

## OVERVIEW of the Daf

### 1) Bequeathing damages (cont.)

Rabbah and R' Nachman explain why the Beraisa does not indicate that a husband does not inherit the right to collect his wife's damages.

R' Pappa explains why a woman does not collect payment when someone strikes her and causes a miscarriage.

The Gemara unsuccessfully challenges Rabbah and R' Nachman's explanation.

### 2) An animal that kills without intent

Reish Lakish rules that the owner of an animal that kills without intent is exempt from paying the thirty-shekel payment.

The source for this ruling is cited.

Rabbah rules that the owner of an animal that kills a person without intent is exempt from paying kofer.

The source for this ruling is cited.

Abaye challenges this ruling from a Beraisa.

The exchange between Rabbah and Abaye on this point is recorded.

R' Shmuel bar R' Yitzchok unsuccessfully challenges the distinction made by Rabbah.

Rava challenges the premise that one must pay for damages even when one is exempt from paying kofer or the thirty-shekel fine for killing a slave.

Rava's challenge is challenged and clarified and the Gemara leaves unresolved the question of whether one is obligated to pay for damages if he unintentionally kills someone with fire.

R' Dimi cites an exposition of R' Yochanan that teaches that one pays kofer whether the killing was intentional or not.

Abaye unsuccessfully challenges this ruling.

Ravin cites an exposition of R' Yochanan that teaches that one pays for killing a slave whether it was intentional or not.

It is noted that Reish Lakish does not make the exposition regarding the slave but makes the exposition regarding kofer.

### 3) Goring a minor

A Beraisa cites a verse that teaches that one is liable if his animal kills a child.

The necessity for an exposition is challenged from a Beraisa. ■

## Gemara GEM

*Is the payment כופר or is it דמים?*

המית שורי את פלוני או שורו של פלוני הרי זה משלם על פי עצמו

The verse teaches **השור יסקל, וגם בעליו יומת**, thus suggesting an association between the owner having to pay (**השור יסקל**) and the animal being put to death (**בעליו יומת**). Accordingly, Rabbah taught that if an ox gores and kills a person, the only time a payment of **כופר** is paid is when the ox itself is eligible for the death penalty. Therefore, if the animal unintentionally killed a person, the animal will not be killed in court, and the owner would be exempt from the death payment of **כופר**.

Abaye cites a Beraisa to challenge the view of Rabbah. If a person who owns an animal comes and admits that his animal (**מועד**) either killed a person or another animal, the owner must pay due to his own confession. Now, in this case, the animal will not be put to death, as the rule is that just as a person is not put to death for his own crime if our knowledge of the crime is his own admission, so too, an animal is not put to death based upon the confession of its owner. Yet, we see that payment, which we assume refers to **כופר** in the case of the animal killing a man, must still be paid. The Gemara, however, defends Rabbah and explains that the payment which is to be made is not the **כופר**, but rather the damages of the loss of the person (**דמים**). This is not a payment of "atonement", but rather a compensation to the family of the one killed. Just as the owner of the ox would have to pay damages if the person was injured, so too does he pay compensation for the victim's death.

Rashi explains a practical difference whether we refer to the "death payment" as **דמים** or as **כופר**. If the ox's owner has no money from which to pay, if the payment is **דמים**/compensation, he is exempt. But, if the payment is **כופר**/atonement, the owner of the damaging animal must make every attempt to procure funds to pay for his atonement.

Tosafos offers a different practical difference whether this payment is **כופר** or **דמים**. If the payment is compensation, we determine the value to be paid by evaluating the value of the victim. If, however, the payment is **כופר** which is atonement, there is an opinion that this payment is the value of the **מוזיק**, who must pay his own value in order to absolve his self of sin.

Furthermore, Tosafos explains that **כופר** is not paid after the death of the **מוזיק**, as there is no atonement for the dead. If the payment is **דמים**, the heirs of the **מוזיק** would still pay it even after the death of the **מוזיק**. Finally, Tosafos notes that the heirs of the **ניזק** may only forego the payment (**מחילה**) if the payment is **דמים**, but if it is **כופר**, they should not stop the **מוזיק** from paying and achieving atonement. ■

# HALACHAH Highlight

## Abortion

אמר ר' פפא התורה זכתה דמי ולדות לבעל

R' Pappa said that the Torah grants the value of offspring to the husband

Sm"א<sup>1</sup> uses the statement of the Gemara that the fetus is considered to be the monetary property of the father to prove that a fetus is not considered a נפש. Shulchan Aruch<sup>2</sup> discusses the case of a woman who is experiencing a life threatening delivery and rules that once the head of the fetus has emerged one is not permitted to harm the baby in order to save the mother since we do not push aside one life for another and moreover, this is the nature of the world. Sm"א explains that the phrase, "this is the nature of the world" was necessary to address the following question. Why is it not permitted to kill the fetus as a רודף—pursuer of the mother? Answers Shulchan Aruch, since this is the nature of the world the fetus cannot be considered a pursuer and thus we do nothing and allow nature to run its course. The reason it is permitted to abort the fetus before its head emerges, explains Sm"א, is that before it emerges it is not considered a נפש and thus when given the choice, priority is given to the life of the mother, which is a נפש, over the fetus, which does not yet qualify as a נפש. Proof that the fetus is not considered a נפש is from our Gemara that discusses the monetary payment that is made to the father of the fetus when someone strikes the mother causing her to miscarry. The very fact that the assailant must make a monetary payment is proof that the assailant is not considered a murderer and thus is

# REVIEW and Remember

1. What is the source that the father is the one who collects דמי ולדות?

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2. What is the dispute between Rabbah and Abaye?

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3. If one lit a fire that spread and killed someone is he obligated to pay for damages?

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4. Why does Reish Lakish accept the exposition "אם כופר" "עם עבד" but rejects the exposition "כופר"?

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not liable to the death penalty.

Rav Moshe Feinstein<sup>3</sup> emphasizes that one should not misconstrue this discussion and entertain the possibility that there is no prohibition against performing an abortion since it is not a נפש. He cites the comment of Tosafos in Sanhedrin<sup>4</sup> that although a gentile is killed for aborting a fetus and a Jew is not, nonetheless, it is prohibited for a Jew to perform an abortion. Rav Feinstein explains that the prohibition for a Jew to abort a fetus is the prohibition against murder. The reason a Jew is not executed for performing an abortion is that there is no verse to indicate that the punishment is death like we find regarding a child but the prohibition against the act is the standard prohibition against murder. ■

1. סמ"ע חו"מ סי' תכ"ה סק"ח
2. שו"ע שם סע' ב'
3. שו"ת אג"מ חו"מ ח"ב סי' ס"ט
4. תוס' סנהדרין נ"ט ד"ה ליכא מידעם ■

# STORIES Off the Daf

## Just one drink

חומר באש מבכור

Today's daf discusses damage caused by fire.

A certain man visited a town and stayed in a Jewish guest house. Everything was going well until he decided to go to a place that sold alcoholic beverages for "just one drink."

Unfortunately, he drank a lot more than that and had trouble staggering to his place of residence. He lit a wax can-

dle and placed it on the table in the middle of his room. Although every normal person of his time knew that a candle without a holder should not be left to burn down since this could cause a fire, in his drunken stupor he neglected to put out the flame.

He awoke to a conflagration. The entire table and a box beneath it were ablaze. Luckily, he awoke in time and people heard his cry for help. Together they quenched the fire and he went back to bed. The next day the host approached the guest and said, "Glad there was no serious damage last night. But you owe me for the table, the table cloth,

and the chest of garments beneath the table."

"I do not!" exclaimed the irate guest. "I am sorry about last night's mistake but I was drunk so I doubt I am obligated for whatever damage was caused. Besides, this is clearly a gramah, so no earthly court can collect from me."

The landlord insisted that they go to beis din and eventually their case was adjudicated by the Chavas Ya'ar, zt"l. He answered, "There can be no doubt that the guest is responsible for the fire and must pay. This is obvious—'adam muad l'olam!'"<sup>1</sup> ■

1. שו"ת חות יאר סימן קס"ט

