

OVERVIEW of the Daf

1) Contrasting the different categories of damagers (cont.)

The Gemara continues to cite the Baraisa that elaborates on the relative stringencies and leniencies that apply to the different categories of damages.

The Gemara inquires why the Baraisa did not mention that שור is more stringent than בור since one must pay for utensils damaged by a שור but not when damaged in a בור.

One possible explanation for this omission is cited and rejected.

Another answer why this case was omitted is presented.

An alternative explanation for the omission is suggested but rejected by R' Ashi.

2) Liability for all the damages even when one caused only part of the damages

A Baraisa elaborates on the Mishnah's ruling that one is responsible for all the damages even when one caused only part of the damages.

It is noted that the Mishnah's ruling seems inconsistent with Rabbi's position regarding a case of one person digging a בור that is nine tefachim and another person digging the tenth tefach.

R' Pappa offers a suggestion how the Mishnah could be reconciled with Rabbi's opinion.

A second version of this discussion is presented.

Alternative explanations of the Baraisa are suggested and rejected.

Following the last of the three suggestions and rejections the Gemara is forced to offer another interpretation of the Baraisa.

This interpretation is challenged and another interpretation is recorded.

Another possible case that could have been discussed is suggested and rejected.

3) Defining נזקו תשלומי

It is noted that the Mishnah used the phrase תשלומי נזק and this is understood as a hint to the concept that the owner of the damaged animal has to deal with the dead animal.

Different sources are cited for the ruling that the owner of the damaged animal has to deal with the dead animal.

The reason three sources are necessary is explained.

R' Kahana challenges the assumption that a verse is needed to teach that the owner of the damaged animal must take care of the dead animal and forces the Gemara to interpret the earlier-cited verses as teaching that the owner of the dead animal suffers the loss of the depreciation of the dead animal.

The Gemara suggests that the issue of the animal's depreciation is subject to a dispute between Tannaim. ■

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Distinctive INSIGHT

The one who broke the bench

ואמר רב פפא כגון פפא בר אבא

The Gemara is in the process of explaining the phrase in the Mishnah which states "הכשרתי במקצת נזקו." What is a case where a person contributed only partly to the damage, but yet is liable for the entire damage?

The Gemara first suggests that where one person digs a pit, and a second person comes and deepens the pit, in certain cases the second person is fully responsible for the consequences which might unfold.

The Gemara then suggests another case to which the Mishnah may be referring. A Baraisa tells of five people sitting on a bench, and their weight was not enough to break it. A sixth person comes and sits on the bench, at which point the bench collapses. Only the last person is liable to pay for the breaking of the bench. Rav Pappa adds, "The 'last person who breaks it' is speaking about a person such as Pappa bar Abba," who, as Rashi explains, was a בעל בשר - an exceptionally heavy person.

Tosafos (ד"ה כגון) cites the opinion of Rashbam who explains why Rav Pappa added his graphic illustration of the sixth man being obese. Normally, a bench is available for people to sit. This, however, is for average people. If a bench breaks when someone sits on it, that person is exempt from paying for damages, using the guideline that if an object which is lent to be used breaks under normal conditions, the user has done nothing wrong. However, a bench is not intended for use by an obese person, and if he sits on it and it breaks, he is liable. This is why the case must be one of a very heavy person, as he is not allowed to sit on a public bench.

Rabeinu Tam disagrees. He contends that if a sixth person sits on a bench, everyone has to respond and stand up. When the bench begins to fail, they are responsible to get up and relieve the excess weight, and all would have to pay if it breaks. However, our case is where the sixth person was very heavy, and he leaned on the others, stopping them from rising. This is why only the last one is liable, not because he did only part of the damage, but because he did the entire damage. This is how the Gemara answers why this case is not a valid example of the Mishnah's case of "הכשרתי מקצת נזקו"—where the person did only part of the damage. ■

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HALACHAH Highlight

Wigs made from the hair of a corpse

ואי משום שהשער מותר (תוס' ד"ה שהשור)

And if it is because hair [from a corpse] is permitted ... (Tosafos ד"ה שהשור)

During the time of Maharam Shik it was common practice for women's wigs to be manufactured from the hair of dead women. The question presented to Maharam Shik was whether it is permitted to use a wig made from the hair of a dead woman since there is a prohibition against deriving benefit from the body of a corpse. Maharam Shik¹ cited Yad Eliyahu who permitted the use of these wigs and stated that he concurs with that opinion for two reasons. Firstly, Poskim maintain that the prohibition against deriving benefit from the body of a corpse is limited to Jews but there is no prohibition against deriving benefit from the corpse of a gentile, and one can assume that the hair comes from the majority of the population which is gentile. Furthermore, even according to those Poskim who maintain that it is prohibited to benefit from the corpse of a gentile, nevertheless, according to Tosafos² hair of a corpse, even a Jewish corpse, is not included in the prohibition and thus it is permitted to wear a wig made from the hair of a corpse.

Teshuvah Teshuvah M'Ahavah³ also addressed the issue of wigs made from the hair of dead women and noted that wigs in his time could even pose a physical danger. The common practice in his times was to make wigs from poor women who died in the hospital. Since these hospitals were not known to be particularly clean he was concerned that the hair used to

REVIEW and Remember

1. In what way is ש'א more stringent than ב'ור?

2. What is the dispute between Tanna Kamma and Rabbi in the case of the ב'ור?

3. When a number of people sit on a bench and break it, who is responsible to pay for the damages?

4. What are three sources needed to teach that the owner has to deal with the dead animal?

make the wig may contain a disease or something similar. Additionally, he explored the issue of whether it is permitted to make a wig from the hair of someone who died and concluded that ideally one should be strict on this matter since there are Poskim who maintain that it is prohibited to benefit from the corpse of a gentile. The only way to permit the practice, he notes, is to formulate a ס'פק ס'פיקא that goes as follows: Perhaps halacha follows those opinions who maintain that it is permitted to derive benefit from the corpse of a gentile but even if we reject that opinion perhaps we follow the opinion who maintains that hair is not included in the prohibition against benefiting from the corpse of a gentile. Therefore, in situations where the strict ruling will not be followed there is support for the lenient position. ■

1. שו"ת מהר"ם שיק יו"ד סי' שמ"ט.
2. תוס' ד"ה שהשור.
3. שו"ת תשובה מאהבה ח"א סי' מ"ז. ■

STORIES Off the Daf

"One man came along...and broke it"

"יבא אחד וישב עליו ושברו..."

Many elevators in Israel are small, and the weight that this mini-elevator can lift is proportionately minimal. Obviously, one who overloads an elevator must pay for any damage.

In a building with just such a mini-elevator, a group of people wished to be transported to the top floor. Both on the outside and interior of the elevator was this sign: "No more than four adults to ride this elevator at any time."

Four people entered but then a fifth decided to join them. When they pointed out that the sign stated clearly that four people is the absolute limit he waved them off. "Do you really think that's true?"

Unfortunately, soon after they began their ascent the elevator jerked to a stop and broke. It required an expensive repair which the first four men in the elevator claimed that the fifth one must pay. The fifth man for his part said that they should all pay an equal share.

When this question was placed before Rav Yitzchak Zilberstein, shlit"a, he said, "It depends. If any one of the five people in the elevator pushed the button

that caused the elevator to rise, he alone must pay all the damages since his negligence set the overloaded elevator into motion. But if someone on a different floor summoned the elevator you are correct that this is comparable to Bava Kama 10. There we find that if five men sat on a bench and it did not break but when a sixth leaned his weight on them it broke, the sixth man must pay if we are certain that he caused the bench to break. In our case, since the fifth person clearly caused the damage, he must pay for the entire repair."¹ ■

1. עלינו לשבח, במדבר, עמוד ת"ש-תש"א

