

# *When Halakhah and Ethics Collide, Part 1*

The Freehof Institute of Progressive Halakhah

## Twelve Minute Shiur #38

1 Exodus 21:35

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3 וְכִי־יִגָּף שׁוֹר־אִישׁ אֶת־שׁוֹר רֵעֵהוּ וַיָּמָת וּמָכְרוּ אֶת־הַשׁוֹר הַחַי וְחָצוּ אֶת־כִּסְפוֹ וְגַם אֶת־הַמֵּת יַחַצּוּן :

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5 When a person's ox injures an ox belonging to his neighbor/fellow (*re'ehu*) and it dies, they shall  
6 sell the live ox and divide its price; they shall also divide the dead animal.

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9 Mishnah Bava Kama 4:3

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11 שׁוֹר שֶׁל יִשְׂרָאֵל שֶׁנִּגְחַ שׁוֹר שֶׁל הַקֹּדֶשׁ וְשֶׁל הַקֹּדֶשׁ שֶׁנִּגְחַ לְשׁוֹר שֶׁל יִשְׂרָאֵל פְּטוֹר שֶׁנֶּאֱמַר "שׁוֹר רֵעֵהוּ" וְלֹא  
12 שׁוֹר שֶׁל הַקֹּדֶשׁ.

13 שׁוֹר שֶׁל יִשְׂרָאֵל שֶׁנִּגְחַ לְשׁוֹר שֶׁל נֹכְרִי פְּטוֹר וְשֶׁל נֹכְרִי שֶׁנִּגְחַ לְשׁוֹר שֶׁל יִשְׂרָאֵל בֵּין תָּם בֵּין מוֹעֵד מִשְׁלָם נֹזֵק  
14 שְׁלָם :

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16 When an ox belonging to a Jew attacks an ox belonging to the Temple [i.e., one sanctified for  
17 Temple use], or when an ox belonging to the Temple attacks an ox belonging to a Jew, (in either  
18 case) the owner of the attacking ox is exempt from liability, because Scripture says (Exodus  
19 21:35): "an ox belonging to his neighbor/fellow (*re'ehu*)," which excludes an ox belonging to the  
20 Temple.

21 When an ox belonging to a Jew attacks an ox belonging to a non-Jew, the (Jewish) owner is  
22 exempt from liability. When an ox belonging to a non-Jew attacks an ox belonging to a Jew,  
23 whether the attacking ox was *tam* or *mu`ad*, the (non-Jewish) owner must pay full damages.

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26 B. Bava Kama 38a

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28 שׁוֹר שֶׁל יִשְׂרָאֵל שֶׁנִּגְחַ שׁוֹר שֶׁל נֹכְרִי - פְּטוֹר.

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30 "When an ox belonging to a Jew gores an ox belonging to a non-Jew, the (Jewish) owner is  
31 exempt from liability."

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33 אִמְרִי : מִמָּה נִפְשָׁד? אִי "רֵעֵהוּ" דּוּקָא, דְּנֹכְרִי כִּי נִגְחַ דִּישְׂרָאֵל נִמִּי לִיפְטַר! וְאִי "רֵעֵהוּ" לֹא דּוּקָא, אִפִּילוּ  
34 דִּישְׂרָאֵל כִּי נִגְחַ דְּנֹכְרִי נִחִיב!

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36 An objection: either way you understand this, there's a problem! If the word "*re'ehu*" is to be  
37 taken literally, then if an ox belonging to a non-Jew gores an ox belonging to a Jew, the non-  
38 Jewish owner should also be held free of liability! If the word "*re'ehu*" is *not* to be taken  
39 literally, then even the Jewish owner of an ox that gores the ox of a non-Jew should be liable!

40 א"ר אבהו, אמר קרא: "עמד וימודד ארץ ראה ויתר גוים" - ראה שבע מצות שקיבלו עליהם בני נח,  
41 כיון שלא קיימו, עמד והתיר ממונן לישראל.  
42

43 Rabbi Abahu said: From the verse (Habakuk 3:6): "(God) stood and took the measure of the  
44 earth (or: shook the earth); God saw, and then made the nations tremble (*vayater*)" – God saw  
45 that the nations, which had accepted the seven Noahide *mitzvot*, did not fulfill them; therefore,  
46 God took action (*amad*, stood up) and released/permited (*hitir*) their property to Israel.  
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49 רבי יוחנן אמר, מהכא: "הופיע מהר פארן" - מפארן הופיע ממונן לישראל.  
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51 Rabbi Yochanan said: From here (Deuteronomy 33:2): "God appeared (*hofi'a*) from Sinai" – at  
52 Sinai, God confiscated/transferred (*hofi'a*) their property to Israel.  
53

54 Rashi

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56 מפארן – כשסיבצו והחזיר התורה על כל האומות ולא קיבלוה.

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58 "From Paran (= Sinai)" – when God made a tour of all the other nations and offered them  
59 the Torah, but they rejected it.  
60

61  
62 M'khilta, Bahodesh, parashah 5

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64 ולפיכך נתבעו אומות העולם בתורה, כדי שלא ליתן פתחון פה להם כלפי שכינה לומר, אלו נתבענו כבר  
65 קיבלנו עלינו, הרי שנתבעו ולא קבלו עליהם, שני "ויאמר ה' מסיני בא" וגו'. נגלה על בני עשו הרשע  
66 ואמר להם, מקבלים אתם עליכם את התורה, אמרו לו, מה כתיב בה, אמר להם: לא תרצח. אמרו לו,  
67 זו היא ירושה שהורישנו אבינו, שנאמר ועל חרבך תחיה. נגלה על בני עמון ומואב, אמר להם, מקבלים  
68 אתם את התורה. אמרו לו, מה כתוב בה, אמר להם, לא תנאף. אמרו לו, כלנו מניאוף דכתיב ותהרין  
69 שתי בנות לוט מאביהם, והיאך נקבלה. נגלה על בני ישמעאל, אמר להם, מקבלים אתם עליכם את  
70 התורה. אמרו לו, מה כתוב בה, אמר להם, לא תגנוב. אמרו לו, בזו הברכה נתברך אבינו, דכתיב והוא  
71 יהיה פרא אדם, וכתיב כי גנב גנבתו. וכשבא אצל ישראל... פתחו כלם פיהם ואמרו: כל אשר דבר ה'  
72 נעשה ונשמע, וכן הוא אומר +חבוקק ג ו+ עמד וימודד ארץ ראה ויתר גוים  
73

74 The nations of the world were invited to accept the Torah, so that none would have a pretext to  
75 complain against God: "had we only been invited, we would have accepted it upon ourselves!"  
76 In fact, though, they *were* invited, but they *didn't* accept it upon themselves, as Scripture says  
77 (Deuteronomy 33:2): "God came from Sinai; God appeared from Paran." God appeared to the  
78 descendants of the wicked Esau and said to them: "Will you accept My Torah upon yourselves?"  
79 They asked: "What is written in it?" God said to them: "You shall not murder." They answered:  
80 "But that is the inheritance we have received form our ancestor, as Scripture says (Genesis  
81 27:40): "By your sword shall you live." God next appeared to the Moabites and the Ammonites  
82 and said to them: "Will you accept My Torah upon yourselves?" They asked: "What is written in  
83 it?" God said to them: "You shall not commit adultery." They answered: "But we are the  
84 descendants of adultery, as Scripture says (Genesis 19:36): Lot's two daughters became pregnant  
85 from their father." God next appeared to the Ishmaelites and said to them: "Will you accept My  
86 Torah upon yourselves?" They asked: "What is written in it?" God said to them: "You shall not

87 steal.” They answered: “Bu that’s the blessing our ancestor received from You, as Scripture says  
88 (Genesis 16:12): “He shall be a wild ass of a man” and (Genesis 40: 15): “I was kidnapped  
89 (stolen) from the land of the Hebrews.”  
90 But when God appeared to the Israelites, they declared in unison (Exodus 24:7): “All that Adonai  
91 has spoken we will do and we will obey.”  
92 Thus Scripture says: (Habakuk 3:6): “(God) stood and took the measure of the earth (or: shook  
93 the earth); God saw, and then made the nations tremble (*vayater*).”