (or the prior victims) will spirit the ox away, seizes the ox as security. Thereby, they become like a ‘shomer sochor’ and are responsible if the ox gores another animal.

A tam becomes a muad only by establishing a pattern of causing injury, not by random injuries. If there is no pattern, the ox remains a tam, irrespective of how often it has caused injury.

אֲנִי יָד עֲנִיִּים אֲנִי

We are the hand of the poor.

Striking – or even raising one’s hand, in order to strike a person, is prohibited. Such a person is called a ‘Rasha’ – “an evil one”.

We learn this from Moses, our teacher, who said, “Rasha, why are you going to strike your fellow?” That phrase is in the future tense. If he had actually struck the victim, the verse would have been written in the past tense. This teaches us that even merely preparing to hit, makes one a ‘Rasha’, an “evil person”.

אֲנֵּן יָד עֲנִיִּים אֲנֵּן

We are the hand of the poor.

There was a community that levied a fine on people who hit others. This occurred and the person who was to receive the money said, “I don’t want it, give it to charity.” Soon after, he changed his mind. Is he allowed to change his mind after stating that the money should go to charity?

Bava Kamma 36 and the Rosh say it is too late. The poor had already acquired the money since we, in the community, are “the hand of the poor”. It does not require a poor person to actually be ‘before us’ since we are “the hand of the poor”.

We can accept the funds on their behalf.

רֶבֶן גַּמְלִיאל וּבֵית דִּינוֹ אֲבִיָּהֶן שֶׁל יְתוּמִין הָיוּ

Rabbi Gamliel and his court were the “Father of the orphans”.

Was there adoption in Biblical times?

The Rabbinic court – “Father of all orphans”, appoints guardians for orphans and children in need. The guardians have the same responsibilities as the natural parents. They care for the child’s upbringing, education, physical accommodations and must administer the child’s property. However, the adopted parents, in Jewish law, do not become the legal parents. They function as the agents of the natural parents, who continue to have all the usual parental obligations to the child.

## שׁוֹר שֶׁהוּא מוּעַד לְמִינוֹ

An ox who is muad to his own species,

but not a muad to others, i.e., to young animals or to mature ones.

He pays the full amount to those he is a muad to, but pays  $\frac{1}{2}$  to those whom he is still a tam. If an ox is on muad on Shabbos, he pays full. If he is not a muad on weekdays, but is a tam on weekdays and he gores, he pays only  $\frac{1}{2}$ .

An ox can change from being a muad on Shabbos after not goring on three Shabbatot. The ox reverts from being a muad animal by standing next to an animal he previously might have gored and does not gore it.

Can an ox tell when it is Shabbos?? Yes.

Can a baby tell when it is Shabbos?? Yes. They can tell that special clothes, special smells and atmosphere are present on that day.

הָרִי זֶה מוֹעֵד לְשַׁבָּת וְאֵינוֹ מוֹעֵד לַחֹל

The ox gored on Shabbos, but not on weekdays.

Once upon a time, there was an ox who gored people, but never on the weekdays, only on Shabbos.

Once upon a time, there was a baby who nursed satisfactorily. However, on Shabbos the baby would not nurse and was very irritable. The mother inquired what to do from several great Rabbis. They advised her not to wear her Shabbos clothes and jewelry on Shabbos but to wear her weekday clothes. She did as they suggested and the baby nursed. In our Gemara, the ox did not recognize the townspeople in their Shabbos clothes. The baby did not recognize its mother in her Shabbos clothes. Change to weekday clothes, and all is well!!

נִגַּח שׁוֹר חֲמוֹר וְגַמְלָה נַעֲשָׂה מוֹעֵד לְכָל

An ox gored an ox, a donkey and a camel.

Is that ox muad?

He only gored each type once. Therefore, he created no pattern, since he gored three separate types of animals.

Rav Pappa says – If muad for one type of animal, the ox is not necessarily muad for other animals, only for the species he gored.

Rav Zvid says - If muad for one type of animal, the ox is muad for all types of animals.

BK 23b - If an animal gored on Sunday, Monday and Tuesday, it is muad for all the days of the week and not just those three days. Therefore, he should be muad for all animals.

An ox gored an ox, ox, ox, donkey and camel.

1. The ox is muad for oxen.

Is the ox also muad for donkeys and camels?

Is the ox muad for all animals? - Rambam says-No, the ox is muad only for the species that he gored at least once, of the three goring actions.



## שור של ישראל שנגח שור של הקדש

If an ox of an ordinary Jew, gores an ox of the Temple treasury,  
the owner is exempt.

Ex 21:35 teaches us that there is liability if ‘the ox of a man gores the ox of his fellow.’ This phrase “of his fellow” excludes the Temple, which is not “a fellow”, or “his friend”.

An ox of a Jew gores the ox of a Canaanite – the owner is exempt.

An ox of a Canaanite gores the ox of a Jew – If the ox is tam or muad, the owner pays full, because a Jew and a Canaanite are not ‘fellows’.

To be fair then, if the Canaanite’s ox gores a Jew’s ox, it should also be exempt.  
No, the Canaanite people are penalized for not keeping the Noahide laws.

„הופיע מהר פארן“

“Had revealed from Mount Paran....”

God went to all the nations and offered them to accept the Torah, but they did not desire to do so.

We understand that each nation was offered and the vast majority of individuals said, ‘No’. But, there were some individuals who might have said ‘Yes’.

When offered to the Israelites, the majority of the nation said, ‘Yes’, but certainly some said, ‘No’. Why should a non-Jew, who wanted to accept the Torah, be denied and a Jew, who did not want to accept the Torah, get it and be allowed to keep it?

Therefore, some non-Jews convert to Judaism and some Jews convert from Judaism. Since these people were always mixed up souls, conversion might realign them.

Bleich 2: p58

שִׁבְעַת מִצְוֹת שֶׁקִּיבְּלוּ עָלֵיהֶם

Seven commandments that they accepted on themselves.

“Desecration of the dead” – ‘Nivul Hamais’.

Is this prohibition limited to Jewish corpses, or does it encompass non-Jewish cadavers as well?

Using the principle of ‘rov’, “majority”, we can say an item of unknown origin is a member of the class of the majority. Therefore, virtually all bodies for dissection are non-Jews, except in Israel.

Rav Kook said: We can do autopsies only on non-Jews.

Rav Joseph Soloveitchik said - All humans are created in the image of God and the statement, “his body may not hang until morning” (Deut 21:23), applies to all.

The rules regarding autopsies apply to all people.

What is a sin?

אם כן מצינו חוטא נשכר

If so, we have found a sin that profits the sinner!!

God commanded the children of Noah to fulfill the seven Noahide laws. They agreed but failed to keep them. God withdrew his commandment to them to follow those seven laws. He released the nations from the commandments. It appears as though they were rewarded for not following the laws. They were released from the obligation.

This is not the case: God's commandments to us are made so that we follow the laws of his creation. For example, it is as though God commanded us, 'Don't touch a hot stove, or don't jump from a high building.' If we follow his instructions, he rewards us for listening to him. Also, we are rewarded by avoiding the consequences of violating a law of nature.

Those nations, freed from the commandment, get no reward if they do follow, but eventually get punished by nature for violating nature's rules. A commandment is a lesson from God regarding how the world works best. The commandments are the fabric of creation (Gen 19:38).

שֶׁאִפִּילוּ נִכְרִי וְעוֹסֵק בַּתּוֹרָה שֶׁהוּא כְּכֹהֵן גָּדוֹל

Even a non-Jew, who follows the Torah, should get rewarded like a high priest.

From Leviticus 18:5, “Man should perform”.

It says ‘man’, not ‘Cohen, Levi, or Yisrael’. Anyone who follows the laws should be rewarded .

(Line 28 B15) However, since they follow the laws without having been commanded, they don’t get the greater merit of following the laws that accrue to a person who has been commanded . The requirement to follow the law causes the Yetzer Hara to be more mobilized and a person has a harder time doing what he was commanded to do. Therefore, he merits a greater reward.

## גְּדוֹלַת הַמִּצְוָה וְעוֹשָׂה יוֹתֵר מִמִּי שֶׁאֵינוֹ מִצְוָה וְעוֹשָׂה

One who is commanded and fulfills, is greater than one who fulfills Mitzvahs without being commanded to do so.

Why?

- One who is commanded, acts with a sense of urgency and mission. He must battle his Yetzer Hara to be sure he fulfills his commitment and that earns him the greatest reward.
- Only one who is commanded, actually fulfills the instruction of Hashem to perform His will.
- One who is commanded and fulfills, gets credit also for having accepted the responsibility to fulfill that Mitzvah. It is part of the declaration 'naaseh v'nishma', "We will do and we will listen."
- The opportunity to develop 'divekus', "an attachment" to God, is only achieved by one who is commanded to do a Mitzvah, but not for those who do so voluntarily.

21 Bava Kamma 38a4 line 38  
Weinbach p490

B8

מאי אית לי גבי נחמתא דבבלאי

What do I have to do with consolation of the Babylonians?

Condolences must be expressed properly.

- Rather than wishing for things to be different than how they are, a man must accept with love, the decree of Heaven. “Shall we accept only the good from the Lord and not accept the hardships He sends up?” (Iyov 2:10).
- We must bless the Lord for the bad, as well as for the good.

Gen 19:38

Deut 2:19

אֵין הַקָּדוֹשׁ בְּרוּךְ הוּא מְקַפֵּחַ שְׂכָר

God does not deprive any creature its reward,

even if the good deed is only for a kind expression (refined speech).

Lot's daughter (the younger), was rewarded for not brazenly identifying her offspring as coming from an incestuous relationship, i.e., 'Ammon', "from my people" ( Gen 19:38). Therefore, we are instructed, "Do not war or exact taxes from them" (Deut. 2:19). As compared to her sister, who brazenly announced her child was 'Moav', "from my father".

No one should be deprived of their reward. A person should be honest with themselves. Just as their failings should be identified in order to be improved, so too, their strengths (Maalos) should be recognized. 'Maalah' means 'virtue' and the word also means, 'a step', i.e., on a staircase. We should recognize our virtues, not with pride, but to identify them, since they are a 'maalah', a 'step', if we use them to be led upwards, i.e., to improve.



# שׁוֹר שֶׁל פֶּקֶחַ

The ox of a competent person.

<u>If an ox of</u>	<u>gores the ox of</u>	the <u>owner is</u>
- a competent person	an incompetent	liable
- an incompetent person	a competent person	exempt

-and the court appoints an agent to watch over the ox.

-and the court accepts testimony regarding the ox, in the presence of the agent.

If the person attains competency, i.e., a blind person sees, a deaf person hears, an insane person becomes sane, a minor becomes an adult, or the ox (muad) reverts to its tam status, i.e., it changes owners and 'it's status changes also! The ox no longer is represented by an agent, but reverts to its prior owner.'

An ox of the arena that kills a person, is not liable, because an arena ox is expected to gore.

## שור של פקח

The ox of a competent person.

There is an exemption for an ox owned by an incompetent.

Usually when one ox gores another, we assess the damage to each and the owner of the goring ox pays for the difference in damage. But, if the ox injured is one belonging to an incompetent, the other owner pays for the entire damage.

There is no offset, since the incompetent is exempt. Therefore, no adjustment is made for the animal of a deaf mute, deranged person, or a minor, since it's owner is exempt.

## שור האצטדין אינו חייב מיתה

A stadium bull that gores a person who dies, i.e., kills a person, is not put to death.

“If he will gore” – means if he gores on his own, he is put to death.

But, if he is forced, or trained to gore, it is not viewed as voluntarily goring and the animal is not responsible. He is not put to death, since a stadium bull is trained to gore.

Is it permissible for a Jewish person to go to a bull fight? No. Jews are considered compassionate. We are concerned about ‘tzar bal hachayim’ “the pain to living things”. We can even violate Shabbos to alleviate the suffering of an animal. We can raise up an animal that is in a pit, we can bring it food on Shabbos, we can put pillows under it’s feet to help it get out of the pit, etc.

וְיִתְּמִי לֹא בְּנֵי כִפָּרָה נִינְהוּ

A minor does not need atonement,

if his animal kills a person. Therefore, he does not pay ‘kopher’\* for kapparah to the family.

Does a minor recite the bracha of ‘Hagomel’? No. Since it is not possible for him to state, “He who bestows good upon the guilty”, since a child is not accountable for his actions, he cannot be considered guilty.

\*Kopher - A monetary payment equal to the value the person had prior to his death, had he been sold as a slave. It is considered an atonement payment.

## כְּגוֹן שֶׁהָרֹג שְׁלֹשָׁה בְּנֵי אָדָם טְרֵפָה

An ox that killed three people, each of whom had a fatal, organic disease,

need not be put to death.

- His prior actions made him ‘muad’ (forewarned) for healthy persons, but not unhealthy ones. Since the situation is different, the ox is considered a ‘tam’ regarding a sick person with a fatal disease.
- A person who kills a ‘tereifah’, “a person certain to die”, is exempt from human penalties, although subject to divine penalties.
- A person who has been sentenced to die, is considered to be an ‘already killed person’ and is no longer considered as “abiding among your people” (Ex 22:27).

עַד שֶׁבָּא רַבִּי עֲקִיבָא

Until Rabbi Akiva came

and taught “(‘et’) HaShem, your God, you should revere” (Vayikra 19:32), and that the “et” means to include Torah scholars.

- But we learn to revere Torah scholars from other sources, i.e., “make the old precious”, why does Rabbi Akiva learn it from the word ‘et’?

Tosphos answers-The derivation from the word “et” teaches a special obligation to honor “one’s main Torah teacher”, ‘rabo muvhak’, or someone who is a renowned Torah scholar.

The Brisker Rov agrees that there are two separate Mitzvahs that relate to honoring Torah scholars:

1. His Torah teacher – Similar to the honor due to his parents, which is learned from the words, ‘et HaShem Elokecha tireh’.
2. To honor any and all Torah scholars- This is learned from the words, ‘V’hadras pnei zakein’, even for one who is not one’s teacher. Each requires a different level of honor (Kiddushin 33a).
  - (1) Obligated to stand for as long as you can actually see your own teacher.
  - (2) Requires that you stand only when such a scholar is within four amos (6 feet) of you.

אַתָּה אֱלֹהֶיךָ תִירָא' לְרַבּוֹת תְּלִמְיָדֵי חֲכָמִים

You shall revere “et” your God, comes to include Torah Scholars.

Rambam (Hilchos Yesodei HaTorah 2:2) - Contemplate the wonders of nature and the universe and you will develop a strong sense of awe and trepidation for God and an overwhelming sense of the magnificence of HaShem’s majesty. This is called, ‘Yiros Haromeimos’.

Rambam ( Sefer HaMitzvos #4)- Awe and trepidation – Fearing God’s judgment and system of punishment. We are also to fear and respect, and have awe for our Rabbis and great Scholars. We can be in awe of their greatness, but not because of their ability to punish us, since only God can punish.

Awe really means the halachic actions we must take. For example, awe for a parent means: don’t sit in his/her chair, etc. Awe for God means: follow certain behaviors and modes of conduct.

הָכָה אֶת הָאִשָּׁה וַיֵּצְאוּ יֶלְדֶיהָ

If one strikes a pregnant woman and causes a miscarriage.

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The assailant must pay the father the value of the child.

If the father dies in the interim. Who gets the money?

Shulchan Aruch says -The mother.

Rema says - The father's heirs. But the child was not yet in existence and you are not able to bequeath an item not yet in existence! True, the offspring is not yet in existence, but the fetus is. Since the father has the right to collect, these rights can be passed to the father's heirs, even though the object (the fetus) is not yet fully present.

This happened to a pregnant Canaanite slave impregnated by a Jewish man and before the assault occurred, she was freed. Who gets the money after the miscarriage?

Shulchan Aruch says - The mother.

Rema –The child “has no father”, so nobody can collect. The mother never collects the value of the offspring.



## הַתּוֹרָה זֹכֶתָה דְּמֵי וְלָדוֹת לְבַעַל

The Torah grants the value of offspring to the husband.

Since the fetus has a monetary value, this is used to argue that it is not yet a soul, “a nefesh”. Since it is not a nefesh, we can choose to save a mother whose life is in danger during her pregnancy, because of her fetus. However, once the head has appeared, the child is now a nefesh and we don’t choose to save one soul in preference to another soul. We let nature take its course since “this is the nature of the world”.

The fact that the fetus is not considered a nefesh cannot be used to permit abortion.  
R Moshe Feinstein: Abortion has a prohibition: not to murder. A person will not be executed for performing an abortion, but he has violated the standard prohibition against murder.

## חומר באש מִבְּבוֹר

Fire is more stringent than a pit.

A man got drunk in a boarding house, lit a candle and fell asleep. The candle burnt down and caused a fire. The owner asked the guest to pay for the damage the fire caused. The guest claimed he was drunk and not in control of his actions and is therefore, exempt.

The Bais Din found him liable. A person is always considered a ‘muad’, “forewarned” and a person’s fire is considered his property (See note 16).

תָּנוּ רַבָּנָן „אוֹ-בֵן יָגַח אוֹ-בֵת יָגַח“

It teaches us that if a boy or girl is gored, the owner is guilty as for an adult.

Rambam teaches us that Shemos 21:29, equates a female with a male for all damages. Damages must be paid for injuries to either one. Why must the Torah teach both damage to adults and damage to children (Shemos 21:31)? Would not one category be sufficient?

- An animal that hurts children could do so with little violence and movement of the huge animal. An unwitting child who is not careful might permit injury.

Notwithstanding these contributing details, the owner is liable.

- An adult should avoid closeness to others with a large animal. An adult could fend for themselves and protect themselves. The Torah teaches even if injury occurs, notwithstanding these contributing details, the owner is liable.

Therefore, the Torah must teach both the law regarding adults and the law regarding children.

שׁוֹר שֶׁהָיָה מִתְחַכֵּךְ בְּכוֹתָל וְנָפַל עַל הָאָדָם

An is ox rubbing itself against a wall and the wall collapsed on a person.

Discusses the law regarding an ox that killed unintentionally:

1. An ox rubbing itself against a wall. The wall collapsed on a man who was killed.
2. An ox intended to kill an animal, but instead killed a man.
3. An ox intended to kill a Canaanite, but instead killed a Jew.
4. An ox intended to kill non-viable babies, but instead killed a viable one.

In all of these examples the ox is exempt.

The killing was either-

1. Not intentional
- 2,3,4. Or the animal intended to kill, but not that particular victim.

## פְּטוֹר מִמִּיתָה וְחַיִּיב בְּכוֹפֶר

Exempt from death but owner has to pay ‘kofer’ – ‘atonement’.

In a case where an ox habitually killed people by jumping into a pit to get vegetation, the ox is a muad and should be liable to death and kofer.

- In our case the ox rubbed the wall for its own gratification.
- How can you know that the ox rubbed for its own gratification and not to kill?

Because even after the wall fell and killed the man, the ox still rubbed (44a3 line 32).

Gemara debates this and give examples of an ox that killed and the following (B5) was the judgement

1. Death and kofer.
2. No death and kofer.
3. Death and no kofer.
4. No death and no kofer.

- Disturbing cases of unintended killing.

A person throws a stone into a crowd with intent to kill but without taking aim. It kills a person. We do not punish him with capital punishment if, in the crowd there is:

- 1 Jew and 9 Canaanites
- 50% Jews and 50% Canaanites
- 9 Jews and 1 Canaanite

The person is still not liable because there is doubt as to whether his act would kill a Jew and “in capital cases the law is lenient”, ‘sofek nefashose lehakail’.

## מַאי טַעְמָא דְרַבִּי יְהוּדָה

What is R Yehudah's reason

for holding the owner liable for unintentional damage done by his ox?

A mother was walking with her son and the boy picked up a stone. He threw it in a random manner and broke a store window. The shopkeeper took the mother to the Rabbi, who said she was obligated to pay. When the father heard this he argued that the child is a minor and in Bava Kamma 44, it teaches that the child is not responsible, neither he nor his parents have to pay for damage done by a minor. They took the case to the Chazon Ish who said the parents indeed must pay.

The parents need not pay for damage done by a minor who is unsupervised, but here, he was in the company of his mother, who should have kept a careful watch over him, so that he would not cause any damage. Since she failed to do so, she is responsible to pay for the damage the child caused.

דָּאָמַר קָרָא „וְאָרַב לוֹ וְקָם עָלָיו”

If there will be a man who hates his fellow; ambushes him, rises up against him, hits him and he dies; and he flees to one of these cities. He is to be put to death (Deut 19:11).

We learn from the phrase “ambushes him” (which would otherwise be superfluous), that the victim must be the one he intended to kill, in order for the murderer to be liable for execution.

If a person threw a rock into a group of people, where his hated one was located and he killed someone else, he is not liable for the death penalty (Bava Kamma 44b2 line 27).

Devarim 21:4

Sotah 46 a

Nazir 11b – 12

Daf Digest

וְכָל קְבוּעַ בְּמַחֲצָה עַל מַחֲצָה דְּמִי

Any doubt that is related to something in its place, is treated as though the probability is fifty-fifty.

The Eglah Arufah ceremony (Deut 21:4) site may never be sown (Sotah 46a). Since we don't know exactly where that is, we should never plant anywhere in Eretz Yisroel. Could we use the principle of 'Rov', "majority"? The majority of the land was not used for Eglah Arufah. No, the principle of "Kavuah ('in place')", '50/50', would displace the principle of Rov. However, the principle of Kavuah only applies if the prohibited item is recognizable.

Another example: An agent betrothed a woman for his master and died on the way back (Nazir 11b,12a), but he did not identify the woman. The master is prohibited from marrying any woman, since she might be a relative of the one who was betrothed on his behalf. But, he can use the principle of Rov, since the majority of women are not relatives of his betrothed. Perhaps, the principle of Kavuah makes it 50/50? No, since the betrothed is not recognizable, the principle of Kavuah does not apply.



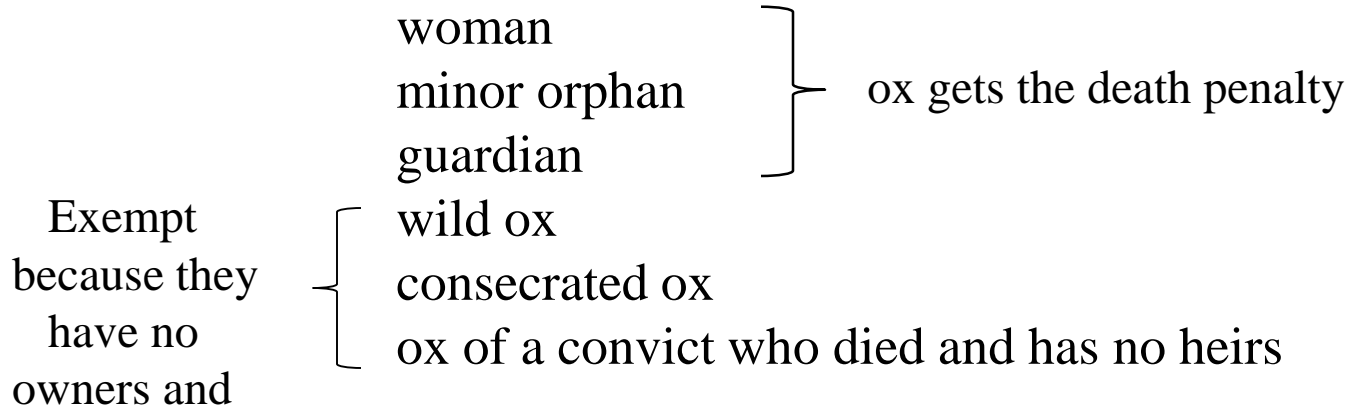
# שור האשה

## The ox of a woman.

These examples allude to the principle of ‘Kavuah’, “50/50 (which leaves doubt) ”. We learn (from Ex 21:28-32) that there are 3 repetitions of the word ox.

This includes 6 situations.

It teaches us of the 6 persons who are responsible to watch their ox and if the ox kills, the animal gets the death penalty.



the scripture says (Ex 21:29), “and his owner has been warned.”

עַד שֶׁתֵּהָא מִיתָהּ וְהָעֶמְדָּה בְּדִין שְׁוִין כְּאַחֵד

Unless the death of the victim and the standing of the ox are alike in judgment.

Ox has to be owned:

- at the time of goring (killing).
- at the time of standing before the court.
- at the time of sentencing.

It must have the same owner and be privately owned:

- |                       |   |                                     |
|-----------------------|---|-------------------------------------|
| If consecrated        | } | The ox has an exemption from death. |
| If declared ownerless |   |                                     |
| If sold by the owner  |   | - The exemption does not apply.     |

# שׁוֹר שֶׁהוּא יוֹצֵא לִיִּסְקָל וְהַקְדִּישׁוּ בְּעָלָיו

An ox was leaving the courthouse to be stoned and it's owner consecrated it.

- An ox on the way to be stoned and it is not consecrated:
  - His owner consecrates it - meat is not consecrated.
  - If he slaughtered it - meat is prohibited.
  - If he consecrated it before the verdict - it is consecrated.
  - If he slaughtered it before the verdict - it's meat is permitted.
- If the animal is entrusted to a 'shomer chinam' - "a watcher for free", or is in the control of :
  - a borrower?
  - a paid watcher?
  - a renter?

He is obligated to take the place of the owner and pay for a muad full damages and for a tam, ½ damages. Even a shomer chinam must pay because he did not watch the ox well enough.

- Just as a person must be present, so the ox must be present in court.

קָשְׁרוּ בְּעֲלִיו בְּמוֹסְרָה

It's owner tied (the ox) with a rein.

Even if the person takes measures to prevent his animal from doing damage, but it none-the-less causes damage, he is liable.

Measures he took:

Used a rein - or a locked a gate- That is ok if the animal is a tam, but not if the animal is a muad. You can't prevent a muad, other than with a knife, i.e., by slaughtering it.

You need to use superior measures in order to not be liable in the case of a muad, than in the case of a tam.

Gemara - Brings a case where an ox is a tam and a muad. How is this possible?

Tam with his left horn and muad with his right.

Note: Deut 22:8

## Daf Digest

מוֹעֵד לְקָרַן יְמִין אֵינוֹ מוֹעֵד לְקָרַן שְׂמָאל

An ox that gores with his right horn three times is a ‘muad’ (forewarned) with the right horn, but not a muad with his left horn.

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If an ox gores once or twice, it is a tam and the owner pays 50% of the damage.

If an ox gores three times or more, it is a muad and the owner pays 100%, the full cost of the damage.

Is there any situation you can conceive of, where the owner would pay  $\frac{3}{4}$  or 75% of the damages??

- The ox gored 3 times with the right horn and is a muad for that horn.

He then gored a 4<sup>th</sup> time. This time with both horns; he pays 100% of  $\frac{1}{2}$  the damage done by the muad (right) horn and pays 50% of  $\frac{1}{2}$  the damage done by the tam (left) horn.

This equals 75% of the damages.

Deut 22:8

21 Bava Kamma 46a1 line 11

B15

„וְלֹא-תָשִׂים דָּמִים בְּבֵיתְךָ“

Don't put blood in your house.

- This teaches us not to have any hazard in our homes.
  - Don't raise a vicious dog
  - Don't use a rickety ladder, etc.

## Daf Digest

וְלֹא-תָשִׂים דָּמִים בְּבֵיתְךָ

You shall not place blood in your house.

What is the reasoning behind R Eliezer's position that the only means of guarding a muad animal is to kill it?

Deut 22:8, "You shall not place blood in your house".

This posuk teaches us that the Torah forbids maintaining a hazard. If he did maintain a muad ox, but guarded it in a superior fashion, I might think he is not liable. If it gores none-the-less, R Eliezer teaches, he would still be liable, because he should not have maintained it at all, but should have removed it. For example, he should have slaughtered it.

## שׁוֹר שָׁנָח אֶת הַפָּרָה

An ox gores a pregnant cow.

This Mishnah discusses cases where the degree of the ‘damager’s’ liability is not certain.

1. Ox gored a cow and fetus and their death was unrelated to the goring.
2. Ox gored a cow who gave birth and the death of the fetus is unrelated to the goring.
3. Ox gored a cow, who miscarries and the fetus died.

Owner of the ox must pay  $\frac{1}{2}$  damages for cow, or  $\frac{1}{4}$  damages for damage to its offspring.

Sumchos says - Money that is in doubt, gets divided.

Gemara - No, he who wishes to extract money, must bring proof.

The Gemara discusses the purchase of a violent animal. The buyer claims he wanted it for plowing, which is a highly valuable task and the owner states, “I thought you wanted it in order to slaughter it, in which case, its violent nature would have no bearing and its value is low”. How can we tell who is telling the court his true intentions? The price paid may tell us the truth.



Daf Digest Review

זֶה כָּלֵל גְּדוֹל בְּדִין

This is a major principle in the law.

Why do chachamim use this phrase?

It is needed to teach the extent to which this principle applies.

A party may be “certain” and the other “not certain”.

The person trying to extract payment must bring proof, witnesses, documents, etc.

Daf Digest

## הַמוֹצִיא מִחֲבִירוֹ עָלָיו הָרָאָיָה

The one seeking to extract payment from his fellow. bears the burden of proof.

A person bought a set of dishes after being told they were an expensive import. He learned they were locally made, had been used by a wealthy, non-Jew, were not kosher and were of a material that could never be koshered. The buyer said, “They were sold under false pretenses, I want my money back.” The seller said, “I told you they were imported to entice you to buy, but the price is the same as for local dishes, so you did not pay more. True, they are not kosher, but we never spoke about whether or not they were kosher when you bought them. True, you cannot sell them to a Jew, but all you need do is sell them to a non-Jew. So I say the sale is good”. The rabbi said – “The buyer must prove that he would not have bought them if he knew these details. The burden is on him, who wishes to extract money. Otherwise, the sale, even under these false pretenses is valid.”

וְנִיחָיו אִי גִבְרָא דְזָבִין לְרִדְיָא אִי גִבְרָא דְזָבִין לְנַבְסָתָא

Let us see if he is a man, who usually purchases oxen for plowing or for slaughtering.

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- The buyer says, “I bought this animal for plowing, but he is wild and not appropriate for my purposes, the sale should be cancelled”. The seller says, “I sold it to be slaughtered and not for plowing, the sale should be honored”.

Questions: 1. Did the seller know that this buyer buys only for plowing, buys only for slaughtering, or buys for both purposes at times?  
2. Did the buyer buy for a low price, suggesting he bought for slaughtering, or a high price suggesting he bought for plowing?

If the seller knew that this buyer only buys for plowing, even if the price is low, the sale would not be valid, since the wild ox was not appropriate for plowing and the seller knew that. However, if these facts are not clear, and/or not known to the seller, the buyer must bring proof to extract money from the seller.

מַנִּיין לְהַמוּצִיא מִחֲבִירוֹ עָלָיו הָרָאִיָּה

Where do we learn the rule: ‘He who wishes to take something that another person has, must bring the proper evidence for that claim’.

What is the source for this principle? The need to bring proof?

- It comes from the phrase (Ex 24:14) - “Whoever has a grievance should approach them”.

Yigash - Should approach them.

Yagish - Should present to them, i.e., show them proof (Ex 24:14).

דְּכָאִיב לִיָּה בְּאִיבָא אָזִיל לְבִי אַסִּינָא

The one who is in pain should go to the doctor.

An employee has the obligation to pursue his wages.

Case: An employee asked the employer for his daily pay. The employer said he does not have it now. Later, the employer got the money. He is obligated to inform the laborer that he has the money. Even if the employee does not come back to pick up the money, the employer has not violated the prohibition against delaying payment. The employer is not obligated to pursue the employee, rather the employee has the obligation (now that he knows the funds are accessible) to go and get his money.

## תַּרְנָגוּלַת שֶׁהִזִּיקָה אֵינוּ גוֹבֶה מִבִּיצָתָהּ

A chicken that damages, we may not collect from her eggs.

- If an animal is a tam, we pay for the damage it creates, up to  $\frac{1}{2}$  it's value.

How do we calculate its value?

1. If it's a pregnant cow, do we count it's fetus?
  2. If it's a laying chicken, do we count it's eggs?
  3. If it's a bird with feathers, do we count it's feathers?
1. Yes – The weight of the cow aids in causing damage and the fetus is considered part of the cow. The value is the cow and fetus.
  2. No - The egg does not contribute to the pecking-type damage.
  3. No- The same regarding feathers on a bird. However, we may sell the eggs or feathers after the time of damage, to raise money to pay the assessed penalty. The egg is considered a mere secretion of the chicken and not part of it's body.

הַקָּדֵר שֶׁהֵכֵנִיס קִדְרוֹתָיו לַחֲצֵר בְּעַל הַבַּיִת שֶׁלֹּא בִּרְשׁוֹת

A potter brought pots into a courtyard without permission.

If the pots become broken, the potter is liable.

If any injury occurs, the potter is liable.

A potter brought pots into a courtyard with permission. The property owner is liable if they become broken, or cause damage.

If one brought produce into the courtyard or his ox into the courtyard :

- The home owner is not liable, unless he not only grants permission, but he explicitly accepts, upon himself, the obligation to guard it.
- If the broken pots damage the ox of the home owner, the potter who brought them in without permission, is liable.

## וְאִם הֵכֵיִס בְּרֶשֶׁת

If he brought the animal into the yard with the owner's permission, the property owner is liable.

If Reuven gives permission to Shimon to bring his animals into his yard and then his animals injure Shimon's. Reuven is liable.

Rema - Automatically.

Shulchan Aruch - Only if he explicitly accepts that responsibility.

Is a teacher liable if one student hurts another? The teacher is responsible.

Rema - Automatically - implied acceptance.

Shulchan Aruch - Only if the teacher explicitly accepted the responsibility.

There isn't a clear correlation between the two cases, because some commentators argue that you cannot be a watchman over another free person. Since the matter is subject to debate, the injured child or his family will not be able to collect damages from the teacher.



## הַנּוֹתֵן סֵם הַמּוֹת לִפְנֵי בֶּהֱמַת חֲבִירוֹ

If a person places poison before his friend's animal.

-Assisted suicide

-Euthanasia

A person who harms another indirectly, is culpable in the judgment of heaven, even if he is free of liability in human courts.

Case: A person placed poison before the animal of a neighbor. The animal ate it and died; there is no liability. Why? Because the animal does not usually eat poison and is not expected to do so. But, if he mixed the poison with the animal's food, then the person is liable.

Even more Divine retribution would be warranted, if a person puts the life of a human being at risk by providing the means by which a person could kill themselves. That is tantamount to murder. Assisted suicide is tantamount to murder.

הָהִיא אֵיתְתָּא דְּעָלְתָּה לְמִיפָּא בְּהוּא בֵּיתָא

A woman enters the house of a neighbor, with permission, in order to bake bread in his ovens.

The neighbor's goat eats the dough, becomes sick and dies. The woman must pay for the death of the goat.

The outcome is different if she only grinds wheat.

Why? The baking of bread is done over a hot oven and she must roll up her sleeves, which requires her host to leave the area. Therefore, only she is responsible for his possessions and must guard them from harm.

The grinding of wheat does not require him to leave, therefore, he is still responsible for his own goat.

## וְאָדָם שֶׁהָיָה מֵתָכֵיִן לַחֲבִירוֹ

A person, who meant to hit his fellow man, but missed and instead, hit a pregnant woman, who lost her fetus, must pay for the lost pregnancy.

The Torah uses the expression ‘onush’, “accident” twice. First, in Exodus 21:22, regarding a lost pregnancy due to injuring the mother, and in Deut 22:19, regarding a new husband who falsely accuses his wife of infidelity during their engagement.

The court shall punish him and penalize him 100 silver coins.

What is the common denominator for the Torah to use the word “accident” in both cases?

The two cases warrant a double payment, plus lashes. In ‘Motsi Shaim Rah’, “false accusation”, the Torah explicitly calls for the two payments. In the other case, the person meant to hit/kill the other person. Since he missed, he is not liable for the death penalty, but does get punished by Heaven, since that is the harshest penalty.

Also, we usually do not punish with both a corporal and monetary penalty. We learn from the common word, that this deed also warrants two punishments, and he must pay for the death of the fetus.

## וְאָדָם שֶׁהָיָה מֵתָכֵּיִן לְחֵבִירוֹ

A man intended to (hit) his fellow.

Ex 21:22- Discusses where a man hit a pregnant woman and she miscarries. He must pay the husband the value of the offspring.

- An ox intended to gore a fellow ox. It missed and it hit a woman, causing a miscarriage. The ox's owner is exempt from paying. Because payment is only for intentional damage.
- A person intends to hit a person and hits a pregnant woman instead, he must pay the value of the offspring to her husband. If her husband dies, he pays his heirs.

How to decide the amount to pay? Her worth (as a maid servant) before and after giving birth. The difference is her offspring's value, which the damager pays. We do not calculate the value of the mother and the value of the born child? And if she has other damages not related to pregnancy, the damager must pay for those, also.

## Daf Digest

## שׁוֹר שָׁנָּה אֶת הַשְּׁפָחָה

If an ox gored a Canaanite maid servant

and she miscarried, he would have to pay the value of the offspring, because that is property of her husband.

Just as if an ox would gore a donkey, the owner of the ox would have to pay, so also, if the ox gores a non -Israelite woman, it would be liable for money damages. But, if the ox intended to gore its fellow ox and instead gored an Israelite, pregnant, woman; the owner of the ox is exempt, because there was no intent on the part of the ox to hurt the woman – it was an “accident” an ‘onesh.’

## החופר בור ברשות היחיד ופתחו לרשות הרבים

A person digs a pit and it opens from:

1. His private domain to a public domain.
2. It opens from a public domain to his private domain.
3. He digs it in the private domain and it opens in another private domain.

In each case, he is liable even if he renounces ownership of the area around the opening (Ex 21:33-34).

- If a person uncovers a pit dug by another - he is liable.
- If a person digs a pit, he is liable.
- Of course, if he is liable even by uncovering, he will be liable if he digs it himself, so what are we taught by these sentences?
- That it does not depend on who owns the land. The liability depends on who created the dangerous obstacle, not upon owning the land on which the obstacle is located.

## Daf Digest

כָּל הָאוֹמֵר הַקָּדוֹשׁ בָּרוּךְ הוּא נִתְרַן הוּא יִנָּתֵר וְ חַיּוֹ

Anyone who says that God disregards sin - his life shall be disregarded.

A student asked, “We learn that God does not overlook sin. Do we not say that HaShem is full of mercy and compassion? He could and should overlook and forgive every sin!”

The Rabbi answered - “If I were a rich man and many poor people come to me for money – if I gave each one all that they needed, I would soon be depleted and not be able to give anything to the next one. I must limit how much I give each person who needs, in order to have some for future needy persons. Also, I remove their incentive to work and earn.

If God forgave all sins without the person repenting, soon people could sin without concern, knowing they would automatically be forgiven. God withholds automatic and complete forgiveness and thereby, makes the world a better place in which to live”.

## החופר בור ברשות הרבים

If one digs a pit in a public domain.

There are five types of pit which could be dug in a public place:

Bor - pit-circular.

Siach - ditch - long and narrow.

Mearah - vault – square and covered with a roof, but has an opening.

Charitzin - squared-off pit – square but uncovered.

Naatzin - wedge-like pit- wide on top and narrow on bottom. For example,  
for storage of water.

- Recall that only if it is 10 tefachim deep, would the pit create a danger to the life of an animal. If the animal died by falling into a depth of less than 10 Tefachim, the digger of the excavation is not liable. However, if the animal was merely injured, he is liable to pay for the damage. A discussion ensues as to what caused the injury, the height of the fall or the foul air in the pit?



# מִסְקֵל מִרְשׁוֹתָיו לְרֶשֶׁת הָרְבִּים

A person was clearing stones from his property onto a public domain.

One should not remove stones from his private property and dump them in a private street.

A man who was doing this, was berated by his neighbor, “Why do you remove stones from property that does not belong to you and put them on property that does belong to you?” This made no sense to the one moving the stones.

Later, he fell on hard times and had to sell his field, and as he walked the street, he tripped on the very stones he had thrown there.

Now he understood, “I had been throwing stones from property, which would not always be mine, to a street which I share with everyone else and therefore, would always be mine.”

בֵּית הַסְּקִילָה הָיָה גְבוּהָ שְׁתֵּי קוֹמוֹת

The stoning area was elevated two times the height of a man.

The guilty party was pushed off and he dies from the fall, which is 3 times his height.

This describes the procedure for executing a person condemned to death by stoning.

## Daf Digest

אֵלָא הֵיִינוּ טַעֲמָא דְרַב נַחֲמָן

This is the reasoning of R Nachman.

- A fall of 10 tefachim can cause death.
- Rav Nachman ruled that an animal, which fell into a depth of 6 tefachim is a 'tereifah' (destined to die,) due to the injuries incurred by such a fall ( 50b).
- How do we reconcile the two opinions? Does Rav Nachman disagree with our Gemara ? Is it 6 or 10 tefachim that is the critical height?

No. He suggests that we must add the 4 tefachim of the height of the legs of the animal. If we do that, the body of the animal actually does fall the 10 tefachim into a ditch 6 tefachim deep.

We do not make the same calculations regarding humans, since there is no space between the legs of a human and the gravity of it's body.

# בּוֹר שֶׁל שְׁנֵי שׁוֹתְפִין

A pit that belongs to two partners.

How can a pit belong to two partners?

Several scenarios:

1. Both authorized an agent to dig it for them. No. There can be no agency to commit a transgression.
2. One dug the first 5 tefachim and then the other dug 5 tefachim deeper.- No. The work of the first is superseded by the work of the second.
3. One digs 9 tefachim and the second digs the 10<sup>th</sup> tefach. No. The work of the first is superseded by the second.
4. Both dug simultaneously - and walked away simultaneously.
  - “If a man shall uncover a pit, or if a man shall dig a pit”, ( Exodus 21:33).
  - Rabbanan- The first time the Gemara states the words, “a man”,- it means that it excludes, “if an ox dug a pit.”

The second time the Gemara states the words, “a man”, – it teaches that if two men dig a pit, only one is liable.

Rabbi - No, since this one is written, that one is also written (51A 4 line B18). The first “man” is stated to exclude “if an ox digs”. The second ‘man’ is written for purposes of stylistic consistency, not for any particular exposition.

## Daf Digest

בּוֹר שֶׁל שְׁנֵי שׁוֹתְפִין

The pit of two partners.

- A person took a book off the library shelf. When he was finished using it, another person asked if he could use it. Who is responsible to return the book to the library shelf?
- One partner uncovered their pit, used it and left it uncovered. The second partner used it and left it uncovered. Who is responsible for any damage that occurs? Our Gemara says the second one.

The last one using the pit or the book must replace the cover of the pit, or the book on the shelf.

הָנִיחַ אָבֵן עַל פִּי הַבּוֹר וְהִשְׁלִימָהּ לַעֲשָׂרָה

Here a person built a wall 1 tefach high at the edge of a 9 tefach pit,

Thereby, completing it to a depth of 10 tefachim. If someone is injured, is he liable?  
Is it the same as digging the pit deeper??

Why should adding a tefach on top, be different from adding a tefach to the bottom?  
It is not. All agree the depth is now 10 tefachim and he is liable (51b3 line 43 A33).

When does the first partner become exempt?

- When he leaves the other one using the pit.
- When he hands over the cover of the pit.

## Daf Digest

וְכִיּוֹן שֶׁמָסַר לוֹ מִפֶּתַח בְּמֵאן דְּאָמַר לִיה לֶךְ חֲזַק וּקְנֵי דְמִי

And once he handed over the keys, it is as if said, “Go, make a chazakah and acquire the land”.

---

Does handing the keys over to the buyer effect the transfer of a house or land?

Pesachim 4a tells us that if the owner hands keys over to the tenant before night fall on the 14<sup>th</sup>, the tenant has the obligation to perform ‘bedikas chometz’, suggesting that the keys convey the transfer to the tenant . Not so. In Pesachim, it does not imply that ownership has transferred, only that the keys, in the hands of the tenant, indicate that only he has access. Therefore, he must do the bedika. The transfer of keys merely gives the approval of the owner, to the buyer, to go and make a chazakah by kinyon. Payment – document – performing a proprietary act - are the acts that convey ownership.

Two roommates had a falling out, so one gave the other the keys and said, “The apartment is yours.” Next month, the landlord called the one who left asking for ½ the rent. Handing over the keys does not constitute a kinyon of any sort. Therefore, the property rights were never transferred and he owes his share of the rent.

בְּסֵהוּ הָרֵאשׁוֹן וּבֵא הַשְּׁנִי וּמִצָּאוֹ מְגוּלָּה

If one covered a pit after he used it and a second person finds it open and does not cover it?

The first is exempt, the second is liable.

If a person covered a pit properly, but an animal fell in because of the noise of digging and it fell forward - he is liable. If the animal fell in because of the noise of digging, but it fell backward – he is exempt.

## Gemara

- How much time does the first one remain exempt? Until he could have been made aware of the pit being open.
- What is the rule if the cover was strong enough to withstand oxen, but not camels, and camels came, damaged the cover, and later, oxen fell in?

The rule is: If it is a place where camels come frequently, he is negligent not to realize that this could happen.



## Daf Digest

בְּסֵהוּ כְּסוּי שְׂיָכוּל לַעֲמוּד לִפְנֵי שְׂוָרִים  
וְאֵין יָכוֹל לַעֲמוּד בְּפְנֵי גְּמָלִים

A lid was strong enough to hold oxen, but the lid over the pit, was not strong enough to support camels.

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How strong does the lid over a pit need to be?

What is the law if an ox fell in, or if a camel fell in ?

Was it expected that camels would be in that city, or that termites might be present?

The owner must anticipate all contingencies, i.e:

- That camels might come and weaken the lid.

- That worms might come and weaken the lid.,

The owner of the pit, in a public domain, is responsible. He has created a hazard and he is responsible for the damages it causes.

## Daf Digest

הִיבָא דְלֹא אֶפְשָׁר לְאַשְׁתְּלוּמֵי מֵהָאִי מִשְׁתַּלֵּם מֵהָאִי

If it is not possible to collect from one, he can collect from the other.

Shimon made noise which frightened Levi's ox into running, and it fell into Reuven's pit. Shimon is an indirect cause and therefore, need not pay.

Levi, the owner of the ox, can collect the full amount from Reuven.

Two people caused damage and each is liable for ½. If one of the parties ran away, or has no funds, the injured party can collect the total amount from the other remaining person (joint and several responsibility).

A robber was caught, but his accomplice took off with the goods. He claims he got nothing from the robbery and he would gladly give the goods back if he had them. He says, "The one who has them in his possession is halachically liable to return them, or pay for them – not me". Bais Din says, "Two persons, who join to steal, are viewed as partners and each is responsible for the entire amount".

## Daf Digest

שׁוֹר שָׁדַחַף אֶת חֲבִירוֹ

An ox pushed another ox into a pit. What is the law?

Options to be considered:

1. The owner of the 'pushing' ox pays all. He caused the injury.
2. The 'pushing' ox and owner of the pit each pay  $\frac{1}{2}$ .
3. The owner of the pit pays all. He provided the dangerous condition – the obstacle.
4. If the ox is 'alert', he would be careful. He guards himself and stays clear of pits.

We can rely on that.

5. If the ox is incompetent, or it is night time – a normal ox could fall in. Then, the owner of the pit is liable. He created the danger into which an animal might get pushed.

Rashi rules-It is highly unlikely that one animal would push another into a pit, especially if the victim is an alert animal. The person who dug the pit is not considered negligent, if his conduct does not create a clear and immediate danger. Therefore, neither the owner of the 'pushing' ox nor the owner of the pit is liable.

וְנֶפֶל-שָׁמָּה שׁוֹר אֹךְ חֲמֹר

“If one dug a pit and an ox or a donkey fell into it” (Exodus 21:33).

A purchaser of scrap metal had a piece fall off his truck and it punctured the tire of a passing auto. The owner of the auto asked the scrap metal dealer to pay for his tire. The scrap dealer refused.

The Rabbi ruled that a person is not obligated to pay for vessels (‘metaltalin’) damaged by his dangerous entity (the jagged piece of steel is likened to a pit).

The explanation is that:

The Torah specifies ‘ox or donkey’ and the Rabbis state that since the Torah specifies these items, it excludes other items, such as persons and utensils. One is liable if an animal falls into his pit and dies, but not if a person falls and dies, or if utensils fall in and break. A broken utensil is considered a dead utensil.

## Daf Digest

## שְׁבִירָתוֹ זֶה הֵיא מִיתָתוֹ

The death of utensils

Breaking a utensil is its death.

Payment for damage to utensils is not included in the category of ‘pit’. This is learned from the word “donkey” in the Torah (Ex 21:33). The paragraph, in regard to pit, concludes with the words, “The one that died shall be his”, i.e., if the animal dies, the owner of the pit owns the carcass and must pay its full value (which can be off-set, in part, by the value of its hide, etc). This phrase tells us that damages from the pit are only due if it is an item which might suffer death in a pit. This should automatically exclude utensils. Why do we need to learn this same lesson from the reference to ‘donkey’?

Because the damage to a utensil is tantamount to its “death”. There is a monetary loss, whether it is damaged, or broken beyond repair.

אַחַד שׁוֹר וְאַחַד כָּל בְּהֵמָה

The same law that applies to an ox, applies to any domestic animal.

- This teaches that the previous Mishnayos discussing a pit and injury to an ox, or a donkey falling in, are not restricted, but apply to all animals and fowl.
- But they do exclude people and utensils.

There are eight laws that the Torah relates to specific animals, but that actually apply to all creatures.

לכלאים

If it refers to the 'kilayim' (diverse species),

cross-breeding or plowing.

Is it permitted to place different species of fish in the same body of water, so that they might cross-breed? Does this violate the prohibition against cross-breeding?

The Biblical prohibition against cross-breeding does not include fish, but includes domesticated and undomesticated animals, birds and undomesticated animals of the sea, but it does not include fish (Rambam Kilayim 51).

However, putting them together is frowned upon, since it manipulates nature. However, since fish are free to interact with each other in nature, some cross-breeding might occur naturally, so there is no stringent prohibition.

לכלאים

Mating or plowing with diverse species.

There is a ban on working an ox and a donkey in tandem.

Reasons given:

- If the donkey is weaker, then the ox and will suffer trying to keep up.
- An ox chews it's cud and the non-cud-chewing donkey may think the ox is enjoying new food, while it the ox goes hungry .

Learn from this to never couple two people of different natures.

Lev 19:19 - “You shall not mate your animal for work.”

Deut 22:10 - “An ox and donkey in tandem”.



## לְהַשְׁבִּית אֲבִידָה

To return what is lost.

Each person should find his own “lost sheep”. For example, when he fails in proper observance and in his spiritual goals. Also, each person should help, and be helped, by the entire community, to find what he has lost.

We are all sheep wandering in the wilderness – and we must not see our ‘fellow sheep or ox’ wander and ignore it, but we must “restore the lost item to your brother.”

## הַרְוָאָה טִי"ת בְּחֻלּוֹמוֹ

One who sees the letter ‘tes’ in his dreams, it is a good sign for him.

Sanhedrin 30a - Dreams have no effect at all, either as a good or bad sign.

Dreams follow the interpretation given to them. The person who interprets a dream can influence the effect the dream has. “As he interpreted it for them, so it was” (Gen 40:22). The analysis came first. The curse or blessing a person receives, also influences how that person will react. Therefore, it may come true.

The letter ‘tes’ was not written in the first ill-fated 10 commandments, since it represents ‘tov’, ‘good’ and God did not want ‘good’ to be destroyed. Also, ‘tes’ is an eternal number. No matter how many times it is multiplied, its product numbers add up to the single digit 9 ex:  $9 \times 123 = 1107 = 9$  and  $9 \times 365 = 3375 = 18 = 9$ .

## הַרְוָאָה טִי"ת בְּחִלּוּמוֹ

If one saw the letter ‘tes’ in his dream,

the custom is to fast, but not if it is on Shabbos, unless he saw the same dream three times or he saw:

1. A Sefer Torah burning on Yom Kippur at Neilah time.
2. The beam of his house falling.
3. His teeth falling.

He may fast on Shabbos, if:

1. Fasting on Shabbos will give him pleasure.
2. He is distressed about his dream.
3. Fasting puts his mind at ease.

In such a case, he is permitted to fast, even on Shabbos.

## הַמְנִהִיג בְּעִיזָא וְשִׁבּוּטָא

One who leads his wagon by means of a goat and a shibuta (a large fish) together.

Torah law prohibits the use of:

1. An ox and a donkey together.
2. Any two animals together, one of which is a kosher species and the other which is not kosher.

The Gemara asks: Can a wagon be hitched at the seashore to a goat walking along the seashore and a large fish swimming in the water along side? Perhaps we could say that since they each function in a different medium, land and water, they can't be considered as working together ? Not so, their mutual efforts result in moving the wagon, therefore, they violate the law of kilayim.

One who brought a sheep into the fold.

This discusses the degree which one must supervise his הַכּוֹנֵס צֶאֱן לְדִירָּ  
from damaging someone else's property.

1. If he locked the gate properly, he is not liable. If improperly locked, he is liable.
2. Robbers breached the fold during the day, he is liable.
3. The fold was breached at night, the sheep escaped and did damage, he is not liable.
4. If he gave the sheep to a shepherd, he is not liable. But, if he gave them over to a deaf mute, deranged person, or a minor; or left them in the sun he is liable.

If a sheep fell into a garden by accident and ate, the owner pays for the benefit he received.

If the sheep went into a garden the 'normal way', owner pays for all damages.

“Properly” is defined as a locked gate that can stand against a normal wind (Bava Kamma 55b2 A9) or he used a rein appropriate for that animal.

Pit, fire, tooth and foot – ‘bor, esh, shein, v’reigel’ - A person must take only basic precautions and then he would be exempt from liability.

אַרְבָּעָה דְּבָרִים הָעוֹשֶׂה אוֹתָן פֶּטוּר מִדִּינֵי אָדָם  
וְחַיִּיב בְּדִינֵי שָׁמַיִם

Four cases, in which a person is not liable under the law of man, but is liable under the laws of heaven.

1. Breaches a rickety wall before his friend's animal. If it was a sturdy wall he would be liable for the wall.
2. Bends his friends wheat toward fire in an unusual wind. If it was a normal wind, he would be liable under the law of man.
3. Hires false witnesses to testify for his friend's case. If he hired them for his own case, he must pay back the ill-gotten funds.
4. One who knows testimony beneficial to his fellow, but does not testify on his behalf.

## Daf Digest

## הכּוּפֵּף קִמְתּוֹ שֶׁל חֲבִירוֹ

One who bends the grain of his friend toward a fire,  
causing water to overflow to extinguish a flame.

Pouring boiling water over a flame. You expect the water to overflow and put out the fire for you.

This is an indirect act and is therefore, permitted on Yom Tov.

Fire damage is considered indirect damage.

Shooting an arrow and causing damage is an example of a direct action.

Using overflow of boiling water may be permitted, but only if you needed the boiling water in the first place and the overflow resulted as a consequence,.

However, it is not permitted if you boiled the water primarily to have it extinguish the flame.

## סימן: העושה בסם ושליח) חבירו נשבר

One who does 'work'; with 'poison'; and one who is 'sent'; his 'fellow'; 'broke'.

The word 'work' refers to working with 'chats' water for the red cow ceremony.

A person who places 'poison' in front of his friend's animal is not liable in the court of man.

However, he, who places 'poison' in the food of his friend's animal, is liable in the court of man.

A person who 'sends' fire in the hands of an incompetent person is not liable in the court of man, but he is liable under the law of Heaven.

A person who frightens his 'friend' and injures him, is not liable in the courts of man.

A person 'broke' his pitcher in a public domain and did not remove the dangerous pieces he is guiltless in the laws of man, but liable under the laws of Heaven.

For example: Robbers 'broke' into a sheep pen at night. the owner is not liable for any damage the sheep do while they are loose.



## Daf Digest

הַמִּבְעִית אֶת חֲבִירוֹ

If one frightened his fellow.

Two people were rivals and hated each other and tried to inconvenience each other.

One person frightened the one other using a toy cap gun, intending to scare him and the man died of a heart attack.

There was no weapon. It was not loaded, but it did make a loud noise. Does he have any liability? After all, he never touched his rival.

We learn (in Bava Kamma 56) that a person who frightens another is responsible for the damage only in the Heavenly courts.

## הוציאוהו לסטים לסטים חייבין

If robbers took animals out, they are liable for any damage the sheep subsequently do.

If the Mishnah means to tell us that a ‘shomer’, a “watchman”, takes the place of the owner, we know that from elsewhere and it would be redundant.

Rather the Mishnah teaches us, that if one ‘shomer’, “watchman”, has sheep stolen from him, the robbers assume full responsibility.

If one custodian transfers a deposit to another custodian, is the first exempt?

No, he is liable (Bava Kamma 56b1, line B28).

## Daf Digest

אָמַר כְּשׁוֹמֵר שְׂכָר דָּמִי

R Yosef says: “He is treated as a paid custodian.”

A person who finds a lost article, guards it and protects it, is exempt from performing other mitzvahs until he succeeds in returning it. He is like a paid watchman. If someone asks him for tzedaka, he is exempt from giving tzedaka and that is his payment – the money he saved!!!!

Tosphos says - A person involved in a mitzvah is exempt from other mitzvahs only if, at that moment he is actually attending to the needs of the lost object, i.e., putting it away in a secure place or feeding the lost animal. But, if he could do another mitzvah, without interfering with the first, he is not exempt from doing the second mitzvah.

Meiri says - A person is exempt from performing other mitzvahs, as long as the object is in his possession. This is because, if he involves himself in other mitzvahs, the object might get stolen. After he securely hides it, he is obligated in all mitzvahs.

## Daf Digest

נִגְנָבָה אוֹ אֶבְדָּה חַיִּיב בְּאַחֲרֵיּוֹתָהּ

If it is stolen or lost, he is responsible for it.

Are you obligated to give money to a poor person who is collecting during ‘davening’, ‘prayers’?

Rav Shternbuch - He is already engaged in a mitzvah and technically, he need not give tzedaka at that time.

However, here he is engaged in a mitzvah between himself and God, so he may interrupt to perform a mitzvah between himself and another person. He may supersede an intrapersonal mitzvah, for an interpersonal mitzvah.

You should not interrupt one interpersonal mitzvah, i.e., protecting a lost object, for another interpersonal mitzvah, i.e., giving tzedaka. But, you may interrupt an intrapersonal mitzvah, i.e., praying, in order to do an interpersonal mitzvah.

To give tzedaka, may you interrupt Kollel learning? Try to do it before or after the set shiur. But if the poor person comes – interrupt your learning and give tzedaka to him.

לְעוֹלָם הוּא חַיִּיב עַד שִׁיחְזִירָנָה לְרִשּׁוֹתָיו

The finder is always liable, until he returns it to the owner's domain.

If a person finds a lost object, he is obligated to protect it from theft or loss, until he returns it to the owner's domain.

In this sense, a person who finds a lost object is considered as a paid custodian – i.e., liable for the amount of any loss.

However, you may return the object, even if the owner is not aware that you returned it. You may leave it where the owner should surely find it, i.e., on his doorstep.

Deut 22:1 “Return you shall return them to your brother.”

This implies that you should return it, even if the owner does not know you returned it.

לְעוֹלָם הוּא חַיִּיב עַד שִׁיחְזִירָנָה לְרִשּׁוֹתָיו

He is responsible until he returns the lost object to the domain of the owner.

A person found a large lost object and notified the owner. The owner said, “It is inconvenient for me to come and pick it up right now, please hold it until I call for it.” It took up space and was a responsibility that the finder did not want to continue having. So he traveled to the owner, delivered it and asked for payment for the delivery. The owner refused saying, “You can’t charge for a mitzvah!!”

Rav Shternbuch said, “The finder is responsible only to make it known to the owner that the object has been found. He need not store it indefinitely. He need not return or deliver it. If he does, he may charge a fee for those services, like any messenger.”

מְבַרֵּיחַ אֶרֶץ מִנְכָּסִי חֲבִירוֹ הוּא

A person sees a lion near his neighbor's sheep, chases it away and the sheep are safe.

He gets no pay.

An animal falls into the vegetable pit of his neighbor, which softens the fall and the animal is safe. The owner of the damaged vegetables gets payment for the reduced value.

- The first case: He volunteered to help for the sake of a mitzvah, the danger/damage to the sheep was only a potential threat.
- The second case: He “was volunteered”. It was not with his agreement. There was an actual injury to the animal that was averted, but the neighbor lost valuable property. He is to be compensated.

## נְכִי חִיָּה בֶּן עֲזַאי אוֹמֵר נְכִי מְזוֹנוֹת

We deduct for a midwife ....and Ben Azzai for food.

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When calculating compensation to a victim, we deduct any benefit derived from the injury, from the payment due the victim.

For example: If someone causes trauma to a pregnant women, such that she miscarries, the amount she is compensated should deduct the fee for a midwife and deduct the cost of extra food needed, if her pregnancy had continued!!!

The husband may say, “My wife would not have needed a midwife, as in Moses’ and Pharaoh’s Egyptian time.” If he says that, the assailant did not necessarily save the husband that expense and it should not be deducted. Only the expenses the husband would definitely have incurred, may be deducted.



21 Bava Kamma 59b1 line 1

A1

Daf Digest

הָיָה שָׂיִם מִסָּאנִי אוֹכְמִי

He wore black shoes.

Where do we get the custom of wearing black as a sign of mourning?

From the above reference in our Gemara. A second source is from Middos 4-5, where a disqualified Kohen wraps himself in black.

Today, some discourage this practice, now that it has been adopted by the gentiles, so that it not appear that we follow their customs.

## Daf Digest

אַתָּה חֲשִׁיבָה לְאִיתָא בּוֹלִי אֶירוּשָׁלַיִם

Are you important enough to mourn over Jerusalem?

Who may mourn the loss of the Bais Hamikdash?

The Torah learned in our institutions is consolation for the years of exile.

Anyone who openly mourns for the destruction of the Bais Hamikdash demonstrates, to an extent, that he does not feel that the Torah study, conducted in exile, is significant. His actions can be interpreted as a sign of disgrace and contempt for the Torah, it's scholars and community leaders. However, if he is himself an important figure, it can be seen as a sincere mourning for the loss of the Bais Hamikdash by:

1. Wearing black shoes.
2. Leaving a part of his house without plaster.

Why do we look askance at regular people who openly mourn the loss of the B'H? We believe they mourn the loss of sovereignty that it represents, rather than the loss of holiness and purity, which it's loss caused. Therefore, we would rather they not do so, but leave mourning to the leaders.

הַמַּגְדִּישׁ בְּתוֹךְ שְׂדֵה חֲבִירוֹ שְׁלֹא בְּרִשּׁוֹת

1. If one piles up stacks of grain in his fellow's field without permission,  
  
and the owner of the field and/or his animal eats the stacks of grain; the owner of the field is not liable to pay for what his animal ate. If an animal was injured, the owner of the stack is liable.
  
2. If one piled up the stacks with his fellow's permission, the owner of the field is liable. He is liable for the damage done by the grain or to the grain.

הַשּׁוֹלֵחַ אֶת הַבְּעֵרָה בְּיַד חֵרֵשׁ שׁוֹטָה וְקָטָן

If one sends fire in the hands of a deaf mute, a deranged person or a minor.

This deals with damage due to fire.

1. If you send fire in the hands of:
  - a. An incompetent - You are not liable under the laws of man, but are liable by the laws of heaven.
  - b. A competent person - The competent person is liable.
2. If you brought wood or fire - You are liable.
3. If you brought fire and fanned the fire - You are liable
4. If wind fanned the fire itself - You are exempt from liability.

Gemara-

- |                                |  |
|--------------------------------|--|
| - burning coal vs fire         | Action of an incompetent is needed. Therefore, the first person is not liable.   |
| - dry wood – chips and a flame | These ingredients make fire an almost certain occurrence, therefore, he is liable. If wind does contribute sufficiently to cause damage, all are exempt. |

אִימָתִי אֵשׁ יוֹצֵאָה בְּזֶמַן שְׁקוּצִים מְצוּיִן לָהּ

When does fire break out? Only when thorns are found nearby.

Calamity comes upon the world, only when there are wicked people and it begins with the righteous.

“If a fire breaks out and spreads to thorns and stacked corn are consumed...”  
(Ex 22:5).

The righteous are punished, for they are responsible for the sins of their generation.  
If evil gossip (fire) occurs in the Kovno Bais Midresh, Sabbath desecration by the people, (thorns) will occur in the Paris Jewish Community (stacked corn).

## כִּיּוֹן שְׁנִיתָן רְשׁוֹת לַמַּשְׁחִית

Once permission has been given to the destroyer,

he does not distinguish between the righteous and the wicked.

When the Aids epidemic began many people believed that those afflicted with the disease deserved it; drug users, promiscuous persons, homosexuals, etc.

But others soon were stricken; youngsters with hemophilia, surgical patients needing transfusions, innocent spouses infected by the adulterous behavior of their partners.

“The destroyer does not differentiate”, once loosened upon society.

## בֵּינּוֹן שְׁנִיתָן רְשׁוֹת לַמַּשְׁחִית

Once permission has been given to the destroyer,

he does not distinguish between the righteous and the wicked.

That is the reason that when the angel of death slew Egypt's first born, the Torah tells us, "and none of you shall go out at the door of his house until morning" (Exodus 12:22).

Yet, we believe that God directs everything that occurs to us and that there is no such thing as 'coincidence', but only 'Kah', 'incidence', 'Hashgachos Pratias' (directly from HaShem).

It is difficult to reconcile these maxims.

## Daf Digest

בְּלָבִים בּוֹכִים מֵלֶאךָ הַמּוֹת בָּא לְעִיר  
בְּלָבִים מְשַׁחֲקִים אֵלָיו הַנָּבִיא בָּא לְעִיר

If the dogs cry the angel of death is in the city, but if the dogs laugh, Eliyahu Hanavi is in the city.

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If the schoichet of a city is dishonest, he sells treif meat to unsuspecting customers and they eat treif. Then, there is no meat for the dogs and they cry.

If the schoichet is honest, he will discard all non-kosher (treif meat) to the dogs and the dogs will laugh, but the town's people will be eating only kosher meat. Such a city, with an honest schoichet, merits the coming of Eliyahu Hanavi.



Shemos 22:5

Weinbach p493

יְתִיב רַב אַמִּי וְרַב אָסִי קָמִיָּה דְּרַבִּי יִצְחָק נַפְחָא

Rav Ami and Rav Assi sat before Rav Yitzchak Nafcha.

Rav Nafcha had two students, one wanted to learn halacha and the other Aggadah . Rav Nafcha told them, “I am like the man who had two wives, an old one and a young one. The young wife pulled out every grey hair her husband had to make him seem more her age, and the older wife pulled out all of his black hair. Soon the husband was bald. However, the husband found a way to please both wives and Rav Nafcha found a way to please both students”.

Fire breaks out on a man’s property: He is obligated to prevent it from spreading to another person’s property. The flames are not just like an animal that he was negligent in controlling, fire is viewed as an actual injury, similar to releasing arrows in the direction of his neighbor and causing damage.

Halacha: Actively causing damage, you must pay for pain, loss of employment, medical expenses etc. Aggadah: Just as the fire of sin caused the destruction of the Temple, when it is reconstructed God will surround it with a protective wall of fire. He taught both Halacha and Aggadah with the same example.

נִמְצָא קֶרֶחַ מִכָּאן וּמִכָּאן

In the end, he remained bald on this side and on the other side.

This is a metaphor for a no-win predicament.

Hagigah 5a – A wasp and a scorpion – also a no win situation.

If a person is bitten simultaneously, by both a wasp and a scorpion, he can't win, because the treatment for a wasp's bite is hot water and for a scorpion's bite is cold water.

The reverse is dangerous, so he can't win.

## וְקָא מִיבְעִיָא לִיה מַהוּ לְהַצִּיד עֲצָמוּ בְּמָמוֹן חֲבִירוֹ

Is it permitted for one to save himself with other people's property?

Have we not learned that we may violate any prohibition in order to save a life (except murder, idolatry and illicit sex)? This lifting of prohibition may only apply if it causes no harm to others. However, if it causes harm to others, it is not permitted to violate the law. Therefore, you cannot steal to save yourself, unless you have in mind to pay it back. However, if a person has no resources and no prospects of being able to pay it back, he may not save himself with another person's property.

כָּל הַמוֹסֵר עֲצָמוֹ לָמוֹת עַל דְּבָרֵי תוֹרָה  
אֵין אוֹמְרִים דְּבַר הַלָּכָה מִשְּׁמוֹ

Whoever places himself in deadly peril for words of Torah, no halachic matter may be reported in his name.

Maharsha - Whoever embarks on an extremely dangerous Torah mission, relying on a miracle to save him, is not worthy of bringing deliverance and redemption.

Yoma - One may not rely on a miracle (Yoma Yerushalmi 1:4).

Pesachim 8b - Those sent to perform a Mitzvah, do not suffer harm. However, where harm is highly probable, this principle does not apply.

21 Bava Kamma 61a1 line 9 B11

Weiss # 738

כָּל הַמוֹסֵר עֲצָמוֹ לָמוֹת עַל דְּבָרֵי תוֹרָה  
אֵין אוֹמְרִים דְּבַר הַלָּכָה מִשְּׁמוֹ

Anyone who endangers himself (deadly peril) for words of Torah, we do not quote any halachic decision in his name.

One is forbidden to place his life in danger for words of Torah.

Torah is “life” and one who endangers ‘life’, has violated an important principle and his name should not be mentioned.

## Daf Digest

הַנּוֹתֵן דִּינָר זָהָב לְאִשָּׁה וְאָמַר לָהּ הִזָּהָרִי בּוֹ שֶׁל כֶּסֶף הוּא

A person gave a gold coin to a woman and said, “Guard this silver coin.”

She lost it- She pays only for a silver coin. Perhaps, if she had been told the truth, she would have watched it better.

She destroyed it directly- She must pay its full gold value. Why? She has no right to purposefully do something wrong.

(Bereshis 34:7) Shechem took Dina- This was an act that the family of Yaakov considered a deep disgrace and defilement. Was Shechem aware of the degree of harm he had done? Was the woman who destroyed the coin aware of the degree of harm she had done?

No, but because the act was an improper act, under any circumstances, they pay for the full impact of the damage they caused.

נְטִירוֹתָא דְּכֶסֶּפָּא קְבִילוּ עָלֵי

I accepted upon myself, the safekeeping of silver.

A wealthy man was given the honor of guarding the valuable community silver ornaments of the Sefrei Torah. He left them unguarded briefly and they were stolen. He claimed that he did not have to replace them since he was a watchman for Hekdesh, consecrated objects.

The rabbis ruled that he did have to pay even though he was a watchman for Hekdesh, since he was negligent and it is as though he had willfully damaged the objects.

“No”, said the rich man, “Bava Kamma 62 shows that if a person was negligent and lost a gold coin (which she was told was silver), she only pays for the value of a silver coin. However, if she willfully damaged it, she pays full price. That shows that negligent acts pay less than willful destruction”. The Rabbi ruled that is not so. “Don’t forget, she did not assume the responsibility of a gold coin, but you did accept responsibility for the silver ornaments and therefore, your negligence requires you to pay the full value of the damage”.

## Daf Digest

# נֵר חֲנוּכָּה מְצוּה לְהַנִּיחָהּ בְּתוֹךְ עֶשְׂרֵה

The mitzvah is to place the Chanukah flame no higher than 10 tefachim from the ground

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and no lower than 3 tefachim from the ground.

If it is lower, it looks like it is on the ground.

If it is higher, it produces less publicity for the miracle. At the height of 3-10 tefachim it is in an unusual position and people will see it.

This rule of height is less important if we light the menorah indoors.

Some say the upper limit for the Chanukah flame is 20 amos. What is the rule if people live:

1. In an apartment building?
2. Facing the public domain?
3. Facing an adjacent building?

It is advised to place it at the entrance:

1. to the apartment.
2. of the building.
3. of the staircase.



## מְרוּבָּה מִדַּת תְּשֻׁלוּמֵי כָּפֶל מִמֵּדַת תְּשֻׁלוּמֵי אַרְבָּעָה וְחֲמִשָּׁה

The rule of twofold payment is more inclusive than the rule of fourfold or fivefold payment objects.

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A person who steals pays 2x if he steals living things or inanimate objects.

This rule pertains only to a thief, not to a robber.

If he slaughters it or sells it he pays – 4x for sheep + 5x for an ox. This rule applies only to ox or sheep (see Exodus 21:37).

A person who steals from a thief: This is not considered a theft and therefore, he does not pay 2x.

A person who sells or slaughters that which another person stole, does not pay 4x or 5x.

A robber only has to return the object or pay its value. A thief has these extra penalties.

## אֵין הַגֹּנֵב אַחֵר הַגֹּנֵב מִשְׁלֵם תְּשֻׁלוּמֵי כֶּפֶל

A thief, who steals from another thief, does not pay ‘kefel’ “penalty” (of double or more).

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This statement in the Gemara may be misinterpreted. It is not permissible to steal from anyone.

You are only exempt from paying Kefel (double, or 4x or 5x the value of the item) which is the fine, but you must make restitution. Kefel goes only to the owner and unless the thief has become the owner. If you steal from him, you only need to provide simple restitution.

And he says, “It was lost  
and I am therefore unable to pay.”

Two Beraisos which teach the law of a thief, who is eventually found out.

“A thief when caught must pay double” (Shemos 22:6,7,8).

1. An unpaid watchman, who claims the item was stolen from him, but he actually stole it, pays double ( or 4 or 5x if he slaughters or sells an animal he stole).
2. An unpaid watchman, who claims the item was lost, but he actually stole it, pays only once.

We have two Beraisos: One to teach that the watchman is treated like a thief, who pays double, if he claims another stole it. Another Beraiso teaches that if he claims it was lost, we do not cause him to pay double.

In the word ‘haganav’, “the thief”, in the pasuk, has an extra letter ‘heh’ that can also be used to teach us this lesson.

פְּרִטְלִמְרָשִׁיעַ אֶת עֵצְמוֹ

This excludes one who incriminates himself.

There is a difference in punishment, whether Bais Din finds you guilty after a trial or you admit your wrong doing before witnesses come.

You pay a fine for one and you pay no fine in the other case.

It is the entire concept of Teshuva. If you confess to your shortcomings and correct them, you will not have to face the witnesses before the heavenly court.

There, it is too late to be discharged from the punishment due you.

Study mussar, learn your shortcomings, do Teshuva and you are exempt from punishment.

## Daf Digest

פֶּרֶט לְמַרְשִׁיעַ אֶת עַצְמוֹ

This excludes one who incriminates himself.

This teaches us that a person who admits to an infraction, that would warrant a fine, is exempt from that fine since he admitted his bad deed.

If someone forces himself on a ‘naarah’, a “virgin” and admits to his crime, he is exempt from the fine, but he must marry the girl and never divorce her.

In our day Bais Din does not have sufficient authority to levy fines. Do we say that since the financial component is not enforced by Bais Din, they also cannot compel the man to marry the girl?

Rambam (in Sefer Hamitzvos) counts the 2 punishments as separate mitzvahs.

This tells us they are not related. Therefore, if one is exempt from the fine, the other punishment need not be considered to be exempt also. He is still expected to marry the girl and never divorce her..

## קָרָן כְּעֵיז שְׁגָנָב

A thief pays for the principle according to the value of the stolen article when he stole it.

N5: Rav teaches that since a person pays a fine, once caught, of 2 or 4 or 5 times its value, the principle is paid at the value the article was when stolen. However, the fine is 2 or 4 or 5 times the value of the article at the time the fine is imposed by the court.

For example:

1. He steals a keg of wine worth 4 zuz and the value of the wine decreases to 1. He pays 4 zuz as restitution for the principal and pays kefel (fine).
2. He steals and then slaughters or sells an ox or sheep, he is liable for the 4 times or 5 times payment which constitutes the principal, plus 3 times the value of the sheep, or 4 times the value of the ox.
3. He stole an ox worth 200 zuz. Then sold or slaughtered it. By the time he comes to court, it is worth 100 zuz. He pays 200 zuz principal and 400 zuz (worth x 4) = 5x

## קָרָו כְּעֵין שְׁגָנָב

A thief pays for (the value of ) the stolen object at the time it was stolen.

Is a thief a watchman?

A thief stole an object and years later, after it had increased in value, he lost it due to negligence. He was then identified. What does he owe the owner, the value of the object when he stole it, or it's value when he lost it?

When a thief takes an object, it is lost from its owner as soon as it reaches the thief's possession. He is a watchman for this lost object. He is responsible, at least to the degree of an unpaid watchman. He is obligated to pay. In the event he is negligent and he must pay for it's value at the time of his negligence, i.e., the increased value of the object.

## Daf Digest

## שִׁינוּי קוֹנָה כְּתִיבָא וְתַנִּינָא

A change in the stolen article affects its acquisition, as it is written and as it is taught.

- The condition of the stolen object may change:

A thief steals a cheap, young calf which grows into a valuable bull and then the thief eats it. What does he owe the owner, the dollar value of the calf or of the bull?

- A thief steals a young valuable (stud) bull and keeps it for years until it grows old and less valuable. Can he say to the owner, “Here, I return your bull to you .”
- The thief must return that which he stole. However, if it changed, he cannot fulfill that requirement; it is no longer the same object.
- If the thief returns a fattened cow, can he ask the owner to pay him back for the added weight and value the cow now has?



## גִּזְלֵי חֶמֶץ וְעֵבֶר עָלָיו הַפֶּסַח

A person stole chometz and after Pesach,

he returned it saying, “Here is that which is yours”.

Can the person at fault (a thief or a borrower), return an item whose value has changed?

A person stole money (coins), which the government then took out of circulation.

Can a person default on the payback of a loan and then, 10 years later, pay back that loan with now depreciated dollars?

The items have not changed physically, yet their value is less.

- A person stole an esrog and wants to return it after Succos.

No, a person cannot return the object itself, since everyone can discern that it has lost a major part of its value.

## Daf Digest

## וְהָרִי מְרִישׁ דְּאִיכָּא שִׁינוּי הַשֵּׁם

A case of a crossbeam, where there was a change.

If it was not to assist those who wish to repent, he would have to return the beam intact.

1. A thief stole a beam that he then used as a main structural support of his house. Must he dismantle the house to return that actual beam?
2. A person, by mistake, built his house on a portion of his neighbor's land. Must he destroy the house to take it off his neighbor's property?
  - 1) No, we allow the thief to pay the value of the beam, to make it easier for a person to do teshuvah.
  - 2) a. Some say 'yes - A person cannot be forced to suffer a loss to benefit another.
  - b. Others say 'no' – Permit him to pay for the land he usurped. Require the landowner to suffer a small loss, to avoid the neighbor suffering a great loss, even though the neighbor was wrong.

וּמִדַּת תְּשֻׁלּוּמֵי אַרְבָּעָה וְחֲמִשָּׁה וְכוּ'

Whereas, the rule of four or fivefold payment, etc.

- Why do we enact a fine of 4 x for a sheep, but 5 x for an ox?

Rashi - An ox walks on its feet, so stealing it does not cause humiliation to the thief. Therefore, he pays 5x. A sheep needs to be carried, which embarrasses the thief, so he pays less 4 x.

In these circumstances, we can learn the financial value of embarrassing a person. The person who stole a sheep, clearly felt that undergoing the embarrassment had the value of one sheep.

## המוכר לפני יאוש

A thief sold a stolen sheep before the owner gave up hope of retrieving (Yeush) it.

Possession has not transferred to the thief and any sale would not be effective. If the sale is not effective, the thief does not receive a 4 x fine. But if the sale is after he gave up ‘Yeush’, possession has transferred to the thief, the sale is valid and he will be fined 4x.

If he slaughtered the animal before or after Yeush, he pays 4 x.

If the animal underwent a change in the thief’s possession, ownership transfers to the thief and the sale is valid, even if the owner did not have ‘Yeush’, “loss of hope”.

## גְּנִיבָה בְּנֶפֶשׁ תּוֹכִיחַ

Kidnapping (stealing a person) demonstrates,

that the thief is liable for selling a stolen animal, even if there is no Yeush.

- Does the term “selling”, refer only to a sale that effects acquisition? And is acquisition only possible after Yeush?

Rashi – The Torah teaches that a person is liable for stealing and selling a person, even though the person does not have Yeush on himself, he has never given up hope of being freed.

If the thief is held responsible for stealing and selling without Yeush in this case, he also should be responsible in the other case (when stealing a sheep or ox), and should be liable to pay a 4 x or 5 x penalty.

גִּזְלָא וְלֹא נִתְיָאֵשׁוּ הַבְּעָלִים

If a thief stole and the owner did not despair of recovering it.

We can learn a principle in life from this Halacha .

If the yetzer hara steals from you, i.e., your good behavior,, your resolve to learn regularly, or any other good quality; he has not totally taken it from you, until you relinquish it to him.

If a person still resolves to mend his ways, the yetzer hara never possesses that which he stole. You still own it and you can get it back. Therefore, never give up. Never give up on yourself and the yetzer hara cannot win.

## Daf Digest

אָבֵל בְּשָׂאָר שְׁנֵי שָׁבוּעַ הַלְעִיטָהוּ לְרָשָׁע וַיָּמוּת

But during the rest of the years of the Shmittah cycle, you may stuff the wicked (i.e., let them eat) and let them die.

---

We are not allowed to eat fruit from a tree until it is 4 years old. It is called an 'orlah' tree. But, if we do eat from it, are we allowed to make a beracha?

During the Shmittah year they would mark the orlah trees because the fields are considered ownerless and people might wander in and take a fruit not knowing it was prohibited. During the other years of the cycle, the rabbis did not mark the trees, because then, to get a prohibited fruit, the person would have had to be a trespasser and we don't need to protect a sinner; let him eat and die. We expect that he would also have made a beracha on the fruit.

We should not embarrass a person, it is like killing him. Yet some times, we have no choice. If possible, however, it should be done in a way such that the person humiliates himself. Regularly, money was taken from the wallet of a person at the mikvah. He painted his wallet with ink. The thief, who took the money, could be seen by all to have very black hands. He never stole again.

## גִּנֵּב עַל פִּי שְׁנַיִם

If a person stole an ox or a sheep and it was testified to by 2 witnesses,

he, then, slaughtered or sold the animal, also testified to by 2 witnesses, he must pay the 4x or 5x payment.

Unless he committed a capital offense:

- Sold it on Shabbos.
- Sold it for idolatry.
- Slaughtered it on Yom Kippur –(which is a Kares offense, but he also pays 4x 5x penalty).
- Stole it from his father.

A person who commits a combination major and minor offense is only punished for the major offense. One is subject only to the greater penalty.



„דָּבָר” וְלֹא חֲצִי דָּבָר

A matter, not a half matter.

R Akiva – 2 witnesses testify – They must testify to the entire matter that creates guilt and warrants punishment.

Deut 19:15 – “On the basis of two witnesses, the matter shall stand”.

For example: To establish if a person an adult- One witness said, “I saw one hair at this site on the body”, and a second witness said, “I saw one hair at this site on the body”.

Since two hairs make an adult, does this count??? No.

Each saw only one hair. They must be able to testify to the entire “matter”.

## Daf Digest

אֵלֶּא דְּקָם לִיה בְּדַרְבָּה מִינִיה

Because he is subject to a greater penalty than that penalty.

A non-religious Jew damaged the car of a religious Jew on Shabbos. Can the religious Jew collect for the damage to his car?

Technically, no. The non-religious Jew is deserving of the death penalty for Sabbath violation and even though we won't mete that punishment out to him, that harsh punishment makes him exempt from the lesser punishment of financial liability.

## Daf Digest

חֵד אָמַר מַעֲשֵׂה שַׁבָּת דְּאוֹרֵייתָא וְחֵד אָמַר מַעֲשֵׂה שַׁבָּת דִּרְבָּנָן

One says consuming food cooked on Shabbos is a prohibition from the Torah and the other says it is from the Rabbi's.

If food was cooked on Shabbos:

1. If inadvertently-it may be eaten after Shabbos by others who did not violate Shabbos to cook it.
2. If intentionally-it may never be eaten by anyone.

Is this rule from the Torah or from the Rabbis?

We can learn from the following rule:

- If an animal is intentionally slaughtered on Shabbos, the shechita should not be valid and the meat can never be eaten.
- If the shechita is not valid, the thief should not pay the 4 or 5 x penalty.

Yet we see that he does pay. Therefore, this prohibition, not to eat food prepared intentionally on Shabbos, is only a Rabbinic injunction and not from the Torah.

Daf Digest

דְּלֹא אָכְלִי בִּשְׂרָא דְּתוֹרָא

Because I had not eaten the meat of an ox...

R Nachman explains that he changed his position from his first response because he was fasting and had not eaten meat.

“One’s Torah is what one eats.” The quality of food affects a person’s learning. Eating meat is necessary to have a clear mind for learning.

## Daf Digest

# חולין שנשחטו בעזרה לאו חולין דאורייתא

The prohibition against benefit from the slaughter of a non-consecrated animal in the courtyard of the Bais Hamikdash, is it not Biblical?

(Deut 12:21) When the place where God chooses to place his name is far from you –  
 “You may slaughter and you may eat”...(Kiddushin 57b).

The inference is that it is not permitted if you are near the Bais Hamikdash.

You may not slaughter in the Bais Hamikdash and if you did, you may not eat from it.

But could you get any benefit from it?

“You shall toss it (the meat of a neveila) to the dogs” (Exodus 22:30).

The inference is that only the meat from a neveila is to be ‘tossed to the dogs’ (discarded), but not the meat from other sources (Kiddushin 58a).

Therefore, though you can’t slaughter it and you can’t eat it, you can get benefit from it.

גִּנְבַּעַל פִּי שְׁנַיִם

- a) 1. Stole an animal - established by 2 witnesses.
  2. Slaughtered or sold animal - established by the same 2 witnesses, but the witnesses were found to be zomemin (dishonest witnesses).
    - The witnesses pay everything
- b) 1. Slaughtered or sold the animal - established by 2 witnesses.
  2. Slaughtered or sold the animal - established by two other witnesses.
 

Both sets found to be zomemin - The first set of witnesses pays 2 x.

    - The second set of witnesses pays 3x.
- c) 1. Slaughtered or sold an animal – established by two witnesses.
  2. Slaughtered or sold an animal – established by two other witnesses.
 

If the latter witnesses only were found to be zomemin:

    - The accused pays 2 x.
    - The latter witnesses pay 3x.
- d) If only 1 of the latter witnesses were found to be dishonest, the second set are invalidated.
- e) If only 1 of the first witnesses was found to be dishonest, all sets of witnesses are invalidated, If there is no theft, there is no improper slaughter or sale.

## כְּדֵי שְׂאִילַת תַּלְמִיד לְרַב

The time for a student to greet his rebbe....

A person who states something falsely could retract that statement but he must do so within a very short period of time. How much time is permitted?

The time it takes for a student to greet his rabbi.

That time is the time it takes to say, “Shalom Aleichah, Rebbe u’mori,” and the time it takes for a rabbi to greet his student, “Shalom Aleichah.”

## כְּדֵי שְׂאִילַת תַּלְמִיד לְרַב

The time for a student to greet his rebbe...

Witnesses are to give their testimony within a very tight time frame for their testimony to be considered delivered together. That time frame is the time it takes for a person to respond to his rebbe's greeting. The rebbe will say, "Shalom Aleichah" and the student will say, "Shalom Aleichah, Rebbe."

What if a person speaks very slowly? Can the witness have a longer period of time? No, the average time to say those words is what counts.



שֶׁהָפִיל אֶת שֵׁן עַבְדּוֹ וְסִימָא אֶת עֵינוֹ

The master knocked out his servant's tooth and later, before the case came to court, the master knocked out his eye, also.

Do we have to pay the slave for his tooth? All agree – No. He goes free for that injury. But do we need to compensate him for his eye? Since he has not yet gone to court and had a judgment for the tooth, he was still a slave when the eye is knocked out and we don't have to compensate a slave. However, we expect the court to free him, retrospectively to the moment the tooth was injured, so he would be a free person at the time the eye was injured. Then, he would warrant compensation for the injured eye.

## Daf Digest

בְּבֵא הָרוּג בְּרִגְלָיו

When the alleged murder victim came on his own two feet.

In Yevamos 88a, we are taught that if 2 witnesses testify that a woman's husband died, she is permitted to remarry.

If two other witnesses come and testify that the husband is still alive, do we force her to divorce the second husband?

No, because 2 witnesses, that are acceptable, carry the same weight as 100 witnesses.

What if the first husband actually appears?

One opinion: We should not accept the testimony of even 100 people who say this is the husband and make her divorce the second husband.

Tosophos says- “The presence of the husband makes it clear to us that the first witnesses were lying. We do not allow her to remain married to the second husband. The first witnesses receive lashes”.

גֵּנוֹב עַל פִּי שְׁנַיִם

That a person stole was established by two witnesses.

A person	told by	and he then	established by	pays	not
Stole an ox or sheep	2 witnesses	slaughtered or sold	1 witness or own admission	2x	4 x or 5 x
Stole an Ox or sheep	2 witnesses	slaughtered or sold	on Shabbos	exempt from payment	because it is a capital offense
Stole an ox or sheep	2 witnesses	slaughtered or sold	for idolatry	exempt from payment	because it is a capital offense

If only 1 witness – thief pays only what he admits to and no penalty (fine).

If a person admits to being liable for a fine and later witnesses come and testify to his guilt, he is not liable to pay the fine.

21 Bava Kamma 74b2 line 28  
Responsa 1990-2000 p806 N101

A29

גָּנוֹב עַל פִּי שְׁנַיִם

He stole, based on the testimony of two witnesses.

RE: Self incrimination in Jewish law.

In Jewish law, even more so than in American law, a person is innocent until proven guilty. However, in civil matters, self incrimination is “like” a hundred witnesses, (Kiddushin 65b, B Metzia 3b).

Self incrimination, however, is not accepted as a basis for court action in criminal matters.

## Daf Digest

שְׁלֹא בְּבֵית דִּין הָיָה קָאִי

He was standing outside Bais Din.

Testimony given to judges while they are not in the court house, i.e. on the road or in the market place, or while they are standing – is such testimony valid?

No, the judges need to be in the proper frame of mind when hearing testimony. They need to be in the Bais Din.

Example: An admission that you owe a fine is not valid unless it is made in the presence of the Bais Din.

Sitting, however, is not required of the judges.

If the judges convened as a Bais Din, whether sitting or standing, the testimony they hear is valid.

## Daf Digest

## וְלֹא תִשְׁלֹמִי אַרְבָּעָה וְלֹא תִשְׁלֹמִי שְׁלֹשָׁה

The Torah says payment of 4x or 5x it does not provide for payment of 4x or 3x.

So, if a person is exempt from paying the principal, or the fine, he will also be exempt from paying 4 or 5 x which would now be 3x or 4x.

- A thief admits he stole, therefore, he is exempt from the fine. He pays only the principal.
- A second thief steals from the first. The requirement to pay a fine is only if he steals from “the house of the owner” (Ex 22:6). This second thief does not pay a fine, he only pays the principal.
- The theft and slaughter of an animal occurs on Shabbos. He pays with his life and is exempt from the principal.

The payment would then be reduced to 3x or 4x, about which the Torah does not speak, he therefore, makes no payment at all.

- A person tunnels into someone’s house to steal, he forfeits his life, since the owner could, preemptively, kill him. So, if he steals and slaughters an ox, he is exempt from paying the principal. He pays nothing.

## וְבִהוּדָאֵת טְבִיחָה קָמִיפְלָגִי

-If you make yourself guilty for the principal by admission that you stole, you will not have to pay a fine of 4x or 5x, even if witnesses later come to testify that you stole. You may get off without the penalty.

- Any witnesses that may obligate you to pay money, either principle or fine, you must be able to cross-examine.

If the thief admits that these witnesses were present at his theft, they can't be questioned and are, therefore, disqualified and can't be used against him (See 75b4 line 31 A1).

Any testimony that can't be challenged by 'Hazamah', 'cross-examination', is not considered valid testimony.

# גִּנֵּב וְהִקְדִּישׁ וְאַחֵר כָּךְ טָבַח וּמָכַר כּו'

If one stole an ox or a sheep and consecrated it and afterwards he slaughtered or sold it.

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Discussion re:

- Stealing an ox or a sheep then slaughtering or selling it.
- If it is already consecrated to the temple, i.e., Hekdesh
- If it is a blemished
- If it is 'Kodshei Kodashim' – 'most holy' {
  - Chatas
  - Olah
  - Asham
- If it is 'Kodshei Kalim' - 'less holy' {
  - Shelamin
  - Bechor
  - Pesach
  - Maasar
- What penalty will the thief have to pay?

If he steals the animal and he, the thief, consecrates it to the temple – does he pay 5x, since he changed the ownership, i.e., sold it? Is consecration like a sale?



גִּנֵּב וְהִקְדִּישׁ וְאַחֵר כָּךְ טָבַח וּמָכַר כּו'

If one stole an ox or a sheep and then consecrated it.

Consecration is only effective if the owner despaired (Yeush).

Only then would it change it's domain. The Temple treasury acquires it via the change in domain. If afterwards he slaughtered it, it, now, is no longer owned by the original owner. Therefore, the thief does not pay a 4x or 5x fine for slaughtering it or selling it.

It is as though he returned the principal to the owner.

A thief steals Reuven's cow and offers it as 'a Korban Olah', "a burnt offering", in the Bais Hamikdash. Who gets the credit? Is the thief exempt from payment to the owner? Does the owner get the credit and does the thief have to pay anything to the owner?

We say HaShem knows who the owner is and He will credit the proper person with the benefit for having donated an Olah. Since the thief, in a sense, returned the cow to the rightful owner, we do not require him to pay anything.

-A person who recites a Kaddish that belongs to another, will not provide benefit to the soul of his departed and will not cause a loss of benefit to the soul who should have received the Kaddish.

-A person who steals an Aliyah does not have to pay ten zuz for stealing a Mitzvah, since the person who lost it could say, "Amen."

-A person who steals, or takes by force, the honor of being a Shaliach Tzibur:

We don't have to say "Amen" to his prayers. He cannot fulfill his role without being acceptable to the congregation.

## Daf Digest

# וְכֹל הָעוֹמֵד לְפָדוֹת בְּפָדוּי דָּמִי

Anything that stands to be redeemed is considered as if it is already redeemed.

Is a temporary crown on a tooth to be considered to be a ‘hatzitzah’, “an interposition” that invalidates a mikvah immersion, or since it stands to be removed in a certain time, can we consider that it was removed even before it was actually removed?

R Zlotowitz - Such a crown does not constitute a hatzitzah.

R Feinstein - A foreign substance that is “not a matter of concern”, ‘aino makpid’, does not invalidate the immersion.

R Schwadran - Even false teeth that serve a cosmetic purpose are permitted.

R David Spector - Even false teeth at the back of the mouth, that do not serve a cosmetic purpose, but serve a functional purpose, do not constitute a hatzitzah.

What is the rule regarding a back brace after surgery, or a cast on a broken arm?

21 Bava Kamma 77a line 1

A1

Daf Digest

פרה

The meat of the Parah Adumah (Red Cow).

This is the shortest daf in the Shas.

It is only 9 words long.

All the rest is commentary.

A Parah Adumah becomes ritually impure, like a food item, since there was a point when it was suitable to be eaten.

## Daf Digest

## מָכְרוּ חוּץ מֵאֶחָד מִמֶּנָּה שָׁבוּ

If he sold the animal, except for 1/100<sup>th</sup> of it, etc.

-If a person stole an animal and then sold it, but retained 1/100<sup>th</sup> of it for himself, he does not have to pay the 4x or 5x fine (kofer daled v'heh), since he did not sell the entire animal. However, if he sold an animal that was missing a limb and was, therefore, incomplete, he would have to pay daled v'heh, since as far as this animal is concerned, the animal is complete.

It all depends on how it is presented.

- When a guest would come to the table of Rav Itzele of Volozhin, he would give him 2 slices of bread to make Hamotzi, to represent Lechem Mishneh. These two slices are whole pieces of bread and can be used, just as whole loafs of bread.
- What can you do if you have only 1 loaf? Have someone cut it in half and present it to you. Now, it is presented as 2 whole ½ loafs.
- What if you have one whole and one partially cut loaf? If the bread was brought out as a ½ loaf, it is considered a whole ½ loaf and can be used!!

## Daf Digest

He sold it except for 1/100<sup>th</sup> of it, etc.

מְכָרוֹ חוּץ מֵאַחַד מִמָּאָה שָׁבוּ

We list here the cases where a thief is exempt from the 4x and 5x payment.

1. When he does not sell the entire animal:

- Missing its horn.
- Missing the shearing.
- Missing a part, i.e., leg – a part needed for shechitah.

Because the Torah (Ex 21:37) states, “And he slaughters it and or sells it.” – which implies all of the animal.

R. Shimon ben Elazar says -No. The missing shearing or missing horn are items which are not fit for consumption anyway. They would not be a meaningful exclusion. So in those cases, he would pay the 4x or 5x penalty needed to fulfill the penalty for the entire animal (referred to in Posuk Ex 21:37).

2. Where he stole an animal he owned in partnership with another person. Therefore, his only violation was that he slaughtered a part that was not his, but he did not slaughter the entire animal as required (in Exodus 21:37) to be a violation. So, he should be exempt from the 4x or 5x penalty.

3. He slaughtered it in an improper manner. That is not considered “slaughter” and he is exempt from the fine.

## שׁוֹתֵפִין שְׁגָבוּ חַיִּבִּין

Partners who stole (and slaughtered or sold) are liable.

Two people participated in stealing objects from another person's house. The second said, "I did not even touch the stolen objects. I merely drove the car, or I merely pushed the wagon the items were placed into by the other party."

Assisting in anyway makes you a partner in the crime and not only may you be obligated to pay your portion, in this case 50%, but if the other party can't contribute, you may need to pay 100% to provide restitution to the owner and satisfy the Bais Din's fine.

גִּנְבַּת בְּרִשּׁוֹת הַבְּעָלִים וְטֵבַח וּמִכָּר חוּץ מִרְשׁוּתָם

He stole an animal in it's owner's domain and slaughtered or sold it outside the owner's domain.

It is considered stolen.

- Or he stole an animal in the owner's domain and slaughtered or sold it in the owner's domain. It is considered not stolen.
- Or stole an animal outside the owner's domain and slaughtered it outside the owner's domain, It is considered stolen.
- He was in the process of pulling it out of the owner's domain and it died. He is exempt, because he did not perform a theft of the animal. Therefore, he is not liable for the 4x or 5x payment.

But, if he took possession of it, we call it theft and he is liable.

Stolen = theft                      Theft = penalty of 4x or 5x

79b Pulling = possession

Pushing or prodding with a stick, such that it moves 1 foreleg and 1 hind leg, is also considered stealing the animal.



## מִפְּנֵי מָה הַחֲמִירָה תּוֹרָה בַּגֶּנֶב יוֹתֵר מִגְזֵלָן

\* Why was the Torah more stringent with a thief, than a robber?

- A robber has no fear of man, his victim, or of God.
- A thief is more insulting to God, he steals clandestinely. He seems to fear man, more than he fears God.

Rashi - He is taking precaution not to be seen by his victim, but he is not afraid to be seen by God. By doing so, he denies the basic tenet of Judaism, namely, that God is aware of man's actions and God rewards and punishes him for them.

- Why is the fine for selling and slaughtering an ox 5 x and a sheep only 4 x?
    - 1a. Ox stopped from working, the owner loses that benefit.
    - b. Ox walked on its own, without effort by the thief.
    - 2a. A sheep does not work.
    - b. A sheep has to be carried, therefore, the thief already paid a price of increased work to steal the sheep and embarrassment of carrying the sheep.
- So his fine can be less, since he has already paid partly for his crime.

## מִפְּנֵי מָה הַחֲמִירָה תּוֹרָה בַּגָּנֵב יוֹתֵר מִגָּזְלָן

Why is the Torah more stringent with a thief, than with a robber?

There is a greater penalty for a person who is a thief, than a robber because:

A ganav – a thief takes only when he cannot be seen by others.

A gazlan – a robber takes in front of the victim.

Why the difference between people who steal? Each did the same crime.

The gazlan shows as little fear of man as he does of God, while the ganav shows he is more afraid of man than of God and expresses an attitude that God does not see what happens here on earth.

Two families each have a banquet, one invites neither the townspeople, nor the royal family. The other invites the townspeople, but not the royal family. The second family shows more respect for the townspeople, than for the royal family. The disrespect to the royal family, warrants punishment.

בֹּא וּרְאֵה כִּמָּה גָּדוֹל כַּחַּשׁ שֶׁל מְלָאכָה

Come and see the power of labor.

Why should stealing an ox cause more of a penalty, than stealing a sheep?

The ox works for its owner, its loss causes greater loss than the mere loss of a sheep.

Also:

The thief pays a price in human dignity for stealing a sheep. He has to carry it in order to escape the scene of his crime; whereas the ox merely walks along with the thief. This difference, carrying the sheep, is enough of an indignity to the thief to mitigate the severity of his penalty.

## אין מגדלין בהמה דקה בארץ ישראל

We may not raise small domesticated animals in Eretz Yisrael

1. Syria was conquered by King David as a personal conquest to enlarge his Kingdom. It was not ordered by HaShem and therefore, did not acquire the holiness of Eretz Yisroel. We may not raise small animals, sheep or goats in Israel, but may do so in Syria and we may raise small animals, etc., in the wilderness areas of Israel. We may not raise chickens in Jerusalem, because of consecrated meat eaten there (no 'sheretzim', 'crawling bugs' permitted).
2. Kohanim may not raise chickens in all of the land of Israel, because the purity of their food is required (no sheretzim permitted).
3. No raising of pigs is permitted in all of Israel.
4. A person may not raise a fierce dog, unless he keeps him chained, so people will not be fearful.
5. No nets for capturing wild doves within 30 ris ( = 1000 yards distance).

## אין מגדליון בהמה דקה בארץ ישראל

We may not raise small domesticated animals in Eretz Yisrael,

because they may cause damage to other people's fields.

However, the Shulchan Aruch permits this practice with the explanation that there are very few fields in Israel owned by Jews. That was accurate in the past, but no longer. Can we reinstitute the ban nowadays, since the original reason has returned and is again pertinent? – Yes.

However:

- 1) If the animals are fed and contained in the owner's field, the risk of damage is much reduced.
- 2) If the raising of small animals in a new settlement was unknown to all, we can assume the neighbors are willing to forgo the damage that they might cause.
- 3) People are more responsible nowadays than in Gemara times and will watch their animals to prevent damage to neighbor's property.

## מַעֲשֵׂה בְּחֶסֶד אֶחָד שֶׁהָיָה גּוֹנֵחַ מִלְבוּ

There was an incident involving a pious person who was suffering from chest pain.

If his life was at risk, he may violate almost any law of the Torah. He may use another's property, destroy it, even steal it, to save his own life or to save the life of another.

Some say: The person who damages or steals to save a life, need not ever pay back the owner.

Others say: The person who damaged or stole articles to save another, must pay the owner and must name the person whose life was saved. He got the benefit and he must pay back the owner for the value of the property used to save him. One must always pay, when one benefits from the property of others.

## Daf Digest

מַגְדִּילִין בְּלָבִים כּוֹפְרִין וְחֹתוּלִים וְקוֹפִין וְחוֹלְדוֹת  
סְנַאִים מִפְּנֵי שֶׁעֲשׂוּיִים לְנַקֵּר אֶת הַבַּיִת

We may raise miniature dogs, cats...because they are used to cleanse the house.

Useful or therapeutic animals:

A person moved into a house in Israel and he had 5 goats. He agrees that the rabbis prohibited raising small animals in Israel, however, he needed goat's milk for his health and for his daughter, who was advised to have animals to play with to help her psychological problems. These goats had been very helpful to her.

May the family keep the goats?

Rav Tzvi Pesach Frank said – Yes.

Technically only 'raising' goats is prohibited.

You can keep a large number of goats (30 is mentioned) in preparation for using them for food for a holiday, or a wedding. This is not called raising.

Similarly, small animals, needed for health reasons, may be kept.

Furthermore, the Chazon Ish even permitted one to raise small livestock in Eretz Yisroel.

וְהִלּוּקָהּ בֵּית בְּאֶרֶץ יִשְׂרָאֵל כּוֹתֵבִין עָלָיו אֹנּוּ אֶפִּילוּ בַּשַּׁבָּת

It is permissible to write a sales contract on buying a house in the land of Israel from a non-Jew, even on Shabbos.

One may ask a non-Jew to do it, even on Shabbos, because of the great importance of settling the land of Israel.



## עשרה תנאים התנה יהושע

Ten stipulations made by Joshua for settling the land of Israel.

1. People may pasture their animals in privately owned forests.
2. They may gather wood from the fields of others.
3. They may gather grass to feed their animals from anywhere.
4. They may cut off shoots in any place, except two fists from an olive tree.
5. Townspeople may use a new spring on someone's property.
6. Jews may fish with a hook in Lake Tiberias – even though it is entirely in Naphtali's portion, everyone could fish there.

## שִׁיהוּ מִרְעִין בַּחוּרְשִׁין

People may pasture their animals in privately owned forests.

7. Wayfarers may relieve themselves in a private field.
8. Wayfarers may walk along paths, until the second rain fall.
9. Wayfarers may turn off the side of the road to avoid pegs in the road.
10. One who is lost in a vineyard, may cut his way out.
11. An unattended corpse acquires the site he is found on for his burial.

These rules were set up to regulate civic interaction. Certain conditions were defined that made everyone a partner and therefore, had the right to the use of the property. This avoided strife and contention.

וְכָל מַעֲשָׂיו לְשֵׁם שָׁמַיִם

Every act of Yehudah ben Kenusa was for the sake of Heaven.

The Chofetz Chaim needed some medicine from a pharmacy and after paying he said to the pharmacist, “I am jealous of you – every act in your daily life goes toward saving lives and reducing pain. You are doing the work of the Lord”.

Always consider that you are working for the purpose of a mitzvah and about the greatness of what you are doing.

In practice, the Chofetz Chaim would say these words to many people during his daily activities.

Every person does vital acts that are mitzvahs.

For example, someone who cleans the streets and reduces disease, those who teach children to lead better, more productive lives, etc. The first item is to think of the important contribution you make each day, as being done for the sake of Heaven.

## אֶחָד אֵילָן הַנוֹטָה לְתוֹךְ שְׂדֵה חֲבִירוֹ

A tree whose branches extend into a neighbor's property.

Reuven planted a fruit tree near Shimon's property line. With the passage of time the branches extended over Shimon's property, preventing him from using his property as he wished.

- 1) May Shimon cut down some of the branches of the fruit tree?
- 2) If it is permitted to cut them down, who should pay?
- 3) If Shimon does not cut the branches, does he at least have a right to keep the fruit that grows over his property?

Answers:

- 1) Yes, if it interferes with his use of his property.
- 2) If Reuven obtained Shimon's permission before planting, it is Shimon's responsibility to remove the branches that are in his way. If Reuven did not obtain Shimon's permission, than Reuven must pay to remove them.
- 3) A tree belongs where its trunk is located and therefore, the fruit is Reuven's property. But, if the branches hang over into Shimon's property, it would be wise to reach a compromise agreement.

## עשרה תקנות תיקון עזרא

Ten conditions stipulated by Ezra the Scribe:

1. Read Torah at Minchah on Shabbos - on account of shopkeepers.
2. Read Torah Monday and Thursday.
3. Courts meet on Monday and Thursday.
4. People launder on Thursday to honor Shabbos.
5. Eat garlic on Shabbos - it aids conjugal relations.
6. Women to rise early and bake – have bread available for the poor.
7. Women to wear pants for modesty.
8. Women are to comb their hair before mikvah - so there is total contact of water with the person (no interposition).
9. Peddlers of perfumes must be allowed to sell in towns and people may not object – so that women do not become repulsive to their husbands.
10. Ezra instituted immersion for ‘baalei kerī’.

אֵין מִיָּם אֶלָּא תּוֹרָה

There is no water other than Torah.

Mordechai established the reading of the Megillah to occur on the Monday or Thursday prior to Purim. This occurred before the time of Ezra HaSofer, when he established the pattern and order of the liturgy, including when to read the Torah.

Reading the Megillah on Monday and Thursday suggests to us that there already was the practice of reading scripture on those days – a practice instituted by Moshe Rabbeinu and supplemented by Mordechai. Moshe's system was to have three people called up. Each person was to read one sentence or one person was to read 3 sentences. Ezra increased the reading to 3 people, each one was to read at least 3 verses. Moshe also determined that there would be 7 readers of the Torah on Shabbos.

אֵין מִים אֶלָּא תּוֹרָה

Water signifies nothing but Torah.

“And they went three days in the wilderness and found no water” (Ex 15:22).

This means that since they went three days without Torah, they became exhausted.

Just as water cleans and makes pure, so do the words of the Torah.

לֹא יַגְדִּיל אָדָם אֶת הַכֶּלֶב

A person should not raise a dog.

Citizens of Abu Gosh asked permission to have dogs for security reasons since they feared Arab terrorists.

-The rule against raising a dog, is in effect, if there is no important reason. If you have a true need, it is permissible to raise a dog. However, the dog should not bark at every passerby, should be contained in a yard and should have a chain. The dog may be released at night, when no visitors are expected. But, if there is a real threat to you or your family, the dog may be free to roam day or night.