

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah presents several examples of the principle, spelled out at the end of the Mishnah, that although a person can, through his own admission, subject himself to payments he cannot obligate himself in fines.

2) Clarifying the Mishnah

The Gemara explains why the Mishnah discusses a case of seduction rather than violation.

It is noted that the Mishnah that obligates a person who admits to seducing a girl to pay for embarrassment and depreciation, does not reflect the opinion of R' Shimon, cited in a Baraisa.

R' Pappa and Abaye discuss whether according to R' Shimon it would ever be possible to pay for embarrassment and depreciation in a case of seduction and the conclusion is that one does not pay.

3) Half-damages

R' Pappa maintains that half-damages are compensation whereas R' Huna the son of R' Yehoshua maintains that half-damages are punitive.

Each opinion explains the rationale behind their position.

Three attempts are made to prove one of the opinions correct and on the third attempt the Gemara successfully refutes the position that half-damages are punitive.

Notwithstanding the refutation of that position, the Gemara rules in accordance with that opinion that half-damages are punitive and explains how the refutation could be resolved.

Some applications of the conclusion that half-damages are punitive are presented.

הדרן עלך אלו נערות

4) **MISHNAH:** The Mishnah discusses whether payments made for a woman who was violated or seduced go to her or her father and the subsequent consequences of that determination. ■

REVIEW and Remember

1. Why doesn't the ox-owner have to pay when he admits that his ox killed his friend's non-Jewish slave?

2. When does a person pay half damages (חצי נזק)?

3. Is paying less than the value of an object a fine—קנס?

4. What two conditions allow a girl to keep the money collected for the fine for being seduced or violated?

Distinctive INSIGHT

The half-damages when an animal gores

תיובתא. והלכתא פלגא נזקא קנסא. תיובתא והלכתא? אין. טעמא מאי איתותב משום דלא קתני כמה שהזיק וכו'.

The Gemara is in the middle of a discussion to understand the nature of the half-payment which the Torah prescribes for damage caused by an ox which has not yet developed a pattern of damaging (שור תם). Rav Pappa is of the opinion that the payment is compensatory. Although oxen are considered domesticated animals, they are not to be treated as tame and under control. The owner has a responsibility to watch them so that they will not gore. If they do damage in this manner, the owner is fully responsible. The Torah is lenient and allows half-payment to be made, because the animal has not yet established a pattern of being dangerous. Rav Huna b. Rav Yehoshua holds that the half-payment is a fine. A domesticated animal is considered tame, and the fact that it gores is a surprise, to no fault of its owner. The owner should be completely exempt, but the Torah obligates him to pay half in order that he increase his vigilance to watch this animal.

A Baraisa is cited which states that the only payments that are considered fines are those which pay more than the actual damage. The Gemara infers that wording of the Baraisa indicates that payments which are less than the damage are indeed compensatory (ממונא), thus proving that Rav Pappa is correct.

Surprisingly, the Gemara reverses itself and rules that the halacha is that the half-payment for damage is a fine. As far as the wording of the Baraisa is concerned, it did not want to make a general statement that paying less than the damage is always a fine, because there is a payment for damage caused by צרורות, when pebbles fly out from under the foot of an animal and indirectly cause damage. Based upon a halacha from Moshe Rabeinu at Sinai, this tortfeasor pays only half. This payment is under the category of "foot—רגל," and is ממונא.

It is noteworthy that in our Gemara, Rashi explains that the halacha from Moshe at Sinai teaches us that the damage of צרורות is under the category of "foot—רגל." Being that all payments of "foot" are compensatory (ממונא), we automatically determine that this half payment is also ממונא. However, in Bava Kamma (3b) Rashi explains it differently. There he points out that the halacha from Moshe at Sinai teaches us that this half payment is considered ממונא. Rashi notes that although the half payment made when an animal gores is a קנס, a fine, the halacha from Moshe at Sinai teaches that here, regarding צרורות, the payment is ממונא. Rashi there seems to take it for granted that although payment in this case is only half, the fact that it is in the category of "foot" and not under the grouping of "horn—קרן" is obvious. ■

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 In memory of
 ר' בערל בן ר' יחיאל

HALACHAH Highlight

Raising Dogs

מנין שלא יגדל אדם כלב רע בתוך ביתו

How do we know that a person should not raise a ferocious dog in their home?

Shulchan Aruch¹ rules that it is prohibited to raise a ferocious dog unless it is restrained by an iron chain. One who lives near the border, which is in constant danger of attacks from the other side of the border, is permitted to raise ferocious dogs but they may only be set loose at night. Rema² adds that according to some opinions since Jews lived amongst hostile, often anti-Semitic neighbors the custom developed to permit raising ferocious dogs. If, however, there is a concern that the ferocious dog may attack and harm people it must be restrained with an iron chain. Shulchan Aruch HaRav³ notes that the definition of a ferocious dog includes a dog that barks. The reason a barking dog is considered ferocious is that there is a concern that the barking may frighten a pregnant woman and cause her to miscarry. One is permitted to raise a dog that does not bark or bite, although Rav Yaakov Emden⁴ writes strongly against dog ownership unless it is for the purpose of providing protection for one's family or property.

Poskim debate how to categorize a dog that does not bark

and will attack only when incited to attack. Is it considered a ferocious dog since it will attack when incited, or is it a calm dog since, on its own, it neither barks nor bites? Rav Yaakov Blau⁵, author of Pischei Choshen, infers from the language of Shulchan Aruch that a dog that can be incited to attack is considered a ferocious dog. Shulchan Aruch writes that if someone incites his friend's dog to attack, the owner of the dog must pay half-damages (חצי נזק). The reason is that since the owner knows that his dog will attack when incited he should not have left it where it could be incited to attack. This seemingly indicates that a dog that could be incited to attack is considered dangerous. Rav Yaakov Meir Stern⁶, author of Imrei Yaakov, a commentary to Shulchan Aruch HaRav Chosen Mishpat, argues that when Shulchan Aruch writes that he should not have left it where it could be incited to attack he did not intend to classify such a dog as a ferocious. Rather his intent was to explain why the owner of the dog is responsible to pay for the damages. He therefore disagrees with the conclusion of Pischei Choshen and maintains that it is permitted to raise a dog as long as it will not, on its own, bark or bite. ■

1. שו"ע חו"מ סי' ת"ט סעי' ג'.

2. רמ"א שם.

3. שו"ע הרב חו"מ דיני שמירת הגוף ונפש סעי' ג'.

4. שו"ת שאילת יעב"ץ ח"א סי' י"ז.

5. פתחי חושן נזיקין פ"ה ס"ק צ"ו.

6. אמרי יעקב לשו"ע הרב הנ"ל ביאורים ד"ה המגדל כלב רע. ■

STORIES Off the Daf

Paying the Fine

"ואי תפס לא מפקינן מיניה..."

On today's daf we find that if one did confiscate money due for damages, he may keep it.

Once, a businessman paid a surprise visit to his factory, hoping to ensure that the workers were not loafing. At the beginning of his tour of inspection, he noticed a young man leaning against the wall, clearly idling. "Perhaps he is on his break," thought the boss as he continued to tour the big factory. When he finally finished he was glad to see that everyone was working diligently—except for that one young man, who was still leaning in the same place,

gazing around with an air of vapid interest. It was clear that he had no intention to get to work anytime soon.

The boss was incensed. He approached the loafer and asked brusquely, "How much money do you make a month?"

"3000 shekels," was the cool reply.

The furious boss indignantly thrust 3,000 shekels into the surprised man's hand and bellowed in front of all the other workers, "Do you think that I am paying loafers here? Take a month's salary in lieu of notice and don't ever let me see you here again!"

He grabbed the young man, turned him around, and pushed him bodily through the exit. Having exorcised his anger and feeling somewhat satisfied, the boss approached the manager of the factory and asked him why he had hired

such a worthless worker.

The manager was taken aback, "What do you mean? He doesn't work here. He works as a delivery boy for a local restaurant. Whenever one of the workers orders food he brings it over. Sometimes he spends a couple of hours here observing."

The humiliated young man went to beis din to ask if he could keep the money as payment for having been publicly embarrassed. Rav Yitzchak Zilberstein, shlit'a, responded, "Damages for embarrassment is highly subjective and it needs to be established by the beis din. However, you are definitely entitled to keep the amount that is owed to you—and the money that you were mistakenly handed can be considered seized subject to a future assessment." ■

