

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah enumerates four categories of damages and contrasts them with one another. The Mishnah concludes by noting the common denominators among them.

2) Defining **אב** and **תולדה**

It is noted that from the reference to general categories (אבות נויקין) it would seem that there are subcategories (תולדות) as well. The Gemara inquires whether the subcategories are treated the same as the general categories.

A Mishnah in Shabbos is cited that discusses general categories and it is demonstrated there that the subcategories are similar to the general categories.

Tangentially, the Gemara explains the difference between general categories of melachah and subcategories of melachah.

A Mishnah regarding the laws of tum'ah is cited that discusses tum'ah and it is clear that subcategories are not similar to the general categories.

The Gemara thus asks whether subcategories of damages are similar to the general categories.

R' Pappa answers that some subcategories are similar and some are not.

A Baraisa is cited that enumerates three categories of damages that could be caused by an animal.

The Gemara cites numerous sources for the category of קרן and explains why different sources are necessary.

Four subcategories of קרן are listed.

The Gemara discusses the subcategory called נגיפה.

It is explained why the Gemara uses the term יגח when discussing goring a person and the term יגף when discussing goring an animal.

The Gemara explains why נשיכה is a subcategory of קרן rather than שן.

It is explained why רביצה and בעיטה are categorized as קרן rather than רגל.

In an effort to clarify R' Pappa's earlier statement the Gemara declares that subcategories of קרן are similar to the general categories of קרן and it is the subcategories of שן and רגל where the subcategories are not similar to the general categories.

A Baraisa is cited that identifies the source for the general categories of שן and רגל. ■

Distinctive INSIGHT

Man possesses מזל

אדם דאית ליה מזל כתוב כי יגח, בהמה דלית ליה מזל כתוב כי יגוף

Rashi explains that מזל denotes that a human being possesses intelligence, and he is therefore able to guard himself that he not be injured. The appropriate expression to be used if an animal does manage to harm him is "כי יגח," which indicates that the animal had intent for harm and came against the person and overpowered him. An animal which gets injured, however, can be as a result of two animals standing together with one pushing or bumping against the other, who was oblivious to any danger. Here, the expression "כי יגף" is used, indicating a push or shove, rather than an intentional act of aggression.

Alternatively, Rashi explains that מזל refers to the fact that a person is not killed easily with the animal simply pushing against him (נגיפה). This is why the Torah uses the expression of נגיחה when describing an animal killing a person, as this term suggests a rough and intentional attack, where the animal gores with its horns and bears down on his human victim. This is where death would result.

In his גליון הש"ס, Rabbi Akiva Eiger cites Rashi to Shabbos 53b, where he explains that the idea of מזל is that man is accompanied by a guardian angel. This corresponds to the second approach which Rashi presented, in that this angel which watches over a person, serves to protect him, thus making it more difficult for an animal to kill him by just merely pushing against him.

Tosafos Yom Tov notes that according to the first explanation of Rashi, because injury to a person is a function of his intelligence, it would be more difficult for an animal to kill a person who is more alert and cognizant of his surroundings. Therefore, if an animal has an established pattern (חזקה) of killing young children, this חזקה would not automatically mean that the animal has a pattern to kill adults, as well. Children do not have a developed sense of danger and to be alert to protect themselves. They are more vulnerable, and the animal will have an easier time attacking them, just as an animal has an easier time injuring its fellow animals. We would not be able to assume that this same animal would be able to overcome the defensive nature of adults. However, according to the second approach of Rashi, where the מזל of a person is what protects him, we would say that children possess this same defensive nature as adults, and an animal that has a חזקה to kill children is automatically deemed to have a חזקה to kill adults, as well. ■

HALACHAH Highlight

Paying for damages

חב המזיק לשלם תשלומי נזק במיטב הארץ

The damager must pay for the damages with the best land

The Mishnah states that the owner of the damager must pay for the damages with the best land. This seemingly implies that it is incumbent upon the owner of the damager to pay with land rather than with movable objects. Rashi¹, however, adds a comment that dramatically changes the meaning of the Mishnah. Rashi writes **אם רוצה לפרוע לו קרקע**— If he [the damager] wants to pay for the damages with land. In other words, the damager is not required to pay for the damages from land; rather it is the damager's choice to pay from land or movable objects. Shulchan Aruch² follows Rashi's approach and even takes the matter a step further. Shulchan Aruch writes, "When Beis Din addresses the issue of collecting for the damaged party from the damager they first collect from movable property and in the event that the damager does not have any movable objects or if he does not own a sufficient quantity of movable objects to cover the cost of the damages he may collect the remaining amount from land." This clearly indicates that the damager is not obligated to pay for the damages from his land if he does not choose to do so.

S"ma³ infers even more than Shulchan Aruch. He maintains that when it comes to paying for damages, the damager has the upper hand to determine how he wants to pay. This is in contrast with the halacha of a borrower. When it comes to

REVIEW and Remember

1. What are the four general categories of damages?

2. What is the difference between an **אב נזק** and a **תולדה**?

3. What are the subcategories of **קרוך**?

4. Why is biting not a subcategory of **שן**?

collecting encumbered property for a defaulted loan the lender has the privilege to decide whether he wants land or movable objects. Regarding damages it is entirely in the hands of the damager to make the choice whether to pay with land or with movable objects. Furthermore, notes S"ma, the language of Shulchan Aruch implies that we assume that he would prefer to pay with movable objects rather than land and if Beis Din is forced to collect property without the consent of the damager Beis Din will assume that he prefers to pay with movable objects. In the event, however, that the damager expresses an interest in paying with land and the damaged party asks for payment from movable objects the damager has the stronger position and the choice is his to decide how he will make payment. ■

1. רש"י ד"ה במיטב הארץ.
2. שו"ע חו"מ סי' תי"ט סעי' א'.
3. סמ"ע שם סק"א. ■

STORIES Off the Daf

The laws of damages

"ד' אבות נזיקין...המבעה"

Rav Chaim Shmuelevitz, zt"l, recounted that when Rav Yisrael Salanter, zt"l, heard that a group of local businessmen planned to begin learning Masseches Shabbos, he commented, "They should first learn Bava Kama. That way, they will learn how to be vigilant in avoiding causing damage to others!" Rav Chaim emphasized that when one learns Bava Kama he should toil to be sensitive to his friend by avoiding any word, action, or even gesture that may anger or trouble him.

But there is another lesson in the importance of learning this mesechta which we can learn from another incident with Rav Yisrael. When asked why children begin specifically with Bava Kama despite the fact that there are many other tractates that seem more relevant or appropriate for their age, he explained, "This is to inculcate within them at the outset their duty to ensure that they cause no harm to others. This is hard to implant in one's heart since one naturally feels that if his property caused damage, he should not be personally obligated to pay since he himself caused no damage and meant no harm. Therefore, it is worthwhile to learn this mesechta with children from a young age in order to instill Torah values regarding

damages."¹

Rav Shlomo Zalman Auerbach, zt"l, made a similar statement while resolving a seemingly difficult question on the first mishnah in Bava Kama. "Even according to the opinion that 'ma'veh' refers to a man who caused damage, the Mishnah avoids using the more usual term *adam* to teach a very important lesson: the mishnah was unwilling to call a person who damaged his friend an 'adam'—a human being. It would appear that learning Bava Kama is an essential element in fulfilling the mishnah, 'Derech erez kadmah laTorah.'² ■

1. מפי השמועה
2. חכו ממתקים, חלק א', עמוד שס"ג