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Gittin Daf 53

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Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### **Mishna**

If one contaminates his fellow’s produce with *tumah*, or if he mixes *terumah* into it, or if he renders someone’s wine *nesech* (*wine that has been used as an idolatrous libation*), if he did so unintentionally, he is exempt; intentionally, he is liable. (52b)

### **The Novelty of the Mishna’s Cases**

It has been stated: With regard to the *Mishna’s* case of one who renders someone’s wine *nesech*: Rav says that it means literally making a idolatrous libation, while Shmuel says that it means that he mixed *nesech* wine into kosher wine.

The *Gemora* asks: Why did the one (*Shmuel*) who says it means mixing not accept the view that it means making a libation?

The *Gemora* answers: He (*Shmuel*) will tell you that making a libation involves a heavier penalty (*he is killed by stoning, and the rule is that one who commits a capital offense and simultaneously commits a lesser offense, he receives the death penalty, but he is exempt from the lesser one, and therefore, he would not be required to pay in this case*).

The *Gemora* asks: What does the other one (*Rav*) say to this?

The *Gemora* answers: He holds like Rabbi Yirmiyah. For Rabbi Yirmiyah said that the thief acquires possession from the moment he lifts the wine from the ground, whereas he does not become liable to capital punishment until the moment of the libation (*and therefore, he will still be liable to pay*).

The *Gemora* asks: Why does the one (*Rav*) who says that it means making a libation not accept the view that it means mixing?

The *Gemora* answers: He (*Rav*) will tell you, mixing wine is basically the same case as mixing *terumah* into someone’s produce (*so the Mishna would not need to mention both cases*).

The *Gemora* asks: What does the other one (*Shmuel*) say to this?

The *Gemora* answers: He (*Shmuel*) says that the penalty for this is a Rabbinic fine, and we cannot derive a new fine from another one.

The *Gemora* asks: But according to Rav, who holds that the imposition of a new fine can be derived from another fine, why does the *Mishna* mention all these cases?

The *Gemora* answers: They are all necessary. For if the *Mishna* had mentioned only one who contaminates his

fellow's produce with *tumah*, then, supposing the food was *terumah*, I would say that the reason why compensation has to be made is because he ruins it completely (*for even a Kohen cannot eat it*), and if the food was ordinary produce, (*I would say that he is liable*) because it is forbidden to cause *tumah* to ordinary produce in *Eretz Yisroel* (on account of those that did not eat ordinary produce when it was *tamei*), but one who mixes *terumah* into ordinary produce, perhaps he is not required to make compensation. And if one who mixes *terumah* into ordinary produce had been mentioned, I would say the reason is because this is a common occurrence, but in the case of one who contaminates his fellow's produce with *tumah*, which is not a common occurrence, I would say that he is not liable. And if both one who contaminates his fellow's produce with *tumah*, and one who mixes *terumah* into ordinary produce had been specified, I would say the reason compensation is required is that no heavier penalty is involved, but I would not apply this rule to one who makes a libation, where a heavier penalty is involved. Therefore, the *Mishna* teaches us that he is liable in this case because of the principle of Rabbi Yirmiyah.

The *Gemora* asks regarding the following teaching of the father of Rav Avin. He taught: Originally this (*law of our Mishna*) was stated regarding one who contaminates his fellow's produce with *tumah* and one who renders someone's wine *nesech*. They then decided to add one who mixes *terumah* into ordinary produce (*causing it to become forbidden to people who are not Kohanim*). Why did the *Mishna* need to list all of these cases?

The *Gemora* answers: They are all necessary. One might think that only one who causes his friend's pure items to become impure is obligated to pay, as there is

no law of "*kim ley b'drabah minei*." [*One who commits a capital offense and simultaneously commits a lesser offense, he receives the death penalty, but he is exempt from the lesser one*] However, regarding one who renders someone's wine *nesech*, I might think that one does not have to pay, as he is liable to be killed (*see the Gemora earlier as to why we indeed do not invoke the rule of "kim ley b'drabah minei"*). If the *Mishna* would only state one who renders someone's wine *nesech*, I might think that he must pay because he makes the wine totally unfit. However, if he only contaminates his fellow's produce with *tumah* (*and they are still allowed to be eaten*), perhaps he would not have to pay. Furthermore, it is possible that these two laws, where the damager is required to pay, might be because he causes a substantial loss. However, in the case of one who mixes *terumah* into ordinary produce, which makes it permissible only to *Kohanim*, perhaps he would not be obligated to pay (*as the loss is not great*). The *Mishna* therefore must also say this case as well. (52b – 53a)

#### **Damage that is not Apparent**

Chizkiyah states: According to Torah law, one is obligated to pay in these cases, whether he did so on purpose or accidentally. Why? Damaging when the damage is not apparent (*i.e just causing a change in status*) is considered damaging. The only reason that the *Chachamim* instituted that one who does this accidentally is exempt, is in order that the person who damaged accidentally will inform the person that his item's status has changed for the worse.

The *Gemora* asks: If so, let us institute that he should be exempt if he does so on purpose as well!

The *Gemora* answers: When he does so deliberately, he is doing so to damage him. Is it not logical that he is

going to want to inform him (*for otherwise, the damaged part will not be bothered*)?!

Rabbi Yochanan states: According to Torah law, one is not obligated to pay in these cases, whether he did so on purpose or accidentally. Why? Damaging when the damage is not apparent (*i.e just causing a change in status*) is not considered damaging. The only reason that the *Chachamim* instituted that one who does this purposely is obligated to pay, is in order that people should not go around making their friend's pure items impure, saying (*afterwards*) that they are exempt from paying.

The *Mishna* states: *Kohanim* who purposely make a *korban piggul* (*a korban whose avodah was done with the intention that it would be eaten after its designated time*) must pay the owner for the damage (*a new animal*). It was taught in a *braisa* regarding this *Mishna*: This is because of "*tikun ha'olam*" – "benefiting the public." According to Chizkiyah, the teaching should be that the reason one is exempt if doing so accidentally is because of *tikun ha'olam*! [*Doing so on purpose makes him obligated to pay according to Torah law!*]

The *Gemora* answers: This is indeed what the *braisa* means to say. One who does so deliberately is obligated to pay, but one who does so by accident is exempt from paying due to *tikun ha'olam* (*as explained above*).

Rabbi Elozar asked a question from the following *Mishna*: If someone works with water designated for use after the offering of the red heifer or the red heifer itself (*both which become unfit if work is done with them*), he is exempt from paying under the laws of man, but is obligated to pay under the laws of Heaven.

According to Chizkiyah, he should be obligated to pay according to the laws of man as well!?

Rabbi Elozar himself answered: The case is where he had the red heifer enter the pen where its mother was in order that it should nurse and thresh grain. [*He is not obligated to pay under the laws of man because his action (of bringing the calf in to nurse) would not have invalidated it; it is his intention for the threshing that disqualifies it; this is not regarded as a "direct damage," and therefore, he is only liable to pay under the laws of Heaven.*] Regarding the water, he weighed weights using the water (*as the weight on the other side of the scale*).

The *Gemora* asks: Doesn't Rava say that such water is still fit?

The *Gemora* answers: The case of Rava is indeed fit. The case that the *Mishna* was referring to is where the water is used as the measurement itself. [*Rashi explains that the case is where meat is placed in the water, and the amount that the water rises up is used as an indicator for weighing the meat.*]

The *Gemora* asks: In the case of the *Mishna*, an actual action is done directly with the water. Shouldn't such a directly damaging action require payment according to Chizkiyah?

The *Gemora* therefore answers: It must be that both Rava and the *Mishna* are talking about the same case (*where the water is merely a counterweight*). The *Mishna* is discussing where he took his mind off the water, and Rava is discussing a case where he did not take his mind off the water. [*One must constantly have his mind thinking, on some level, about this water, to ensure nothing happens to it to make it become unfit.*]

*The Mishna is merely discussing a case where the weighing caused him to take his mind off of the water.]*

Rava Papa asked a question from the following *braisa*: If someone steals a coin and it later ceases to be legal tender, or he steals *terumah* and it becomes impure, or he steals *chametz* and Pesach passes by (*which causes it to be forbidden for benefit*), he may return the object to the owner and say “Here is your object before you!” According to Chizkiyah, he is a thief and should have to pay accordingly! This is indeed a refutation on Chizkiyah’s position (*that even damage that is not apparent is considered damage*).

The *Gemora* asks: Let us say that this is essentially an argument among *Tannaim*. The *braisa* states: One who makes his friend’s pure items impure, one who mixes *terumah* into his friend’s regular produce, and one who renders someone’s wine *nesech*, whether he did so accidentally or deliberately, he is obligated to pay. This is the opinion of Rabbi Meir. Rabbi Yehudah says: If he does so accidentally, he is exempt; if he does so deliberately, he is obligated. What is the crux of their argument? It must be that one holds that damage that is not apparent is considered damage, while the other holds it is not!

Rav Nachman bar Yitzchak answers: Everyone holds damage that is not apparent is not damage. The argument here is whether or not one who damages accidentally is given a fine because of one who damages on purpose. Rabbi Meir says he is, while Rabbi Yehudah says he is not. (53a - 53b)

### ***Imposing a Penalty by an Inadvertent Transgression***

The *Gemora* asks: We can ask that both Rabbi Meir and Rabbi Yehudah seem to contradict their positions in the

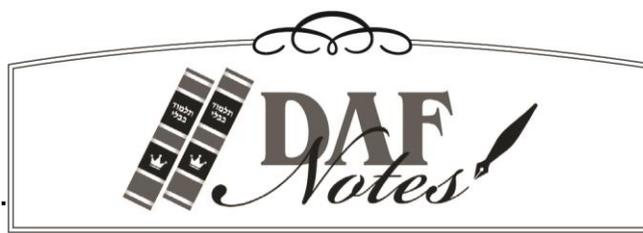
following *braisa*. The *braisa* states: If one cooked on *Shabbos* by mistake (*he didn’t realize that it was Shabbos or he didn’t know that cooking was forbidden*), he is permitted to eat the food (*even on that Shabbos*). If he cooked intentionally, he is prohibited from eating the food (*forever; others, however, are permitted to eat the food on that Shabbos*); these are the words of Rabbi Meir. Rabbi Yehudah says: If he cooked inadvertently, he is only permitted to eat the food after *Shabbos* is over (*Motzoei Shabbos because the Chachamim penalized this case on account of a case where one cooked deliberately; others, however, are permitted to eat the food on that Shabbos*). If, however, he cooked intentionally, he is prohibited from eating the food forever (*so that he should not derive any benefit from the transgression; but others, may eat the food once Shabbos is over*). Rabbi Yochanan Hasandler says: If he cooked inadvertently, others are only permitted to eat the food after *Shabbos* is over, but he may not eat from that food. If, however, he cooked intentionally, he and others are prohibited from eating the food forever. This *braisa* seems to present a contradictory opinion of Rabbi Meir and Rabbi Yehudah (*regarding penalizing an inadvertent action on account of a deliberate one*)!?

The *Gemora* answers: Rabbi Meir’s position is not contradictory. He merely holds that a fine is only appropriate regarding a Rabbinic law, not when a Torah law is broken.

The *Gemora* asks: Pouring wine for idolatry is a Torah law, yet Rabbi Meir says he is obligated to pay!?

The *Gemora* answers: This is only because idolatry is a very stringent topic.

[*The Gemora continues to answer the contradiction on Rabbi Yehudah.*] The *Gemora* answers: Rabbi



Yehudah's position is not contradictory. He holds a fine should not be given regarding Rabbinic prohibitions. It should only be given regarding Torah prohibitions.

The *Gemora* asks: Pouring wine for idolatry is a Torah prohibition, yet he does not impose a fine!?

The *Gemora* answers: Being that idolatry is such a stringent prohibition, a fine is unnecessary, as anyway, people stay away from idolatry.

The *Gemora* asks that there seems to be a contradiction in Rabbi Meir's position regarding imposing a fine when it comes to Torah law. The *braisa* states: If someone plants on *Shabbos*, if he did so accidentally, it may stay planted, and if he did so deliberately, it must be uprooted. If he planted during *shemita*, whether accidentally or deliberately, it should be uprooted; these are the words of Rabbi Meir. Rabbi Yehudah says: If someone plants on *shemita*, if he did so accidentally, it may stay planted, and if he did so deliberately, it must be uprooted. If he planted on *Shabbos*, whether accidentally or deliberately, it should be uprooted.

The *Gemora* asks: We should take the logic of the question one step further. Both *Shabbos* and *shemita* are Torah laws. Why should there be a difference between them? The reason for that must be as was taught in the following *braisa*: Rabbi Meir said: [In truth, there is no penalty imposed in cases when a Biblical prohibition was violated inadvertently.] Why do I say that if he plants inadvertently on *Shabbos*, he may keep it, and if he deliberately plants, he must uproot it, whereas if he plants during *shemita*, whether inadvertently or deliberately, he must uproot it? It is because the Jewish people reckon the age of a tree from the *shemita* year (and it therefore must be

uprooted, for otherwise, people will think that it is permitted to plant during *shemita*; they will not know that it was planted inadvertently), however, they do not reckon back from *Shabbos* (as to which day the tree was planted; therefore there is no concern that people might erroneously think that it's permitted to plant on *Shabbos*).

And with respect to the statements of Rabbi Yehudah, there is also no contradiction, since in the region of Rabbi Yehudah, the *shemita* year was taken seriously (and therefore, there was no reason to impose a penalty). For once a certain man there called to another, "You are a convert, and your mother was a convert!" He retorted, "At least, I do not eat produce of the *shemita* year like you." (53b – 54a)

#### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: In what case can a guardian separate *ma'aser* on behalf of the orphans?

A: If the produce was meant for consumption.

Q: Why can a guardian make a *lulav* or *sukkah* for the orphans, but he cannot pledge charity on their behalf?

A: Charity does not have a limit.

Q: Is a guardian that was appointed by the father required to swear that he did retain any of the orphan's property?

A: It is a *machlokes* between Abba Shaul and the *Chachamim*.