

OVERVIEW of the Daf

1) Defining תשלומי נזקו (cont.)

The Gemara finishes citing the Baraisa presented to demonstrate that the issue of the animal's depreciation is subject to a dispute between Tannaim.

The assertion that the dispute in the Baraisa relates to the animal's depreciation is rejected and an alternative explanation is offered.

Support for this explanation is cited.

The Gemara clarifies the circumstances of the dispute regarding the "trouble" of transporting the dead animal's body.

2) Evaluating property

Shmuel states that we evaluate for damages but not for thieves or robbers. Shmuel also makes a vague statement regarding evaluating for a borrower and Rav agreed with the suggestion.

The Gemara inquires about the meaning of Shmuel's statement and concludes that Shmuel ruled that we do not evaluate for a borrower.

This proof is rejected.

After citing different opinions whether we evaluate for thieves and robbers, Ulla, in the name of R' Elazar, rules that we do not evaluate for thieves and robbers but we do evaluate for borrowers.

3) Rulings of Ulla, in the name of R' Elazar

Another ruling is cited, related to a woman who becomes טמאה because she delivered the amniotic sac.

Rava rejects Ulla's explanation and offers his own understanding of this halacha.

Rava's interpretation is unsuccessfully challenged.

Another ruling is cited from Ulla, in the name of R' Elazar, related to redeeming a firstborn child who died within thirty days.

A fourth ruling from Ulla is cited, in the name of R' Elazar, related to the correct method of acquiring large animals.

This ruling is unsuccessfully challenged.

Another ruling from Ulla is recorded, in the name of R' Elazar, related to evaluating clothing brothers took before formally dividing their father's estate.

A sixth ruling from Ulla is presented, in the name of R' Elazar, regarding a watchman who gave the deposit to another watchman.

Rava's dissenting opinion regarding this matter is cited.

Ulla, in the name of R' Elazar, rules that a creditor may take the debtor's slaves as payment for his debt.

R' Nachman asks whether this ruling applies to orphans, and Ulla answers that it does not.

The novelty that the creditor may collect the debtor's slaves is explained. ■

Distinctive INSIGHT

We do not evaluate the salvage value for the thief

אמר שמואל אין שמין לא לגנב ולא לגזלן אלא לנזקין וכו'
When an animal falls into a pit and is killed, the one who dug the pit must pay for the financial loss the owner suffers. The Gemara had taught that the carcass of the animal may be used as part of the payment, as the dead animal has some salvage value.

Shmuel teaches that the system in the courts of evaluating the dead animal's worth as part of the compensation package is not available for a thief or robber. When an item which was stolen breaks or an animal dies in the possession of the thief, the thief must keep the broken pieces or the dead carcass for himself, and the owner must be given full payment. In other words, a thief cannot present the owner with the remnants of what was stolen and simply pay the difference in cash as a manner to restore the original value of what he stole.

The source for this halacha is taught in the Yerushalmi from the verse (Shemos 22:3), "חיים שנים ישלם...alive, he shall pay double." The payment must be made using the item itself only when the item is intact ("alive"). In reference to stealing specifically, we also find a verse (Vayikra 5:23): "He shall return the stolen object—אשר גזל—that he stole." Rashi and Tosafos explain that the object can be returned only as long as it is still in the condition it was when it was stolen, but not if it is broken or dead. Tosafos adds that if the thief wants to pay with money, he may do so, and it is not necessary for him to find a comparable item to that which he stole.

Several other approaches are presented among the Rishonim to explain this halacha. Rashbam notes that a thief is listed among the categories of damagers (4b), and, by definition, payment for damage may be paid even with bran (inferior movable objects). Why, then, can a thief not use the broken pieces of the stolen object towards the value of what he owes? Tosafos responds by saying that this is precisely the lesson of the verse, as taught in the Yerushalmi. Rashbam, however, contends that a thief may give the broken pieces or carcass as part of his restitution. The lesson of Shmuel is that the thief suffers the loss of value of the object between the time of death and when it is evaluated in court (פחת נבילה).

ריב"ם (cited in Tosafos, Bava Metzia 96b) explains that when a person is paying for damages, we inform him that he may use מטלטלין as part of the payment. If a thief is aware on his own of this right, he may pay with the broken pieces remaining from what he stole. The lesson of Shmuel is that the court does not advise him about this payment method. ■

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HALACHAH Highlight

The fast of the firstborn

אי"ר אלעזר בכור שנטרף בתוך לי יום אין פודין אותו

A firstborn boy that is killed within his first thirty days is not re-deemed.

Teshuvah Shvus Yaakov¹ was asked whether the father of a firstborn baby boy born on the night of the fourteenth of Nissan must fast. The rationale to exempt the father from fasting is the assumption that the obligation to fast begins at the beginning of the night of the fourteenth and since this child was born after that time the father never became obligated to fast, or perhaps that fact is not relevant. After discussing various angles related to the question he concludes that if the baby was born after chatzos (mid-night) the father is exempt from fasting. The reason is that even the Egyptian babies that were born after chatzos were not subject to the decree of death, so it was only the Jewish babies that were born before chatzos that were saved from the plague of the first born that would be obligated to fast.

Korban Nesanel² suggests that the father's exemption from fasting has nothing to do with when the baby was born; rather it is related to the principle presented in our Gemara. A father is not obligated to fast for his first born son who is less than thirty days old since he has not removed himself from the category of a stillborn, similar to the Gemara that states that before a baby is thirty days there

time finding and hiring the diver."

Not surprisingly, the perpetrator categorically refused. "Why is that my responsibility? I will pay for the diver but you can spend the time and effort finding him. Or you could always just leave the coin in the water..."

When this question was brought before the Beis Efraim, zt"l, he replied, "This question actually echoes a dispute between the Shach and the Maharshal zt"l. At first glance it would appear as though there is a proof from Bava Kama 11 that the owner of the coin must toil to find someone to retrieve it. We rule that if an animal fell into a pit and died, the owner of the animal must find a way to retrieve the

carcass. So too here, the owner of the coin must retrieve it.

"But when considered on a deeper level it is clear that the Shach is correct and the one who threw it in must work to recover it. The difference is that in Bava Kama, the animal fell into a pit created by another so he has no obligation to deal with the carcass. In our case, the perpetrator took the coin without permission. This constitutes stealing and the object must be returned. Clearly, in order to fulfill his obligation to return the coin he must first find a way to bring it to the surface..."¹ ■

1. שו"ת בית אפרים, חו"מ, סימן ל"ה

REVIEW and Remember

1. Explain אין שמין לא לגנב ולא לגזלן?
2. What is the correct method of acquiring a large animal?
3. If a watchman gives a deposit to another watchman, who is liable to pay for the loss?
4. What is an אפותיקי?

is no obligation to perform a pidyon haben. Birkei Yosef³ advocates on behalf of Shvus Yaakov and demonstrates that precedent cannot be drawn from the case of pidyon haben. The Torah decrees that a pidyon haben may not be performed earlier than thirty days after the baby is born. Regarding the fast of the first born it is logical to assume that any baby that was alive during the plague of the first born was in danger, even those babies that were destined to die before they reached the age of thirty days. Therefore, the father's obligation to fast depends upon whether or not the baby was born before chatzos. Sha'arei Teshuvah agrees with Birkei Yosef's assertion that pidyon haben does not provide precedent for our question. ■

1. שו"ת שבות יעקב ח"א סי' י"ז.
2. קרבן נתנאל פסחים פ"י סי' י"ט אות פ'.
3. ברכי יוסף או"ח סי' ת"ע סק"ו.
4. שערי תשובה שם סק"א. ■

STORIES Off the Daf

Restoring what was lost

"והכא בטורח נבילה קמיפלגי..."

Acertain man became very upset at his friend and decided to teach him a sharp lesson. He took the other man's valuable coin and hurled it into a deep pond on the other's property.

The owner of the coin approached the man who had tossed it in the water and demanded that he retrieve the coin immediately. "Very funny joke, but just as you surely understand that you must pay to recover the coin, you are the one who needs to waste his

