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Bava Kamma Daf 9

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Land or Cash

Rav Huna says (*to answer the contradiction between the verses*): He can either pay (for damages) with money or with his land of superior quality.

Rav Nachman asked a question on Rav Huna from a *braisa*. The *braisa* states: The verse “*He should return*” includes even something that is worth money, even something such as bran (*can be used as payment for damages*)!?

The *Gemora* answers: The *braisa* is discussing a case where he does not have anything else.

The *Gemora* asks: If that is all he has, isn’t it obvious that this is what he must use to pay?

The *Gemora* answers: One might have thought that it is the responsibility of the person who damaged to exchange his goods for money, and then pay. The verse therefore teaches us this is not the case. (9a)

Money is like Land

Rav Assi says: Money is like land.

The *Gemora* asks: What is the halachic relevance of this statement? If it is to teach that both land and money can be used to pay for damages, Rav Huna already taught that law!?

The *Gemora* answers: Rather, Rav Assi is discussing a case where two brothers inherited their father, and one took money and one took the land. A creditor (*of their father*) came and seized the land. The brother who took the land can go back and demand half of the money from the other brother. [*This is the meaning that money is like land.*]

The *Gemora* asks: Isn’t this obvious? Is one of them a son and one not a son (*they are both responsible to pay for their father’s debt*)?!

Some say: On the contrary, the brother who took the money can claim that he took the money in order that his brother will not have to compensate him if his money is stolen, and that he will not compensate his brother if the land is seized!?

Rather, the *Gemora* answers: Rav Assi is discussing the same case above, but where both brothers took land. [*In such a case the other brother will have to split his land with the brother whose property was seized.*]

The *Gemora* asks: Didn’t Rav Assi explicitly say this before? It was taught: If brothers split an inheritance, and a creditor took one of their portions, Rav says that their division is nullified. Shmuel says: The brother lost his portion. Rav Assi says: The brother whose possessions were seized should take a quarter of his brother’s land or one quarter of money. [*However, the other brother is not required to give him an entire half of land, and he has the right to give one quarter money due to this doubt whether*

they are like buyers or inheritors (according to Rashi's second explanation).]

The Gemora explains the dispute: Rav says that the division is nullified, as brothers who split their father's possessions are like inheritors (*who are both obligated to pay their father's debt; once one brother's share was taken away, it was as if he never received his share and the estate must be divided again*). Shmuel says that these brothers are like people who purchase from each other, and do so without responsibility for what happens to the other person's portion. Rav Assi is unsure whether they are like inheritors or buyers, and therefore he says he takes one quarter of his brother's share of land (*for money that lies in doubt must be divided, and since they might be purchasers, one brother might not owe the other brother anything*) or one quarter money (*because the other brother can claim, "If the creditor would have come to me, I would have pushed him off with money; just because you gave him land does not mean that I must give you land"*). [So why did Rav Assi find it necessary to state that money is like land again?]

The Gemora answers: When Rav Assi said money is like land, he meant that it is as good as paying with excellent quality land.

The Gemora asks: Didn't Rav Huna already say this law?

The Gemora answers: The statement should read: And Rav Assi also says (*like Rav Huna*). (9a)

One Third for "Hiddur Mitzvah"

Rabbi Zeira says in the name of Rav Huna: For a *mitzvah*, one must spend up to a third.

The Gemora asks: What is the case? If it means that one must give up one third of his fortune if he has the opportunity to do a *mitzvah* at this price, does this mean

that if he has the opportunity to do three *mitzvos*, he must lose his fortune?!

Rather, Rabbi Zeira says: It means that, for a *mitzvah*, one must spend one third more of his intended spending amount in order to have a more beautiful way of fulfilling the *mitzvah*.

Rav Ashi asked: Is this third calculated from the inside (*two more coins if the mitzvah costs six*) or is it calculated from the outside (*three more coins if the mitzvah costs six*)? The Gemora leaves this question unresolved.

In Eretz Yisroel they said in the name of Rabbi Zeira: Until one third (*of adding value to beautify a mitzvah*), one receives reward in the next world. After one third, Hashem pays him back in this world. (9a – 9b)

Mishna

Whatever I am obligated to guard, I have prepared its ability to damage (*and am therefore obligated to pay if it damages*). If I caused part of its damage, I am obligated to pay for it as if I prepared the entire damage. One is liable if the damaged property is property that is not subject to the laws of *me'ilah* (*misusing hekdesch; i.e. chullin*), property belonging to Jews, and property that has an owner. One is liable if the damage occurred in any place except in the private property of the damager, or if the property was owned by both of them (*the Gemora will explain this last statement*). When a damage occurs, the damager must pay compensation with the most superior land. (9b)

Preparing the Damage

The *braisa* states: Whatever I am obligated to guard, I have prepared its ability to damage. What is a case illustrating this law? If a person had an ox or a pit and he placed it in the care of a deaf-mute, a deranged person,



or a minor, and it caused damage, he must pay, unlike a fire.

The *Gemora* asks: What is the case of the *braisa*? If it is where the ox was tied and the pit was covered, and the parallel case to that is a coal (*which cannot erupt into a flame unless someone fans it*), what is the difference between the cases (*regarding payment*)? It must be that he gave them (a deaf-mute, a deranged person, or a minor) an untied ox or an open pit, and the parallel case of fire would be one where he gave them a torch. If this is correct, why is he exempt from paying for the ensuing damage caused by the fire? Didn't Rish Lakish say in the name of Chizkiyah: He is exempt under the laws of man only if he gave him a regular coal, and the deaf-mute fanned it. However, if he gave him a fire, he is liable. Why? This is because there will certainly be a damage caused by such an act. The case must be where the ox was tied and the pit was closed, and the parallel case to that would be a coal.

What is the difference between the cases (*regarding payment*)?

The *Gemora* answers: It is normal for an ox to get loose, and it is normal for a cover of a pit to fall off (*therefore, the owner is negligent and liable*). However, a coal left alone will eventually just burn out.

The *Gemora* asks: According to Rabbi Yochanan who says that if one gives a fire to a deaf-mute, he is exempt, and the parallel to that is clearly a case of an ox that is untied and a pit that is open, why is he not liable for the damage caused by the fire?

The *Gemora* answers: The way the deaf-mute held the fire caused the damage, as opposed to the case of the pit and ox where they did the damage on their own. (9b)

INSIGHTS TO THE DAF

Spending Money for a Mitzvah

Tosfos writes that it is evident from our *Gemora* that a person is not obligated to give up all of his possessions in order to fulfill a *mitzvah*, and even for a *mitzvah* that will pass in time, such as an esrog. It is further evident from the conclusion of the *Gemora* that one is not even obligated to give up a third of his possessions in order to fulfill a *mitzvah*. And furthermore, it is said regarding charity: One who gives liberally to charity should not give more than a fifth of his money, for then, he will be forced to beg for support himself.

All Mitzvos

The Rosh writes that this *halacha* applies by all *mitzvos*; one should not spend more than a fifth of his wealth on any specific mitzva, such as esrog or lulav. The Rambam and Rema seem to rule accordingly.

Why not Spend?

The Rishonim ask: Why would someone be exempt from performing a *mitzvah* just because it costs more than a fifth of his wealth? The Ra'avad answers that this is similar to *halacha* that one should make his *Shabbos* like an ordinary weekday, and not be forced to be supported from charity. This is because poverty is regarded as death, and one is not obligated to give up his life for an ordinary *mitzvah*.

The Biur Halachah writes (*in his explanation of an opinion from the Beis Yosef*) that not all *mitzvos* are compared to charity, for charity is a *mitzvah* that will not pass in time, and even if the poor people are before him, they can be supported by another person. That is why one would not be obligated to spend more than a tenth of his possessions. However, with respect to a *mitzvah* that will



pass in time, it is possible that there would be an obligation to spend more than a tenth.

Reb Yaakov Emden asks: Why isn't there an obligation to spend more for a positive commandment? Did we not learn regarding one who does not want to fulfill a positive commandment – we beat him until his soul departs him? Do we treat his money stricter than his life?

The Maharitz Chayus answers that we only beat him until his soul departs him when he is rebelling against the fulfillment of *mitzvos*; otherwise, we do not beat him, and he would not be required to spend all his money for it.

Lo Sa'aseh is Different

The Ra'avad adds that this *halacha* applies only to a positive commandment; however, one would be required to spend his entire wealth in order not to transgress a negative precept.

Must he Spend a Fifth?

The *Gemora* (*Kesuvos* 50a) states that one should not spend more than a fifth of his wealth to fulfill a *mitzvah*; is one halachically required to spend up to that amount, or is it only regarded as a *mitzvah*?

The Beis Yosef (Y"D; 249) writes that it is considered a *mitzvah* in the preferable manner if one spends up to a fifth of his wealth in order to perform a *mitzvah*. The Beis Yosef adds that although one can imply from the *Gemora* that it is not even a *mitzvah* to spend that amount because the *Gemora* states: One who spends liberally should not give more than a fifth of his wealth; however, even less than that would be regarded as spending liberally, and there would be no *mitzvah* whatsoever to spend that amount. Nevertheless, there is a Yerushalmi in Pe'ah that seems to indicate that there is a *mitzvah* to spend up to one-fifth of his wealth for a *mitzvah*.

In the sefer *Ahavas Chesed*, the Chafetz Chaim cites a Rambam in his explanation to the Mishnayos, who writes that there is a halachic obligation to spend up to one-fifth of one's wealth for charity. He asks from our *Gemora*, which would seem to indicate that there is no such obligation. He answers that our *Gemora* is discussing a case where the poor people are not present and someone is searching to find them in order to give them charity. In such a situation, there is not even a *mitzvah* to give up to one-fifth. However, the Yerushalmi and the Rambam are speaking about a case where the poor person is in front of you; then, there would be a halachic obligation to give up to one-fifth.

Spending More than a Fifth

What if one wants to spend more than a fifth? Is he allowed to? It is evident from the Rambam in his explanation to the Mishnayos that it is regarded as virtuous (*midas chassidus*) for one to spend more than a fifth. However, it can be inferred from the Rambam in halachos that one should not spend more than a fifth of his wealth on a *mitzvah*.

The Chafetz Chaim reconciles the two rulings of the Rambam in the same manner as before. If the poor person is present, it would be regarded as *midas chassidus* to spend more than a fifth, and that is what the Rambam in his explanation to the Mishnayos is discussing. However, when the poor people are not present and one is chasing after them, he should not spend more than a fifth.

The Shitah Mekubetzes writes that one is permitted to spend more than a fifth of his wealth if it is to support the studying of Torah. The *Ahavas Chesed* explains the reasoning for this. One who supports another fellow to learn Torah is creating a partnership with him; the supporter receives a reward together with the one who is



learning the Torah. One is permitted to purchase this reward for himself even if it will cost him more than a fifth.

Reb Moshe Feinstein (Igros Moshe (Y"D, 4:37) rules that this is correct only if the supporter specifically negotiates with the one studying Torah to create a partnership of Yissochar and Zevulun. However, if the provider is just donating money to support Torah, he is not permitted to give more than a fifth.

The Ibn Ezra in Mishlei (4:7) writes that one is permitted to spend more than a fifth of his wealth in order to study Torah himself. The Chafetz Chaim in Likutei Halachos (Yoma 12a) also rules like that. However, the Netziv in the Shiltos states that this is a matter of dispute between two Amoraim. The *Gemora* in Eruvin cites the verse that Torah is not in the Heavens. Rav Avdimi says: If it would be in the heavens, one would be obligated to go there and learn. It is evident that one would be forced to spend more than a fifth of his wealth to study Torah, for otherwise, he could claim that it costs too much to travel to the Heaven. However, Rava disagrees regarding the interpretation of that verse, and according to him, one would not be allowed to spend more than a fifth in order to study Torah.

The Rema (Y"D, 249:1) seems to hold that one can give away more than one-fifth of his wealth to charity right before he dies. It is brought in the name of Rabbeinu Yonah that even then, he should not.

DAILY MASHAL

It is written in Ahavas Chesed that one who is a free-spender in regards to himself and his family, i.e., he splurges on expensive clothing, builds for himself a fancy mansion and generally leads a luxurious lifestyle; it is permitted for him to give to charity more than a fifth of his wealth.

Some say that if one finds himself in dire straits, he is permitted to spend more than a fifth with the intention that it should be on account of this deed that he will merit a salvation. It is brought in the name of the Bnei Yissoschar that one who requires atonement on a specific sin is also permitted to give away more than a fifth.