

OVERVIEW of the Daf

1) Taking the law into one's own hands (cont.)

The Gemara continues to try and cite a proof for the dispute between R' Yehudah and R' Nachman whether one is permitted to take the law into his own hands but all the attempts prove unsuccessful.

2) **MISHNAH:** The Mishnah presents a dispute regarding the degree of liability in a case where a pitcher with water breaks in the public domain.

3) Damage to clothing

R' Yehudah in the name of Rav asserts that liability is for the clothing but not for the person since it was the ground that caused the damage.

Shmuel asserted that the owner of the pitcher cannot be responsible for the clothing since the owner of a בור does not pay for clothing and the liability must be limited to damage to the person.

Rav responded that an object is a בור only if it is declared ownerless but if the owner retains ownership it is his property that damages and is not a בור.

R' Oshaya cites a Baraisa that contradicts both Rav and Shmuel.

After clarifying the question the Gemara presents how Rav would explain the Baraisa and how Shmuel would explain the Baraisa.

R' Elazar asserts that the Baraisa's case of liability for placing a stone in the public domain applies only when someone trips on the stone and is damaged by the stone but the owner of the stone is exempt if the person tripped on the ground and was damaged by the stone.

The Gemara notes that this interpretation does not follow R' Nosson's opinion about collecting damages from more than one person who was involved in causing the damages.

According to a second version R' Elazar explains the Baraisa in a way that is consistent with R' Nosson.

4) Defining intent

Rabbah offers a definition of the term intent used by R' Yehudah.

Abaye challenges this explanation.

Rabbah responds with a clarification of R' Meir's view, This explanation of R' Meir's view is challenged. ■

Distinctive INSIGHT

Intervening to stop a sinner

עבד שמסר לו רבו שפחה כנענית

The Gemara cited an argument regarding whether a person is allowed to enforce the law for himself in a case where he is not at risk to lose money if he would wait to take the case to court. Rav Yehuda held that a person is not allowed to enforce the law for himself in such a case, while Rav Nachman said it is permitted.

As the Gemara attempts to show which opinion is correct, it brings a Baraisa where a Jewish slave who has completed his term until Yovel is reluctant to leave the house of his master. The master may actively force him to leave, to the extent that if the master injures him, he is exempt. This source for this halacha is identified as a verse in Bamidbar (35:32). We see, notes the Gemara, that Rav Nachman is correct, and that the master may enforce the law and evict the ex-slave from the house, even if it means injuring him.

The Gemara rejects the proof, however, explaining that in until his being freed, the master was allowed to assign a maidservant to his Jewish slave, but this condition expires with the slave's release. It is therefore understandable for the master to evict his Jewish resident, who is no longer a slave. The dispensation to enforce his eviction is not due to the owner's being allowed to take the law into his own hands, but it is rather his being permitted to distance this former slave from the distinct risk of continuing to live with this maidservant, who is no longer permitted to him.

This Gemara suggests that a Jew may forcefully stop another Jew who is about to violate a sin. דגול מרבבה (to Yoreh De'ah 151:#6) cites the opinion of Sha"ch that the only time one Jew is obligated to intervene to stop another from sinning is when the sinner is acting inadvertently. If, however, the sinner is acting willfully, an observer is not required to intercede to stop him. (O.C. 316) notes that our Gemara seems to suggest otherwise. The former owner of the slave is allowed to strike his slave who is supposed to go free in order to stop him from knowingly sinning with the maidservant, yet we have seen that where the sinner acts intentionally, no one has the responsibility to stop him. The answer may be, he says, that here the slave is sinning with the maidservant of the owner. Here, the owner has an right to stop the sin from occurring. However, when someone is sinning intentionally with his own property, no one else has the obligation to get involved. ■

HALACHAH Highlight

Using force to make someone comply with the Torah

מניין לנרצע שכלו לו ימיו ... וחבל ועשה בו חבורה שהוא פטור

How do we know that a nirtza who completed his term ... and [the master] hit him causing a wound is exempt from liability?

Ketzos HaChoshen¹ writes that according to the opinion that maintains that a loan does not, Biblically, create a שיעבוד, the authority that allows Beis Din to force a borrower to pay back a loan is the general authority that permits Beis Din to force a person to fulfill a mitzvah. Accordingly, only a Beis Din of experts (מומחין) possesses this authority and nowadays our right to exercise this authority is due to the fact that we are agents of the earlier generations. Nesivos Hamishpat² notes that our Gemara that authorizes a slave owner to strike his slave to stop him from maintaining a relationship with a non-Jewish maidservant indicates that everyone has the authority to force a person to fulfill a mitzvah. Ketzos Hachoshen³ answers that there is a difference between forcing a person to fulfill a mitzvah and using force to separate a person from committing a transgression. Only a Beis Din of experts has the authority to use force to compel a person to fulfill a mitzvah but any person has the authority to use force to prevent a person from transgressing a prohibition.

Yam Shel Shlomo⁴ also writes that everyone is authorized to use force to prevent a person from transgressing a prohibition but he asserts that there is a difference between mitzvos

STORIES Off the Daf

Mitigating circumstances

אונס רחמנא פטריה

A chassid once approached his rebbe, Rav Yizchak of Vorke, ז"ל, in a very broken-hearted manner. He had a physical ailment that contact with water severely exacerbated. When he had been ill the doctor had declared with certainty that his illness was the result of contact with water. Not surprisingly, they absolutely forbade him from going to the mikveh even after he recovered.

Chassidim are generally very careful about Ezra's decree that a ba'al keri must go to the mikveh, especially before davening. Although the halachah is that they

nullified this gezeirah, the Mishnah Berurah and many other authorities rule that one who fulfills this decree will be blessed.¹ In addition, many pre-Chassidic sources mention that observing this takanah is essential for true spiritual development. Rav Chaim Kanievsky, shlit"א, brings a list of some of these luminaries, including the Arizal, the Beis Yosef's Maggid, and the Reishish Chochmah.²

With all these sources it is no wonder that the young man felt frustrated by his inability to maintain this practice. The Vorkever Rebbe turned to his young follower and said, "In Bava Kama 28 we find: 'אונס רחמנא פטריה—The Merciful One' absolves those constrained by mitigating circumstances.' This seems superfluous. Why not just say that one who is constrained by mitigating circumstances

REVIEW and Remember

1. Why is a slave owner allowed to hit his נרצע slave that won't leave?
2. What steps can a person take to exempt himself from giving ma'aser?
3. What is the point of dispute between Rav and Shmuel?
4. What is the source for the principle אונס רחמנא פטריה?

that are between man and Hashem and mitzvos that are between man and his fellow man. When it comes to interpersonal mitzvos any person can prevent another from transgressing a prohibition, thus one may use force to stop Reuven from hitting Shimon. In contrast, when someone is about to transgress a prohibition that is between man and Hashem only those people who are known to be righteous and act out of pure motives for the sake of Hashem has the authority to use force to prevent someone from committing a transgression. The reason, he explains, is out of concern that empty headed people will start hitting others using the excuse that they were attempting to prevent a transgression. ■

1. קצות החושן סי' ג' סק"א
2. נתיבות המשפט שם סק"א
3. משו"ב נתיבות שם
4. ים של שלמה פ"ג סי' ט' ■

is absolved? In addition, who cares if he is פטור since he didn't fulfill the mitzvah?"

The Rebbe answered his own question: "Hashem sees into a man's heart. If a person yearns to do a mitzvah but truly cannot, it is as though the Torah itself fulfills the mitzvah for him!"

The chassid lingered in his rebbe's presence, obviously unsatisfied with this response. He clearly was hoping to receive a blessing that he would, in fact, be able to immerse in the mikveh.

The rebbe admonished him, "Why are you still standing here? Who will do the mitzvah better—you, or the Torah?"³ ■

1. בסימן פ"ח בשם הפמ"ג
2. עיין אורחות יושר טהרה עמוד מ'
3. גדולת הצדיקים עמ' נ"ח