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Benefit, but no Loss

Rabbi Abba bar Zavda sent the following to Mari the son of Mar: Ask Rav Huna as to his opinion regarding the case where someone lives in his friend's courtyard without his knowledge, must he pay him rent or not? But in the meanwhile Rav Huna passed away. Rabbah bar Rav Huna replied as follows: So said my father, my master, in the name of Rav: He is not required to pay him rent. And someone who rents a house from Reuven must pay rent to Shimon.

The *Gemora* asks: But what connection does Shimon have with the house (*rented from Reuven, that the rent should be paid to him*)?

The *Gemora* answers: If it were discovered to be the property of Shimon, the rent must be paid to him.

The *Gemora* asks: But if so, do not the two statements contradict each other (*for Shimon does not know that his friend is living in his house*)?

The *Gemora* answers: The latter ruling deals with a case where the house was for rent (*in which case, the owner suffered a loss and the dweller must pay for the rent*), whereas the former ruling refers to a case where the house was not for rent.

It has similarly been stated: Rabbi Chiya bar Avin said in the name of Rav, and others say that he said it in the name of Rav Huna: Someone who lives in his friend's courtyard without his knowledge is not obligated to pay him rent. He, however, who rents a house from the representatives of the town, must pay rent to the owners.

The *Gemora* asks: What is the meaning of "the owners"?

The *Gemora* answers: If it were discovered to be the property of an owner, the rent must be paid to him.

The *Gemora* asks: But if so, do not the two statements contradict each other (*for the owner does not know that his friend is living in his house*)?

The *Gemora* answers: The latter ruling deals with a case where the house was for rent (*in which case, the owner suffered a loss and the dweller must pay for the rent*), whereas the former ruling refers to a case where the house was not for rent.

Rav Sechorah said in the name of Rav Huna in the name of Rav: Someone who lives in his friend's courtyard without his knowledge is not obligated to pay him rent, for it is written: Through desolation, the gate is broken apart (*demons destroy a vacant house; it emerges that the dweller actually benefits the owner*).

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Mar the son of Rav Ashi remarked: I myself have seen such this demon and the damage was as great as a rampaging bull.

Rav Yosef said: Houses that are inhabited by people remain in a better condition (*for they maintain it*).

The *Gemora* asks: What is the practical difference between these two reasons?

The *Gemora* answers: There is a difference between them in the case where the owner was using the house to store wood and straw (*the demon will not be there because the house is being used, but since there are no people living there, the house will not be maintained*).

The *Gemora* cites an incident: There was a case where someone built a mansion upon ruins that had belonged to orphans. Rav Nachman seized the mansion from him (*to pay the orphans*).

The *Gemora* notes: May it therefore be inferred that Rav Nachman is of the opinion that he who lives in his friend's courtyard without his knowledge is not obligated to pay him rent.

The *Gemora* responds: That land had originally been occupied by certain Carmanians, who used to pay a little rent to the orphans. When the builder had been advised by Rav Nachman to go and make a peaceful settlement with the orphans, he disregarded it. Rav Nachman therefore seized the mansion from him. (21a)

Turning to the Side

The *Mishna* had stated: When does he pay from what it had pleasure? If it ate from in middle of the street, he pays for what it had pleasure. If it ate from the side of the street, he pays for what it damaged.

Rav said: The ruling ordering payment for the actual damage done extends even to a case where the animal (*stood in the street but*) turned its head to the side of the street (*and ate the food there*). [*He is liable for it is unusual for the animal to do this ;either because of keren, or because of shein – two versions in Rashi.*] Shmuel said: Even in the case when the animal turns its head to the side, no payment will be made for the actual damage done (*since the animal is in the public domain*).

The *Gemora* asks: But according to Shmuel, how then can it happen that there will be liability to pay for actual damage (*when it ate from the side of the street*)?

The *Gemora* answers: Only when the animal left the street altogether and walked into the side of the street (*and ate there; the owner would be liable for it is not the public domain*).

There are those who taught this argument between Rav and Shmuel independent of the *Mishna*: In the case of an animal turning its head into the side of the street (*and eating food there*), Rav maintains that the owner will be liable for the actual damage, whereas Shmuel says that there will be no liability for the actual damage.

The *Gemora* asks: But according to Shmuel, how then can it happen that there will be liability to pay for actual damage (*when it ate from the side of the street*)?

The *Gemora* answers: Only when the animal left the street altogether and walked into the side of the street (*and ate there; the owner would be liable for it is not the public domain*).

Rav Nachman bar Yitzchak raised an objection on Rav from our *Mishna*: If it ate from the entrance of a store, he pays for what it had pleasure. How could the damage in this case have occurred unless the animal turned its head to the entrance of the store? And yet the *Mishna* rules that he pays for what it had pleasure, and not for what it damaged!?

He raised the objection and he himself answered it: The entrance to the store was at a corner (*in which case, the animal ate from the food that was placed there without having to turn its head*).

There are those, however, who say that in the case of an animal turning its head to the side of the street, there was never any argument whatsoever that there would be liability (*for the actual damage done*). The argument between Rav and Shmuel was in the case where a person designated a part of his domain for the public (*he did not build a fence on his property line; rather, he built it further in*) and the following was stated: Rav said that the liability for the actual damage done would only be in a case where the animal turned its head to the side of the street and ate (*food which was left there*). But in the case where a person designated a part of his domain for the public, there would be no liability to pay. Shmuel, however, said that even in the case where a person designated a part of his domain for the public, there would be liability to pay.

The *Gemora* asks: Might it not be suggested that the dispute between Rav and Shmuel would be whether one is liable for digging a pit on his own property (*and while he abandons the property, he still retains his ownership of the pit*)? Rav, who here holds that one is exempt (*for the loss sustained by the owner of the fruits, when he designated a part of his domain for the public*), maintains that a pit dug on one's own property is subject to the law of *bor* (*so that the fruits left on his unfenced property adjoining the public ground constitute a "pit," and the ruling is that illegal pits may be confiscated by anyone, so certainly one would not be liable for damaging the "pit"*). Shmuel, who maintains that one is liable (*for the loss sustained by the owner of the fruits*), would hold that a pit dug on one's own property could never be subject to the law of *bor*.

The *Gemora* answers: Rav could refute this suggestion and say as follows: I may nevertheless maintain that in general, a pit dug on one's own property is not subject to the law of *bor*, but here it is different, since the animal's owner is entitled to plead to him as follows: "You had no right to bring your fruits so near to the public ground and make me liable through my cow consuming them." Shmuel, on the other hand, could contend and say like this: In general, a pit dug on one's own property may be subject to the law of *bor*, for it may be reasonable to say that the animal overlooked the pit and unwittingly fell in. But in the case of the fruits, is it possible to claim that the animal was not aware of them? Surely the animal saw them!

The *Gemora* suggests that the case where an animal turns its head to the side of the street is actually a point at issue between the following *Tannaim*. For it has been taught in a *braisa*: If it ate from in middle of the street, he pays for what it had pleasure. If it ate from the side of the street, he pays for what it damaged. This is the view of Rabbi Meir and Rabbi Yehudah. Rabbi Yosi and Rabbi Elozar say: It is not usual for an animal to eat, only to walk. The *Gemora* asks: Is not Rabbi Yosi merely expressing the identical view already expressed by the *Tanna Kamma*? Rather, it must be that the case of an animal turning its head to the side of the street was the

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point at issue between them, so that the *Tanna Kamma* maintains that in the case of an animal turning its head to the side of the street, the owner will be liable to pay based on the benefit that it had derived, whereas Rabbi Yosi would hold that the payment will be in accordance with the actual damage done by it!?

The *Gemora* rejects this: No! All agree that in the case where an animal turns its head to the side of the street the *halachah* will be either in accordance with Rav or in accordance with Shmuel; the point at issue, however, between the *Tannaic* authorities here in the *braisa* may have been as to the explanation of the Scriptural verse "*and it consumes in the field of another*." The *Tanna Kamma* maintains that the verse is meant to exclude liability for damage done on public ground, whereas the other *Tannaim* are of the opinion that the verse exempts liability only for damage done to fruits which were in the damager's domain (*but there will be liability for fruits that were eaten in the public domain*).

The *Gemora* asks: In the damager's domain! Is it not obvious that the owner may claim: "What was your fruit doing in my domain?"

The *Gemora* answers: The point at issue between the *Tannaim* must be in reference to the cases dealt with above by Ilfa (*where it stretched out its neck and ate from the back of another animal*) and by Rabbi Oshaya (*where the animal jumped and ate from a basket carried by someone*). (21a – 21b)

Mishna

If a dog or a goat jumped off a roof and broke utensils, the owner is liable to pay full damages, for it is *mu'ad* to act in such a manner. 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. (21b)

Negligence in the Beginning; Accident at the End

The *Gemora* infers from the *Mishna* that the reason for liability is because the dog or goat jumped from the roof, but were it to have fallen down from the roof (*and then broke utensils*), the owner would be exempt. It can thus be inferred that the *Tanna* of our *Mishna* accepts the view that when a situation begins with a negligence (*for the owner was not guarding his animal on the roof*) and results in a mere accident, the owner is not liable to pay.

The *Gemora* cites a supporting *braisa*: If a dog or a goat jumped off a roof and broke utensils, the owner is liable to pay full damages; however, if they fell off the roof, the owner would be exempt.

The *Gemora* asks: It is understandable according to the opinion who holds that when a situation begins with a negligence and results in a mere accident, the owner is not liable to pay. However, how would the one who disagrees (*and holds that one would be liable in such a situation*) understand the *braisa*?

The *Gemora* answers: It could be referring to a case where the utensils had been placed very close to the wall so that were the animal to have jumped, it would have missed them altogether; in which case there was not even a negligence at the beginning (*with respect to these utensils*).

Rav Zevid said in the name of Rava: If the wall (*around the roof*) was narrow (*where it was very likely that the*

animal will fall), the owner will be liable even if the dog or goat fell off the roof. (21b)

INSIGHTS TO THE DAF

Through Desolation, the Gate is Broken Apart

Rav Sechorah said in the name of Rav Huna in the name of Rav: Someone who lives in his friend's courtyard without his knowledge is not obligated to pay him rent, for it is written: Through desolation, the gate is broken apart (*demons destroy a vacant house; it emerges that the dweller actually benefits the owner*).

Mar the son of Rav Ashi remarked: I myself have seen such this demon and the damage was as great as a rampaging bull.

Rav Yosef said: Houses that are inhabited by remain in a better condition (*for they maintain it*).

It would seem from this *Gemora* that without this benefit that the dweller provides for the owner, he would be liable to pay. The Rashba asks: Why would this be? It seemed from the entire *Gemora* above that everyone holds that when one benefits and the other one does not lose, he is not liable to pay!?

He answers that although the *Gemora* here agrees that one who benefits from another is exempt from liability if he did not cause a loss, practically speaking, this would not be the *halachah*. This is because, generally, one who dwells in someone else's house does cause a slight damage to the house. The *Gemora* had previously ruled that whenever there is a loss to the owner, the one who benefits is obligated to pay for the pleasure that he derived. The *Gemora* here is explaining that the benefit which the dweller is providing the owner by dwelling in his house offsets the loss in damages that the owner incurs on account of the dweller. It is therefore classified as a case where one benefits and the other is not losing.