

OVERVIEW of the Daf

1) Liability for someone who enters your store (cont.)

Rav Zevid in the name of Rava presented a third context where R' Yosi bar Chanina made his statement.

The Gemara compares the position of this version with the first version of R' Yosi bar Chanina's statement.

2) Workers who are wounded by the animals of their employer

A Baraisa discusses the liability of an employer whose animal harms an employee who comes to collect his salary.

The Gemara clarifies the circumstances of the Baraisa's rulings.

A related Baraisa is cited and clarified.

3) MISHNAH: The Mishnah discusses the calculation of damages when two animals or two people or a person and an animal injure one another.

4) The dispute between Tanna Kamma and R' Akiva

A Baraisa is cited that elaborates on the dispute between Tanna Kamma and R' Akiva.

The exchange back and forth regarding their respective drashos is recorded.

5) MISHNAH: A case of payment for one animal goring another is presented.

6) Identifying the dispute in the Mishnah

The Gemara notes that the Mishnah follows the opinion of R' Akiva rather than R' Yishmael who disagree in a Baraisa.

The Gemara elaborates on the point of dispute between R' Akiva and R' Yishmael.

Another practical difference between their opinions is cited.

Rava asked R' Nachman whether according to R' Yishmael the damager has the authority to sell the damaging cow.

R' Nachman answers that he is not authorized to sell the animal.

Rava and R' Nachman continue to debate the matter.

A related Baraisa is cited and clarified.

7) Selling, slaughtering and sanctifying a damaging animal

A Baraisa is cited that discusses the right of the damager to sell, slaughter or sanctify his damaging animal.

The Gemara elaborates on different segments of the Baraisa.

From one of the teachings the Gemara infers that one who damages his friend's mortgaged securities is not liable.

The novelty of this inference is explained.

Another part of the earlier Baraisa is explained. ■

Distinctive INSIGHT

What should be done if the ox is sold instead of being divided?

בעא מיניה רבא מרב נחמן מכרו מזיק לרבי ישמעאל מהו

The Baraisa in the Gemara presented the dispute regarding the half payment which is evaluated against the attacking ox which is a תם. Rabbi Yishmael says יושם השור, which means that the court evaluates the damaging ox, and based upon its value, its owner has to pay up to half the amount of the damages of the animal which was injured. The value of the damaging ox is just a number which represents a cap on the amount of money to be paid. Rabbi Akiva contends that הוחלט השור, which means that the damaging ox itself is confiscated, so to say, and is taken as payment to pay for the half damage to the injured animal. We view the owner of the damaging ox and the owner of the damaged animal as partners in the ownership of the surviving animal.

The Gemara asks what would be the law according to Rabbi Yishmael if the owner of the damaging ox sold his animal and did not wait to divide it with the owner of the damaged animal. The Gemara concludes that the sale is not valid.

The Rishonim discuss this same question according to the opinion of Rabbi Akiva.

Tosafos (ד"ה הקדישו), Ramban and Rashba all explain that the sale of the ox is not valid. Rambam, however, writes (Nizkei Mamon 8:6) that if a תם is sold, even though the sale is valid, the payment for damages is to be taken from the animal which damaged. Lechem Mishnah (ibid.) points out that because the Gemara only asks about such a sale according to R' Yishmael, this suggests that according to R' Akiva it is obvious that the sale should not be valid. What, then, is the rationale for Rambam's ruling? He answers that it is true that according to R' Akiva the sale is certainly not totally valid, and this is why Rambam rules that although the sale is final, the payment for the damage is still collected from the ox which was sold. The Gemara, however, did ask whether perhaps the sale could be completely valid according to R' Yishmael, who holds that the animal is not taken itself as payment.

K'tzos HaChoshen (407:1) explains that Rambam holds that according to R' Akiva, the animal is owned partially or completely as payment only after the final verdict in court is rendered. The Gemara had concluded that half payment of a תם is a קנס—a fine, and if the owner of the damaging ox admits before the judgment is final, he is exempt from paying (מודה בקנס פטור). The sale of the animal is valid only before the verdict was finalized. ■

HALACHAH Highlight

An acceptable response to an attack

שני שוורים תמין שחבלו זה את זה

Two תם oxen that injured one another

The Mishnah discusses a case of two תם oxen that gored one another and rules that we evaluate the damage to both oxen and if one caused more damage than the other that owner will pay half the difference. Rosh¹ asserts that the Mishnah's case is limited to where the two oxen started to injure one another at the same time or when one injured the other and some time later the injured ox struck the attacker. If, however, one ox attacked the other and while the first ox was attacking the second ox responded by damaging the first ox, the owner of the second ox will not be liable to pay. The rationale behind this exemption is based on the principle כל פטור—any time one animal behaves abnormally and the second animal responds with abnormal behavior the owner of the second animal is exempt.

A similar halacha is mentioned in Shulchan Aruch regarding people. Shulchan Aruch² rules that if one person assaults another, the victim is allowed to defend himself by striking back and hitting the assailant. There is, however, a disagreement whether it is permitted for the victim to hit the assailant once the initial beating stopped. According to S"ma³ even after the assault is over, as long as the victim is still burning mad (יחס לבבו) he will not be liable if he strikes his

REVIEW and Remember

1. What is the meaning of the word "Yes" when used as a response to a knock?
2. What is the point of dispute between R' Akiva and R' Yishmael?
3. Why is the damager not permitted to sell the cow but is allowed to sanctify the cow?
4. Explain the case of חזיק שעבודו של חברו.

assailant. Taz⁴ disagrees with this ruling and maintains that once the initial fight is over it is not permitted for the victim to hit his assailant unless it seems as though he will be attacked a second time. Sefer Pischei Choshen⁵ writes that according to the rationale of S"ma even if the assailant did not begin to hit the victim it would be permitted for the possible victim to defend himself since he may have already reached the stage of being burning mad. According to Taz it would not be permitted for a person to defend himself unless he was struck or it appeared as if he was about to be struck. ■

1. רא"ש סי' י"ג
2. שו"ע חו"מ סי' תכ"א סע' י"ג
3. סמ"ע שם ס"ק כ"ד
4. ט"ז שם
5. פתחי חושן הל' נזיקין פ"ב הע' ל' ■

STORIES Off the Daf

Damage at the door

אין קום אדוכתך משמע

A group of hired hands once finished a day job and wished to be paid on time. When they saw that the man who had hired them to do the work didn't come to the office, they decided to go to his home to request their rightful due. He had warned them that it might be difficult for him to bring the money to the office on time, so when they saw that it was already late afternoon, they figured that the employer was simply too busy to come and that they should go to his home for their wages.

When they rang the man's doorbell, he said, "Yes."

Taking the word as a signal to enter, the workers walked into the house. Unfortunately, the employer was not in immediate reach of the entryway. His overzealous dog didn't like the look of the men and flew at them before its owner could restrain it. Unfortunately, one of the workers sustained a nasty bite before the dog was dragged off by the baal habayis.

When the worker claimed that the employer owed him money for the damage he said, "I never told you to come in. You entered at your own risk. I merely said, 'Yes,' I did not say, 'Come in.'" The group of workers disagreed and decided to go for halachic adjudication.

When Rav Yaakov Blau was consulted regarding this case he said, "The employer need not pay. Although we find in Bava Kama 33 just such a case and the Rama rules like the Rosh that any worker who enters the house of his employer is likened to one who is b'reshus, his reasoning is that in those days people were only paid at the employer's home. This surely has no relevance today if there is an office where these workers would normally receive their wages. The Taz, זת"ל, rules clearly that the even if the employer says, 'Yes,' he is not responsible for any damage. It is only if he explicitly tells them to come in that he is responsible."¹ ■

פתחי חושן חלק ו' פרק ה' הערה כ"ג