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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

The Common Characteristics

The *Mishna* had stated: The common characteristics of all of them are that they normally damage, and a person must watch them (*to ensure that they do not damage*). If they damage, their owner is obligated to pay for the damages from the best of his land.

The *Gemora* asks: What does this (*the term "their common characteristic"*) include?

Abaye answers: It includes one's stones, knives, and packages that were placed at the edge of his roof, and they fell off the roof due to a common wind and caused damage.

The *Gemora* asks: What is the case? If they damage while they are moving, it would seem that they should be considered under the category of fire! After all, what is the difference between fire and these things? Fire has another force mixed with it (*i.e. wind*) and its ownership and obligation to watch it are upon the owner, and these things are similar!

The *Gemora* answers: Rather, it is referring to a case where these objects are at rest (*after they were blown off the roof*).

The *Gemora* asks: If the person declared them to be ownerless, then both according to Rav and according to Shmuel, one would be obligated to pay, because they fall under the category of a pit! After all, what is the difference between a pit and these things? A pit is originally made as an entity that can do damage and its ownership and obligation to watch it are upon the owner, and these things are similar (*when they are blown off the roof, they are made to do damage*)! Rather, he must not have declared them ownerless. According to Shmuel, who says that we derive all of these damages from the damage of a pit, this should also be under the category of a pit!?

The *Gemora* answers: The case must be where he indeed made them ownerless. It is unlike a pit, as there is another force involved in their damaging (*i.e. wind*). It is unlike fire, as fire normally spreads and damages (*while these normally do not*). However, from the category of a pit and fire together we can derive this type of damage. [*This is why the Mishna says "the common characteristics," in order to include these things derived from fire and a pit.*]

Rava answers (*the original question*): It includes a pit (*i.e. stone placed in the public domain*) that is moved by the feet of people or animals (*and only damages in the place it was moved to*).

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The *Gemora* asks: What is the case? If he made it ownerless, then both according to Rav and according to Shmuel, one would be obligated to pay, because they fall under the category of a pit! After all, what is the difference between a pit and these things? A pit is originally made as an entity that can do damage and its ownership and obligation to watch it are upon the owner, and these things are similar! Rather, the case must be that he must not have declared them ownerless. According to Shmuel, who says that we derive all of these damages from the damage of a pit, this should also be under the category of a pit!?

The *Gemora* answers: The case is indeed where he made them ownerless. This case is unlike a pit, as the owner's digging of a pit causes it to damage, whereas in this case, other people or animals moved it to a location where it damaged. One could say this could still be categorized as a way of damaging, as an ox does not damage because the owner makes it damage, but rather damages on its own. However, it is unlike an ox that goes and damages by itself. In conclusion, from both a pit and an ox we can derive that the owner should be liable. [*This is why the Mishna says "the common characteristics," in order to include this type of damage derived from a pit and an ox.*]

Rav Adda bar Ahavah says: It includes the damage mentioned in the following *braisa*. The *braisa* states: All those who the Sages said may open their pipes (*and allow sewage to go into the public domain*) and throw their fertilizer (*into the public domain*) were not given permission to do so in the summer. While they may do so in the rainy season, if they do so and they (the sewage or fertilizer) cause damage, they are obligated to pay for the damage.

The *Gemora* asks: What is the case? If they damage while they were moving, that is the direct force of the person (*for which he is obviously liable*)! Rather, it must be that they damaged after they came to rest in the public domain. What is the case? If the person made them ownerless, according to both Rav and Shmuel, this is considered a pit. After all, what is the difference between a pit and these things? A pit is originally made as an entity that can do damage and its ownership and obligation to watch it are upon the owner, and these things are similar! Rather, he must not have declared them ownerless. According to Shmuel who says that we derive all of these damages from the damage of a pit, these should also be under the category of a pit!?

The *Gemora* answers: The case must be where he indeed made them ownerless. However, they are unlike a pit, as a person does not normally have permission to open a pit in the public domain, whereas here, he does! One could say these could still be categorized as a way of damaging, as an ox has permission to walk in the public domain, and nevertheless, the owner is liable. However, they are unlike an ox that goes and damages by itself. In conclusion, from both a pit and an ox, we can derive that the owner should be liable. [*This is why the Mishna says "the common characteristics," in order to include this type of damage derived from a pit and an ox.*]

Ravina says: It includes the law of the following *Mishna*. The *Mishna* says: If a wall or tree fell into the

public domain and caused damage, their owner is exempt from paying for the damages. If a person was given a certain amount of time to cut down his tree or break his wall and they damaged (*by falling*) within this time, he is exempt. If they damaged after the allotted time, he is liable. What is the case? If the person made them ownerless, according to both Rav and Shmuel, they are considered a pit. After all, what is the difference between a pit and these things? A pit is originally made as an entity that can do damage and its ownership and obligation to watch it are upon the owner, and these things are similar! Rather, he must not have declared them ownerless. According to Shmuel, who says that we derive all of these damages from the damage of a pit, these should also be under the category of a pit!?

The *Gemora* answers: The case must be where he indeed made them ownerless. However, they are unlike a pit that is originally made to do damage. One could say that they could still be categorized as a way of damaging, as an ox is not originally made to do damage, and nevertheless, the owner is liable. However, they are unlike an ox that goes and damages by itself. In conclusion, from both a pit and an ox we can derive that the owner should be liable. (6a – 6b)

Shortened Language

The *Mishna* had stated: If they damage, their owner is *chav* (*obligated*) to pay for the damages from the best of his land.

The *Gemora* asks: Why does the *Mishna* say "*chav*" instead of the normal term "*chayav*"?

Rav Yehudah says in the name of Rav: The *Tanna* of our *Mishna* lived in Yerushalayim, where they use shortened expressions (and he said "chav" which has only two letters (in Hebrew) instead of "chayav," which has four). (6b)

Choice Property

The *Mishna* had stated: If they damage, their owner is *chav* (*obligated*) to pay for the damages from the best of his land.

The *braisa* states: "*The best of his field and vineyard he should pay*." Rabbi Yishmael says: This is judged by the choicest field of the one who was damaged. Rabbi Akiva says: The point of the verse is to have the damager pay from his choicest field, and certainly this would apply to *hekdesh* (*explained later*).

The *Gemora* asks: And according to Rabbi Yishmael, is it logical to assume that if the animal damaged a poor row of vegetables, the owner must pay as if it was the best one? [*Why should he be required to pay more that what his animal damaged?*]

Rav Idi bar Avin says: The case is where his animal ate from a row among other rows, and we are not sure if it ate from a poor bed or a rich bed. In such a case, Rabbi Yishmael rules that he must pay excellent quality.

Rava asks: If in a case where it was known that it ate poor quality, he would only have to reimburse poor quality; why should that change if we are unsure what he ate? We always say that if someone is trying

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to extract money from someone else, the burden of proof is on him (*to show he deserves it*)!?

Rav Acha bar Yaakov therefore suggests: The case is where the best quality of the damaged party is equal to the poor quality of the one who damaged. Rabbi Yishmael says that we judge based on good quality of the damaged party, while Rabbi Akiva says that the good quality land is based upon the damager's property.

The *Gemora* asks: What is Rabbi Yishmael's reasoning?

The *Gemora* answers: It says "*field*" by the payment for *shein* and *regel* and it says "*field*" by the damage itself. Just as the field discussed above is that of the damaged party, so too, the field discussed below (*"the best of his field he should pay"*) is that of the damaged party.

The *Gemora* asks: What is the reasoning of Rabbi Akiva?

The *Gemora* answers: He understands that the verse "*The best of his field and vineyard he should pay*," is instructing the one paying to pay based on the best quality of his own field.

The *Gemora* asks: What is Rabbi Yishmael's reply?

The *Gemora* answers: He understands that both his teaching (*above*) and the simple meaning of the verse are applicable. The simple meaning of the verse can apply in a case where the damager owns both excellent quality and poor quality, while the damaged party owns only poor quality. The poor quality of the damager is not as good as the poor quality of the damaged party. In such a case, the damager must pay from his excellent quality, and he cannot claim that the one damaged should accept his poor quality. (6b)

INSIGHTS TO THE DAF

Derived from Fire

The *Mishna* had stated: The common characteristics of all of them are that they normally damage, and a person must watch them (*to ensure that they do not damage*). If they damage, their owner is obligated to pay for the damages from the best of his land.

The *Gemora* asks: What does this (*the term "their common characteristic"*) include?

Abaye answers: It includes one's stones, knives, and packages that were placed at the edge of his roof, and they fell off the roof due to a common wind and caused damage after these objects were at rest.

The *Gemora* further explains: The case must be where he made these objects ownerless. It is unlike a pit, as there is another force involved in their damaging (*i.e. wind*). It is unlike fire, as fire normally spreads and damages (*while these normally do not*). However, from the category of a pit and fire together we can derive this type of damage. [*This is why the Mishna says "the common characteristics," in order to include these things derived from fire and a pit.*]

The Rosh writes that there are those who hold that since we derive this case through a *tzad hashavah* from pit and fire, it has all the leniencies of pit and fire. Therefore the owner would be exempt from liability for any utensils damaged and he would be exempt if these objects killed a person. It also has the leniencies of fire, and he would be exempt if something hidden got destroyed. There also are those that are uncertain regarding this.

The Rosh writes that he holds that it has a *halachah* like a pit, since it is primarily derived from *bor*. These obstacles that damage after they came to rest are just like a pit. We need to learn from fire only that the logic that there is a force mixed in with it is not a reason to exempt the owner from liability. Accordingly, there will be no exemption for destroying things that are hidden, because this is not a sub-category of fire at all.

The Yam shel Shlomo writes that this is the Rif's understanding as well, for he left out the entire *Gemora*. This is because it is an actual case of *bor*, and there is no halachic difference with the fact that it is derived from the *tzad hashavah*.

The Brisker Rav asks on the Rosh: If this case is derived from fire, how can it be stricter than fire? Something that would not be subject to any liability by fire, what is the source for liability in this case?

He explains: When the Torah exempts the owner from liability for the hidden objects destroyed by fire, it is said only on a damage that is regarded as fire. Something that is derived from fire, but is not fire, is not included in this exemption.

DAILY MASHAL

Tzvei Yidden

Two Jews came to the Rogatchover Gaon to settle their dispute. The Gaon was engrossed in an extremely difficult sugya in Yerushalmi (the Jerusalem Talmud), and he dismissed them out of hand. They went to Reb Meir Simcha and related to him what had transpired. Reb Meir Simcha calmed them down by saying over our Gemora: The *Mishna* had stated: If they damage, their owner is *chav* (*obligated*) to pay for the damages from the best of his land. The *Gemora* asked: Why does the *Mishna* say "*chav*" instead of the normal term "*chayav*"? Rav Yehudah said in the name of Rav: The *Tanna* of our *Mishna* lived in Yerushalayim, where they use shortened expressions (and he said "chav" which has only two letters (in Hebrew) instead of "chayav," which has four). The Tanna used a smaller word by leaving out the middle two "yuds." Reb Meir Simcha smiled and said that the Rogatchover Gaon is a Yerushalmi, and he is fluent in the entire Yerushalmi, and that is why he dismissed two "yidden" (two Jews).

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