

## OVERVIEW of the Daf

### 1) Selling, slaughtering and sanctifying a damaging animal (cont.)

The Gemara concludes elaborating on the earlier-cited Baraisa.

### 2) When the animals change value subsequent to the damage

A Baraisa is cited that discusses the halachos of paying for damages when one of the animals changes value subsequent to the damage.

It is noted that the Baraisa takes both sides of the debate between R' Akiva and R' Yishmael.

The Gemara explains how the Baraisa could be consistent with R' Akiva.

This explanation is unsuccessfully challenged.

A second halacha of this Baraisa is explained.

### 3) MISHNAH: R' Meir and R' Yehudah disagree how to interpret the verses that discuss how to pay for damages caused by תם.

### 4) Elaborating on the dispute in the Mishnah

A Baraisa is cited that elaborates on the conversation between R' Meir and R' Yehudah.

Rava suggests a practical difference between their opinions.

Abaye successfully refutes this explanation.

R' Yochanan offers another explanation.

Support for R' Yochanan's explanation is cited.

A point in R' Yehudah's statement is explained.

R' Acha bar Tachlifa questions R' Yehudah's position.

Rava responds to this question.

The subsequent exchange between Rava and R' Acha bar Tachlifa is recorded.

### 5) MISHNAH: The Mishnah contrasts a person's liability for damages he causes and damages caused by his animal.

### 6) Liability for destructive acts on Shabbos

R' Avahu cites a Baraisa that teaches that one who does a destructive act on Shabbos is exempt from punishment except for one who inflicts a wound or burns something.

R' Yochanan challenged this ruling.

R' Yochanan's position is challenged. ■

## Distinctive INSIGHT

*The more severe penalty cancels the less severe penalty*

והוא שהדליק את הגדיש בשבת פטור מפני שמתחייב בנפשו

The Mishnah concluded with the law of a person who ignites a haystack on Shabbos. The halacha is that with this one act, the person is liable for two punishments. For violating Shabbos, he is eligible for a death penalty, and for destroying property he should be liable to pay damages. In such a case we apply the rule of **קיים ליה בדרכה מיניה**, and the one act is only punished with the more severe of the punishments associated with his act. Here, he is to be put to death for violating Shabbos, and he does not have to pay financial restitution for the burnt property.

One of the guidelines of the rule of **קיים ליה בדרכה מיניה** is that the financial and corporal punishment elements of the act must occur simultaneously in order for the financial aspect to be cancelled. The Yerushalmi (Kesuvos 3:1) deals with the fact that in our case, the person is liable for death with the igniting of the first stalk, whereas the damage to the remaining stalks occurs only as the fire spreads. Perhaps the one who lit the flame should be exempt from paying for the first stalk, but why should he be exempt from payment for the rest of the field? The Yerushalmi explains that each stalk which is burned is a separate act. If witnesses were present, they could warn him not to let the fire spread to the next stalk, and they could also warn him to not allow the Shabbos to continue to be violated (assuming he could limit the spread of the flame in some permitted manner). Therefore, he continues to experience a condition of simultaneous liability for damage and violation of Shabbos with each stalk.

Rabbi Akiva Eiger explains that the Yerushalmi does not mean that the judgment for Shabbos applies to each and every stalk that burns, as the penalty of death only applies to the first stalk. Rather, when the rule of **קיים ליה בדרכה מיניה** is used for the rest of the stalks after the first one, the financial aspect of the act is eclipsed even though there is no longer an ability for the court to apply the death penalty for the violation of Shabbos. As long as Shabbos is being violated, an **איסור** is being done for each stalk, and it is the continued commission of the **איסור** that eclipses the need to pay for damage. This is true, however, when the more severe punishment is the death penalty. If the sinful act is one which incurs lashes and payment (**מלקות וממון**) we dismiss the financial payment only when one actually receives the lashes. R' Yochanan holds (Kesuvos 35a) that one who does an act which is liable for lashes inadvertently (**שוגגין**) is still required to pay the money. ■

## HALACHAH Highlight

### Tearing paper from a roll on Shabbos

כל המקלקלין פטורין חוץ מחבול ומבעיר

*One is exempt from punishment for any destructive act except for inflicting a wound or burning*

**M**ishnah Berurah<sup>1</sup> rules that if a person tears paper to wipe himself on Shabbos, e.g. a paper towel, he has violated the melachah of tearing (קורע) even though the act of tearing off a piece is destructive. The reason he is liable is that his intention was to perform a constructive act by tearing that paper and thus it is considered as though he tore with the intent of a constructive outcome (קרוע על מנת לתקן). It was suggested to Tzitz Eliezer that tearing paper to use it should not constitute an act of constructive tearing since it should be considered similar to the case discussed by Rambam of digging when one is interested in obtaining the dirt rather than having a hole in the ground. Regarding that case Rambam writes that it is considered a destructive act even though one benefits from having the dirt. So too, ripping paper should be considered a destructive act despite the fact that one benefits from having the ripped piece of paper available.

Tzitz Eliezer<sup>2</sup> rejected this comparison and wrote that in this regard, the melachah of tearing is different from other melachos. The primary purpose of other melachos is to bring about a constructive outcome, therefore there is a requirement that the melachah should be done לגופה—the act itself should be for a [constructive] purpose. The nature of the melachah of tearing is a destructive act and thus it is unnecessary for the constructive outcome to come from the act itself (מגופה) rather there is liability as

## REVIEW and Remember

1. Are damages assessed at the time of the damage or at the time of payment?
2. What is the point of dispute between R' Meir and R' Yehudah?
3. According to R' Yochanan, what is the point of dispute between R' Meir and R' Yehudah?
4. What are some examples where one is liable for the act done by their animal but not if they did the act themselves?

long as there is some beneficial outcome from the act. This is evident from the fact that one is liable for tearing a cloth with the intention to eventually sew it into a usable garment. Although at the time of the tearing there was no beneficial outcome to the act of tearing, nonetheless, since there will eventually be a beneficial outcome it is classified as קורע על מנת לתקן—tearing with the intent to produce a constructive outcome. Even the case of digging a hole in the ground is a subcategory of building. Therefore, for one to be liable it is necessary for the act itself to be constructive. ■

1. מ"ב סי' ש"מ ס"ק מ"א
2. שו"ת ציץ אליעזר ח"א סי' ל'
3. ציץ אליעזר שם אות ג' וד' ■

## STORIES Off the Daf

### Offsetting the Damage

ושבח ועמד על ד' מאות ז"ו

**A** certain principal supervised a teacher who performed his job competently, but not as well as he would have liked. When a much better qualified friend of this principal was in desperate need of a job, the principal was eager to hire him in place of the merely competent teacher. The trouble was that the other teacher had a valid contract. The principal figured that if he offered a handsome sum and to defray all moving expenses, the teacher he wished to dismiss would agree. He was correct. The teacher found a job very far from the present work, and it also paid much more

than he had earned at his previous job.

The principal wondered if he was really obligated to pay since the teacher had gained substantially from what had originally seemed to be a loss.

He asked his own rabbi, who thought he had a proof to support him in Bava Kamma 34. There we find that if one's animal damaged an ox and it increased in value, the owner of the damaging ox cannot claim that the damage did the ox good, since the owner of the damaged ox can retort that it would have increased more in value if it had not been damaged. Although this pshat is rejected by Rashi, many Rishonim rule like this. The S"ma, ז"ל, comments that if it was a corpse which increased in value as a result of the damage, the owner of the damaging ox need not pay the damage. "Presumably,

the same is true here. Since the transfer worked out to be to the teacher's benefit in the end, why should you have to pay?"

But when he consulted with Rav Moshe Feinstein, ז"ל, Rav Moshe disagreed. "He definitely must pay. That is discussing an animal where the one who caused the damage also has partial rights in the increase of the animal's value which will offset the cost of the damage. But in any other type of damage where the one who caused the harm has no rights in any resultant increase in value, the fact that good came out of it is irrelevant. For the teacher, losing his job was a clear form of damage and the principal agreed to pay. Therefore, he must pay!"<sup>1</sup>

1. אגרות משה חו"מ ח"א סימן ל"ז