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The Chicago Center

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

OVERVIEW of the Daf

1) Rulings of Rabbah (cont.)

Rabbah notes that there will be a dispute in a case of one who threw a baby off a roof and an ox killed the baby before the baby hit the ground.

Rabbah issues rulings, related to damages and yibum in a case of a man who fell off a roof onto a woman.

Rabbah issues rulings related to one who is blown off the roof from the wind.

Rabbah discusses liability for placing a coal on a person's heart or clothing.

Rava cites two Mishnayos to support the two rulings of Rabbah related to the coal.

Rabbah inquires about the liability for placing a coal on another person's slave or animal.

After clarifying the inquiry Rabbah rules on both cases.

הדרן עלך כיצד הרגל

2) MISHNAH: The Mishnah discusses whether one who breaks a jug left in the public domain is liable for damages and whether the owner of the jug must pay if his jug damaged another person.

3) Clarifying the Mishnah

It is noted that the Mishnah begins with the term כדand concludes with the term חבית. Another instance when a Mishnah changes terms is cited.

R' Pappa asserts that the terms are synonymous and the only difference will arise in a case of buying and selling.

4) The exemption of the one who damaged the jug

The Gemara questions why the one who damaged the jug is exempt when he should watch where he is going.

Three answers are suggested.

R' Pappa asserts that the Mishnah reads like Shmuel or R' Yochanan but not like Rav's explanation.

Rav's opinion is defended by R' Zevid in the name of Rava.

A fourth resolution to the original question is presented.

A related incident is recorded.

5) Payment for embarrassment

R' Chisda sent an inquiry to R' Nachman regarding the amount of payment for embarrassing someone.

Upon request, R' Chisda fills in more of the details of the case.

R' Nachman answered that the one who caused the damage had the right to defend his legal rights.

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Distinctive INSIGHT

When do we say a person must watch where he steps?
אמר ליה ר' אבא לר' אשי הכי אמרי במערבא משמיה דר' עולא לפי שאין דרכן של בני אדם להתבונן בדרכים

The Mishnah had taught that if a person places a jug down in the public domain, and someone else trips on it and breaks it, the one who broke it does not have to pay for the damage. The Gemara began by asking why this should be so. We expect that people who carry vessels in the street sometimes have to put them down to rest, and others who pass by should have to watch where they walk. If they are negligent and do not pay attention, they should be accountable for any damage they cause (נתקל פושע).

The Gemara first answers that although people are expected to watch where they walk, our Mishnah is discussing a case where jugs were placed along the entire public passage, and bumping into them could not be avoided. Or else we are discussing where the jugs were placed in the street in a dark area, or right around a corner, both of which are cases where a person would bump into the vessel without having a chance to avoid it.

Another answer given to this question is that the original premise of the question is flawed and, in fact, people are not expected to be careful to watch every step they take in the street. Rashi explains that this answer of Rebbe Abba to Rav Ashi is intended to respond to our understanding of the Mishnah. According to this approach, we can be dealing with the jug being broken in broad daylight and in full sight of the person walking by, and we do not have to say that we are dealing with a case

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REVIEW and Remember

1. Why is one exempt from liability for murder when he places a coal on another person's heart?

2. If one spills out his wine to save another person's honey, how much can he expect to be reimbursed?

3. Explain אין דרכן של בני אדם להתבונן בדרכים.

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

HALACHAH Highlight

Walking into someone's room to wake him and breaking his glasses

לפי שאין דרכן של בני אדם להתבונן בדרכים

Because it is not the way of people to pay attention on the road

Reuven asked Shimon to come into his room in the morning to wake him. When Shimon came into the room in the morning, he accidentally stepped on Reuven's glasses that were on the floor under the edge of Reuven's bed. Is Shimon obligated to pay for the broken glasses, or perhaps since Reuven asked Shimon to come into his room to wake him, there was no reason for Shimon to think that Reuven's glasses would be on the floor where he could step on them and he is exempt from paying for the broken glasses?

Teshuvas Knei Bosem[1] ruled that Shimon is exempt from payment and he based his ruling on our Gemara. The Mishnah teaches that if Reuven puts a jug into the public domain and Shimon comes along and breaks it he is exempt from paying for the broken jug. R' Abba in the name of R' Ulla explains that the exemption is due to the fact that people do not pay attention as they are walking – שאין דרכם של בני אדם להתבונן בדרכים. Similarly, Shimon is not expected to pay attention where he is walking and thus he is considered an אונסwhen he broke Reuven's glasses.

Sefer Pischei Choshen[2] questions the application of the principle "that people do not pay attention as they are walking" to this case. Reuven has the right to put his glasses in his room and in such a situation this principle does not apply. Moreover, it is only on public paths that we say that people do not pay attention to where they are walking because their eyes are looking up or because they are engrossed in thought but in a private domain it would seem that this exemption does not apply and a person is expected to watch where he is going to assure that he does not damage another's property. One consideration that could exempt Shimon from liability is to say that Reuven was negligent when he placed his glasses on the floor by his bed knowing that Shimon would walk into the room in the morning to wake him. He leaves the issue unresolved. ■

1. שו"ת קנה בושם ח"א סי' קנ"ד
2. ספר פתחי חושן הל' נזיקין פ"ח סע' כ"ה ■

(Insight. Continued from page 1)

where the jug was placed in a dark area, or where the jug was placed around a corner.

חידושי ראב"ד points out that according to this explanation of Rebbe Abba, the Mishnah is not in accordance with the opinion of Rabbi Meir, who holds that one who trips over an item in the street is considered negligent. He explains, however, that Rabbi Meir only meant that if a person himself trips over his own feet, he must quickly rise and avoid posing a danger to others who may soon pass by. If he does not get up immediately, he is negligent. However, even Rabbi Meir agrees that if a person trips over something else, his having kicked the item and breaking it is not negligent, as people do not watch where they step in the street. ■

STORIES Off the Daf

Thieving from a thief

עביד איניש דינא לנפשיה

The Sefer Chassidim records a story relevant to today's daf:

A certain man visited his friend and the two decided to play a game of chance. There was a large stake, and when the visitor lost he was very upset. He had heard that since one who gambles for money does not expect to lose, there is no real kinyan and the winner of the stake is a thief. He knew that there was no point requesting his money back but had an idea how he could restore his loss. The game set they had played on was worth around the amount the visitor had lost. After he left, the visitor returned surreptitiously and stole the game. He figured that this way he would save his friend from the serious sin of stealing since now he had made up all the money he had lost. After all, does it not say that one may steal back from a thief?

Eventually he began to have second thoughts. If he had won, wouldn't he have taken the money from his host? Why had his righteous thoughts come to him only after he had sustained a loss? Was he absolutely certain that creeping into his friend's house and robbing him of the game had left his hands free of sin?

He decided to ask his Rav. "There are two reasons why this was a sin. First of all, even according to your understanding that he was a thief, you acted no better. Do you think stealing is acceptable just because you robbed a thief?

"Second of all, he does acquire the money. Although the loser doesn't initially mean to give the winner his money, since every loser ultimately gives up on ever seeing his money again, the winner does acquire his winnings. Obviously you stole what was really his even though he took it in an underhanded fashion. The principle on Bava Kama 27, that a man may sometimes take the law into his own hands, is only true if the thief did not make a kinyan!"[1] ■

1. ספר חסידים סימן ת'

(Overview...Continued from page 1)

6) Taking the law into one's own hands

The Gemara presents the dispute between R' Yehudah and R' Nachman whether a person is authorized to take the law into his own hands.

Each Amora explains the rationale behind his opinion.

R' Kahana challenges R' Yehudah's position that one may not take the law into his own hands. ■

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