



OVERVIEW of the Daf

1) A landlord accepting responsibility (cont.)

Another unsuccessful attempt is made to determine whether a landlord accepts responsibility even for damages that may come from outside sources as well.

A related incident is presented and it is noted that Rava's ruling seems to be at odds with an earlier ruling of Rav.

The parallel between the two cases is rejected.

Another similar case is cited to challenge this ruling but this challenge is also rejected.

2) Teachings of Rava

Rava teaches that if Reuven brought his ox into Shimon's property without permission and his ox dug holes on the property Reuven is liable to pay for the damage to the land and Shimon is responsible for damages that result from the holes in the property.

Rava rules that if Reuven's animal enters Shimon's property without permission and Shimon is injured by the animal Reuven must pay. But if the animal crouched, Reuven is exempt.

R' Pappa clarifies the last ruling.

Rava rules that if Reuven enters Shimon's property and damages Shimon he must pay but if Shimon damaged him Shimon is exempt.

R' Pappa explains the last ruling.

A parallel ruling from Rava or R' Pappa is cited.

3) An ox falling into a בור

Rava taught that one is only liable for damage to another's בור if his ox fell in when it ruined the water as soon as it fell in but if the water was not ruined until later he is exempt.

It is noted that this ruling is inconsistent with Rav and the Gemara is forced to revise its understanding of Rava's position.

The Gemara questions the Mishnah's ruling that when an animal falls in a pit and crushes someone the owner must pay

כופר when that payment is only made by a מועד animal.

Rav explains the circumstances of the Mishnah's case.

Shmuel offers an alternative explanation for the Mishnah's case.

Ulla suggests a third explanation for the Mishnah.

Shmuel's explanation is unsuccessfully challenged.

4) The dispute between Tanna Kamma and Rabbi

Rav asserts the halacha follows Tanna Kamma whereas Shmuel maintains that the halacha follows Rabbi.

A related Baraisa is cited.

An internal contradiction in the Baraisa is noted.

R' Elazar asserts that the two clauses are contradictory.

Rava offers an alternative explanation for the Baraisa.

R' Pappa suggests a third explanation for the Baraisa.

5) MISHNAH: The Mishnah discusses liability for an animal or person that strikes a pregnant woman and causes her to miscarry. The Mishnah begins to discuss how that payment is assessed. ■

Distinctive INSIGHT

Payment for causing the loss of the fetus

ואדם שהיה מתכוין לחבירו והכה את האשה ויצאו ילדיה משלם דמי ולדות

The Mishnah teaches the law of a person who intended to strike his fellow man, but he missed and instead struck a pregnant woman who, as a result, lost her fetus. The law is that the one who caused the injury must pay for the lost pregnancy. The Mishnah continues and describes how we determine the value of this payment.

R' Meir Simcha of Dvinsk point out that it is interesting to note that the Torah uses the expression עונש twice in reference to monetary payments. One time is in the verse (Shemos 21:22 - עונש יענש -) which describes the obligation for a person to pay for the loss of a fetus by harming its mother. The other place is in reference to רע מוציא שם, where a new husband falsely accuses his wife of infidelity during the engagement. The verse (Devarim 22:19) states "וענשו אותו—the court shall punish him and penalize him one hundred silver coins." What is the common denominator in these two cases whereby the Torah uses the expression עונש?

These two cases both feature a double punishment of monetary payment as well as lashes. Generally, the rule is that we do not apply both monetary and corporal punish-

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REVIEW and Remember

1. What was Rava's ruling in the case of a woman who was making dough in her friend's home and the homeowner's goat ate some dough and died?
2. Is one allowed to hurt someone to remove him from his property?
3. How does a שור become a בור?
4. Is an animal owner obligated to pay the value of the offspring (דמי ולדות) if his animal intentionally gores a pregnant woman?

Today's Daf Digest is dedicated by Andrew Bransky
 in memory of his mother

Mrs. Carole Bransky O.B.M.

מרת סיבה ריבה בת ר' יהודה לייבן הלוי ע"ה

HALACHAH Highlight

Accepting liability for a friend's home

כיון דבעיא היא צניעותא וכו' הלכך עלה דידה רמיא נטירותא

Since it requires modesty ... therefore it is upon her to protect the homeowner's goat

Reuven put a pot of food in the oven and then realized that he had to run out for a while. He called his neighbor Shimon and asked if he would mind coming into the apartment to turn off the stove after half an hour. Shimon agreed and Reuven went out to his appointment. When Reuven returned a couple of hours later he immediately smelled something burning and upon entering the kitchen he realized that Shimon did not turn off the oven and not only was the food inedible but the pot was damaged beyond repair as well. Reuven wants Shimon to reimburse him for the food and the pot whereas Shimon argues that he agreed to do a favor for Reuven but he never accepted upon himself any sort of liability in the event that he would forget to turn off the oven.

One could suggest that the case in our Gemara forms a precedent for this case. The Gemara teaches that in a case where a woman entered a neighbor's home to bake she accepts responsibility to guard her possessions from causing damage to the neighbor's property. What compels the woman to accept this responsibility is that the neighbor has no choice but to leave his house since, due to tznius reasons, he can not remain in the house while she is baking. Shulchan Aruch¹ codifies this halacha and it seemingly establishes a principle that if someone enters a friend's home and knows that the homeowner will not be present he accepts upon himself the responsibility of a שומר. On the other hand, one could argue that the application to our case is incorrect. If we were to accept the

(Insight. Continued from page 1)

ments together, and we use the rule קם ליה בדרבה מיניה, and only the more harsh of the punishments is administered. In the case of רע שם מוציא the Torah explicitly states that the husband must pay, and that lashes are dealt. The case of payment for the lost fetus is a case where the perpetrator was aiming to strike his fellow man, and he instead struck the pregnant woman. The view of Rambam is that whenever a person aims to kill one person but kills another instead, although the court cannot execute him for murder, the assailant is nevertheless liable for death by the hands of heaven (מיתה בידי שמים). This is usually enough to exempt him from any monetary payments associated with his act. However, in the case of a lost fetus, the Torah rules that he must pay a financial penalty as well as his deserving שמים מיתה בידי שמים. This is why the Torah uses the expression עונש in these two cases, where the defendant earns a double punishment for his deed. ■

premise that the woman becomes a שומרת on the homeowner's property while she is there she would also be liable if the goat were stolen and there is no indication that the woman accepted upon herself that degree of liability.

What seems to be a more correct parallel is the halacha cited by Shulchan Aruch and Rema² that if one hires a worker to remove flax that is soaking and the worker does not do his job, causing the flax owner a loss, the worker is responsible to pay for the loss. Similarly, in our case since Reuven relied upon Shimon to turn off the oven to keep the food from burning and Shimon failed to perform that task he is responsible to pay for the damages that occurred. ■

1. שו"ע חו"מ סי' שצ"ג סע' ג'
2. שו"ע רמ"א חו"מ סע' של"ג סע' ה' ■

STORIES Off the Daf

The Halachah is like Rebbi

שמואל אמר הלכתא כרבי

A certain man used to use his friend's premises for his business, which was to lend money to non-Jews at interest. He did this in his friend's name, so that anyone who was not in the know would have certainly thought that the loans were actually issued by the owner of the premises.

Unfortunately, the owner of the premises got involved in an imbroglio of his own and the local gentry informed on him

to the government. The police revoked his license to use the storefront and manage his old business, and confiscated everything that had been on the premises. Since the moneylender's documents were in the name of the owner of the store, the authorities took them too.

The moneylender took his friend to beis din, claiming the entire value of the documents that had been seized. "At least you owe me for causing me to lose the money. It is possible that an earthly court cannot compel you to pay for gramma, but your obligation to heaven is definitely to pay me!"

When this case came before the Rama

MiPano, zt"l, he ruled that the storefront owner owed nothing. "Not only is this not considered damage, it is not even gramma. On Bava Kama 48 we find that Shmuel rules like Rebbi who says that if one brought his property into his friend's domain and it was damaged, the owner of the premises need not pay unless he accepted responsibility for his friend's property. Although Rav argues, the halachah is like Shmuel in dinim..."

The Ramah M'Pano concluded, "In our case, clearly both parties were victims. Hashem should grant them success and return all they lost!"¹ ■

1. שו"ת הרמ"ע מפאנו סימן נ"ב