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Bava Kamma Daf 23

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Daf Notes is currently being dedicated to the neshamot of

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

**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

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

### ***Fire: His Money or His Arrow?***

Rava says: Abaye has the following difficulty. According to the opinion that the liability for fire is on account of “his arrows” that caused it, how would the Torah exclude a person who makes a fire from paying for something hidden (*that was consumed by the fire; there is no exemption for hidden things for one who damages directly with his hands*)?

Abaye answered: The case would be where a fire started in a certain yard and the fence of the yard broke for reasons not related to the fire. The fire went and damaged in another yard. In such a case, his arrows have ceased. [*Being that when the fire was started, it was not supposed to go beyond the fence, it is understandable that he should not have to pay for anything beyond that area.*]

The *Gemora* asks: If the above logic is correct, he should not have to pay for anything beyond the fence, even things that are not hidden!

Rather, the *Gemora* answers: It must be that the one who holds that the liability for fire is on account of “his arrows” that caused it, agrees that it is also regarded as “his property” (*that damages i.e. an ox*). [*This means that even if the logic of an arrow does not apply, he will still have to pay if his fire damaged, since it is his property.*] And the case where he is exempt from

hidden things is where he could have fenced in the area before it spread, and he didn’t (*for even though his arrows have ceased, he would have been liable because it is his property*). This is comparable to him having an ox, and not locking the stable door.

The *Gemora* asks: If the one who holds that a fire is like his arrow agrees that it is also like his property, what is the difference now between the two opinions?

The *Gemora* answers: The difference is whether or not he is liable to pay for the (*other*) four categories of damage (*that a person must pay for if he damages, but not if his property damages – these are: pain, doctor bills, humiliation and loss of work*). (23a)

### ***The Dog and the Coal***

The *Mishna* had stated: 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.

The *Gemora* asks: Who is obligated to pay for the grain?

The *Gemora* answers: It is the owner of the dog who is liable to pay.



The *Gemora* asks: Why isn't the owner of the coal liable as well?

The *Gemora* answers: The case is where he guarded the coal properly.

The *Gemora* asks: If he guarded his coal properly, what is the dog doing there?

The *Gemora* answers: The dog dug a path to the coal.

Rav Mari, the son of Rav Kahana, says: This shows that regular doors are considered "dug" (*meaning passable*) regarding dogs. (23a)

### ***Mouth of the Damager***

The *Mishna* had stated: 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.

The *Gemora* asks: Where did the dog eat the cookie? If it ate the cookie next to an outsider's pile of grain (*not in the field belonging to the cookie owner*), why is he obligated to pay for it? The verse says, "*And it consumes it in a field of another,*" and this has not happened!

The *Gemora* answers: It must be that it ate it in the field of the cookie owner.

The *Gemora* says: If so, we should derive from here that the mouth of a cow (*when it is eating in the yard of the damaged party*) is like the yard of the damaged party, for if it would be treated like the mouth of the damager, the owner of the dog can claim, "What is your

bread doing in my dog's mouth?" [*He would then be exempt from damage.*] For they indeed inquired: Is the mouth of a cow like the yard of the damaged party or is it like the yard of the damager?

The *Gemora* asks: If it would be like the yard of its owner, how would we ever have a case of "teeth?" [*"Shein" is only liable in someone else's domain.*]

Rav Mari the son of Rav Kahana answered: The case is where it scratched itself against a wall to relieve an itch (*and the wall fell down*), or it soiled fruits while rolling around on top of them.

Mar Zutra asked: Doesn't the damaging of "teeth" have to be that the item damaged is completely destroyed (*based upon a verse*)? In this case this has not happened (*as the stones of the wall and fruit are still present, though they are damaged*)!

Ravina answers: The case where it scratched itself against a wall is where it totally erased images that were on the wall. Rav Ashi answers (*regarding the fruit*): The case is where it pressed the fruits into the mud (*to the point where it is impossible to gather*).

The *Gemora* attempts to resolve the inquiry from a *Mishna* (*in Sanhedrin 76b*). The *Mishna* states: If someone incited a snake or a dog to attack someone, he is exempt for paying for the damages. This implies that while the inciter is exempt (*for he did not directly cause the damage*), the owner of the dog is responsible for the damages done by his animal. If a dog's mouth would be like the domain of its owner, let the owner say, "What was your hand doing in my dog's mouth (*i.e. in my domain*)?"

The *Gemora* answers: The *Mishna* must mean that even the inciter of the dog attack is exempt (*and certainly its owner*).

Alternatively, the *Gemora* answers: The case may be where the dog stuck its fangs out of its mouth and bit the person (*but did not take his hand into his mouth*). [*Therefore the person is not considered as having entered the owner's domain.*]

The *Gemora* attempts to resolve the inquiry from the end of that *Mishna* which states: If a person made a snake bite someone (*he brought the mouth of a snake close to a person's body in a way that its teeth were touching the person*), Rabbi Yehudah says he is liable to receive the death penalty, while the *Chachamim* say he is exempt.

Rav Acha bar Yaakov explains the argument as follows: Rabbi Yehudah maintains that a snake has venom in its teeth (*and it will come out without any special action done by the snake*), and it is understandable that the person is liable for murder (*since it is as if he stabbed someone with a knife*) and the snake will not be stoned (*for it did not do anything*). According to the *Chachamim*, it is the snake itself that secretes its venom (*after biting into the person*), which is why the snake should be killed, but the person who "made him" do so is exempt.

The *Gemora* asks: According to the *Chachamim*, why should the snake be put to death? If the mouth of the snake is like the domain of its owner, why can't the owner claim, "Why was your hand (*or any part of your body*) in the mouth of my snake?"

The *Gemora* answers: Regarding killing the animal that damages, we do not say this claim of "Why was your

hand etc.?" [*It is only with regards to damages that the animal owner is exempt if it took place in the damager's domain; not with regards to execution.*]

The *Gemora* asks: How do we know this distinction?

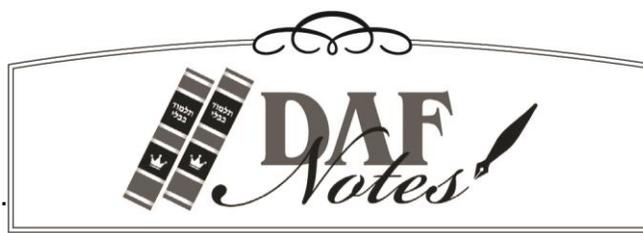
The *Gemora* answers from a *braisa*. The *braisa* states: If someone enters another person's domain without permission, and the landowner's ox kills him, the ox is killed, but its owner does not have to pay *kofer*. [*"Kofer" -- "redemption money" is money usually paid when someone's ox kills a person.*] Why is the ox exempt from *kofer*? It must be because he can say, "What were you doing in my domain?" Why, then, don't we say with respect to killing his ox that he can similarly say, "What were you doing in my domain?" It must be that we do not say this claim to prevent the animal from being executed. (23a – 23b)

### **Preventing a Damage**

There were once goats from the Tarbu family that were damaging Rav Yosef's possessions. Rav Yosef asked Abaye to go tell the owner to hide his goats (*so they should not damage*). Abaye told Rav Yosef: "Why should I go? He will just tell me that you should put up a fence around your field!" [*Abaye was using this as an excuse not to follow Rav Yosef's instructions. In truth, it is the animal owner's responsibility to guard his animal from damaging.*]

The *Gemora* asks: If people have to put up fences (*and otherwise cannot claim damages*), when would there be a case of "teeth?" [*"Teeth" is only if the damage occurs in the property of the one who was damaged.*]

The *Gemora* answers: The case would be when the animal dug under the fence and got into the field.



Alternatively, the case would be where the fence fell in the middle of the night.

Rav Yosef, and some say Rabbah, announced: The people who are going up (*Bavel to Eretz Yisroel*) and the people going down (*Eretz Yisroel to Bavel*) should listen. These goats that are allocated for slaughter (*but the butchers wait until the market day*) that damage, we warn their owners two or three times. If they listen, all is well. If not, we say to them: Come to the slaughtering area and take your money. [*This means that we slaughter the animal immediately and the owner gets the money that the meat is sold for.*] (23b)

### **Mishna**

What is a *tam* and what is a *mu'ad*? A *mu'ad* is an animal that was testified about three days in a row, and (*it reverts to being*) a *tam* when it stopped goring for three days. This is the opinion of Rabbi Yehudah. Rabbi Meir says: A *mu'ad* is an animal that was testified about three times (*even on the same day*), and (*it reverts to being*) a *tam* when the children play with it and it does not gore them. (23b)

### **INSIGHTS TO THE DAF**

#### ***Like "his Arrows"***

Rabbi Yochanan said: One is liable on the damage caused by his fire on account of it being "his arrows" (*it is as if he shot out an arrow which caused damage*).

The Nimukei Yosef explains that this is why one is permitted to light candles Friday afternoon even though they will be burning on *Shabbos*; since the

candles were lit from before *Shabbos*, which is when he shot the arrow.

The *Minchas Chinuch* explains further: According to Rabbi Yochanan, he is liable for the moment that he set the fire ablaze. Just as one who shoots an arrow is liable for the shooting of the arrow even though the damage which occurs afterwards is now unavoidable; so too it is with respect to one who lights a fire. Accordingly, a halachah would emerge as follows: If one lit a fire and before it had a chance to do damage he died, the inheritors would be obligated to pay (*from the properties of the deceased*), since the reason for liability was already completed while the lighter was still alive. This is only true if "his arrows" did not cease (*when there was a fence preventing the fire from spreading, and the fence fell down after he died*). However, if "his arrows" ceased before he died, they will be exempt from liability. As long as the heirs did not know about the fire, they would not be liable, for if they did know about it, and they could have prevented the fire from damaging, they will be liable, for it is their property that is damaging.

### **DAILY MASHAL**

#### ***Watch Out!***

When the Chazon Ish went walking on the street and a car would drive close by, he would veer off to the side, and say, "Perhaps the driver does not remember the Tosfos in Bava Kamma which writes: A person should be more careful about not damaging others more than his concern that he should not get damaged himself."