

## OVERVIEW of the Daf

### 1) Fire (cont.)

Rava reports that Abaye had a question against the Amora (R' Yochanan) who maintains that liability is because fire is similar to shooting an arrow, but he answered the question.

This explanation is challenged and the Gemara relates that the opinion that compares fire to shooting an arrow agrees that fire also carries liability because it is his money.

The practical difference between these two opinions is identified.

### 2) Liability when a dog takes a coal and places it on another's pile of straw

The Gemara initially states that the owner of the dog is liable for the pile of straw.

The reason the owner of the coal is not liable is explained.

R' Mari comments that this discussion indicates that dogs will tunnel under closed doors.

The Gemara identifies the location where the dog ate the cake mentioned in the Mishnah.

### 3) Is the mouth of the cow considered to be in the damaged party's yard?

The Gemara suggests that one can infer from the Mishnah that the mouth of a cow is considered to be in the damaged party's yard.

The possibility that the cow's mouth should be treated like the damager's property is unsuccessfully challenged.

Two unsuccessful attempts are made to resolve the inquiry of whether the cow's mouth is treated like the damaged party's yard.

### 4) Goats

Two incidents involving goats damaging other people's property are recorded.

5) **MISHNAH:** R' Yehudah and R' Meir disagree about how an animal becomes **מועד** and how it reverts back to being a **תם**.

### 6) Clarifying the differing positions

Abaye and Rava disagree how to interpret the verse used by R' Yehudah to formulate his position. ■

## Distinctive INSIGHT

### *Change of status after three incidents of goring*

כל שהעידו בו שלשה ימים

**T**osafos cites the classic disagreement between Rebbe and R' Shimon b. Gamliel (Yevamos 64b) regarding how a **חזקה**—a change of status — is established. One opinion is that this change occurs after a condition repeats itself a second time, while the other view is that it must occur three times before a status is legally altered. Although our Mishnah states that an ox becomes a **מועד** after three incidents of goring, with the animal's owner being warned after each event, Tosafos points out that this reflects the opinion of R' Shimon ben Gamliel. There are Mishnayos in reference to other topics which present the development of a **חזקה** after two incidents (in reference to kiddushin and lashes) thus reflecting the opinion of Rebbe.

Tosafos wonders whether we must say that Rebbe, who holds that **חזקה** changes after two times, necessarily rejects the simple reading of the verses which describe the **מועד** process for a goring ox. The verse (Shemos 21:36) seem to clearly describe that "it was a goring ox today, yesterday and the day before..." whereupon it finally becomes a **מועד** after the third time. Tosafos explains that although the Gemara identifies the Mishnah as representing the opinion of R' Shimon b. Gamliel, the truth is that Rebbe would agree that the law of a goring ox changes only after three incidents, due to the reading of the verse.

**חידושי רבי שלמה** explains that Rebbe holds that the ox attains that status of a "goring ox" after two incidents. However, the rule is that in order for the owner to pay full

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## REVIEW and Remember

1. Explain **באש טמון**.

2. In the case of the Mishnah, who is responsible to pay for the pile of grain?

3. Is one liable to pay for damages if one incites his dog to bite another person?

4. What are the two issues under dispute between R' Yehudah and R' Meir?

## HALACHAH Highlight

*Is someone who damages with fire liable to pay for the embarrassment that was caused?*

לחייבו בארבעה דברים

To obligate him in four payments

Rashi<sup>1</sup> explains that the four payments one is liable to pay when causing damage with fire are damages, pain, medical expenses and lost wages (נזק צער ריפוי ושבת). The owner of the fire does not have to pay for the embarrassment (בושת) that he caused since we will learn (26b) that one is not obligated to pay for causing another person embarrassment unless it was done intentionally. Rambam<sup>2</sup>, however, rules that one who causes damage with fire is also obligated to pay for the embarrassment that he caused. Lechem Mishnah<sup>3</sup> expresses astonishment that Rambam holds one who damages with fire liable for all five payments when the Gemara explicitly states that one is only obligated to make four payments rather than five. He suggests that Rambam refers to a case where the owner of the fire intended to cause damage and that is the reason he is obligated to pay even for the embarrassment whereas the Gemara refers to a circumstance where there was no intent to cause damage and thus he is exempt from paying for the embarrassment. Accordingly, Rashi and

Rambam do not disagree; they merely refer to different circumstances.

Bach<sup>4</sup> disagrees and maintains that Rashi and Rambam dispute whether one who causes damage with fire is obligated to pay for the embarrassment that he caused. As far as the Gemara's statement (that one is obligated to make four payments) is concerned, Bach explains that according to Rambam the meaning of the Gemara is that one must make four payments (pain, medical, unemployment and embarrassment), in addition to the payment for damages. Vilna Gaon<sup>5</sup> notes that Rambam's ruling is stated explicitly in Yerushalmi. The question that remains is why there is liability for embarrassment when there was no intent to cause damage. S"ma<sup>6</sup> suggests that Rambam holds that when a person lights a fire in a place where an ordinary wind will blow it to a location where it will cause damage it is considered as if he had intent to cause damage. This would be in contrast to the case of a person who climbs onto a roof and falls in an ordinary wind where we do not consider it as if his falling was done intentionally. ■

1. רש"י ד"ה לחייבו
2. רמב"ם פי"ד מהל' נזקי ממון הט"ו
3. לחם משנה שם
4. ב"ח חו"מ סי' תי"ח ס"ק י"א
5. גר"א שם אות ל"ז
6. סמ"ע שם ס"ק כ"ג ■

## STORIES Off the Daf

*Out of harm's way*

ולחייב בעל הגחלת

The Shelah Hakadosh, zt"l, exhorted us to be vigilant never to harm another. "In Berachos we find that Chanah pleaded with God, 'Master of the universe, nothing in Your creation was made in vain: eyes to see with, ears to hear, and a nose to smell with. You created a mouth to speak with, hands to do labor, and feet to go places...' We see that everything has a purpose for which it should be used. How much more so should we refrain from causing damage, since one who does so is even worse than one who sits around doing nothing..."<sup>1</sup>

The Chazon Ish, zt"l, was well known for his remarkable ability to solve

any problem by virtue of the Torah's wisdom. People were astounded by his erudition and his ability to understand any topic—from psychology to surgery—from his Torah learning. This was not only a result of his diligence or his breadth of knowledge. He merited this because every detail of his life was addressed according to the Torah's dictates. Even the simplest action was carefully considered to ensure that it was in accordance with the Torah.

Rav Yechezkel Bertler, shlit"l, recounted: "Even the most mundane matter like walking through the streets reminded the Chazon Ish of Torah. Whenever he walked on a street without a sidewalk, he would veer to the side of the road as cars approached. He would always explain why with the same wry comment, "Perhaps the driver has forgotten the Tosafos in Bava Kama 23 that

states that one must be even more careful to guard against damaging another than to guard his own self from sustaining damage."

In this way he fulfilled his obligation to safeguard his own life while reminding himself and whoever accompanied him of this powerful lesson!<sup>2</sup> ■

של"ה הקדוש מסכת סוכה נר מצוה אות נ"ג מעשה איש חלק ד' קמ"ג

(Insight...continued from page 1)

payment it is not enough that the ox be a goring ox. It must become a מועד, and this happens only when three gorings are accompanied with daily court appearances by its owner. (הועד בבעליו). This is why Rebbe agrees that in this case, the status of the ox does not result in its becoming a מועד until after three incidents of goring. ■