

OVERVIEW of the Daf

1) A claim of wheat and a response of barley (cont.)

The Gemara refutes the challenge to Rabbah bar Nosson's ruling that when a plaintiff claims wheat and the defendant admits to owing barley the defendant is not obligated to pay even barley.

2) Two oxen that damage

Rava of Parzika infers from the Mishnah that if two תם animals damage the damaged party may collect from either one of them.

R' Ashi refutes this explanation.

After an exchange regarding the circumstances of the Mishnah the Gemara reverts back to its original understanding of the Mishnah and explains that ruling in light of R' Akiva's position that the damager and the damaged party become partners in the damaging ox.

הדרן עלך המניח

3) MISHNAH:

The Mishnah presents a dispute between R' Meir and R' Shimon regarding the correct way for the owner of a תם animal to make payments when it damages many different animals.

4) Clarifying R' Meir's position

The Gemara takes note that R' Meir's position seemingly, does not follow R' Yishmael's opinion, nor does it follow R' Akiva's opinion.

Rava suggests that the Mishnah follows R' Yishmael and suggests a circumstance to explain why the last party damaged collects first.

This explanation is unsuccessfully challenged.

The Gemara notes that R' Yochanan explains the Mishnah the same way as Rava.

Rava's explanation is unsuccessfully challenged.

5) Paying for humiliation when one strikes a friend in the ear

A Mishnah is cited related to the amount one must pay for the humiliation caused when striking a friend in the ear.

A related incident is recorded in which R' Yosef wonders which currency was referred to by the Mishnah that discussed this topic.

After clarifying this matter the Gemara recounts the rest of the incident. ■

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 By Dr. and Mrs. Justin Gordon
 In loving memory of their mother
 מרת בת'ני בת ר' יאור מרדכי, ע"ה

Distinctive INSIGHT

Four or five gorings, but yet a תם

שור שנגח ארבעה וחמשה שוורים

Toras Chaim notes that the Mishnah expresses the multiple gorings in terms of "four and five" times rather than "three" because it is common for the Mishnah to use four and five when describing something that has happened many times. Other examples of this are in Shabbos 126b regarding removing four or five boxes from an area to make room for guests. Also, in Bava Metzia (30b and 32a) in reference to returning an animal that gets lost even four or five times, and loading or unloading an animal in distress even four or five times. Maharam explains that the Mishnah wishes to teach that an ox can possibly remain a תם even after four or five gorings.

Rashi (ד"ה שור) explains that the ox in our Mishnah is still a תם throughout, even though it gored four or five animals. The Rishonim present various explanations why this animal did not "graduate" to becoming a מועד. Rashi explains that this animal gored one of its victims, but then it saw another animal and did not gore it. It then gored a second time when it saw another animal, but it then saw two animals and did not gore them. It then gored the next animal it saw. By continuing to follow an erratic pattern, it does not become a מועד, for in order to develop a pattern, it must follow a regular, predictable course. It could even become a מועד if it predictably gored every second or every third animal it sees, but that is not what this animal did.

Rashba and Ra'aved explain that the ox in our Mishnah did, in fact, gore four or five times consecutively, but the owner was not brought to court to have witnesses testify about his animal's poor conduct. The animal does not become a מועד unless the owner is adequately advised in court (והועד בבעליו).

Shita Mikubetzes notes that Rashi did not offer this explanation because he feels that if an animal gored many times, the owner would probably be alerted to its behavior.

מהר"ן שפירא points out that the Gemara explains that our case is where the ניזק confiscated the animal as payment for his loss. If, however, the owner had not been brought to court at all, the ניזק has no right to take the animal, as the מזיק still has the option of exempting himself completely by confessing to his animal's causing damage. This is why Rashi avoided the approach of the Rashba and Ra'aved. ■

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 Mr. & Mrs. David Friedman
 In honor of the marriage
 of their children
 Jake & Michelle

HALACHAH Highlight

Retracting a pledge to tzedaka

הואיל ופלגא דזוזא הוא לא בעינא נתביה לעניים

Since it is only half a zuz I don't want it, give it to the poor

Reuven owed Shimon a sum of money and Shimon told Reuven to give the money to tzedaka. Some time later Shimon asked Reuven to pay him the money rather than give the money to tzedaka. Is Shimon allowed to change his mind and demand Reuven to give him the money or perhaps once Shimon made the initial statement that Reuven should give the money to tzedaka, he no longer has the right to retract that statement since his verbal pledge to tzedaka is equivalent to giving the money to a private person (אמירתו לגבוה כמסירתו להדיוט)?

Rav Menashe Klein¹ wrote that this question is related to an incident recorded in our Gemara. There was a certain person who struck his friend and Beis Din ruled that the assailant must pay the victim half a zuz. The victim told the assailant to give the money to the poor and then changed his mind and wanted the money for himself. R' Yosef ruled in that incident that the poor already acquired the money and although there were no poor people present when the statement was made, nonetheless, he, R' Yosef, is considered like the hand of the poor. Tosafos² asked why it was necessary for R' Yosef to explain that the victim could not retract his statement because he is the hand of the poor when a simpler reason could have been offered. Chazal (Rosh Hashanah 6a) teach that once a person pledges money to tzedaka he is not able to retract and that should have been the reason given by R' Yosef why the victim could not retract. Tosafos offers two an-

REVIEW and Remember

1. According to R' Akiva what happens to a תם animal that gores?
2. What is the point of dispute between R' Akiva and R' Yishmael?
3. What is the difference between צורי currency and מדינה currency?
4. Why did R' Yosef tell the victim that it was too late to change his mind and keep the zuz that gave to the poor?

swers to this question. In his first answer he writes that the statement made by the victim did not rise to the level of a vow since the money was not yet extant (דבר שלא בא לעולם). Since it was not a vow the exposition mentioned earlier does not apply and thus R' Yosef was compelled to invoke his status as an arm of the poor. In the name of Rabbeinu Chananel, Tosafos writes that the victim did not want to retract his pledge, he merely wanted to use the money to lend to someone else and R' Yosef told him that since the money reached the "hands" of the poor it could not be used for any other purpose. Accordingly, explains Mishnah Halachos, in line with the first explanation of Tosafos, Shimon is able to retract since his statement was not a vow. According to Rabbeinu Chananel, however, Shimon could not retract, since his statement was considered a vow to tzedaka. ■

1. שו"ת משנה הלכות חי"ב סי' ק"ס
2. תוס' ד"ה יד עניים אגן ■

STORIES Off the Daf

We are the hand of the poor

אגן יד עניים

Striking another Jew is a very serious offense. Even one who raises his hand to strike another is considered a rasha. Reish Lakish learns this from Moshe Rabbeinu's exhortation, "רשע למה תכה רעך" "Rasha, why are you going to strike your fellow Jew?" He explains that the word, "תכה" is in the future tense. If he had actually struck his friend, the verse should have written, למה הכית - the same term in the past tense. The fact that he used future tense teaches that Moshe Rabeinu called a man who merely raised his hand to strike his neighbor wicked.¹

It is therefore not surprising that vari-

ous communities established special punishments to deter members from actually assaulting one another no matter what the provocation. Some places put the offender in cheirem until he made it up to the man he attacked. One community in the time of the Rosh, זת"ל, accepted upon themselves that any Jew who dared to strike his fellow would be required to pay an inordinate fine: one hundred gold coins.

Once, in that community, two merchants had words and one forgot himself and struck the other. When the perpetrator remembered the huge fine he was astounded. He hoped that his friend would forgive his behavior since he was a goodhearted fellow who did not really need the money.

In the meanwhile, the victim declared that he had no intention of taking the fine. "I have no need of the money; let it be given to those who learn."

When the perpetrator approached and begged forgiveness, the victim forgave him and absolved him of paying the fine. The gabai tzedakah was not certain that he could really do this after having already indicated it should be given to poor scholars, and consulted with the Rosh.

The Rosh replied, "We find in Bava Kama 36 a similar case. There, the struck man said to give the money owed him for having been hit to the poor, but later changed his mind. Rav Yosef told him that it was too late, the poor had acquired the money since, 'we are the hand of the poor.' The same is true here."

The Rosh concluded, "This is all the more so in view of the opinion of Rabeinu Tam that the man merely wished to use the money now and pay the poor later."² ■

1. סנהדרין דף נ"ח
2. שו"ת הרא"ש כלל י"ג