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בבא קמא ה׳
CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) General categories of damages (cont.)

The Gemara continues to analyze why R' Oshaya did not include in his list of general categories of damages many of the cases included by R' Chiya.

It is suggested that R' Chiya maintains that undetectable damage (היזק שאינו ניכר) is not considered damage but this suggestion is rejected.

The Gemara questions why R' Chiya mentions the number twenty-four when seemingly it is not coming to exclude any additional cases.

It is suggested that the number is to exclude the case of a מוסר and a מפגל.

This explanation is unsuccessfully challenged

Since R' Oshaya and R' Chiya use the term אבות it seems that there should be תולדות as well; accordingly, the Gemara wonders what those subcategories would be.

R' Avahu suggests that the term אבות is needed to teach that the damager pays from superior land.

The rationale for this ruling is cited.

2) Clarifying the Mishnah

The Gemara explains the meaning of the progression of phrases in the Mishnah.

Rava notes that once the Torah mentions בור and one other general category of damage we could infer all the other cases, except קרן, from them.

The reason the Torah enumerates all the cases, is to teach unique halachos that apply to each category. ■

REVIEW and Remember

1. Why is מוסר not included in R' Chiya's list of general categories of damages?

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2. What two ideas are conveyed by the term אבות?

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3. What makes קרן different from all the other general categories of damages?

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4. Is one responsible to pay for utensils that were damaged in a בור?

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לע״נ הרבנית הצדקת
מרת שאצא באבטשא, ע״ה
בת כ״ק אדמו״ר רבי פנחס שלום זצ״ל מקאסאן
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נלבע כח׳ אייר תשע״ב

Distinctive INSIGHT

Payments for the damage of שן and רגל are exempt in the public domain

שן ורגל לפוטרן ברשות הרבים

The Gemara points out that the various categories of damage listed in the Torah are itemized in order to inform us of the specific details which apply in each case. For example, the damages of שן and רגל are exempt in the public domain. Rashi notes that the source for this is as indicated by the words "בשדה אחר." These damages only pay when they cause a loss in private property. Ri"f writes that the reason these damages are exempt in the public domain is that it is normal and routine for an animal to walk down the street, so the owner cannot be held accountable for the normal, routine movements of his animal. The owner of the items which get damaged must assume responsibility for having left his items in a place where animals can easily find them.

Rosh wonders why Ri"f had to add his own reason for the exemption of שן ורגל in the public domain, when the Gemara itself cites the verse of "בשדה אחר" as the source. Rosh then explains that Ri"f is coming to explain why the Torah makes this exemption, and he says that it is because an animal normally walks in the street, and the owner cannot be expected to follow every step of his cow. However, at the same time, the owner of an animal is liable for any damage by קרן even in the public domain. The reason for this is that this type of damage is done intentionally, and the owner should know that the animal has a pattern of acting impetuously. (Payment for a תם, where the animal has no established pattern of casuing damage, is indeed only due to a rabbinic penalty, and the owner should have been exempt.)

An interesting application of this explanation is in a case where a long board is lying on the ground, partly in the public domain, and partly in private property. The animal is walking in the public domain, where it bumps into the board and causes damage in the private property. Although this damage falls under the category of רגל, the owner of the animal is exempt from paying for damages that might occur in private property since the animal is walking normally in the public domain.

Chazon Ish (2a) explains that שן ורגל are unique in that the animal has its own choice of movement, so when it does damage it is only considered an indirect responsibility (כח כחו) of its owner. Even if the owner walks the animal to a pile of privately-owned fruit in the street, the owner would be exempt. This is a reason why שן ורגל are liable only as ממונו and cannot be derived as categories of damage based upon the liability one has for fire (in a case where it is חיציו). ■

HALACHAH Highlight

Undetectable damages

היזק שאינו ניכר לא שמיה היזק

Undetectable damages are not considered damages

According to Biblical law if someone causes undetectable damage (היזק שאינו ניכר) to another's property he is not obligated to reimburse the damaged party. One example of this concept is the case of someone who defiles his friend's tahor food. In addition to the fact that the owner will not be able to eat that food while tahor, the food loses some value and the victim has thus suffered a financial loss. Nevertheless, since the damage is undetectable the damager is not obligated to reimburse the victim. Another example is someone who pours terumah into his friend's food. As a result of the presence of terumah in the mixture the owner will be forced to sell the food at a discounted price since it is edible only for kohanim. However, since the damage is not recognized the damager is not Biblically obligated to pay for the damage he caused. Aruch Hashulchan[1] equates this type of damage with indirect damage (גרמא) which is another category of damages for which the damager is Biblically exempt.

Out of concern that people would intentionally cause undetectable damage to other's property without having to face a financial consequence Chazal decreed that one who causes undetectable damage to another's property is obligated to reimburse the damaged party for the loss. Although the requirement to pay is Rabbinic, nonetheless, the damager is obligated to pay from his best property (עידית). The reason, explains Shach[2], is that Chazal set up their decrees to parallel Biblical law. On the other hand, there are a number of leniencies that apply since the origin of the obligation to pay is only Rabbinic. One leniency is that it is only the damager who is obligated to pay for the damages but if the damager died his children would not be obligated to pay for the undetectable damage that was caused by their father. Another leniency is that one who causes undetectable damages unintentionally (שוגג) or due to circumstances beyond his control (אונס) will not be obligated to pay since the rationale behind the enactment was directed at those people who intentionally cause undetectable damage to others. There is, however, one stringency which results from the fact that the obligation to pay is a Rabbinic enactment. Yam Shel Shlomo[3] writes that if a person admits that he intentionally caused undetectable damage to another's property he will be liable to pay for the damages. Although there is a rule מודה בקנס פטור— one who admits to a fine is exempt, that rule is limited to Biblical fines but one can obligate himself, based on his own admission, to a fine that was enacted by Chazal. ■

1. ערוך השלחן סי' שפ"ה סע' א'.
2. ש"ך שם סק"ב.
3. ים של שלמה המובא בערוה"ש הנ"ל סע' ב'. ■

STORIES Off the Daf

The informant

"מוסר..."

Although we find on today's daf that an informant damages with mere words, this prohibition is certainly one of the worst forms of damage mentioned. The Shulchan Aruch rules that an informant—even if he only causes a monetary loss—forfeits his portion in the world to come.[1] This includes a person who goes to secular courts with another Jew without trying to settle their differences in a Jewish court of law.

Two friends once had a fight over money, and the argument degenerated into some very personal invective. One partner offered to go to beis din, but since the other had no evidence that would stand up in a court of law, this merely infuriated him even more. Finally, the other threatened that if the first party did not pay him what he felt was owed to him he would inform on him to the non-Jewish authorities. The one who had wanted to go to beis din refused indignantly and his enraged former partner stalked off in the direction of the domicile of the local magistrate. People who were around were shocked, and they warned him that an informant is one of the lowest levels to which one can sink, but to no noticeable avail. On his way he had a change of heart—possibly as a result of the admonishments—and turned back.

Shortly after, he was slated to give testimony in beis din regarding another matter, but some people who had witnessed his outburst were afraid that he may be ineligible like a man who had informed on his fellow Jew. After all, everyone knew that he had meant to act as an informant even though he had a change of heart. The would-be informant claimed that this was ridiculous; although he had threatened to do his former partner egregious harm, he had not actually done anything.

When this question was raised before the Beis Yaakov, zt"l, he ruled that this man was ineligible to be a witness until he repents in the manner that is prescribed for those who are ineligible to testify because of their sins. He added, "We treat this man as if he had actually informed on his fellow Jew."[2] ■

1. חושן משפט, שפ"ח:ט'
2. שו"ת בית יעקב, סימן קי"ט

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