



OVERVIEW of the Daf

1) מנסך (cont.)

Rav continues to explain why he rejects Shmuel's explanation and the Gemara records Shmuel's response to that challenge.

The Gemara explains why, according to Rav, it is necessary for the Mishnah to teach so many different cases involving fines.

A second explanation for the necessity of the different cases is explained in light of another Baraisa.

2) Undetectable damage

Chizkiyah asserts that biblically one is responsible for undetectable damage and explains why the sages exempted one for undetectable damage that was inflicted inadvertently.

The reason the sages did not exempt someone who intentionally inflicted damage is explained.

R' Yochanan asserts that Biblically one is not responsible for undetectable damage and the sages enacted that one who intentionally inflicted damage is responsible to pay.

The Gemara makes a number of unsuccessful attempts to demonstrate that undetectable damage is not considered the same as detectable damage.

R' Pappa successfully demonstrates that undetectable damage is not considered the same as detectable damage and thus refutes Chizkiyah's position about this matter.

It is suggested that the dispute between Chizkiyah and R' Yochanan is subject to a debate between Tannaim.

R' Nachman bar Yitzchok rejects this assertion and main-

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Distinctive INSIGHT

Various cases of undetectable damage

גזל מטבע ונפסל וכו' אומר לו הרי שלך לפניך

Chizkiya and Rav Yochanan argue about the issue of causing damage which is physically undetectable, but which is legally destructive. The classic examples brought in the Mishnah are *מדמע*, *מטמא* and *מנסך* – where, although the product is physically intact, the wine or produce is ruined by being contaminated with impurity or having been poured in front of idolatry. Chizkiya holds that one is technically liable for causing such damage, while R' Yochanan holds that this type of damage is not regarded as typical, and the one who causes it is technically exempt from paying for what he has ruined.

Our Gemara cites a Mishnah from Bava Kamma (96b) which seems to indicate that R' Yochanan is correct. If someone steals a coin, and the coin subsequently is withdrawn from circulation, the thief can simply return the outdated and worthless coin to its owner and say, "Here is your coin which I took." Beyond this, the thief is not obligated to pay for the monetary loss which the owner suffers. The Gemara accepts this proof as conclusive, and the opinion of Chizkiya is rejected from the halacha.

The *שיטות קדמונים* contrasts this halacha with another case, that of a fence between a vineyard and a wheat field. If the fence develops a breach, or if it falls, the owner of the fence must repair it in order to avoid a situation of mixed seeds between a vineyard and wheat field. If the owner of the fence is negligent and does not fix it, he is liable for paying for the loss of the fruit which becomes ruined due to the *כלאים*. If the halacha is that *הזיק שאינו ניכר* is not liable to pay, here, too, the damage to the wheat and grapes is not physical, but rather just a legal situation. Why can't the owner of the fence just present the "ruined" produce to its owner and say, "Here is your fruit," as we saw in the case of the coin which was discontinued?

He answers that with the fall of the fence between the wheat and the grapes, the fence owner is warned to immediately fix the situation, and his inaction is ruled as negligence. He could have prevented the loss, and he remained inactive. In the case of the coin, however, the thief is obliged to return the coin, but he has no control over the coin remaining valid. Even if the thief would return the coin immediately, the government would still have declared it valueless. *רמ"ה* points out that in the case of the mixed seeds, it is the grapes that ruin the wheat, as opposed to the thief and the coin, where it is not the thief who caused the coin to lose value, but it was rather the government that discontinued the coin's worth. ■

REVIEW and Remember

1. Why, according to Rav, does the Mishnah have to present many examples of undetectable damages?
2. What is the dispute between Chizkiyah and R' Yochanan?
3. Explain the claim *הרי שלך לפניך*.
4. Why do Tanna'im treat the case of making someone's wine into *יין נסך* so severely?

HALACHAH Highlight

Payment for damaging used property

הכהנים שפגלו במקדש מזידים חייבין
 Kohanim who make a korban pigul in the Beis Hamikdash: If done intentionally they are obligated

A common question related to damages is how to assess the value of used property. A new garment that has been worn only a few times is worth, as a used garment, perhaps a quarter of its original value, but to the owner of the garment it has only lost a small fraction of its original value. If someone damages that garment, which value will be used to calculate the damages? If we were to look at its objective market value the damaged party would recover only a small amount but if we were to assess the value of the garment from the subjective perspective of the owner he would recover a much larger sum. Nesivos Hamishpat¹ maintains that one who damages property that can not be sold in the market is not obligated to pay since the value of an item is assessed by its market value. Accordingly, Nesivos would maintain that one who damages a used suit is only obligated to pay for the damages according to its objective market value.

Rav Moshe Sternbuch, in his Teshuvos V'hanhagos², cites the opposing position of Chazon Ish who demonstrates from Rashi's comment to our Gemara that one is obligated to pay for damaging property that has no market value. The Gemara discusses the liability of a kohen who makes someone's korban pigul and Rashi³ comments that the kohen will pay the owner for the value of the animal since the owner will have to bring

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tains that the dispute relates to whether the sages punished inadvertent acts on account of deliberate acts.

The positions R' Nachman bar Yitzchok ascribes to R' Meir and R' Yehudah are contradicted by the positions they express in a different Baraisa.

The Gemara resolves these contradictions.

Another contradiction between two rulings of R' Meir is noted.

The Gemara begins to demonstrate that there is no contradiction between the two rulings of R' Meir by elaborating on the second Baraisa. ■

another animal as a replacement. Even though an animal designated as a korban has no market value since it can only be used by its owner for a korban, nevertheless, the kohen who damaged the animal by making it pigul is responsible to pay the owner for the loss that he suffered. This implies that damages are assessed subjectively which would mean that in our case the damaged party will recover the value of the garment from his subjective perspective rather than from an objective standard.

Rav Sternbuch⁴ suggests a number of reasons why the case discussed by Rashi is not relevant to the case of assessing the value of used property. As far as practical halacha is concerned Rav Sternbuch suggests different methods of calculating the depreciation of different types of objects depending upon a number of different factors. ■

1. נתייה"מ ס"י קמ"ח.
2. שו"ת תשובות והנהגות ח"ד ס"י ש"כ.
3. רש"י ד"ה חייבין.
4. שו"ת תשובות והנהגות שם. ■

STORIES Off the Daf

Stolen Esrogim

"אומר הרי שלך לפניך..."

Although esrogim are very expensive even today, until modern times they were exorbitant. During years when the supply was low, esrogim could cost a veritable fortune—to find one in a town or city was considered fortunate. During ordinary years it was usual for a dealer to give an esrog to someone before he paid so that he could bring it to his Rav first to see if it was truly mehudar and worth the price. Although virtually everyone returned to pay, there were some who took unfair advantage and disappeared with

the esrogim.

Of course, no one wishes to feel like a גנב...so these unscrupulous people would often be very careful with the esrog the entire chag and return the perfect esrogim to the indignant owners, often by proxy.

The question was: could these people just return it and say, "Here is your object," despite the fact that the esrog was now worth a little more than the price of a lemon instead of the veritable fortune it would have commanded before the holiday? Thieves claimed that this situation is no different than stolen chometz which the thief can return after Pesach even though it is no longer worth even a penny, as we find on today's daf.

The Pri Megadim, zt"l, is unsure

whether an esrog is different from chometz, since no one in his right mind would steal chometz and violate the prohibition. But people care less about an esrog, so perhaps it is not like chometz.¹

When the Shoel Umeishiv, zt"l, was asked about such a case he ruled that the thief owed the original price of the esrog. "Chometz is different, since no one can tell on the outside if bread is חמץ שעבר עליו הפסח. But everyone knows an esrog has no intrinsic value after Sukkos compared with what it was worth before the chag. Can he return an object that everyone knows is not even worth one percent of its previous value!"² ■

1. פמ"ג, סימן תרנ"ו, מ"ז, ס"ק א'
2. שו"ת שואל ומשיב, מהדורה תנינא, או"ח, סימן ס"ה