

OVERVIEW of the Daf

1) Paying for benefit (cont.)

The Gemara explains that Rav obligates the animal's owner to pay for the benefit he received from the eating of the produce as well as the benefit from produce that broke the animal's fall, but the novelty is that he must pay for the produce that broke the animal's fall.

The reason the animal's owner must pay for the benefit from the produce that broke his animal's fall is explained.

R' Kahana and Rava disagree about what caused the animal to fall.

The rationale behind the dispute is explained.

R' Kahana asserts that one only pays the cost of benefit for the row where the animal fell but if the animal moves to another row and eats, the owner must pay the full cost of the damage.

R' Yochanan disagrees and maintains that the animal's owner pays the cost of benefit even if it eats from another row.

R' Pappa elaborates on R' Yochanan's position.

2) Walking into a field in the normal fashion

R' Yirmiyah inquired about the halacha of an animal that walked into a field in the normal fashion and caused damage with its birth waters.

The inquiry is clarified and left unresolved.

3) Assessing damages

R' Masna suggests one source for the method of assessing damages in the context of a larger field.

This exposition is unsuccessfully challenged.

Three different methods of assessing damages in the context of a larger field are presented.

The three opinions are unsuccessfully challenged.

A related Baraisa is cited.

R' Pappa suggests an explanation of this Baraisa.

This explanation is rejected and R' Huna bar Manoach in the name of R' Acha the son of R' Ika offers an alternative explanation.

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Today's Daf Digest is dedicated
 By Dr. and Mrs. Samuel Saltzberg
 in loving memory of their father
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Distinctive INSIGHT

"Chasing away a lion" - the parameters of מבריח ארי

מבריח ארי מנכסי חבריה הוא

Our Gemara introduces the concept of מבריח ארי—a person is content to assist his fellow Jew by "chasing away a lion" which comes to threaten his property. The classic case chosen to illustrate this rule is where a lion is threatening to attack a flock of sheep, and an observer can easily chase away the lion and save the owner of the flock from any loss. Anyone who would do this would certainly be doing a mitzvah, and he would not expect to be paid for this simple, yet meaningful task.

In the case in our Gemara, an animal falls into a vegetable patch and benefits. The Mishnah rules that the owner of the animal must pay for the benefit his animal enjoys. According to the conclusion of the Gemara, Rav explains that this payment refers not only for any food the animal proceeds to eat, but payment must also be made for any vegetables destroyed by cushioning the fall of the animal as it landed in the garden. The novelty of this ruling is that we might have thought that the owner of the garden would be expected to have his vegetables available to save the falling animal from injury ("chase the lion/danger away"), and that no compensation be given for the vegetables. Rav therefore rules that payment must be rendered, because in this case, the owner of the garden did not volunteer his services, and he also sustained a loss, both of which are considerations which are unlike the circumstances of "chasing away a lion."

Rashi explains that one will not be paid in the case of מבריח ארי because he acts with the intent of performing a mitzvah. שערי יושר (3:25) explains that this does not mean that he forgoes any hope of being paid for saving his friend's property. Rather, he understands that he may or may not get remuneration for his act. Therefore, it is as if he sustains no loss for his efforts, as he has accepted the eventuality that he may never see any benefit for his actions.

Tosafos explains that one who is מבריח ארי does not receive payment only when there is uncertainty whether or not the danger will actually strike, as in a case where a lion is prowling near a flock of sheep. Even without intervention, the lion might not strike. However, saving a falling animal by cushioning its fall with vegetables is preventing a certain loss, and compensation is therefore due.

Ramban and Rashba explain that מבריח ארי does not get paid when there is no expectation that the protective intervention be done. By volunteering, the person offers his services gratis. If one performs the mitzvah of returning a lost object, this is a mitzvah he is expected to do, and he may be compensated. ■

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HALACHAH Highlight

Paying for a broken window

א"ר יוסי בר חנינא סאה בשישים סאין

R' Yosi bar Chanina said that a seah is calculated by sixty seah

Chofetz Chaim¹ addresses what he sees as a mistaken assumption that people make regarding a case of damages. People mistakenly think that if they break the window of someone's house they are obligated to pay for the window to be replaced. This, however, is untrue because our Gemara teaches that if an animal eats a row of food from a garden we assess the damages in terms of the loss of value to the field that contains sixty rows and one row was consumed. So too, regarding a broken window the damager is not responsible to pay the cost of replacing a window; rather he must pay for the value the house lost as a result of the broken window. Since in most cases the house will not lose value due to one broken window the damager will not have to pay anything.

Chazon Ish² disagrees with this approach and maintains that since the house is not on the market for sale and all that is needed is to replace the broken window, the damager is obligated to pay the replacement costs. The rationale behind this approach is that there is a difference between damage that will be repaired and damage that will not or cannot be repaired. The Gemara's discussion relates to damage that cannot be repaired and in such circumstances the value of the damages will be assessed in terms of sixty times the actual damage. In contrast, when the damages will be repaired the damager is responsible to pay for the repair or replacement costs. Teshivas Ohr L'Tzion³ suggests that this dispute could be traced back to a dispute between Rashi and Rambam in our

REVIEW and Remember

1. What is the dispute between R' Kahana and Rava?

2. Under what conditions is one liable even when he guarded his animal?

3. What two halachos are derived from the phrase **בוער בשדה אחר**?

4. What is the point of dispute between R' Nachman and Rava?

Gemara. Rashi and Rambam disagree about the correct way to assess damages when one cuts down a tree. According to Rambam the damager is obligated to pay the full value of the tree since the tree was not meant to be sold as opposed to the fruit; therefore, the loss is considered greater. In contrast, according to Rashi the loss will be calculated using the sixty-times method described earlier because he maintains that all damages will be assessed uniformly. Accordingly, concludes Ohr L'Tzion, since halacha follows Rambam it emerges that halacha will also follow Chazon Ish and the damager will be responsible to pay to replace the broken window. ■

1. דבריו מובא בתשובת אור לציון דלקמן
2. חזו"א סי' ר' סק"ג
3. שו"ת אור לציון ח"א חו"מ סי' ד' ■

STORIES Off the Daf

Relinquishing ownership

מבריח ארי מנכסי חבירו הוא

The horrifying death and destruction wreaked during World War II is impossible for those who did not experience it to even imagine. As Rav Gifter, zt"l, wrote in his piyut for Tisha b'Av: "Six times a thousand thousand." During the war, Jews were deported to a destination that what was unknown until fairly late in the hostilities. It was only later revealed that the millions of deportees were murdered in cold blood by the Nazis and their henchmen.

During the earlier period when the fate of the deportees was still unclear, a certain man was offered the opportunity to purchase the holy seforim of various communities. He wondered if this was permitted.

One great sage ruled that this is forbidden, since the Ramah, zt"l, states that yei'ush does not apply to seforim.¹

He decided to consult with the Chelkas Yaakov, zt"l, regarding this question. The Chelkas Yaakov answered, "This is definitely permitted. It is true that the Ramah states that yei'ush does not apply to seforim, but the owner of the sefer still must pay the money used to redeem his sefer from non-Jewish hands. We rule that the Jewish owner must pay what the Jewish redeemer paid, in accordance with what Tosafos and the Rosh in Bava Kamma 58 rule regarding land. There they rule that the man who redeemed the land may make full use of it until the original owner recompenses him for what he spent to redeem it."

He added, "Besides, in these uncertain times where Jews have been driven from their homes stripped of all their worldly goods, it is clear that the owners are indeed

from their seforim. Especially since, in other countries, the evildoers went so far as to burn all seforim they could lay their hands on."

The Chelkas Yaakov concluded, "Although it is considered laudable to return the seforim to the owners, it is clear that according to the letter of the law they may certainly be redeemed..."² ■

חו"מ קל"א סע' ח'
שו"ת חלקת יעקב חו"מ סי' כ"א

(Overview...continued from page 1)

nation.

Someone cut down another's tree and R' Nachman ruled that the damages must be assessed in relation to sixty trees.

Rava asserts that that method of assessment does not apply when a person, rather than property, inflicted the damage.

Abaye challenges Rava's position from a Baraisa. ■