



OVERVIEW of the Daf

1) Pain – צער (cont.)

R' Pappa finishes explaining why he thinks the Mishnah follows Rabbi rather than Ben Azzai.

The Gemara inquires how pain is calculated when there is also נזק.

The father of Shmuel offers a suggestion for calculating the pain payment.

This suggestion is challenged and the Gemara, after a number of attempts, reaches a final understanding of this calculation.

2) Healing – רפוי

A Baraisa is cited that presents three different opinions regarding the collection of healing costs.

Rabbah presents the explanation of the dispute of the students and why he disagrees with their understanding as well as his interpretation of the dispute.

Another Baraisa related to healing costs is cited.

Two interpretations are offered to explain the opinion of R' Yosi bar Yehudah, cited in the Baraisa.

A point in the Baraisa is explained.

Additional rulings related to the healing payment are presented.

3) Multiple payments

R' Zevid in the name of Rava suggests a source that an assailant must make multiple payments for his assault.

This source is unsuccessfully challenged.

R' Pappa in the name of Rava cites a source that one pays for healing even when he pays for damages.

This source is unsuccessfully challenged.

The Gemara infers that from this discussion it is possible to pay for the other payments even when damages are not paid.

The source that each payment could be made even when there is no damage is cited.

4) Unemployment - שבת

A Baraisa is cited that elaborates on the calculation of the unemployment payment.

Rava further elaborates on the unemployment payment.

Rava presents a series of inquiries related to calculating payments for an assailant who inflicted multiple injuries at multiple times to his victim and the inquiries remain unresolved.

Rabbah inquires about payment when an injury causes the victim to be unemployed but he will completely heal.

The Gemara begins a response to the inquiry. ■

Distinctive INSIGHT

One evaluation or several?

אמדוהו מהו? מי אמרינן כיון דאמדוהו חדא חדא בעי למיתב ליה, או דלמא כיון דלא שלים יהיב ליה דמי כוליה. תיקו

Rava had proposed a question regarding how to evaluate payments for pain and embarrassment in a case where several injuries were caused one after the other, and the court had not assessed the payments for each injury as it occurred. Finally, the victim was caused to be deaf, which is a devastating condition. Now that four injuries have been inflicted, do we review each injury individually and require that the victim be paid separately, or do we say that due to the deafness, he is to be compensated for his entire self, so there is no need to collect individual payments for the pain and embarrassment for each earlier injury? The Gemara concludes that we might say that the victim will only get the larger payment for his entire self (due to being deafened). Yet, we can still ask what would happen if the victim had been evaluated for each injury along the way, but the payments had not been made until the person was later deafened. Should the victim be paid for each injury, or does it suffice to pay him for his entire self? The Gemara concludes “תיקו”.

Rambam rules that if the person had suffered several injuries, after which he was deafened, if he had been evaluated for each loss as it occurred, and he was then evaluated for his loss of hearing, he can only collect for the one, larger damage of his whole self. If the victim on his own collected the payments assessed for the individual injuries, as well as the comprehensive payment for his entire self, we would not be able to retrieve these payments from him.

ב"ח explains that Rambam here follows his general policy regarding the ruling of תיקו, or any unresolved question in

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REVIEW and Remember

1. How is the pain payment calculated?

2. Can the assailant insist on healing the victim rather than paying another doctor to treat him?

3. What halachos are derived from the phrase ורפא ירפא?

4. What was the essence of Rava's unresolved inquiry related to one who inflicts multiple injuries?

Today's Daf Digest is dedicated
 By Mr. and Mrs. Ira Arthur Clair and family
 In loving memory of their father's 16th Yaharzeit
 Mr. Sholem Clair z'l
 ר' שלום שכנא בן ר' ברוך ז"ל

HALACHAH Highlight

Is one obligated to pay for causing long term pain?

צער במקום נזק היכי שיימנן

How do we calculate the pain payment when there are also damages?

Rav Shlomo Zalman Auerbach¹ expressed uncertainty whether payment for pain is limited to the pain the victim experiences at the time he is struck, or does the assailant pay even for ongoing pain that the victim experiences as a result of the blow? A practical difference between these two approaches would be if the assailant cut off the victim's hand while the victim was anesthetized. Under the effects of the anesthesia he did not feel anything, but he will be in great pain afterwards. Is the assailant obligated to pay for the subsequent pain?

Rav Auerbach suggests that this issue is disputed by Rishonim in their commentaries to the Gemara Kesubos (39a). The Gemara there discusses the obligation to make a payment for pain when a man is מאנס a besulah and the Gemara questions whether there is pain. Tosafos² expresses astonishment at the Gemara's question since it is obvious that a besulah will experience pain. He cites Ri who answers that the pain a besulah experiences is not felt when she is with the man, only afterwards, and one is not obligated to pay for subsequent pain, only pain that is felt at the time of the assault. Rashba, also cited in Tosafos, offers an alternative explanation to the Gemara indicating that he disagrees with the principle of Tosafos and maintains that included in the payment for pain is even the pain that is experienced subsequent to the actual blow.

After further elaborating on the matter he decides that it is evident from Rosh³ that the payment for pain is limited to the pain experienced at the time of the assault and does not

(Insight. Continued from page 1)

the Gemara. Rambam understands that in these cases we do not proactively decide to take money from one person to another, but if one person collects the money on his own, we can not take it away from him. Rosh, however, disagrees, and says that each injury should be evaluated on its own, and that we do not simply make one overall evaluation at the end. Rosh understands that although an evaluation was not conducted earlier as each injury occurred, it would have been appropriate for this to have been done. Therefore, the victim can recapture the amounts that would have been assessed to compensate him for his loss, and he does not have to lose by having only one comprehensive estimate made.

ים של שלמה wonders how Rosh can arrive at a resolution where the Gemara leaves the issue without a conclusion.

The rule regarding a ruling of תיקו is dealt with practically with the court abstaining from interceding between the parties, and we do not collect money from one party to the other. Rambam holds that if one person takes from the other we allow him to keep it, but Rosh and ר"י hold that no confiscating on anyone's behalf is allowed or tolerated. ■

include the ongoing pain that resulted from the blow. The rationale is that it is a חידוש that one must pay for pain or humiliation for striking another person, as we see that when an animal injures a person the owner only pays נזק but not the other payments. Since it is a חידוש, we can only obligate the assailant to pay when it is similar to the case of the Torah which is the case of the woman who grabs a man in order to protect her husband and in that case the payment is only for the pain experienced at the moment she grabs him. ■

1. חידושי מנחת שלמה לבבא קמא דף פ"ה ע"א
2. תוס' כתובות ל"ט ד"ה צער דמאי
3. רא"ש פרק הכונס סי' ט' ■

STORIES Off the Daf

The father of Shmuel

אמר אביו דשמואל

On today's daf we find a teaching related by the father of Rav Shmuel.

The humility of Rav Shlomo Zalman Aurebach, זת"ל, was legendary and was complemented by his insightful ability to avoid getting involved in conflicts. To this aim, he would often sidestep answering questions regarding thorny public issues. One time, someone pestered him to give an opinion in a certain public dispute. Rav Shlomo Zalman dodged the question

brilliantly, as was his wont. He demurred, "Since you live in Bnei Brak, where the altercation is taking place, you can ask a local rav. Why must I rule when there are so many competent authorities in your city?"

When the askan finally went on his way, Rav Shlomo Zalman said to the person accompanying him, "Am I a rav at all, then? Over which community or neighborhood do I preside? I am just an old man. I don't understand why people ask me..."

When he saw how astonished his companion was by this statement. He amended it. "Nu... So you can say that I

teach young men."¹

On another occasion, the elderly posek was accosted by an American tourist. The tourist did not know the times for davening and decided to ask the kindly looking elderly gentleman just leaving the shul. Rav Shlomo Zalman began to enumerate all the many times for prayer in the shul. After he completed the list he repeated himself until the tourist had a clear grasp of when the times were.

The tourist felt a great appreciation to the kind gentleman and asked for his name. "Avuhah d'Shmuel," replied the Rav with a smile.² ■

1. חכו ממתקים ח"ב ע' נ'
2. מבקשי תורה ח"ג ע' קל"ה