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

OVERVIEW of the Daf

1) Liability for destructive acts on Shabbos (cont.)

The Gemara resolves the challenge against R' Yochanan's position.

The case of an ox that needs its ashes is explained

The earlier interpretation of the Mishnah is unsuccessfully challenged.

Rava offers an alternative resolution to the challenge to R' Yochanan's position from a Mishnah.

Rava's explanation is unsuccessfully challenged.

2) MISHNAH: The Mishnah presents the halacha concerning many different cases of doubt of one or more oxen damaging one or more oxen.

3) Money that is in doubt

R' Chiya bar Abba infers from the Mishnah that Sumachus' colleagues disagree with his position that money that is in doubt should be divided by the litigants.

Upon inquiry R' Chiya bar Abba clarifies that Sumachus maintains his position even when both litigants make claims of certainty.

The Gemara explains how we know the Mishnah refers to a case where both litigants are certain regarding their claim.

R' Pappa attempts to demonstrate that the Mishnah discusses a case where one litigant is certain and the other is uncertain.

The Gemara unsuccessfully challenges the assumption that the Mishnah refers to a case where one litigant is certain and the other is uncertain.

4) A claim of wheat and a response of barley

Rabbah bar Nosson teaches that if a plaintiff claims wheat and the defendant admits to owing barley the defendant is not obligated to pay even barley.

The novelty of this ruling is explained.

This ruling is unsuccessfully challenged.

Another unsuccessful challenge to this ruling is presented. ■

REVIEW and Remember

1. How does the Gemara prove that there is such a thing as an intelligent ox?

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2. Is circumstantial evidence sufficient to obligate one to pay for damages?

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3. Why did R' Chiya bar Abba think that the Mishnah demonstrates that Sumachus' colleagues disagree with him?

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4. Why are two sources necessary to teach that one who responds to a claim by admitting to a different item is exempt?

_____

Distinctive INSIGHT

Why do we not use the rule מודה בקנס פטור?

הניזק אומר גדול הזיק והמזיק אומר לא כי אלא הקטן הזיק וכו׳ המוציא מחבירו עליו הראיה

The Mishnah teaches the law of two animals (both תם) of a single owner which pursued a third animal which was then killed, but we do not know which of the two animals was the assailant. The restitution for fifty per-cent of the loss of the dead animal must be made only up to the value of the animal which caused the damage. The ניזק claims that the damage was done by the larger, more valuable of the two animals (thus availing himself to a higher dollar amount from which to collect), while the מזיק claims that the damage was done by the smaller, less valuable, of the two animals. The halacha is that the one who is trying to draw funding from his fellow must prove his case before we can award him his claim.

It is clear from the Gemara that the dispute between the two litigants is regarding the amount of money represented by the difference in value between the two animals owned by the מזיק. Even the מזיק admits that he owes at least up to the value of the smaller of the two pursuing animals, and this amount is therefore not in question. Rosh and Nimukei Yosef ask why do we not invoke the rule מודה בקנס פטור—when one is the source of one's own guilt, he is exempt from any payments which are קנס? The Gemara had earlier established that since oxen are considered חזקת שימור, in a state of being guarded, the half-payment which is paid for damage done by a תם is a penalty, and not compensatory. Therefore, the admission of the מזיק in our case that he will pay from the smaller animal should result in his being exempt. Why, then, should he pay anything at all?

They answer that the case here is that there are witnesses who saw the goring, but they did not notice which of the two animals was the culprit. The fact that this owner must pay is already established by the witnesses, and the confession on his part is not the source of his being found liable to pay at least from the value of the smaller animal.

Rashba also notes that the rule to be exempt from payment of קנס should apply in our case. However, as ש״ך explains (88:16), our case is dealing even where there were no witnesses, but the ניזק took the מזיק to court, and the ניזק won. The מזיק does not deny his need to pay due to the court ruling, but he contends that it was not the larger animal which caused the damage, but it was rather the smaller of the two. Because the confession of the מזיק is only due to the court's proceedings, he is not actually the source of his guilt, and this is why he is not exempt by admitting that he must pay. ■

HALACHAH Highlight

An animal building a sukkah

הכא במאי עסקינן בשור פקח שעלתה לו נשיכה בגבו וכו'

Here what are we dealing with? We are dealing with an intelligent ox that had a bite on its back

Shulchan Aruch[1] rules that a sukkah that was not built for the sake of the mitzvah is valid as long as it was made for the sake of shade but if it came into existence on its own it is invalid since it was not constructed for the sake of shade. Poskim disagree regarding the disqualification of סכך that was not made for the sake of shade. According to one opinion[2] it is necessary for the סכך to be placed onto the sukkah for the sake of shade but if it was not placed on the sukkah for the sake of shade the sukkah is invalid. Accordingly, if the wind tore branches off of a tree and they fell onto a sukkah the sukkah is invalid since those branches were not put onto the sukkah for the sake of shade. Others[3] disagree and maintain that the intent of Shulchan Aruch is not that the סכך must be placed onto the sukkah for the sake of shade; rather the requirement is that one should intend to use the סכך for shade. Consequently, even if the branches fell onto the sukkah by the wind as long as the owner intends to use them for shade the sukkah is valid.

The Gemara Sukkah (8b) mentions an animal's sukkah. Levush[4] explains that the Gemara refers to a sukkah that was built by a person for the sake of an animal. Rav Yosef Engel[5] suggests that the Gemara refers to a sukkah that was built by an animal. At first glance this explanation is astonishing since halacha requires that the sukkah should be constructed, at least according to one opinion, for the sake of shade and an animal that does not have דעת is incapable of having proper intent. Teshuvas L'horos Nosson[6] suggests that support for Rav Yosef Engel's position could be found in our Gemara. Our Gemara discusses the possibility of an animal burning a stack so that it can roll around in the ashes to relieve the discomfort of a bite on its back. Similarly, an animal may put branches on a sukkah so that it should have a shady place to rest. ■

1. שו"ע או"ח סי' תרל"ה סע' א'
2. ע' פסקי תשובות סי' תרל"ה הע' 2
3. ע' פסקי תשובות סי' תרל"ה הע' 3
4. לבוש סי' תרל"ה סע' א'
5. גליוני הש"ס לגמ' סוכה ח
6. שו"ת להורות נתן ח"ח סי' ל"ט ■

STORIES Off the Daf

A Shabbos accident

בשוגג וכדתנא דבי חזקיה

A certain man drove home before Shabbos and parked his car on the street up the block from his house. When he went to get his car after Shabbos, he was shocked to find that someone had rammed into his car, breaking right through the door, and caused thousands of dollars worth of damage. On the windshield he found an interesting note: "I, the undersigned, witnessed the entire accident at 10:00 A.M. Shabbos morning. A black car with the following license number rammed you because he was driving carelessly. He tried to do a hit and run but I quickly ran up and jotted down his number. My name is Yaakov Gold and I am happy to testify to my assertions here." It concluded with his number and address.

The owner of the car immediately realized that it is quite likely that he could not use the note to turn to the witness. Perhaps making use of the note was prohibited, just as the products of any melachah done specifically for a Jew are prohibited even after Shabbos for the Jew for whom the act was originally performed.

When this question came before Rav Yitzchak Zilberstein, shlit"a, he replied, "There is no problem on account of ma'aseh Shabbos like you thought, since the note merely gives you information and you are not using it in any way.

"There are other possible problems here, however. The first potential problem is that a religious Jew using such a note from a nonreligious yet clearly Jewish person is likely a chilul Hashem. In addition, it is not clear that the driver of the other vehicle, if he is also a Jew, is responsible to pay for the damage to your car. The halachah is קם ליה בדרבה מיניה. If one did damage while at the same time doing an act that bears a potential death penalty if done before witnesses and with hasra'ah, he need not pay for the damage. Even if you say that the driver's action counts as shogeg since he is a תינוק שנשבה, this will not avail you because of the limud of tana d'vei Chizkiyah on Bava Kama 35. There we find that even if one did the aveirah where בשוגג, he is still obligated. But perhaps taking him to din is like one who took what was damaged in a case of קם ליה בדרבה מיניה. Just as in such a case the damaged party keeps what he took, so too in your case.

Rav Zilberstein concluded, "The only thing you can halachically do here is to threaten the perpetrator to take him to court with your witness and try and make him admit that he is guilty of causing the damage. Then his insurance company will pay!"[1] ■

1. עלינו לשבח חלק ה' עמוד תקצ"ז-תקצ"ח

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