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בבא קמא י״ג
CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) Liability for sacred property (cont.)

The Gemara concludes the unsuccessful challenge to the assertion that R' Yosi Haglili's opinion is limited to when the animal is still alive.

2) Kodshim Kalim

The Beraisa that contains the dispute between R' Yosi HaGalili and Ben Azai regarding ownership of kodshim kalim is presented.

The Gemara clarifies that according to Ben Azzai R' Yosi HaGalili's opinion is limited to the case of Shelamim and according to R' Yochanan does not include a ma'aser animal.

Ravina maintained that R' Yochanan's explanation that we are excluding the case of a ma'aser animal was said in a different context.

The second version of R' Yochanan's teaching is successfully challenged.

Rava offers a completely different interpretation of the Mishnah.

This explanation is successfully challenged.

3) A kodshim kalim animal that damages

R' Abba teaches that when a kodshim kalim animal damages collection comes from its body and not from its sacrificial parts.

This explanation is unsuccessfully challenged.

As part of the explanation the Gemara demonstrates how this explanation is consistent with both Rabanan and R' Nosson who disagree whether one has the right to collect all the damages from one partner when it is impossible to collect from the second partner.

Rava rules that when a Korban Todah damages collection comes from the animal and not from its loaves.

The novelty of this ruling is explained.

4) Clarifying the Mishnah

The Gemara explains the intent of the Mishnah's line, "נכסים שהן של בני ברית". The Mishnah's emphasis that the laws of damages only apply to privately held properties is explained.

(Continued on page 2)

REVIEW and Remember

1. When does a first-born animal become sanctified?

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2. What is the point of dispute between Rabanan and R' Nosson?

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3. To what case does the Baraisa refer when it mentions an exemption for ownerless properties?

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4. What is the owner od an animal that damaged another animal on the damger's property exempt from liability?

_____

Distinctive INSIGHT

Exclusive property—נכסים המיוחדים

עד שתהא מיתה והעמדה בדין שוין כאחד

The Mishnah (9b) taught that payment for damages done by an ox are only paid for "נסכים המיוחדין." The definition and application of this term is obscure, and the Gemara presents several opinions to decipher this phrase. Among the explanations given is that of Ravina who says that the lesson is that a person only pays for damage his animal causes if he still owns the animal when the case is presented in court. However, if, after the damage occurred, the owner either consecrated the animal for the Bais HaMikdash, or if he disowned it (הפקיר), no payment is to be made. The Torah only requires restitution to be made if the animal had exclusive ownership (מיוחדים) from the time it did the damage until the time the case is brought to court for payment. In the Beraisa which follows, the source for this halacha is identified by Rabbi Yehuda. The verse states that from the moment the animal begins its damage until the time testimony is brought in court we have a condition of "והועד בבעליו—testimony is brought against its owner." This suggests that there be one solitary ownership throughout the episode. If the owner gives his animal to someone else, abandons it, or even if he donates it to the Bais HaMikdash, he has interrupted this continuity, and he is exempt from paying.

Tur (C.M. #406) writes that if the owner abandoned the animal and made it ownerless, but then he himself re-acquired the animal, he must still pay the damages. He explains that the lesson from the verse is not that we cannot have a situation of the animal being "ownerless" in the meantime, but rather we cannot have a situation where the animal is ownerless at the moment of the verdict in court. The Vilna Gaon notes that Rashi disagrees with Tur. Rashi writes that the animal must be owned by one person "from the moment of the goring until the time the animal is brought to judgment." If the owner declares the animal ownerless, even for a short time from the moment of damage until the court appearance and even until the verdict, this condition would be interrupted.

The Vilna Gaon and Rabbi Akiva Eiger bring a proof to the Tur from the wording of the Gemara, which says that the animal must be owned by the same person from "the moment of death (damage) until the time of judgment and the verdict." If Rashi were correct, the Gemara would not have had to mention the intervening stage of "העמדה בדין," as it would have included in the range of damage/verdict. Rather, we see that the animal has to be owned at each stage, but not continuously. ■

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In memory of
Yehoshua ben Reuven Yosef & Dov ben Avrohom Yakov
by the Zimmerman family

HALACHAH Highlight

Selling the animal after it gores

עד שתהא מיתה והעמדה בדין וגמר דין שוין כאחד

Until the death, the beginning of the trial and the end of the trial are alike

The Gemara states that if an ox gores and the owner declares it ownerless or sanctifies the animal he is exempt from paying for the damages. Rashi[1] explains that liability demands that the ox belong to one person from the time that it gores until the end of the trial (גמר הדין). Rashba[2] challenges this explanation since this explanation would lead us to an untenable outcome. According to Rashi's explanation if the owner of an ox died after it gored the heirs who inherit the ox should be exempt from payment since the ox did not remain in one person's possession from the time that it gored until the end of the trial. Furthermore, according to Rashi if the owner sold the animal before the end of the trial he should also be exempt so why then did the Gemara address the cases of sanctifying the animal and declaring it ownerless when it could have discussed the case of the owner selling the animal?

Rashba suggests that the intent of the Gemara is that the ox must remain in its same circumstance; meaning owned by someone, from the time that it gores until the end of the trial but if it is sanctified or is declared ownerless it is no longer owned by a person and thus it does not qualify as שור איש. If the owner merely sold the animal he would remain liable since the animal is still owned by a person. This interpretation is supported by a careful reading of the Gemara. The Gemara uses the term כאחד which implies that the animal remained in the same circumstance throughout rather than the term באחד which would imply that it remained under the same owner throughout.

Tosafos Rabbeinu Peretz[3] also follows Rashba's interpretation and offers another proof to that position. According to Rashi's approach there would never be a case of an ox that will be stoned since immediately after the ox gores and kills someone the owner can sell the ox to his friend thus releasing himself and the animal from any further liability. Rather, the only exemption is when the animal is sanctified or declared ownerless so that the ox no longer has any owner whatsoever. ■

1. רש"י ד"ה למעוטי וד"ה והועד.
2. דברי הרשב"א מובא בשיטמ"ק ד"ה יתר.
3. תוס' התוספות רבינו פרץ ד"ה והועד. ■

(Overview...Continued from page 1)

A second interpretation of the emphasis that damages apply only to privately held properties is suggested.

Ravina suggests that the phrase excludes where the owner of the goring ox consecrated the ox after it gored. A Beraisa is cited that supports this interpretation. An emendation is made to the Beraisa.

The rationale for the exemption when the damage takes place on the damager's property is explained.

5) שן and רגל in a jointly owned field

R' Chisda in the name of Avimi and R' Elazar disagree whether one is liable for שן and רגל in a jointly owned field. This discussion relates to the proper way to read the Mishnah.

It is noted that this explanation seems inconsistent with Rav's explanation of the Mishnah.

The Gemara cites a Beraisa that refers to the case included by the phrase "חב המזיק".

The Beraisa mentioned a case of an animal causing damage in the watchman's field. The Gemara inquires about the exact circumstances of that case.

The Gemara arrives at an acceptable explanation of the Beraisa.■

STORIES Off the Daf

Borrowing from a child

"חב המזיק להביא...השואל"

Today's daf discusses a person who borrows.

In most religious communities in Israel, parents allow their children to tread the streets without fear. This is especially true of communities such as Bnei Brak which does not even have a police station. In such places, when parents need some things from the local grocery store they sometimes send their six-year-old with a list of items that must be purchased and some kind of wagon—or even a baby carriage—to transport the items home.

A certain man required a vehicle to move some fairly heavy seforim when he spied a child pushing a wagon to the local grocery store.

"Perfect," he thought.

He approached the child and requested to borrow the wagon for several minutes. Although the man was a comparative stranger, the child happily obliged, and the man moved the seforim and returned the wagon. Shortly afterwards, the child left the wagon in the street "for just a moment" and a car destroyed it.

When the parents heard that this man had borrowed it they claimed that he was obligated to pay the damages since he had returned it to an irresponsible child.

"But so did you!" the accused hotly contested.

When the question was put before Rav Yitzchak Zilberstein, shlit"a, he replied that the man who had borrowed the wagon was indeed guilty, but for a different reason. "He had no right to borrow the wagon from the child so he is a shoel shelo mida'as and is likened to a thief. All damages are on him until he at least returns the wagon to its rightful owner. If he had been a person who often borrowed things from the parents or if the parents were known to be generous with their possessions, there would be room for doubt, but since they do not know him and would very likely have refused to lend him their wagon, he is responsible!"[1] ■

1. עלינו לשבח, במדבר, עמוד תרמ"ד-תרמ"ה

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