

OVERVIEW of the Daf

1) Unwitting transgression - תקלה (cont.)

The Gemara continues to cite the Baraisa that establishes that the issue of unwitting transgression is a dispute amongst Tannaim.

2) Paying the wine owner the value of his wine.

The Gemara wonders why the honey owner must pay the value of the wine and cannot claim that he was merely joking when he made his offer.

The reason such a claim is rejected in the case of the Mishnah is explained.

3) Clarifying the Mishnah

The necessity for the Mishnah to address the case of the wine and honey as well as the case of the donkeys is explained.

4) Receiving compensation for the lost donkey

R' Kahana inquires whether the rescuer can expect reimbursement for the value of his donkey if it emerges from the river on his own.

Rav answered that he may demand reimbursement and cites an incident that supports this conclusion.

A question regarding the cited incident is raised and resolved.

Rav asked Rabbi whether the rescuer can receive payment for his donkey even when he fails at saving his friend's donkey.

Rabbi answered that he would only receive his fee and not full compensation.

This ruling is unsuccessfully challenged.

5) Sharing expenses

A Baraisa is cited that discusses how expenses are divided amongst the members of a caravan.

The reason it was necessary to present the last ruling is explained.

Another related Baraisa is cited, this one dealing with passengers on a boat.

The reason it was necessary to present the last ruling is explained.

Another Baraisa regarding caravans is presented.

Rami bar Chama, Rava and R' Ashi offer alternative explanations of the first ruling of the Baraisa.

6) MISHNAH: The Mishnah discusses the responsibility of a robber when extortionists take the stolen land from him.

7) Clarifying the Mishnah

R' Nachman bar Yitzchok notes that according to some versions the Mishnah reads מסיקין whereas according to others it reads מציקין. The appropriateness of the two terms is explained.

The Gemara clarifies the case where the land was taken on account of the robber.

A second explanation of this case of the Mishnah is presented.

8) Informers

A related incident is presented and R' Yosef and R' Huna bar Chiya continue to discuss R' Nachman's ruling. ■

Distinctive INSIGHT

Evaluating value and weight to alleviate a danger

מחשבין לפי משאוי ואין מחשבין לפי ממון

The Baraisa teaches that if a cargo ship is traveling in the sea and it is in danger of being sunk by a storm, the rule regarding dumping of its freight to lighten its weight is that merchandise should be tossed relative to weight, and not relative to value. In other words, if two merchants each have merchandise, and one threw 100 litra (a certain weight) of his boxes of gold overboard, he cannot demand that a merchant transporting iron must throw overboard more than 100 litra, even though the iron would be worth much less than the same weight of gold.

This rule is in sharp contrast to the earlier Baraisa where a caravan traveling in the desert is accosted by bandits who are willing to accept ransom to spare them. There, the travelers are required to contribute to the ransom relative to the value of the merchandise each carries. Tosafos Ri"d notes that the difference between these cases is that the bandits in the desert want money, and not necessarily to kill people. That is why the solution is to present them with a payment. In our case of the boat, however, while it is true that every litra of weight which is tossed will save not only the remaining merchandise, but also people's lives, the immediate danger is due to the boat's being weighted down in the water, and this is alleviated by lightening its burden.

Mordechai cites מהר"ם who points out that it is appropriate to assess the people at risk based upon the nature of the danger at hand. For example, if a city is targeted to pay a tax, the money should be collected based upon wealth of each inhabitant. This is using the guidelines we have established, as the government aims its sights upon the resources of the city, and the wealthier citizens are prominent in this regard.

The Gr"a uses this principle to explain the ruling of Rema (C.M. 163:43) that when taxes are set based upon everyone's

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REVIEW and Remember

1. When is acclaim of **בך אני** acceptable?

2. Why did the Gemara feel it was unnecessary for R' Safra to reacquire his donkey

3. What is the rule for sharing expenses for members of a caravan or passengers on a ship?

4. What is the rationale to call thieves **מסיקין**?

HALACHAH Highlight

The method of collecting funds for communal needs

מחשבין לפי ממון ואין מחשבין לפי נפשות

We calculate according to money; we do not calculate according to the number of people

Yam Shel Shlomo¹ writes that when collecting funds from the community for a mitzvah purpose the amount needed is divided by the number of residents, with each person paying an equal share. Mordechai² adopts a different approach and asserts that, except for life and death matters, collections are made based on wealth, with wealthy people contributing more and poor people contributing less. Rema³ follows the position of Mordechai and rules that when a community needs to hire a tutor, a chazzan or build a synagogue, the amount collected from each individual will vary according to his means.

The position of Rema, however is not so simple. In Shulchan Aruch Orach Chaim⁴ the Mechaber rules that the amount collected for a chazzan depends on each person's means and Rema⁵ adds that according to some opinions half of the total is collected according to the individual's means and the second half is divided equally amongst the residents in town, and he concludes that this is the prevailing custom. Machatzis Hashekel⁶ suggests that in Choshen Mishpat Rema was presenting what halacha dictates on this matter and in Orach Chaim he was describing the custom that is commonly followed. The rationale⁷ for using two different methods of collecting funds is that on the one hand poor people have the same need for a chazzan as wealthy people, but on the other hand wealthy people are often interested in spending more money to obtain a better quality chazzan. Thus as a compromise

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relative wealth, when the payment is made, it does not make a difference whether the money one holds is his or whether it is someone else's. For example, if a person is holding onto \$200, and due to the larger amount he must pay a higher percent of tax, it makes no difference whether only one hundred is his and the other hundred belongs to his friend. Even if he would have paid a lower percent for his one hundred alone, the total of two hundred he is holding attracts more attention, and it all deserves to be taxed at the higher rate. This is similar to the case of the boat where the value of the merchandise is not relevant when the weight is the nature of the problem. ■

the custom developed to split the collection into two collections.

In explanation of the halacha that money for a tutor is collected based on each individual's means, Gra⁸ writes that it is because having a tutor is considered a communal need (צרכי העיר). Accordingly, we can clarify the ruling of Rema who writes that every person must contribute to communal needs, like a place to hold weddings (בית חתנות) or a mikveh, even if he will not benefit from those needs. Although Rema does not specify how the money is to be collected, we can conclude that the intent is that it should be collected based on each individual's means rather than the total's being divided equally amongst all the residents, as the funds for other communal projects are collected. ■

1. ים של שלמה ב"ק פ"י סי' מ"ב
2. מרדכי בבא בתרא סי' תע"ח-ט
3. רמ"א חו"מ סי' קס"ג סוף סע' ג'
4. שו"ע או"ח סי' נ"ג סע' כ"ג
5. רמ"א שם
6. מחצית השקל שם
7. ע' ט"ז שם
8. גר"א חו"מ סי' קס"ג ס"ק פ"ה ■

STORIES Off the Daf

Hashem had mercy on him

משמיה רחמי עלה

A certain man once angered a acquaintance. The offended man wished to teach the one who had angered him a lesson, so he burned down his house. He made sure that no one would be hurt, and there was no actual monetary loss involved since the house was completely insured.

The arsonist was shocked when the other man took him to court. In beis din he admitted that he had burnt the house down but explained that the man had been completely recompensed. "I don't owe you a dime. It's true that what I did was very nasty but you have done plenty of nasty

things to me too!"

The victim disagreed. "The fact that I have a deal with the insurance company has nothing to do with you. You damaged my house and you must repay me like every other mazik."

When this unusual case reached the Maharsham, zt"l, he ruled that the arsonist must pay the entire damage. "In our times, insurance companies are a kind of investment that must reimburse their subscribers in the event of a fire. What does this investment of many years on the part of the victim have to do with the case at hand?"

Surely we must not let the arsonist get off scot-free just because the homeowner has an arrangement that provides for him in case of fire. The man who burned down the house must pay for every penny of damage that he caused!"¹

When word of this question reached the Ohr Someach, zt"l, he agreed with the Maharsham and proved it from today's daf.

"On Bava Kamma 116 we find a parallel situation. Two donkeys fell into the river, and their two owners made a deal that the owner of the cheaper donkey would abandon his own animal in order to rescue the more expensive donkey and be fully reimbursed. Even if the abandoned beast managed to escape the river on its own and rejoined its master, the agreement still stands and the money is still owed. Although the owner of the less expensive donkey sustained no loss, we say that Hashem had mercy on him. This in no way removes the obligation to repay the value of the donkey. The same is true in our case!"² ■

1. שו"ת מהרש"ם חלק ד' סימן ז'
2. אור שמח פ"ז מהלכות שכירות ה"א