



MISHNAS CHAYIM

משנת היום

MISHNAH ON THE PARSHAH

A project of CHEVRAH LOMDEI MISHNAH • Parshas Mishpatim 5768

Do fish have to keep *mitzvos*?

Yes, you read that correctly.

I imagine that you're somewhat bewildered by now. Okay, let's back up a bit.

There are two main themes discussed in this week's *parsha*. The latter section of the *parsha* deals with the revelation at *Har Sinai* and the giving of the Torah; the former discusses numerous *dinei mamonos* (financial laws). Amongst the various *dinim* set forth is the topic of *negichah* (goring), which discusses the procedures surrounding the unfortunate circumstance of one's ox goring something—or worse, someone.

If someone's ox fatally gores another person, the owner may be subjected to a fine. The ox also has to deal with the law. The Mishnah in *Bava Kamma* (4:5) states:

שׁוֹר שֶׁנִּגַּח אֶת הָאָדָם וְמָת, מוֹעֵד מְשָׁלָם כִּפְּרָה,
וְתָם פְּטוּר מִן הַכֶּפֶר, וְזֶה נִזְהָ תַּיְבִּים מִיתָה.

"If an ox fatally gores a person, the fine levied to the owner depends on the ox's history. If it was a habitual offender, then the owner must pay the fine; if not, he is exempt. In either case, however, the ox must be put to death."

Although the Torah refers to an "ox" when discussing these *halachos*, the *Chinuch* (*Mitzvah* 51-52) assures us that these laws hold true for other animals as well. Consequently, we find in another Mishnah (*Eduyos* 6:1) that, "Rav Yehudah ben Bava testified.... that a chicken was stoned to death in the Jerusalem court for having committed homicide." (In case you're wondering how a chicken could pull

that off, Rashi in the Gemara (*Berachos* 27a) explains that it pecked on the soft spot of a baby's head.)

The bottom line is: it doesn't matter whether the perpetrating creature was an ox, a llama, or a platypus; if it did the deed, it dies.

Now, let's talk about fish. If someone owns a piranha, for example, and it gobbles up a person, is the piranha subject to the death penalty?

In discussing this *halachah*, the Rambam (*Hilchos Nizkei Mamon* 10:2) writes, "It is the same whether it is an ox, or any other animal or bird; if it kills a person, it is subject to the death penalty." Since the Rambam listed 'animal' (the Hebrew term is actually *behaymah v'chayah* which usually refers to mammals) and 'bird', but omitted 'fish', the implication is that fish are exempt from this punishment. Nevertheless, a difficulty remains: Why should the *halachah* differ when it comes to the aquatic class?

At this point, it is worthwhile to contemplate the underlying idea behind the *halachah* to kill a homicidal animal. The Ramban (*Bereishis* 9:5) wonders for whom this punishment is intended: the animal for its misdeed, or the owner for his negligence. Ostensibly, the latter rationale is the more likely option, since it is difficult to hold an animal accountable for its actions; after all, it's just a dumb animal (no offense). However, the Ramban points out that a stray ox who fatally gores a person is also accorded the death penalty (*Bava Kamma* 4:7). Apparently, the capital punishment afforded to

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the ox is not intended as a penalty to the owner; therefore, it must be a punishment for the animal itself!

How are we to understand the demand upon animals to be held accountable for their deeds? The *Kli Chemdah* (*Parshas Yisro, sec. 6*) refers us to the Gemara in *Shabbos (146a)*, which describes the wonderful impact of the revelation at *Har Sinai* upon its participants.

As a result of the original sin of Adam, all living creatures became infused with a type of spiritual impurity known as *zuhamah*. The revelation at *Har Sinai* had a purifying effect on the Jewish people who were present, cleansing them of their *zuhamah*.

The Ran (*Shabbos 108a*) explains that this purification process was not limited to the Jewish people; anyone else standing there at the time benefited as well. Thus, the land animals and birds that were standing in proximity to *Har Sinai* also merited to be cleansed of their spiritual pollution. Fish, on the other hand, are residents of the sea; as such, they were not by *Har Sinai*. Consequently, they missed out on this 'spiritual decontamination,' and retained their *zuhamah*.

The Ran denotes a practical ramification of this occurrence. The parchment of a *sefer Torah* may be made using the skin of animals or fowl, since they underwent the spiritual cleansing process at *Har Sinai*. Fish, on the other hand, retain their *zuhamah*, and are effectively disqualified for usage in objects of *kedushah*.

The *Kli Chemdah* asserts that in light of the above Gemaras, the idea that animals are accountable for their actions is much more palatable. After all, the animals did participate in the revelation at Sinai to a certain extent,

and were spiritually affected by it. Of course, they did not become fully obligated in *mitzvos* like the rest of us. Nevertheless, they were charged with a limited responsibility: namely, don't kill the humans.

With this, the *Kli Chemdah* concludes that we can understand the exemption of fish from the death penalty. As the Ran pointed out, only land creatures shared in the experience at Sinai. Consequently, only land creatures are held accountable and subsequently punished when they violate their 'prohibition' of homicide. Fish, on the other hand, were absent from *Har Sinai* and were never charged with the responsibility to avoid human casualty. Therefore, insofar as the death penalty is concerned, fish are 'off the hook'.

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