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DAF Notes
Insights into the Daily Daf
Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Bava Kamma Daf 29

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

Explaining Rabbi Yehudah

The *Mishna* had stated: Rabbi Yehudah said: If the owner of the pitcher had intent, he is liable (*if his pitcher breaks and someone slips on the water*); otherwise, he is not.

Rabbah explains: Rabbi Yehudah is referring to a case where he intended to bring the pitcher down from his shoulder. [*Rabbi Yehudah maintains that one who stumbles is negligent and that is why he is liable in this case. If it broke by falling off his shoulder, he is not liable, for this is an unavoidable accident.*]

Abaye asked him: Do you mean to say that Rabbi Meir (the *Tanna Kamma* of the *Mishna*) would hold that he is liable even if the pitcher disintegrated (*while it was on his shoulder*)!?

Rabbah replied: Yes! Rabbi Meir would hold the owner of the pitcher liable even in such a case (*where the pitcher disintegrated*) and he was left holding its handle.

The *Gemora* asks: But how can this be? This was an unavoidable accident, and the Torah exempts one from liability in such cases! For it is written (*regarding a betrothed girl who was violated*) [Devarim 22:26]: *But unto the girl you shall not do anything*. [*Evidently, an unavoidable action is regarded as if it happened by itself, and not committed by the person.*]

Perhaps you will make a distinction between a case involving the death penalty (*where one will not be responsible if it was an unavoidable accident*) and a case involving damages (*where one will be responsible*), this is not the case, for we learned in a *braisa*: If his pitcher broke and he did not remove it, or if his camel fell down and he did not stand it up, Rabbi Meir holds that he is liable for their damage (*for he maintains that stumbling is a negligence*) and the *Chachamim* hold that he is exempt from liability under the laws of man, but he is liable under the laws of Heaven. And the *Chachamim* agree to Rabbi Meir in a case where one placed his stones, knives, and packages at the edge of his roof, and they fell off the roof due to a common wind and caused damage, he would be liable (*for he was negligent by placing them in a place where they can easily fall off*). And Rabbi Meir agrees to the *Chachamim* in a case where one brought jars to the top of a roof for the purpose of getting dry from the sun and fell down because of an abnormal wind and did damage, that he is exempt from liability. [*This proves that even Rabbi Meir holds that one is exempt from liability by damages in a case where it is an unavoidable accident.*]

Rather, Abaye explains that Rabbi Meir and Rabbi Yehudah argue about two things: They argue regarding a damage that occurred at the time of the fall (*before he had a chance to remove them*), and they argue about a damage that occurred after the fall (*after he had time to clear it up*). The difference of opinion regarding damage done at the time of the fall of the pitcher arises on the question whether one who stumbles is considered negligent or not. Rabbi Meir maintains that one who stumbles is considered negligent, whereas Rabbi Yehudah is of the opinion that one who stumbles is not considered

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negligent. The difference of opinion regarding the case of damage done after the fall is regarding one who abandons his hazardous objects. Rabbi Meir maintains that one who abandons his hazardous objects is liable, whereas Rabbi Yehudah holds that he is exempt from liability.

The *Gemora* proves this is so from the fact that the *Mishna* states two cases: If someone slipped in the water at the time that the pitcher fell or he was injured by the shards after the fall (*he declared the shards ownerless*).

The *Gemora* asks on Abaye: If the *Mishna* is referring to two cases, then the *braisa* (*cited above*) is also discussing two cases. Now the case dealing with his pitcher can be explained as happening at the time of the fall and afterwards, but the case of the camel cannot! The case dealing with after the fall can be explained when the owner abandoned the carcass of the camel, but how can we explain the case when it happened at the time of the fall (*the owner cannot be faulted for his camel stumbling; what should he have done*)?

Rav Acha answers: It can be referring to a case where the camel was led in water along the swollen banks of a river (*and the argument is if this is considered negligent or not*).

The *Gemora* asks: If there is another way, then he is certainly negligent (*for taking the slippery one*), and if there is no other way, it is an unavoidable accident (*what should he have done*)?

The *Gemora* answers: The case can be where the owner stumbled which caused the camel to stumble over him.

The *Gemora* asks: What does Rabbi Yehudah mean when he said, "If he had intent" with regards to the case where he abandoned his hazardous objects? [*With respect to the first case, he meant that the owner intended to break the pitcher in the street; in that case, he will be liable.*]

Rav Yosef said: It means that he intended to acquire the shards (*then he will be liable*). Rav Ashi also explained like that.

Rabbi Yochanan said (*according to the Gemora's conclusion*): That which the Rabbis exempt from liability the person who abandoned his hazardous objects is only in a case where its inception was done by accident; however, in an ordinary case, where one abandons his hazardous objects into a public domain, he will be liable. (28b – 29b)

Abandoning Hazardous Objects

It was stated: Regarding one who abandons his hazardous objects, Rabbi Yochanan and Rabbi Elozar dispute this. One of them says that he is liable, and the other disagrees.

The *Gemora* comments: Shall we say that one of them is saying like Rabbi Meir, and the other like the Rabbis!?

The *Gemora* suggests that they do not argue according to Rabbi Meir (*they would agree that the owner is liable*). Their dispute is only according to the Rabbis. The one who holds that he is not liable is in complete agreement with the Rabbis. The one who holds that he is liable maintains that when the Rabbis exempted the person who abandoned his hazardous objects from liability, they did so only in a case where its inception was done by accident; however, in an ordinary case, where one abandons his hazardous objects into a public domain, he will be liable.

The *Gemora* proves that Rabbi Elozar is the one who holds that the owner is liable, for Rabbi Elozar said in the name of Rabbi Yishmael: There are two things which are not legally in one's possession and the Torah views them as if they are in his possession. One thing is a pit that one digs in a public domain, and even though he does not own the public domain, he is responsible for any liability that

occurs regarding the pit. Similarly, one cannot have benefit from *chametz* after the sixth hour on the fourteenth of Nissan, and the *chametz* is rendered as ownerless, but one who retains *chametz* after the sixth hour is considered to have violated the transgression of owning *chametz* when it is prohibited to own *chametz*.

The *Gemora* asks: Did Rabbi Elozar actually say this? But as a matter of fact, he said the contrary, for we learned in a *Mishna*: If one turns over dung in a public domain and someone gets damaged by it, he is liable to pay for the damages. And Rabbi Elozar said that this is the *halachah* only if he intended to acquire it. However, if he did not intend to acquire it, he is not liable. We see that if one abandons his hazardous objects, Rabbi Elozar holds that he is not liable!?

Rav Adda bar Ahavah answers: Rabbi Elozar understands the *Mishna* to be referring to a case where he returned the dung back to its original position (*he therefore will not be liable unless he acquires it, for it is as though he didn't touch it in the first place*).

Ravina said: The following can be used as an analogy to Rav Adda bar Ahavah's case: If someone found an open pit, covered it and then uncovered it (*he will not be liable, for it is as though he didn't touch it in the first place*).

Mar Zutra the son of Rav Mari asked Ravina: Are the two cases comparable to each other? There, the initial action (*of the first person – when he dug the pit*) was not undone (*when the second fellow covered it; hence, the first person can still be liable*); here, the initial action (*of the first person – when he placed the dung down*) was undone (when the second fellow picked it up). [*Therefore, the second fellow should be held liable!?*] Rather, it should be compared to a case where someone found an open pit. He then filled it up and afterwards dug it anew. Since the initial action was undone, it should now become the responsibility of the second fellow!?

Rather, Rav Ashi explains that Rabbi Elozar understands the *Mishna* to be referring to a case where he picked up the dung less than three *tefachim* off the ground (*in which case, he did not acquire it*).

The *Gemora* notes: Since we have proven that Rabbi Elozar holds that one is liable for damages caused by his abandoned hazards, it must be that Rabbi Yochanan maintains that he is not liable.

The *Gemora* asks: Did Rabbi Yochanan actually say this? But we learned in a *Mishna*: If one hides a thorn or glass in a public domain, or if he builds his fence out of thorns, or if his fence fell into a public domain and another person was damaged by them, he is liable to pay for the damages. And Rabbi Yochanan said: When he builds his fence out of thorns, he is liable only where the thorns were projecting into the public domain. However, if the thorns were confined to his domain, he will not be liable. The reason must be because he is merely creating a hazard in his own property. We can assume that Rabbi Yochanan holds that the liability for a pit is in a public domain. Evidently, he holds that one would be liable if he abandons his hazardous objects!?

The *Gemora* answers: In truth, Rabbi Yochanan holds that one is not liable if he abandons his hazardous objects. The reason why he is not liable in a case where the thorns were confined to his domain is because people do not normally rub against walls when they are walking.

The *Gemora* asks: But doesn't Rabbi Yochanan hold that the *halachah* always follows the ruling of an anonymous *Mishna*, and we learned in a *Mishna*: If one digs a pit in a public domain and an ox or a donkey fall into it, he is liable. [*Evidently, he holds that one would be liable if he abandons his hazardous objects!?*]

Rather, it is clear that Rabbi Yochanan holds that one is liable if he abandons his hazardous objects.

The *Gemora* notes: Since we have proven that Rabbi Yochanan holds that one is liable for damages caused by his abandoned hazards, it must be that Rabbi Elozar maintains that he is not liable.

The *Gemora* asks: But doesn't Rabbi Elozar say in the name of Rabbi Yishmael etc. (*a pit that one digs in a public domain, and even though he does not own the public domain, he is responsible for any liability that occurs regarding the pit*)?

The *Gemora* answers: This is not difficult, for although he himself holds that one is not liable, his teacher holds that he is liable. (29b – 30a)

INSIGHTS TO THE DAF

As though it is in his Possession

Rabbi Elozar said in the name of Rabbi Yishmael: There are two things which are not legally in one's possession and the Torah views them as if they are in his possession. One thing is a pit that one digs in a public domain, and even though he does not own the public domain, he is responsible for any liability that occurs regarding the pit. Similarly, one cannot have benefit from *chametz* after the sixth hour on the fourteenth of Nissan, and the *chametz* is rendered as ownerless, but one who retains *chametz* after the sixth hour is considered to have violated the transgression of owning *chametz* when it is prohibited to own *chametz*.

Rashi seems to say that the *chametz* is regarded as his only in the sense that he is held accountable for violating the two commandments of "*chametz* being seen in his possession" and "leaven being found in his house." However, he does not actually own the *chametz*.

Similarly, the Meiri writes with respect to the pit. If there is water in the pit, everyone is allowed to draw water from there. The digger of the pit cannot prevent them from drinking the water by saying that he is the owner, for the Torah considers him the owner only with respect to liability for the damages.

The Chasam Sofer writes that if one would have *chametz* on *Pesach* and on *Pesach*, he would sell it to a gentile, he still would be liable, for the Torah considers it his. And so too, the *halachah* would be by a pit – if a gentile would acquire the pit, it would still be regarded as the digger's pit with respect to liability for its damages.

The Noda Beyehudah disagrees and maintains that if without the prohibition of *chametz*, it would not be in the Jew's possession, we do not say that the Torah treats it as if it is in his possession.