



OVERVIEW of the Daf

1) Damages - נזק (cont.)

The Gemara concludes its refutation of the challenge to the Baraisa that interpreted the phrase עין תחת עין as a reference to a monetary payment.

Additional attempts are made to prove that the phrase עין תחת עין refers to a monetary payment but the Gemara rejects them until R' Ashi finally succeeds.

A Baraisa cites the opinion of R' Eliezer regarding the method of assessing damages for someone who knocked out the eye of another.

Two related incidents are recorded.

2) Collecting damages in Bavel

It emerges from the second incident that damages that require an assessment of a person's value as a slave cannot be done in Bavel.

Rava states the parameters for collecting damages in Bavel.

These principles are unsuccessfully challenged but what emerges is that judges nowadays act as agents, in limited circumstances, for earlier Batei Din.

Rava's earlier ruling that we collect damages when an ox injures an ox is challenged.

The Gemara differentiates between a case of תם and a case of מועד.

This distinction is challenged and the Gemara draws another distinction, namely, the difference between קרן and שן ורגל.

3) Pain - צער

Rava suggests that the Mishnah that obligates an assailant to pay for pain even when there is no damage reflects

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REVIEW and Remember

1. What is the punishment for a tereifah who commits murder?

2. According to R' Eliezer, how do we calculate damages?

3. Which cases may Beis Din adjudicate in our times?

4. What is the point of dispute between Ben Azzai and Rabbi?

Distinctive INSIGHT

Collecting payment for embarrassment in Bavel

חסדא חסדא קנסא קא מגבית בבבל

Rava pointed out that judgments for payment of damages can only be ruled upon by qualified judges (סמוכים). In Parashas Mishpatim, where these laws are all presented, the Torah requires that these laws be adjudicated by judges known as "אלהים", which suggests that they must be ordained. Therefore, in Bavel the courts were generally not authorized to collect these payments. Nevertheless, there are certain categories of laws of damages for which the courts in Bavel could rule, as the judges are considered to be agents of the courts in Eretz Yisroel (עבדין שליחותיהו). The area in which the judges in Bavel may rule are those which deal with being ממון (direct compensatory payments), but not קנס (punitive damages, or penalties). The laws must also deal with a type of payment which is relatively common, and not a situation that is considered rare. This definition leads the Gemara to ask why the judges in Bavel are not allowed to rule in regard to payment for embarrassment (בושת) which is understood to be a compensatory payment, and it is also relatively common. To this, the Gemara relates that when Rav Chisda asked Rav Nachman how much to assess for embarrassment for someone who hit his fellow man with a certain tool, Rav Nachman responded with surprise and asked, "Chisda! Are you considering collecting קנס in Bavel?" We see, therefore, that the Gemara considers payment for embarrassment to be defined as קנס (punitive damages), and not as ממון.

Shitta Mikubetes notes that although our Gemara clearly defines payment for embarrassment as a קנס, Rav Oshia (4b) clearly holds that payment for embarrassment is ממון. Several answers are given to resolve this inconsistency. כץ מהר"י explains that causing embarrassment without having caused any physical damage is not a קנס, but if it is accompanied by causing physical damage, it is a קנס. Tosafos explains that בושת is ממון, but our Gemara calls it קנס because it is paid in spite of there being no monetary loss having been suffered. Therefore, it is the type of damage which should not be collected in Bavel. Ramban understands that בושת is ממון, but it is relatively uncommon. Therefore, it should not be collected in Bavel, just as we do not collect קנס. ■

HALACHAH Highlight

Paying damages

בקנסא לא עבדינן שליחותייהו

For matters involving penalties we do not act as their agents

Rambam¹ writes that if a person were to come to Beis Din and admit that he injured his friend and there are no witnesses to testify to the assault, the assailant does not have to pay for the damages - נזק. This ruling, that נזק is categorized as a קנס rather than payment, seems astonishing. Since the payment is calculated by determining how much value the victim lost on the slave market how could it be said that the payment is a penalty rather than a payment for his loss of value? Rav Shlomo Zalman Auerbach explains that it is considered a penalty since there are times that a person pays more than the loss the victim suffered. For example, if an assailant cuts off his victim's hand he will be charged the loss of value of the victim if he was a slave rather than his unemployment for each day he does not work at his profession. If a few days later the victim were to die of natural causes it would turn out that the assailant paid more than the loss he caused the victim since he really only caused him to lose a couple days of work. Since the Torah obligates the assailant to pay for the victim's loss of market value under all circumstances it is indi-

the position of Ben Azzai.

R' Pappa argues that it is more logical to assume the Mishnah reflects Rabbi rather than Ben Azzai. ■

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cation that the payment is a novelty (חידוש) of the Torah that is categorized as a penalty.

Rav Auerbach³ takes the position of Rambam and applies it to our Gemara. Our Gemara states that our Batei Din may not adjudicate cases involving fines. Seemingly, this means that in our times it would not be possible to bring someone to a Din Torah to collect נזק. This also means that if an assailant decided he wanted to voluntarily pay the victim נזק it would be considered nothing more than a gift since there is no obligation, even to discharge a Heavenly obligation, unless the obligation is declared by Beis Din. It is possible, however, that it does make sense to pay for נזק even according to Rambam. Shulchan Aruch⁴ rules that if one pays נזק he is exempt from paying unemployment for the job he regularly performs. Accordingly, if the assailant pays for נזק, even though there is no obligation to make the payment it will, nevertheless, exempt him from paying unemployment. ■

1. רמב"ם פ"ה מהל' חובל ומזיק ה"ו
2. חידושי מנחת שלמה לבבא קמא פ"ג
3. חידושי מנחת שלמה לבבא קמא פ"ד
4. שו"ע חו"מ סי' ת"כ סע' י"ז ■

STORIES Off the Daf

The high cost of shaming another

בושת

Today's daf discusses recompense for embarrassment.

Tzaddikim have always been the defenders of orphans. They have often married them off and sometimes even raised them along with their own children. In this tradition, Rav Yitzchak Freidman, zt"l, the Rebbe of Bohosh, raised an orphaned child in his home. Not only was the child an orphan, he also suffered from a debilitating and unsightly skin disorder. Only a rare person would have been willing to allow him to visit, much less to raise him

as one of his own.

One time a very wealthy man came to visit the rebbe and was left to await his arrival. When the visitor noticed the child in a corner, he began to heap abuse on him. The rebbe—who heard the ruckus—rushed into the room.

As the hapless child wept the rebbe rebuked the heartless gevir. "I am sure you know that one who shames his friend has no portion to the world to come. Now, you probably figure that the word 'chaveiro' in that teaching means someone on the level of the man doing the shaming. According to this erroneous reading there is no prohibition for one who embarrasses someone lower on the social ladder than himself. If this is what you assume, this is a grave error on your part

since it is clearly false. Just look at Tamar. She was willing to burn rather than embarrass her father-in-law. Instead of publicly declaring that his judgment was false and exhibiting the clear proof, she chose to send it to him privately and was willing to die if he remained silent.

"Think for a moment. Is there any person lower than someone who allows another person to be burned to death to avoid a deserved public shaming? Yet Tamar was willing to die for even someone who placed himself on the lowest imaginable level."

Here the rebbe raised his voice, "How much more should you not humiliate a defenseless orphan!" he thundered.¹ ■

1. בנעורינו ובזקנינו ע' ק"ה