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Bava Kamma Daf 18

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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

### **Beginning or End?**

[Rava had inquired: If an animal pounced upon a utensil but it didn't break, and it rolled to another place and broke there, what is the halachah? Do we consider the beginning of the process, and it is regarded as if the animal itself broke the utensil (in which case the owner will be liable to pay in full), or do we look at when the utensil actually broke, and then it would be regarded as a case of "pebbles" (in which case the owner will be liable to pay for only half the damages)?]

The Gemora attempts to resolve this from the following braisa: If chickens were pecking on a rope of a bucket, and the rope snapped causing the bucket to break, they are liable to pay full damages. This would prove that we follow the beginning of the process (and that is why it is regarded as if the chicken broke the bucket directly, for otherwise, the owner should pay for only half the damages).

The Gemora rejects the proof: The braisa (which states that he pays full damages) can be understood to be referring to the rope.

The Gemora asks: But isn't it unusual for a chicken to eat a rope (and it therefore should be a case of keren, and the owner should only pay half)?

The Gemora answers: The braisa is referring to a case where the rope is smeared with dough.

The Gemora asks: But the braisa specifically said that the bucket broke?

The Gemora answers: Rather, it must be that the braisa is in accordance with Sumchos, who holds that one is liable to pay full damages in a case of "pebbles."

The Gemora asks: If so, let us consider the end part of the braisa: If a piece (from the broken bucket) shot out and broke another utensil, the halachah is as follows: He must pay full damages for the bucket and half damages for the second utensil. If the braisa reflects the opinion of Sumchos, why is he liable to only half of the damages?

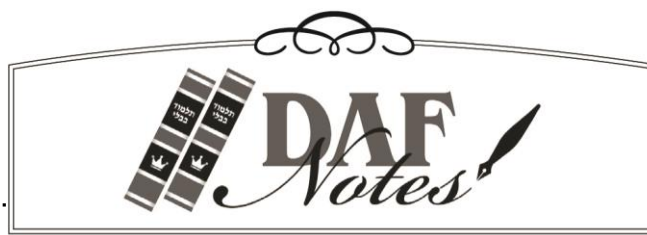
Perhaps you will answer that Sumchos distinguishes between a case where the damage was caused by the animal's force and one where it was caused by the force of its force. However, that cannot be, for Rav Ashi inquired: According to Sumchos, do we treat the damage caused by the force of the animal's force the same way as the force of the animal itself? If our distinction is correct, we should be able to resolve that they are not treated the same.

Rather, it must be that the braisa is in accordance with the Chachamim and it would prove that we follow the beginning of the process.

Rav Bibi bar Abaye explains the braisa to be referring to a case where the chicken was constantly pecking the bucket until it broke (and therefore, it would not prove anything with respect to a damage caused in an indirect manner). (18a)

### **Pebbles; mi'Gufo or from Aliyah?**

Rava inquired: When one is obligated to pay half damages on account of pebbles, does he pay only from the animal



itself (*not exceeding the value of the animal*), or does he pay even from choice property (*from his other assets*)? Does he pay only from the animal itself, for we do not find that half damages are paid from the choice property, or perhaps he should pay from the choice property, for we do not find that damages occurring in a normal manner would obligate the owner to pay only from the animal itself?

The *Gemora* attempts to resolve the inquiry from the following *braisa*: A chicken hopping is not regarded as *mu'ad*. Others say that it is *mu'ad*.

The *Gemora* clarifies the *braisa*: It cannot be referring to ordinary hopping, for obviously, it is *mu'ad* for a chicken to hop. It must be referring to a case where the chicken hopped and pebbles shot out causing a utensil to break. One *Tanna* holds that he pays only from the animal itself and the other *Tanna* holds that he pays from the choice property.

The *Gemora* rejects this argument: The argument in the *braisa* is as follows: One *Tanna* holds like Sumchos and one holds like the *Chachamim*.

The *Gemora* attempts to resolve the inquiry from the following *Mishna*: If a dog took a cookie (*with a coal stuck to it*) and went with it to a pile of grain where it ate the cookie and set the pile on fire, full payment must be made for the cookie, whereas for the grain, only half damages will be paid. Now, what is the reason that only half damages will be paid for the grain if not on account of the fact that the damage of the grain is a case of pebbles (*for the fire spreading from the place of the coal to the entire stack is regarded as coming about through the force of the dog*)? And a *braisa* has been taught in connection with this *Mishna* that the half damages will be collected out of the body of the dog!

The *Gemora* rejects this proof: But do you really think that this *braisa* is dealing with a case of "pebbles"? [*This cannot be, for Rabbi Elozar states in a braisa regarding this case that full damages are paid for the grain and that those damages should be paid from the body of the dog itself.*] According to

Rabbi Elozar, do we find anywhere that full damages (*when the damage was done in a usual manner*) should be collected out of the body of the animal itself?

Rather, this ruling must be referring to a case where the dog acted in an unusual manner in handling the coal (*it took the coal into its mouth and then placed it on the grain*). Rabbi Elozar would be following the opinion of Rabbi Tarfon, who maintains that for an abnormal *keren (tam)* in the damaged party's domain, the damager must pay full damages (*and the payment will be collected from the body of the animal itself*).

There is no proof, however, that this explanation is compelling, for the reason which compelled us to assert that Rabbi Elozar maintain the same opinion as Rabbi Tarfon is only because he required the owner to pay full payment from the body of the dog itself. However, there may be an alternate explanation. It may be suggested (*that the Mishna is referring to a case where the dog acted in a usual manner*) and Rabbi Elozar holds like Sumchos, that in the case of pebbles, full damages will be paid; and that he further adopts the view of Rabbi Yehudah, who said that in the case of *mu'ad*, half of the payment (*the part of tam*) remains unaffected (*by the fact that the animal is now a mu'ad and it is still subject to the halachos of tam*). And Rabbi Elozar's statement that payment is made out of the body of the dog is referring only to the *tam* part of the full damages.

Rav Samma the son of Rav Ashi asked Ravina: I would say that Rabbi Yehudah's opinion is confined only to cases where a *tam* turned into a *mu'ad* (*that is where half of the payment would be collected like a tam*), whereas in cases where the animal was a *mu'ad* from the onset (*such as the case of pebbles*), did you hear that Rabbi Yehudah would hold like that?

Rather, Rabbi Elozar's statement regarding full payment deals with a case where the dog became a *mu'ad* (*by setting fire to grain three times in an unusual manner*) and the point at issue (*between the two Tannaim*) will be that Rabbi Elozar maintains that there is such a thing as becoming a *mu'ad*

with respect to the *halachos* of pebbles (*and that is why the owner will be liable to pay full damages*), whereas the *Chachamim* maintain that there is no such thing as becoming a *mu'ad* in the case of pebbles (*for it cannot be stricter than a normal case of pebbles, where he is only liable to pay for half the damages*).

The *Gemora* asks: But if so, we should be able to resolve the inquiry of Rava, for Rava inquires: Is there such a thing as becoming a *mu'ad* regarding pebbles, or is there no such thing as becoming a *mu'ad* in the case of pebbles? According to the above explanation, we should assert that according to the *Chachamim*, there could be no such thing as becoming a *mu'ad* in the case of pebbles, whereas according to Rabbi Elozar, there may be a case of becoming a *mu'ad* even in the case of pebbles!?

Rava, however, may say to you: My inquiry as to the possibility of becoming a *mu'ad* is based upon the view of the *Chachamim* who argue with *Sumchos* (*and hold that half damages are paid by pebbles*), whereas here (*in the case of the dog*), both the *Chachamim* and Rabbi Elozar may hold in accordance with *Sumchos* who maintains that full damages are collected by pebbles. The reason, however, that the *Chachamim* rule that only half damages should be paid is on account of the fact that the dog handled the coal in an unusual manner, but it had not yet become a *mu'ad* for that. The point at issue between the two *Tannaim* would be exactly the same as between Rabbi Tarfon and the *Chachamim* (*if one pays full damages or only half in a case of an abnormal keren in the damaged party's domain*).

The *Gemora* asks: But perhaps Rabbi Tarfon maintained only that the payment will be in full, however, did you ever hear that he made it dependent upon the body of the animal itself?

The *Gemora* answers: Yes, he did, for he derives his opinion from a *kal vachomer* from *keren* in a public domain (*if shein and regel in a public domain is exempt from liability, and yet, full payment is collected when it took place in the property of*

*the one damaged; we see that the property of the damaged party is stricter than a public domain; so with respect to keren, where one is liable to pay half damages in a public domain, then certainly he should be liable to pay full damages when it damaged in the damagee's domain*); and it only stands to reason that we apply the principle: It is sufficient for a derivative to be the same as the original case from which it has been deduced (*and since keren in a public domain only pays from the animal itself, so too, the full damages paid for keren in the damagee's domain should only be collected from the body of the animal itself*).

The *Gemora* asks: But behold, Rabbi Tarfon does not agree with this principle (*for otherwise, he would agree with the Chachamim that the payment for keren in the property of the damaged party should only be half damages*)!?

The *Gemora* answers: He does not agree with this principle only when the *kal vachomer* would thereby be rendered completely ineffective, but where the *kal vachomer* would not be completely nullified, he too upholds this principle. [*The kal vachomer teaches us that he is liable to pay full damages for keren in reshus hanizek, but "dayo" teaches us that the payment is only from the body of the animal itself.*] (18a – 18b)

### ***Becoming a Mu'ad by Pebbles***

It was stated above: Rava inquired: Is there such a thing as becoming a *mu'ad* regarding pebbles, or is there no such thing as becoming a *mu'ad* in the case of pebbles? Do we compare the case to *keren* (*and therefore, the laws of mu'ad should apply*), or is it a sub-category of *regel* (*and therefore, the laws of mu'ad should not apply*)? [*There are two versions in Rashi if this inquiry is dealing with an abnormal case, or a damage caused in a usual manner.*]

The *Gemora* attempts to resolve the inquiry from the following *braisa*: A chicken hopping is not regarded as *mu'ad*. Others say that it is *mu'ad*.



The *Gemora* clarifies the *braisa*: It cannot be referring to ordinary hopping, for obviously, it is *mu'ad* for a chicken to hop. It must be referring to a case where the chicken hopped and pebbles shot out causing a utensil to break. And the *braisa*, is it not, referring to a case where it damaged in this manner three times? One *Tanna* holds that there is *mu'ad* regarding a case of pebbles and the other *Tanna* holds that there is not.

The *Gemora* rejects this argument: The argument in the *braisa* is as follows: The damage occurred only once and one *Tanna* holds like Sumchos and one holds like the *Chachamim*.

The *Gemora* attempts to resolve the inquiry from the following dispute: In the case where an animal dropped dung into dough, Rav Yehudah maintains that the payment must be in full, whereas Rabbi Elozar says that only half damages will be paid. And the dispute, is it not, referring to a case where it damaged in this manner three times? One *Amora* holds that there is *mu'ad* regarding a case of pebbles and the other *Amora* holds that there is not.

The *Gemora* rejects the proof: No, it deals with a case where the damage occurred only once, and the point at issue between them is the same which is between Sumchos and the *Chachamim*.

The *Gemora* asks: But is it not unusual for an animal to do such a thing (*and it should be regarded as keren, and only half damages should be paid*)?

The *Gemora* answers: The animal was pressed for space (*and could not move away from the dough*).

The *Gemora* asks: But why should not Rav Yehudah have explicitly stated that the *halachah* is in accordance with Sumchos and similarly Rabbi Elozar should have stated that the *halachah* follows the *Chachamim*?

The *Gemora* answers: It was necessary to teach a specific ruling in regard to dung, for otherwise you might have thought that since these excrements are contained in the body of the animal, they should still be considered as a part of its body (*and it should not be considered a case of "pebbles"*); it has therefore been made known to us that this is not so.

The *Gemora* attempts to resolve the inquiry from the following *braisa*: Rami bar Yechezkel taught: If a rooster put its head inside a glass vessel and made a loud noise that broke it, the owner has to pay for the full value of the damages. Additionally, Rav Yosef said that it was said in the house of Rav: If a horse neighed or a donkey brayed and this caused vessels to break, the owner must pay half of the damages. And the *braisa*, is it not, referring to a case where it damaged in this manner three times? One *Tanna* holds that there is *mu'ad* regarding a case of pebbles and the other *Tanna* holds that there is not.

The *Gemora* rejects this argument: The argument in the *braisa* is as follows: The damage occurred only once and one *Tanna* holds like Sumchos and one holds like the *Chachamim*.

The *Gemora* asks: But is it not unusual for an animal to do such a thing (*and it should be regarded as keren, and only half damages should be paid*)?

The *Gemora* answers: There were seeds in the vessel (*and therefore it was a normal thing for the rooster to do*). (18b – 19a)

## INSIGHTS TO THE DAF

### *Halachah l'Moshe mi'Sinai*

The Rambam (Hilchos Mamrim 1:3) writes: There cannot be an argument regarding a *halachah* learned from a *Halachah l'Moshe mi'Sinai*. The obvious question is from our *Gemora* where we have the disagreement between the *Chachamim*

and Sumchos regarding the payment for the case of “pebbles.” The *Chachamim* maintain that the *Halachah l’Moshe mi’Sinai* teaches us that half damages are collected, whereas Sumchos disagrees.

The Maharitz Chayus quotes this question from the Chavos Yair (192), and suggests based on the Rambam in his explanation to a *Mishna* at the end of Eduyos that we have a tradition that Eliyahu Hanavi will do good for *Klal Yisroel* at the end of time, but there is a disagreement on the specifics. Here too, all agree that pebbles is a *Halachah l’Moshe mi’Sinai* that it is included in damages that one is responsible for, but they argue as to the extent of the liability.

The *Gemora* cites Rav Ashi inquiry: According to Sumchos, do we treat the damage caused by the force of the animal’s force the same way as the force of the animal itself? There are several approaches to understand this.

The Shitah Mekubetzes writes that since Sumchos does not agree that pebbles are learned from a *Halachah l’Moshe mi’Sinai*, the reason he holds that one is liable in full is purely based upon logic. Accordingly, there can be a distinction between damage caused by the animal’s force and damage caused by the force of the animal’s force.

The Rosh understands the inquiry as follows: Sumchos was uncertain if there was a *Halachah l’Moshe mi’Sinai* by pebbles at all. If there was one, perhaps it was coming to teach us that one is not liable to pay full damages by a case where the damage was caused by the force of the animal’s force; rather, he is only obligated to pay half.

According to both these approaches, it is evident that they did not learn like the Maharatz Chiyus.

Reb Avi Lebovitz quotes a Chasam Sofer (Beitzah 5a - pg. 20), who offers another approach. We certainly find many cases where there is a dispute regarding a *Halachah l’Moshe mi’Sinai*. The Rambam doesn’t mean to say that an argument cannot develop on a tradition; rather, he means to say that

when there was a disagreement about a tradition and the Sages of the generation agree to one approach and reject the other – they essentially are deciding that the tradition of the one they accept is correct and the other is not. At that point, no later generation can restore the argument and rely on the tradition of the individual.

## DAILY MASHAL

### Accident – Time after Time

A man notified R’ Aryeh Levin that the son of Ariel Sharon had been killed in a tragic accident. As Sharon had suffered earlier from the deaths of his wife and another child in a road accident, the man urged R’ Aryeh Levin to invite him to his home where he could offer him comfort. Despite his poor health, R’ Aryeh decided to do the right thing, and go to the Shiva to be Menachem Aveil. R’ Aryeh attempted to comfort Sharon, who had been broken by the tragedy. After returning home, R’ Aryeh gathered a number of Mezuzos, together with covers, and sent them to Sharon’s home, as he had noticed during the Shiva that several were needed. Sharon appreciated the gesture and later, made a point of visiting R’ Aryeh when he was ill, in Hadassah hospital. R’ Aryeh was excited at the honor of receiving Ariel Sharon, head of the Army, who no doubt had many important duties to attend to. R’ Aryeh quickly decided to share a complimentary Dvar Torah with Sharon. As they were preparing that week to read Parshas Yisro, R’ Aryeh noted the Rashi which says which events Yisro had heard of in deciding to come join the Bnei Yisroel – Krias Yam Suf and the fight with Amalek. R’ Aryeh asked: Why did Yisro need two reasons? Wasn’t splitting the sea good enough? The answer may be that splitting the sea was obviously a miracle, and miracles can’t always be counted on. However, when Yisro saw how Bnei Yisroel, as an army, were so capable of defeating Amalek in battle, he was convinced that now was the time to join.