

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

Rava offers his own explanation of the Mishnah's ruling that where there is an uncertainty whether the calf was in the mother at the time of the goring, the damaged party will collect three-quarters damage.

The Gemara demonstrates how Rava's explanation is consistent with another position of his.

2) Goring a pregnant cow

Rava rules that when an ox gores a pregnant cow the damages are assessed in terms of a pregnant cow rather than a cow and an offspring separately.

Rava cites two other cases that have similar rulings.

These rulings are unsuccessfully challenged.

The Gemara expresses uncertainty whether the owner of the cow or the owner of the fetus collects for the value of the lost robust appearance of the animal.

After noting that the matter is subject to a dispute the Gemara rules that it should be split between the two parties.

3) MISHNAH: The Mishnah presents cases of damages that occur when one brings his property into another's courtyard.

4) Implicit responsibility for damages

The Gemara infers from the Mishnah that someone who has permission to put his pots in another's field does not automatically accept responsibility for guarding the landowner's animals from injury from those pots. This inference is consistent with Rabbi.

The opposite inference can be drawn from a later ruling in the Mishnah that is consistent with Rabanan who disagree with Rabbi.

It is also noted that the Mishnah's final ruling follows Rabbi which means the Mishnah is self-contradictory.

R' Zeira confirms that the Mishnah is not consistent. Rava explains how the Mishnah could be consistent with Rabanan.

5) Damage to the land owner's animal

Rav asserts that the produce owner is liable only if the animal slips on the produce but if the animal ate too much and died the produce owner is exempt.

R' Sheishes unsuccessfully challenges this ruling.

Another challenge is presented but the answer is seen as so obvious that the one who asked the question is forced to explain what he was thinking.

A last challenge to Rav's ruling is resolved by Rava.

6) A landlord accepting responsibility

The Gemara inquires whether an acceptance of responsibility includes protecting the object from outside damages or is limited to the landlord not causing damage.

An unsuccessful attempt is made to demonstrate that the landlord must protect the object in his care from damage from outside sources as well. ■

Distinctive INSIGHT

We do not collect from the egg of a hen toward the half payment

תרנגולת שהזיקה אינו גובה מביצתה. מאי טעמא? פירשא בעלמא הוא

Rava teaches several lessons regarding how to assess an animal regarding its available value for half payment of a תם. If a pregnant cow causes damage, payment may be calculated based upon its full value, including her fetus, which is considered part of her body. If a hen causes damage as a תם, its value does not include any egg it lays, as a hen's egg is considered a separate entity (פירשה) from its body.

פסקי רי"ד explains that when a hen causes damage in an unusual manner, this falls under the category of קרן, and half payment is assessed for the first three times this occurs. Some commentators illustrate that this may be when the hen has a cord tied to its leg tied to a pail, and the animal drags the pail and causes damage.

פסקי רי"ד disagrees and says that the case of dragging a pail pays half because it was defined as צרורות, which is technically in the category of רגל and pays מן העליה—even from beyond the value of the animal. A true example of a hen causing קרן is where the hen pecks on the head of a baby and causes an injury. This is unusual, and pays only half, מגופה.

The commentators discuss the opinion of Rava that collection is not made from the egg. We must explain with an introduction. When payment is made from a pregnant cow and its fetus, the concept is that an animal with a larger volume "carries more weight" and causes a greater damage due to its bulk. This is why the fetus is part of the calculation. An egg in a hen does not contribute to a greater impact of hen's pecking away, so some say that no collection is made at all from the egg, not even from the added volume of the egg to the bulk volume of the hen. Some want to say that we do not collect the full value of the egg, but we do calculate the incremental increase the volume the egg contributes to the size of the hen, and to this extent payment is collected from the egg (Shitta Mikubetzes, in the name of ר"א).

ר"מ מסרקסטה (also cited in Shitta Mikubetzes) explains that this exclusion only applies to an egg which was fully developed and contained within the body of the hen at the moment it caused damage. Eggs which are produced by the body of the hen any time after the time of the damage may be used for collection, as these nurture from the body of the animal, and it is no different than collecting from the bird's feathers which continue to grow even after the time of damage. ■

HALACHAH Highlight

Liability of a teacher for a student's injury

ואם הכניס ברשות בעל החצר חייב

And if he brought the animal into the yard with permission the property owner is liable

Shulchan Aruch and Rema disagree about the liability of a property owner (Reuven) who grants permission for a friend (Shimon) to put his animal into the property owner's yard. According to Shulchan Aruch¹, if Reuven gave permission to Shimon to put his animal in Reuven's yard and then Reuven's animal damaged Shimon's animal he is exempt from liability unless he explicitly accepts upon himself the responsibility to guard Shimon's animal. Rema² cites authorities who disagree and maintain that once Reuven gives Shimon permission to put his animal in Reuven's field Reuven automatically accepts upon himself the responsibility to make sure that Shimon's animal will not be harmed by Reuven's animal. If Reuven's animal then inflicts damage to Shimon's animal he will be liable to pay.

One could propose that this case could serve as the foundation for a more common question. Is a teacher liable if one student hurts another student? At first glance it seems that this question relates to the above mentioned dispute between Shulchan Aruch and Rema. According to Shulchan Aruch it could be argued that unless the teacher explicitly accepted upon herself to guard the children the teacher could not be held liable if one child hurts another. Rema, in contrast, would maintain that once the teacher takes the child into her classroom there is an implied acceptance of responsibility for that child, therefore, if the teacher is not careful and one child hurts another the teacher would be responsible to pay for the damages.

STORIES Off the Daf

Accountable before Heaven

הנותן סם מות לפני בהמת חבירו פטור מדיני אדם

A certain man owned a large barn where he kept his animals. His friend lost the barn where he had kept his animals and naturally asked the owner of the large barn if he could house his animals in his structure. The owner happily acquiesced and everything went fairly well until he found out that the new denizens of his barn were actually sick with a communicable disease. He only discovered this when they started dying. Sadly, it was clear that

eating the food left over by the sick animals had communicated the germs to his animals. They too took sick and died.

The owner of the barn was incensed. He demanded that his friend pay for his losses, but the friend claimed that he had done nothing wrong. "It is true that I knew they were sick, but I didn't realize just how serious it was. It's not as if my animals directly damaged yours."

This question was adjudicated by the Beis Shlomo, zt"l. "In Bava Kamma 47 we find that one who places poison in front of his friend's animal is exempt in earthly courts but God holds him accountable. The Rosh learns that he is not accountable because the owner should have watched his animals and made sure they did not eat

the poison. In our case, according to Rosh, where the owner did not know that the other animals were sick, the defendant is obligated to guard the plaintiff's animals and must pay for any damage incurred by failing in his duty. On the other hand, most Rishonim learn that he is not responsible for placing poison in front of his friend's animals because this is merely גרמא. The halachah follows these Rishonim.

"The same is true in our case. Although the animals definitely contracted their sickness due to the defendant's negligence, this is merely גרמא. Although God holds him accountable, we do not force him to pay for the damage."¹ ■

1. שו"ת בית שלמה חו"מ סי' קכ"ו

REVIEW and Remember

1. What is the procedure for assessing the damages to a pregnant cow?
2. What is the point of dispute between Tanna Kamma and Rebbi?
3. What is the contradiction regarding the Mishnah that is noted by the Gemara?
4. According to Rav, why is a produce owner exempt when a courtyard owner's animal ate his fruit and died?

The application of the dispute between Shulchan Aruch and Rema to the case of the child, however, is not so simple since there is a dispute whether there is a concept of being a שומר—watchman - on a free person. According to some Poskim there is no concept of being a שומר on another person and thus the teacher could not be held accountable for the injury that occurred. Only according to the Poskim who accept the premise that one could be a שומר on a person is it possible to apply the dispute between Shulchan Aruch and Rema to the case of the children. Concerning the liability of an adult for a child in his care, Pischei Choshen³ concludes that since the matter is subject to debate one will not be able to collect for damages from the teacher. ■

1. שו"ע חו"מ סי' שצ"ח סע' ה'

2. רמ"א שם

3. פתחי חושן הל' פקדון פ"א הע' מ"ט ■