

THE BAIS HAVAAD HALACHA JOURNAL

Family, Business, and Jewish Life through the Prism of Halacha

VOLUME 5785 • ISSUE XVIII • PARSHAS TETZAVEH-ZACHOR



HORSE RAISING: MUST ONE RELIEVE AN ANIMAL'S PAIN?

Adapted from the writings of Dayan Yitzhak Grossman

The Associated Press reports:

A horse that fell through the ice of an upstate New York pond was saved by rescuers who pulled together to free the animal from the frigid water.

Body-camera footage from responding officers shows the team of Saratoga Springs police and neighbors grunting and straining to pull Sly, a 1,300 pound (590 kilogram) horse, from a hole in the ice late Monday afternoon... Officer Kyle Clinton arrived first and helped Ernst get Sly's full head back up on the ice. They were soon joined by others, including two more officers, neighbors and family members....¹

The prohibition against *tza'ar ba'alei chaim* (causing pain to animals) is generally invoked to prohibit hurting an animal actively (*bekum va'asei*); in this article, we consider whether the prohibition also

includes passively (*besheiv ve'al ta'aseh*) allowing it to suffer—i.e., whether it includes an obligation to rescue an animal from pain.

The Torah commands:

If you see the donkey of someone you hate crouching under its burden, would you refrain from helping him?—you shall help repeatedly with him.²

The Gemara relates this mitzvah of *prikah* (unloading an animal)³ to the imperative of avoiding *tza'ar ba'alei chaim* according to the view that *tza'ar ba'alei chaim* is prohibited *min haTorah*,⁴ and Rashi assumes that according to that view, this *pasuk* is actually the source of the *issur*.⁵ It would seem to follow from this that even passively allowing an animal to suffer is forbidden. As we mentioned here several months ago,⁶

(continued on page 2)

²Shmos 23:5.

³The discussion in the Gemara cited in the following note actually considers the possibility that this *pasuk* may not specifically refer to unloading, as opposed to loading, an animal, but our discussion follows what seems to be the generally accepted understanding of the *pasuk*.

⁴Bava Metzia 32a-b.

⁵Rashi Shabbos 128b sv. *Tza'ar ba'alei chaim deOreisa*.

⁶Monkeys on the Run: People and Ba'alei Chaim. Nov. 21, 2024.

A PUBLICATION OF THE
BAIS HAVAAD HALACHA CENTER

290 River Avenue, Lakewood NJ 08701

1.888.485.VAAD (8223)

www.baishavaad.org

info@baishavaad.org

Lakewood • Midwest • Brooklyn • South Florida

לע"נ הרב יוסף ישראל
ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
HaRav Yosef Grossman zt"l

The Bais Hava'ad
on the
Parsha
Bring the Parsha to Life!

PARSHAS TETZAVEH MAJORITY WULE

Excerpted and adapted from a *shiur*
by Rav Moshe Ze'ev Granek

The Mishnah (Kilayim 9:1) says that all the *bigdei kehunah* are made of sheep's wool, linen, or both. The Mishnah later says that if one mixed together sheep's wool and camel's wool, the status of the thread follows the *rov* (majority) of the fibers. The context of this halacha is that of *kilayim* (which forbids wearing a mixture of sheep's wool—not camel's wool—and linen), but it is unclear whether it also applies to the halacha about *bigdei kehunah*.

To resolve this ambiguity, we need to explain the basis for this halacha. According to the Bais Yosef (based upon his understanding of the Rambam and Smag), we follow *rov* here because of *bitul* (nullification): The majority thread nullifies the minority. However, perhaps *bitul* can only be used to nullify an *issur* mixed with *heter* and render it permitted, but not to grant a status that an item does not have. So if *bigdei kehunah* must be made from sheep's wool, perhaps a garment with a sheep's-wool majority does not qualify based on *bitul*. This question may

(continued on page 2)

Q&A from the
BAIS HAVAAD
HALACHA HOTLINE
1.888.485.VAAD(8223)
ask@baishavaad.org

Meal Plan

Our *seudas* Purim usually goes on for several hours, so this year's may continue into Shabbos. What should we do about *bentching*, kiddush, davening, *Al Hanisim*, etc.?

The Rama (O.C. 695:2) directs that when Purim falls on Friday, the *seudas* Purim should begin before *chatzos hayom* (Mishnah Brurah ibid. 10) so as not to interfere with the honor of Shabbos. Some allow delaying the *seudah* until *sha'ah asiris* (the tenth hour), approximately three hours after *chatzos* (Mishnah Brurah citing Yad Efrayim).

(continued on page 2)

(continued from page 1)

this is apparently the position of the Toldos Yaakov (R' Yaakov Zev Kahana, a great-nephew of the Gra):

It therefore appears to me that it is a mitzvah incumbent upon anyone who sees oxen goring each other or chickens striking each other to separate them, so that they will not come to gore or strike each other again. For this is included in the mitzvah of *prikah* that is explained in Bava Metziah 32a...⁷

Rav Kahana is apparently grounding the imperative to separate fighting animals not just in the general duty to avoid *tza'ar ba'alei chaim*, the subject of his discussion there, but in the specific mitzvah of *prikah*. That is, he is extending the mitzvah of *prikah* beyond the specific case of the overburdened animal to any situation in which an animal's suffering can be alleviated. This is a novel and perhaps debatable idea.

The Eishel Avraham (the "Butchatcher," R' Avraham Dovid Warman of Butchatch) is cited as adopting a more nuanced stance: The specific *issur* of *tza'ar ba'alei chaim* applies only to actively hurting an animal; there is a broader mitzvah to save it from pain, though he is uncertain whether this obligation is *deOreisa* or *deRabanan*. The mitzvah of *prikah* is a special case: Since the cause of the animal's pain was the loading, its current suffering is considered to have been actively caused.⁸ (It is unclear why this should apply to anyone but the loader.)

A possible proponent of the view that there is no rescue requirement is the Rambam, who seems to rule that the mitzvah of *prikah* does not apply where both the animal and its burden belong to a non-Jew:

If the animal belongs to a non-Jew and the burden belongs to a Jew: If the non-Jew is driving his animal, one is not obligated to relieve it. If not, he is obligated to unload and load it on account of the suffering of the Jew. Similarly, if the animal belongs to a Jew and the burden belongs to a non-Jew, one is obligated to unload and load it on account of the suffering of the Jew. But the animal and its burden belong to a non-Jew, one is not obligated to take care of them except on account of *eivah*.⁹

The Rambam seemingly maintains that absent the concern for *eivah*, the mitzvah of *prikah* and the *issur* of *tza'ar ba'alei chaim* do not require active measures to alleviate an animal's suffering. This is indeed the Or Sameiach's (R' Meir Simcha of Dvinsk) understanding of the Rambam, that "the Torah does not impose upon a Jew to trouble himself in order to alleviate *tza'ar ba'alei chaim*, for the trouble of a Jew is more beloved to Hashem than the suffering of an animal."¹⁰ Other *Acharonim*, however, understand the Rambam to agree that *prikah* and *tza'ar ba'alei chaim* require relieving an animal even if it and its burden belong to a non-Jew, and they interpret the Rambam accordingly.¹¹

R' Baruch Rapoport, formerly *rosh* bais din in Johannesburg, asked R' Asher Weiss whether the owner of a sick dog is obligated to take it to a veterinarian. Rav Rapoport inclined to the view that *tza'ar ba'alei chaim* does not apply *besheiv ve'al ta'aseh*.¹² But R' Asher disagreed:

Because this issue of *tza'ar ba'alei chaim* is the will of Hashem, may He be blessed, due to the attribute of mercy and compassion, there is no difference between actively causing it pain and not stopping it from experiencing pain.

R' Asher concedes that it is obvious that

A person is not obligated to circulate in the forest and the desert among the beasts of the field and the birds of the sky to feed the hungry and heal the sick, as he is commanded regarding members of the covenant.

But on the other hand:

It is logical that with regard to an animal in his possession, whose feeding is his responsibility, he should be concerned about its welfare and its needs, and included in this are also its health needs, according to the norms of animal owners.¹³

⁷Or Sameiach ibid.

⁸See Toldos Yaakov Y.D. siman 33 p. 148.

⁹Cited by R' Asher Weiss, below. I have been unable to locate this source in the original.

¹⁰See Rosh, Bava Metziah 32a, s.v. "והיה".

¹¹See R' Asher Weiss, Tza'ar Ba'alei Chaim (2), as 4.

¹²He suggests that the concern for *bal tash'chis*, however, would obligate the owner to do so. R' Asher in his response disagrees and maintains that *bal tash'chis* does not apply *besheiv ve'al ta'aseh*.

¹³R' Asher Weiss, Tza'ar Ba'alei Chaim (2), as 4.

O&A from the
BAIS HAVAAD
HALACHA HOTLINE
1.888.485.VAAD(8223)
ask@baishavaad.org

(continued from page 1)

If you were unable earlier, you may begin even in the late afternoon, because it is a *seudas* mitzvah (see Mishnah Brurah 249:13). In all cases, limit your eating so you retain an appetite for the Shabbos meal (Mishnah Brurah 529:8 and Sha'ar Hatziyun ibid. 10).

If the seudah continues until Shabbos, you may be *poreis mapah umekadeish* ("spread a cloth and make kiddush"), a procedure that goes as follows (O.C. 271:4):

At candle lighting time, stop eating. The *neiros* Shabbos are lit, and a cloth is spread over the bread on the table. Kiddush is made, but *borei pri ha'gafen* is omitted if wine was already drunk during the *seudah*. After kiddush, challah should be eaten (at least a *kebeitzah*), but no *bracha* is made, because *hamotzi* was already made at the beginning of the *seudah*. Some say that two challos should be held and a piece broken off in fulfillment of *lechem mishneh* (Purim Meshulash by R' Srayah Dublitzki, based on Aruch Hashulchan). Others say that *lechem mishneh* is not required, because *hamotzi* is not recited (Shu"t Ha'elef Lecha Shlomo O.C. 113).

The *poskim* debate whether *Al Hanisim* should be said in addition to *Retzei*. The Mishnah Brurah (ibid. 16) concludes that only *Retzei* is said, as saying both would be contradictory.

After the *seuduah*, Kabbalas Shabbos and Maariv are recited.

In some communities, this procedure was practiced *lechat'chilah* in years like this. (See Me'iri Ksubos 7a and Mekabtzil Vol. 24 p. 89.) But the prevailing custom today is to finish the *seudah* during the day. Some also cite from kabbalah sources that kiddush should be made only after Kabbalas Shabbos and Maariv (Kaf Hachaim 271:22).



RAV ARYEH FINKEL

⁷Toldos Yaakov Y.D. siman 33 p. 148.

⁸Cited by R' Asher Weiss, below. I have been unable to locate this source in the original.

⁹Hilchos Rotzeiach 13:9.

(continued from page 1)



be subject to a dispute among the *Rishonim* (see Koveitz

invokes *rov* not due to *bitul*, but because every fabric has a halachic status: If a majority of the fibers are *tzemer* (sheep's wool), the fabric is classified as *tzemer*, but if the majority is a different material, the fabric is

not *tzemer*. According to this it would seem that a fabric of mostly sheep's wool and a minority of other material would be acceptable for the *bigdei kehunah*, because the fabric is defined as *tzemer*.

He'aros 59).

According to the Noda Bihuda (*Tinyana* 186), the Mishnah

SILVER
FAMILY
THERAPY
AGENCY
Care

BHHJ SPONSORS

Mr. Shmuel Caro

To become a corporate sponsor
of the BHHJ or disseminate it in
memory/zechus of a loved one,
email info@baishavaad.org.

Elevate your Inbox.

Scan here to receive the
weekly email version
of the Halacha Journal or sign up at
www.baishavaad.org/subscribe

