



OVERVIEW of the Daf

1) Defining **מבעה** (cont.)

The Gemara continues to analyze Shmuel's rationale for defining **מבעה** as **שן**.

The Gemara questions why **רגל** was not mentioned explicitly in the Mishnah.

After rejecting one explanation Rava asserts that **רגל** is, in fact, referenced in the Mishnah and it is **קרן** that is left out.

The reason **קרן** is not mentioned explicitly is explained.

Shmuel explains why he rejects Rav's explanation.

Rav's response to Shmuel's challenge is presented.

Two challenges to Rav's position are recorded.

Another challenge to Rav is presented.

It is noted that the same Mishnah is difficult for Shmuel as well and the Gemara resolves both challenges.

Rav Meri suggests that **מבעה** should be translated as water but this suggestion is rejected.

R' Zevid suggests that **מבעה** should be translated as fire but this suggestion is rejected.

2) General categories of damages

R' Oshaya cites a Baraisa that enumerates thirteen general categories of damages.

The Gemara presents the discussion why the Tanna of our Mishnah listed only four general categories of damages and R' Oshaya enumerated thirteen.

R' Chiya cites a Baraisa that enumerates twenty-four general categories of damages.

The Gemara begins to present the exchange between R' Oshaya and R' Chiya regarding the more authoritative list of general categories of damages. ■

Distinctive INSIGHT

*In what way are **נזק** and **צער** considered **ממון**?*

ורב אושעיא מאי טעמא לא תני הני בממונא קמיירי בקנסא לא קמיירי

On our daf, R' Oshaya taught a list of thirteen main categories of damages. At the end of the daf, Rebbe Chiya taught a list of twenty-four major categories of damages. The Gemara asks why R' Oshaya's list only features thirteen categories, but it does not include the additional categories of Rebbe Chiya. The Gemara answers that Rebbe Oshaya only listed categories where payment is compensatory (**ממונא**), but not where the payment for damages includes punitive damages (**קנס**). Rambam writes (**חובל ומזיק הו**) that if someone comes on his own and admits that he injured someone else and there are no witnesses to testify about this event at all, the one who admits is exempt from paying for damages (**נזק**) or for pain (**צער**), but he must pay lost wages, embarrassment and for medical expenses. We see from Rambam that payment for damages and pain are considered punitive damages where a person is exempt if he admits on his own (**מודה בקנס פטור**). It is evident that Rambam holds that there is no ascribed value for a human being, and any payments for damage cannot be adequately considered compensation. Payment for pain also does not represent the value of the suffering.

Magid Mishnah challenges this Rambam from our Gemara where R' Oshaya lists only categories which are compensation, and his list includes **נזק** and **צער**. Furthermore, Rambam himself writes (**נערה בתולה ב: יב**) that if someone confesses that he seduced or was **מאנס** someone's daughter, the attacker does not pay the fine based upon his own confession, but he does pay **נזק** and **צער** due to his confession. How are we to resolve the opinion of Rambam?

אבן האזל explains that there are two types of financial obligations. One is where a person admits that he owes money to someone else. The other is where a person admits that he did something which, as a result, obligates him to pay. In general, a person is believed that he owes money to someone else, i.e., he damaged his friend's property, so he must pay. Regarding personal injuries, however, a person is not believed to obligate himself. The payments of **נזק** and **צער** are not genuine payments, as paying money for a person's body and the pain he suffers are not true compensation for what has been lost—there are no values for such things. Therefore, in these cases we treat the confession us-

REVIEW and Remember

1. Why is a slaveowner exempt from paying for the damages his slave causes?
2. What are the **ארבעה דברים** that one pays when he damages others?
3. What are the additional categories of damages that R' Oshaya adds to the list?
4. What category of damages does R' Chiya add to the list of damages?

HALACHAH Highlight

A maid's liability for damages

עבד ואמה לאו אע"ג דכוונתן להזיק אפי"ה פטירי

[Regarding] a slave and maidservant, even if they intend to cause damage they are exempt

HaShai Lamoreh¹ expresses uncertainty whether a maid who broke utensils in her employer's home is obligated to pay. The basis for his uncertainty is the ruling in Shulchan Aruch² that a woman who breaks something in her home is exempt from repaying her husband. Yerushalmi explains that forcing her to pay would detract from the shalom bayis of the home. It could be suggested that forcing a maid to pay for damage that she causes will also detract from the peaceful environment of the home and thus the maid should also be exempt from making payments. On the other hand, one could argue that the exemption was only enacted for the woman of the home but not for other members of the home. Teshuvah Maharsham³, in fact, writes explicitly that a maid will not be exempt from paying for damages she causes since she is only in the home temporarily.

Teshuvah Chavos Yair⁴ was also asked about the liability of a maid. There was a woman who was very careful with her possessions and whenever the maid would break something the woman of the home would deduct its value from the maid's salary. Chavos Yair explained that according to the letter of the law the maid is responsible since she is categorized as a paid watchman who is responsible for the utensils

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ing the guidelines we find regarding קנס, that one who confesses is exempt, and we do not trust the confession that the actual act of injury was caused by the one admitting. Normally, once a person confesses regarding a קנס, even if two witnesses later come we do not obligate the person. Here, though, if two witnesses would come later and testify that this person, indeed, caused the injury, we would accept their testimony even after the confession. ■

even if they break as a result of an accident. The only factor that could change the halacha is if it could be determined that there was a custom that women do not seek reimbursement when their maid breaks a small item. Although normally we don't follow the majority when it comes to monetary matters, if there are only one or two women in town who are particular about their maid breaking their objects we disregard their opinion (בטלה דעתן) and will exempt the maid. Although there are opinions who assert that there are a significant number of homeowners who are particular about these matters and consequently the maid should be required to pay for the damages, nevertheless, Aruch Hashulchan⁵ writes that common custom is that homeowners do not demand payment when a maid inadvertently damages an item that is not very expensive. ■

1. הגהות שי למורה אה"ע סי' פ' סעי' י"ז.
2. שו"ע אה"ע סי' פ' סעי' י"ז.
3. שו"ת מהרש"ם ח"ג סי' נ"ד.
4. שו"ת חות יאיר סי' ק"ו.
5. ערוה"ש חו"מ סי' של"א סעי' ז'.

STORIES Off the Daf

A question of liability

"האדם שחייב בארבע דברים..."

A certain man was driving the long road from Toronto to New York City when he fell asleep at the wheel "for just a moment" and got into a serious accident. After it was all over, he wondered what the exact extent of his halachic obligation was. We find on Bava Kama 4 that a man who damages is obligated in up to four additional payments besides the cost of the actual physical damage. However, if the accident was truly the result of mitigating circumstances and not negligence or malice, he only pays

the damage itself.

Although the man accepted responsibility for paying for the other side's repairs, he wondered whether he also had to pay the other person's medical costs. Perhaps falling asleep at the wheel is not really actionable negligence and he need not pay the bills. Although contemporary batei din do not collect more than the actual damage, Rav Moshe Feinstein ruled that one is nevertheless obligated to pay any of the other four types of damages that apply in a case of real wrongdoing.¹

When the man who caused the accident presented his question to his local rabbi, the rabbi responded unequivocally that he was obligated. "If you had slept in anticipation of the long drive,

you would not have fallen asleep at the wheel. Obvious, you would be considered קרוב לפשיעה and must pay all of the other side's medical bills..."

But when presented the case to Rav Wosner, ז"ל, he explained that it was not so simple. "It is true that if the driver fell asleep at the beginning of the arduous trip, he is certainly קרוב לפשיעה. But if the driver fell asleep after many hours of driving this is likely an אונס. Since this could happen to anyone due to exhaustion from the drive, who is to say if he is responsible or not?"² ■

1. אג"מ, חו"מ, ח"ב, סי' י"ח
2. שו"ת שבט הלוי, ח"ח, סימן ש"א