

OVERVIEW of the Daf

1) Falling "forward" and "backward" (cont.)

The Gemara demonstrates that Rav's definition of the terms "forward" and "backward" are consistent with other statements he has made.

Shmuel disagrees with Rav's understanding of the Mishnah and consequently his rulings and offers a different definition of the term "backward."

Rav's position is challenged and three different responses are presented.

R' Chananyah cites a Baraisa as support for Rav.

A challenge is presented against the Mishnah's ruling that the owner of the בור is liable when an animal falls in as a result of the sound of someone digging.

R' Shimi bar Ashi asserts that the Mishnah follows the opinion of R' Nosson who maintains that when damage occurs in a בור its owner is the one who has to pay when collection cannot be made from another source.

The Gemara demonstrates that this is R' Nosson's position.

R' Nosson's ruling regarding a תם animal is challenged.

Two alternative answers from Rava are presented.

Rava relates that if an animal tripped on a rock placed near a בור and the animal falls into the בור there will be a dispute between

R' Nosson and Rabanan regarding the correct ruling.

The Gemara explains why it was necessary for Rava to apply the dispute to this case.

2) Two oxen that gored a third

Abaye and Ravina disagree about the degree of liability

(Overview...Continued on page 2)

REVIEW and Remember

1. What is the point of dispute between Rav and Shmuel concerning liability for a בור?
2. What is the issue disputed by Rabanan and R' Nosson?
3. Why is the owner of a בור exempt from paying if a disqualified korban falls into his בור?
4. What is the source for exempting the owner of a בבור damages that happen to utensils?

Distinctive INSIGHT

One ox pushing another into a pit

רבי נתן אומר בעל השור משלם מחצה ובעל הבור משלם מחצה

A Baraisa teaches the law of one ox which pushed another ox into a pit. According to our text, the halacha is that the owner of the pushing ox must pay for all damages, and the owner of the pit is exempt. The pushing ox instigated the damage, and the owner of the pit can claim that had the ox not been pushed into the pit, it would not have fallen in by itself. R' Nosson disagrees, as he holds that the owner of the pushing ox pays half of the damage, and the owner of the pit pays the other half of the damage. He is of the opinion that both parties were partners in contributing to the damage.

The Rishonim discuss the nature of the ox pushed into the pit in this Baraisa. Rashi explains that the halacha of R' Nosson that the pit owner pay half applies even if the ox which was pushed in was an alert ox (שור פקח). The rule (שור פקח) - "א"יבני ליה לעיוני ולמיוזל" - it should have been more careful as it walked," which works to exempt the owner of the pit, does not apply in this case where the ox was pushed in to the pit by another animal.

Tosafos, however, notes that R' Nosson obligates the owner of a pit to pay only if an incompetent ox (שור שוטה) falls into the pit, or if a normal ox falls in at night. However, if a normal ox falls in during the day, the owner of the pit is always exempt, even if it was pushed in by another animal. The reason is that a normal ox guards itself and stays clear of pits to the degree that it does not even let itself get pushed into pits. Tosafos proves his contention, because if the pit owner is only exempt when the animal falls in by itself, and he is indeed liable if it gets pushed, then the one who dug the pit would have to be concerned that he is creating an obstacle for animals who might get pushed. This means that the pit he dug is a danger to animals which might get pushed, and the one who dug it would consequently be liable even when the animal falls by itself (תחילתו בפשיעה וסופו באונס). It must be, concludes Tosafos, that the pit owner is exempt from all cases regarding normal oxen.

In response to the point of Tosafos, ים של שלמה and Pnei Yehoshua explain that Rashi holds that it is highly unlikely that one animal would push another into a pit, especially when the victim is an alert animal. Therefore, the one who dug the pit would not be liable due to the rule of תחילתו, תחילתו בפשיעה as we only consider one's initial act to be negligent when the irresponsible aspect of his conduct is in regard to a clear and immediate consequence. Here, where the pushing of one ox against another into a pit is rare, the digging of the pit is not ruled תחילתו בפשיעה, and he would be exempt. ■

Today's Daf Digest is dedicated
 By Mr. and Mrs. Dovid Tessler

In memory of their family that was נהרג על קידוש השם
 יהא זכרם ברוך

HALACHAH Highlight

Paying for a partner's share of damages

וכל היכא דלא אפשר לאשתלומי מהאי משתלם מהאי

And wherever it is impossible to collect from one he can collect from the other

The Gemara discusses the principle of R' Nosson that relates to collecting damages when there were multiple parties involved in causing the damage. For example, an animal fell into Reuven's pit due to fright that resulted from the sound of Shimon digging around that pit. Shimon is not obligated to pay for the damages since he is only an indirect cause of those damages (גרמא בעלמא). R' Nosson's principle teaches that once the damaged party is not able to collect from Shimon he will collect the entire cost of the damages from Reuven.

Tur¹ cites the opinion of Ramah who applies this principle in a very broad fashion. What is the halacha in a case where two people (Reuven and Shimon) caused damage in a way that both of them are liable but one of the damagers (Shimon) fled or does not have the funds to pay his share of the damages? Does the damaged party have the right to expect the party that remains and has the necessary funds (Reuven) to pay the full cost of the damages or not? Ramah asserts that R' Nosson's principle applies in this case as well and Beis Din will obligate Reuven to pay the full cost of the damages. Tur disagrees and explains that R' Nosson's principle only applies when the Torah exempts Shimon from responsibility. It is illogical, explains Tur, that Reuven should have to pay for Shimon's share of the damages just because Shimon fled and can no longer be prosecuted.

Rav Akiva Eiger² presents an interesting application of this dispute. If a Jew and an apostate held a knife and together slaugh-

where two oxen, one ordinary and the other a disqualified korban, gored a third ox.

The Gemara offers two different explanations for this dispute.

A second version of the dispute is presented together with two different explanations for the dispute.

3) Three parties to damages

Rava discusses the degree of liability when a person and an animal push something into a pit.

The Gemara explains why בור is exempt from paying for damages that occur when a disqualified korban falls into the pit.

Rava's position on this matter is questioned and resolved.

This explanation forces Rava to find a new source for the ruling that the owner of the damaged animal must deal with the body of the dead animal.

The rationale behind this exposition is explained.

4) Damages to utensils in a בור

It is noted that the Mishnah which exempts liability for damage to utensils in a pit is inconsistent with R' Yehudah who maintains that the owner of the בור must pay for damaged utensils.

The Gemara begins to present the exchange between Rabanan and R' Yehudah regarding their respective expositions.

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tered an animal, the shechitah is invalid and the parties are obligated to pay for the loss they caused the owner of the animal. Whether one of the parties will be obligated to pay the entire loss if the other party is unable to pay is dependent upon the dispute between Ramah and Tur. ■

1. טור חר"מ סי' ת"י סע' ל"ז

2. חידושי רעק"א לסימן כ"ו סע' ב' ■

STORIES Off the Daf

Partners in crime

ליכא לאשתלומי מהאי

On today's daf we find that sometimes, when one has no halachic right to take money from one of those who was responsible for damage, he can nevertheless extract payment from a second party who was also responsible.

Once, a pair of thieves decided to rob a wealthy household of their very expensive and portable jewels. One thief boldly placed a ladder next to the bedroom window and crept into the house while another waited in the street below. The first man

searched the bedroom for any jewels. As he discovered the gems he tossed them to his friend who waited in the street below. Just as they had cleaned out a great many of the jewels, the man at work in the house was caught. Although the thief struggled mightily to get away, he was overpowered.

When he was taken before the local beis din he made a very surprising claim. "I am definitely not the main thief since I got nothing from the entire heist. I would gladly return the stolen property but they are with my partner who is surely very far away from here. Surely I am not obligated to recompense them for stolen goods which are theirs and must halachically be returned to them by the one who has them in his possession!"

When the Chavas Yair, zt"l, was consulted regarding this bizarre claim he said, "It is true that the partner who got away was the main thief and he would be required to pay back the entire sum that was stolen. However, since he is not here, you are required to somehow raise the money to repay the entire sum instead. Two people who join forces to steal together are both responsible for the entire sum stolen. This can be compared to two people who borrowed a sum of money together but only one can afford to repay the loan. Since the two were partners they are each considered cosigners for the other. The same is true in your case!"¹ ■

1. שו"ת חות יאיר, סי' רי"ב

