

## OVERVIEW of the Daf

### 1) שן and רגל in a jointly owned field (cont.)

The Gemara unsuccessfully challenges its present understanding of the Baraisa.

R' Elazar's position regarding liability for שן and רגל in a jointly owned field is unsuccessfully challenged.

The Gemara cites support for its understanding of the Baraisa that resolved the challenge to R' Elazar.

R' Zeira unsuccessfully challenges the earlier assumption that one is not liable for damages of שן and רגל in a jointly owned field used for produce rather than animals.

In light of the current explanation it is suggested that R' Chisda and R' Elazar also do not disagree but this suggestion is rejected.

### 2) Four general rules of damages

The Gemara cites the Baraisa that was quoted earlier.

It is noted that the first part of the Baraisa follows R' Tarfon and the latter part of the Baraisa follows Rabanan.

The Gemara cites Shmuel's statement to R' Yehudah that confirms that the Mishnah changes from R' Tarfon to Rabanan.

Ravina in the name of Rava explains that the Mishnah follows R' Tarfon.

This explanation is unsuccessfully challenged.

**3) MISHNAH:** The Mishnah presents a number of rules that pertain to payment of damages.

### 4) Clarifying the Mishnah

R' Yehuda explains the intent of the phrase, "שום כסף" and cites a Baraisa that echoes this interpretation.

A Baraisa is cited to explain the meaning of the phrase שוה כסף.

Rabbah bar Ulla explains how the Baraisa knows that the phrase שוה כסף means what it says it means.

This explanation is successfully challenged and Rabbah bar Ulla suggests another explanation.

This explanation is also challenged and R' Ashi offers an acceptable explanation.

R' Yehudah bar Chinana notes a contradiction whether damages are paid from land or even movable properties.

A resolution is offered.

This resolution is unsuccessfully challenged.

The meaning of the phrase בפני בית דין is explained.

The meaning of this phrase is unsuccessfully challenged.

The Gemara explains the meaning of the phrase על פי עדים.

This explanation is challenged. ■

## Distinctive INSIGHT

*The cow damaged the garment, the garment damaged the cow*

פרה שהזיקה טלית וטלית שהזיקה פרה

The opening statement in the Mishnah (14b) is שום כסף. Rabbi Yehuda explains that this teaches that when we evaluate damage and payment, we do so in monetary terms, and financial restitution is to be made. This point is illustrated clearly in the Baraisa which follows in the Gemara: "If an ox damages a garment (by trampling on it), or if a garment damages an ox (the animal is injured by tripping over the garment in the street), we do not say that the court should confiscate the ox to pay for the ruined garment (even if the ox was worth much more than the damage done to the garment), or vice-versa. Rather, we determine the monetary cost of replacing the object which was damaged, and restitution is made with money.

Rashi explains that the case is dealing where the ox and the garment interacted with each other and they both suffered damage. Which ever item suffered the greater loss should pay the owner of the other with money. Tosafos and Rashba ask that if this altercation took place in the public domain, the damage done by the ox would be exempt, as רגל does not pay for damage in the public domain. And if the damage took place in private property, the owner of the garment would be exempt, in accordance with the rules of בור.

Tosafos Ri'd, Rosh and Nimukei Yosef therefore explain that the case is where the ox was walking in a domain where both parties had permission to have animals enter, but only one had permission to put his objects. The animal of one stepped on the garment owned by the other, whereby the garment was torn and the leg of the animal was broken. In this scenario, where the domain was partly restricted, it is a private domain vis-à-vis the garment, so the owner of the ox is responsible for damage the animal causes. Yet, it is also a public area regarding the damage to the ox, so the owner of the garment cannot say that the ox should not have been there.

In מרומי שדה, the Netzi"v suggests that the case could be where the garment is lying partly in private property and partly in the street. The animal trampled on the end in the street, causing the part in private property to tear, while the animal itself became injured by the garment. Although the animal itself was in the street, Shulchan Aruch (C.M. 389:15) rules that the animal owner must pay for damage done in the private property. ■

Today's Daf Digest is dedicated

In loving memory of

Faige Raizel bas Menachem Manush A"H, Mrs. Fanny Inger O.B.M.  
 by her children Dr. and Mrs. Aaron Friedman

# HALACHAH Highlight

## Paying for damages caused by a fire or a pit

אלא פרט לבית דין הדיוטות

Rather it excludes a Beis Din of non-experts

The Mishnah state that damages are only paid if the obligation was declared in Beis Din. The Gemara explains that the Mishnah means to teach that only a Beis Din of experts (מומחים) has the ability to obligate a person to pay a fine (קנס) but a Beis Din comprised of non-experts (הדיוטות) does not have the authority to obligate someone to pay a fine. Shulchan Aruch<sup>1</sup> elaborates on the different categories of fines that our Batei Din may not collect since we are non-experts. One case that is mentioned is one animal that goes into another animal. The reason that Beis Din will not obligate the owner of an animal that goes another animal is that we (non-experts) can only obligate people to pay for damages that commonly occur and it is an uncommon occurrence for one animal to gore another.

Pischei Teshuvah<sup>2</sup> cites Shvus Yaakov<sup>3</sup> who discusses whether Batei Din nowadays can obligate a person for damages caused by fire or a pit. Shvus Yaakov cites authorities who maintain that Batei Din have the authority to obligate people for damage they caused by fire or digging a pit but notes that there are some Rishonim who express uncertainty whether Batei Din can obligate a per-

# REVIEW and Remember

1. In what domain is one liable for שן and רגל?
2. What is the point of dispute between R' Tarfon and Rabanan?
3. What property does Beis Din collect from a damager?
4. What is a בית דין הדיוטות?

son to pay for damages caused by a fire or a pit. Due to this uncertainty Yam Shel Shlomo<sup>4</sup> ruled that Batei Din cannot obligate a person to pay for damages caused by fire or a pit. Shvus Yaakov disagrees with this ruling and cites a ruling of Chavos Yair<sup>5</sup> where he obligated a person to pay for damages that were caused by fire. Pischei Teshuvah notes that Ketzos HaChoshen and Sha'ar Hamishpat agree with Shvus Yaakov's ruling and even R' Akiiva Eiger<sup>6</sup> who challenges Shvus Yaakov only disagrees with his proof but agrees with his ruling. ■

1. שו"ע חו"מ סי' א' סע' א'
2. פת"ש שם סק"ב
3. שו"ת שבות יעקב סי' קל"ו
4. ים של שלמה ב"ק פ"ח סי' ה'
5. שו"ת חות יאיר סי' קס"ט
6. חידושי רעק"א שם על הש"ך סק"ב ■

# STORIES Off the Daf

## Witness to a tragedy

על פי עדים...סיפא אצטריך ליה

Before Jews were granted rights in Europe, they were often mistreated and disregarded. They were afforded no human rights at all. On the contrary, they were often expected to tolerate any insult or abuse from their "betters." Sadly, even a slain Jew was often not even considered a tragedy. To the average gentile, he was just another pernicious unbeliever dead.

Even an ox that killed a Jew was

not prosecutable in many countries. Unlike the relatives of a gentile killed by an ox, the heirs of a Jew had no legal right to compensation or even to put the offending animal to death.

There was a case where a Jew was gored to death by an ox in front of only one Jewish witness. After he informed the relatives of the tragedy, the family immediately seized the animal. They figured that they would kill it to ensure that it not cause further harm. But someone present pointed out that this may well be forbidden. "In Bava Kama

14 we find that one may only collect damages if there are two kosher witnesses. Perhaps the same is true in this

case as well?"

When the Bach, zt"l, was consulted regarding this question he replied that the standard in Bava Kama does not apply to the property of non-Jews. He said, "One may definitely kill a non-Jew's ox based on the testimony of a single witness before one judge. And no warning is required to execute the ox."<sup>1</sup>

The Chelkas Yoav, zt"l, added, "In this case, the witness need not testify before separate judges since he can also act as the judge."<sup>2</sup>

1. שו"ת הב"ח סימן קי"א
2. חלקת יואב סנהדרין דף ט"ו