



Today's Daf Digest is dedicated
 In loving memory of **שרגא פייוול דוד בן קמואל**
 The Abramowitz family

OVERVIEW of the Daf

1) Clarifying Rabanan's position (cont.)

The use of the verse **ובער בשדה אחר** to refute the kal v'chomer that one should be exempt for damages of **שן** and **רגל** in the public domain is unsuccessfully challenged.

A kal v'chomer is suggested that teaches that one is only responsible to pay half-damages for **שן** and **רגל** in the domain of the damaged party.

The word **ישלם** disproves this suggestion.

A kal v'chomer is suggested that teaches that one should be liable for **קרן** in the public domain.

R' Yochanan answers that the term **יחצון** disproves this suggestion.

A kal v'chomer is suggested that teaches that someone who kills his friend should be liable to pay kofer.

A verse is cited that disproves this suggestion.

A kal v'chomer is suggested that teaches that a **שור** should be liable to pay **ד' דברים**.

A verse is cited that disproves this suggestion.

2) Paying kofer when an animal tramples a baby

The Gemara asks whether there is a **כופר** payment when an animal tramples a baby and kills it.

The basis for this question is explained.

The Gemara demonstrates that kofer is paid when an animal tramples a baby.

3) **MISHNAH:** The Mishnah discusses damages inflicted by a person.

4) Damaging a person unintentionally

(Continued on page 2)

REVIEW and Remember

1. What is the source that indicates that one pays full damages for **שן** and **רגל**?
2. What is the extent of liability for unintentional damages to another person?
3. What is the point of dispute between R' Shimon ben Gamliel and Rabanan?
4. If one breaks a utensil that was falling toward the ground, is he liable to pay for breaking the utensil?

Distinctive INSIGHT

The stone that dropped—he knew it not

אמר רבה היתה אבן מונחת לו בחיקו ולא הכיר בה ועמד ונפלה ...
 לענין שבת מלאכת מחשבת אסרה תורה

Rabba presents a case of a person who was in a sitting position and was unaware that there was a stone in his lap. When the person stood up, the stone fell. Regarding damages, the person is liable. Regarding Shabbos, the person is exempt.

Ramban notes that we see that if a person causes damage to something, even if the situation is completely inadvertent and uncontrollable (**אונס גמור**), he is still liable for damages. Having a stone in one's lap and not being aware of it, according to Ramban, is a situation which is beyond one's control, but the person is nevertheless liable.

Nimukei Yosef writes that being liable for having a stone drop out of one's lap is not beyond one's control. Although the person did not realize that he had a stone in his lap, it is reasonable for a person to consider that he might have placed something in his lap while sitting, and he should check to see if something may drop as he stands up. If he fails to exhibit simple caution, he is liable. It could be, therefore, that a person is exempt if the situation would be completely uncontrollable (**אונס גמור**).

א also write that this case is actually not uncontrollable. If someone has a stone in his lap large enough to cause damage, he certainly should have detected it and not forgotten about it. If the person nonetheless stood up and let it drop, he is liable.

Rabba also teaches that this person is exempt for any violation of Shabbos if he unknowingly carries the stone in his lap. The reason given is that in order for an act to constitute a **מלאכה**, the one doing the act must realize that he is doing this action. If he knows that he is doing a particular action, but he either does not know that such an act is a violation of Shabbos, or if he forgets that today is Shabbos, he is acting **בשוגג** - inadvertently. However, if he does not even know that he has a stone in his lap, he is completely exempt—it is not **מלאכת מחשבת**.

Rabbi Akiva Eiger explains that the Gemara did not use the rule of **מתעסק**, which is a universal rule to exempt any act of sin in the Torah. The reason is that **מתעסק** is still a sin, but it is exempt from bringing an offering as atonement. In our case, the rule of **מלאכת מחשבת** exempts the person completely, although this is a consideration only in regard to forbidden labors on Shabbos. ■

HALACHAH Highlight

Liability for damaging while drunk

אדם מועד לעולם ... בין ער בין ישן

A person is always מועד...whether awake or whether asleep

Yam Shel Shlomo¹ writes that someone who damages another's property while drunk is liable to pay for the damages even if he is as drunk as Lot who was completely unaware of what he was doing. The reason is that a person is always considered מועד and is thus responsible for his actions. The reason this must be the halacha, suggests Yam Shel Shlomo, is that if the halacha was that a drunk is exempt from the damages that he causes people would intentionally get drunk to damage the property of their enemies.

Teshuvos Habach² addressed a case in which Reuven was celebrating at a wedding and he threw glass at a wall, which was customary for people who were drinking, and Shimon claims that a piece of the shattered glass struck his eye and caused him to lose his vision in that eye completely. Bach ruled that Reuven is responsible to pay for the damages that he caused Shimon even though Reuven claims that he was drunk when he broke the glass. The reason is that a drunk bears the same responsibility for his actions as a person who is sober. The only difference in responsibility is that a person who is drunk is exempt from davening but as far as liability for damages even someone who is drunk is fully responsible to pay for the damages that he causes. The rationale behind this responsibility is that he was responsible to not get so drunk that he would cause damage to other people's property. Since he was not careful in that regard he is responsible for whatever damage he causes while drunk. It is similar to the

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The Gemara infers from the Mishnah that one who unintentionally damages another person is only liable to pay for damages but not the other דברים.

Chizkiyah cites a source for this ruling.

5) Rulings of Rabbah

Rabbah issues rulings related to a person who unknowingly had a stone on his lap and when he stood up he damaged someone or violated Shabbos.

Rabbah issues rulings regarding a person who was aware the stone was on his lap but forgot before he stood up.

Rabbah issues rulings for a case where a person intended to throw a rock two amos but threw it a distance of four amos.

Rabbah issues rulings for a case where a person intended to throw a rock four amos but threw it a distance of eight amos.

Rabbah issues two rulings related to one who changed conditions after someone else threw a utensil from off of a roof, in one case the one who changed the conditions is liable and in the other he is exempt.

Rabbah notes that there will be a dispute in a case of one who threw a baby off a roof and another person killed the baby with a sword before the baby hit the ground. ■

liability that one has for damages that he causes while he was sleeping. Even though while he is sleeping he is unaware of what he is doing and does not realize that he is damaging the property of others, nevertheless, he was responsible to take steps before he fell asleep to assure that he would not damage another's property and if he did not take those steps he is liable for whatever damage he causes. ■

1. ים של שלמה ב"ק פ"ג סי' ג'
2. שו"ת הב"ח ישנות סי' ס"ב ■

STORIES Off the Daf

The Shomer's responsibility

הכיר בה ושכחה

Acertain person traveled from Israel to America for his sister's wedding. Since this was a rare opportunity for him, he purchased all sorts of goods to bring home, including a fairly large digital piano. He had paid a bargain price and he figured that it would cost him some extra money as an extra suitcase. When he arrived at the airport to check in his luggage, he was shocked to learn that to fly it over he would need to pay an additional one hundred and ten dollars for each leg of the journey that the bulky instrument was handled. Since he had a changeover on his

itinerary this meant he was required to pay twice for an extra luggage piece and twice the extra fee for handling such a large bag.

Since this was more than he had paid for the piano he decided to ask a relative to take it home and possibly send it over with someone traveling on a direct flight.

In the hustle and bustle of seeing all the international guests off, this relative completely forgot about the piano. Months later it was clear that it had been left at the airport.

When the owner of the piano confronted the relative who had agreed to take the piano home, the relative apologized for forgetting the item.

"You do know that you must pay for it?" the owner said.

"Why do you say that? In Bava Kama

26 we find that someone who had a stone on his lap and forgot about it and damaged something only pays nezek. Rashi explains that this is not considered פשיעה - negligence. I was a shomer chinam and must pay only for negligence."

The two decided to go to a posek for arbitration. The one who had mislaid the piano was told, "You must pay the price of the piano. In Bava Metzia we find that forgetting is considered negligence. The Avodas Hagirshuni,¹ 1 zt"l, and the Yeshuas Yisrael,² 2 zt"l, both explain that although ordinarily forgetting is not negligence, shemirah is different. A shomer who forgot an object he agreed to watch is definitely irresponsible for forgetting his charge!" ■

1. עבודת הגרשוני סימן ב'
2. סימן נ"ה ס"ק א'