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

Come and hear: If a man brings his ox into the premises of another person without permission, and an ox from elsewhere comes and gores it, there is no liability. But if he brought it in with permission, there would be liability. Now, who would be exempt and who would be liable? Does it not mean that it is the owner of the premises who would be exempt (when it was brought in to his premises **without** his permission) and the owner of the premises who would be liable (when it was brought in to his premises **with** his permission).

The Gemora rejects this: No, it is the owner of the ox [from elsewhere] who would be exempt (when the damaged ox was brought in to the premises **without** permission) and similarly it is the owner of the ox [from elsewhere] who would be liable (when the damaged ox was brought in to the premises **with** permission).

The Gemora asks: But if so, what has permission or the absence of permission to do with the case?

The Gemora answers: They say: Whose teaching is stated in this braisa? It is in accordance with Rabbi Tarfon, who holds that the unusual (keren; i.e. tam) damage occasioned in the plaintiff's premises must be compensated in full. [The braisa means as follows: Where the ox was brought in] with permission, the case would therefore be one of unusual (keren) doing damage in the plaintiff's premises and the payment would have to be for full damages, whereas in the absence of permission it would amount to unusual (keren) doing damage on public ground, and the payment would accordingly be only for half damages.

A certain woman once entered the house of another person for the purpose of baking bread there, and a goat of the owner of the house came and ate up the dough, from which it became overheated and died. [In giving judgment] Rava ordered the woman to pay damages for the value of the goat. The Gemora asks: Are we to say now that Rava differed from Rav, since Rav said: It should not have eaten?

The Gemora answers: They say: Are both cases parallel? There, there was no permission and the owner of the produce did not assume any obligation of safeguarding [the property of the owner of the premises], whereas in this case, permission had been given and the woman had accepted responsibility for safeguarding [the property of the owner of the premises].

The Gemora asks: Why should the rule in this case be different from [what has been established, that] if a woman enters the premises of another person to grind wheat without permission, and the animal of the owner of the premises eats it up, the owner is not liable, and if the animal suffers harm the woman is liable, the reason being that there was no permission, which shows that where permission was granted she would be exempt?

The Gemora answers: They say: In the case of grinding wheat, since there is no need of privacy at all, and the owner of the premises is not required to remove himself,

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

the obligation to take care [of his property] still rests upon him, whereas in the case of baking where, since privacy is required (because her sleeves are rolled up and her arms are exposed) the owner of the premises removes himself [from the premises], the obligation to safeguard his property must fall upon the woman. (48a)

The Mishna had stated: If a man brings his ox into the premises of another person etc. Rava said: If he brings his ox into another person's premises and it digs there pits, ditches, and caves, the owner of the ox would be liable for the damage done to the ground, and the owner of the ground would be liable for any damage resulting from the pit. For although the master stated: [It says:] *If a man shall dig a pit*, and not 'if an ox [shall dig] a pit', still here [in this case] since it was the responsibility of the owner of the ground to fill in the pit (before he declared it ownerless) and he did not fill it in, he is reckoned [in the eyes of the Torah] as having himself dug it.

Rava further said: If he brings his ox into the premises of another person without permission, and the ox injures the owner of the premises, or the owner of the premises suffers injury through the ox (by tripping over it), he is liable, but if it drops down, he has no liability.

The Gemora asks: But why should the fact of its lying down confer exemption?

Rav Pappa said: What is meant by 'it drops down' is that the ox dropped down its excrements [upon the ground], and thereby sullied the garments of the owner of the premises. [The exemption is because] the excrements are a case of bor (pit), and we have never found bor involving liability for damage done to utensils.

The Gemora asks: This explanation is satisfactory if we adopt the view of Shmuel who held that all obstacles come under the head of bor. But according to the view of Rav who said [that they do not come under the category of bor] unless they have been declared ownerless, what are we to say?

The Gemora answers: It may safely be said that excrements as a rule are abandoned. (48a)

Rava said further: If one enters the premises of another person without permission, and injures the owner of the premises, or the owner of the premises suffers injury through him, there would be liability; and if the owner of the premises injured him, there would be no liability.

Rav Pappa said: This ruling applies only where the owner was unaware of him (the trespasser). For if he had been aware of him, the owner of the premises by injuring him would render himself liable, as the trespasser would be entitled to say to him, "Though you have the right to evict me, you have no right to injure me."

The Gemora notes: And they follow their own line of reasoning [adopted by them elsewhere], for Rava or, as others say, Rav Pappa stated: Where both of them [plaintiff and defendant] had a right [to be where they were], or where both of them [on the other hand] had no right [to be where they were], if either of them injured the other, he would be liable, but if either suffered injury through the other, there would be no liability. This is so only where both of them had a right to be where they were or where both of them [on the other hand] had no right to be where they were, but where one of them had a right and the other had no right, the one who had a right would be exempt, whereas the one who had no right would be liable. (48a – 48b)

The Mishna had stated: If it falls [there] into a pit of the owner and fouls the water, there would be liability.

Rava said: This ruling applies only where the ox makes the water foul at the moment of its falling into the pit. For where the water became foul [only] after it fell in, there

would be exemption on the ground that [the damage done by] the ox should then be [subject to the law applicable in the case of] bor, and water is classified as a "utensil," and we never found bor involving liability for damage done to utensils.

The Gemora asks: This explanation is satisfactory if we adopt the view of Shmuel who held that all obstacles come under the head of bor. But according to the view of Rav who said [that they do not come under the category of bor] unless they have been declared ownerless, what are we to say?

We must therefore suppose that if the statement was made at all, it was made in this form: Rava said: The ruling [of the Mishnah] applies only where the ox fouled the water by [the dirt of] its bod, but where it fouled the water by the smell of its carcass, there would be no liability. The reasoning for this is because the ox [in this case] was only a [secondary] cause [of the damage], and for a mere [secondary] cause, there is no liability. (48b)

The Mishna had stated: Where [it kills] the owner's father or his son [who] was inside the pit, there would be liability to pay kofer.

The Gemora asks: But why? Was the ox not a tam?

Rav said: We are dealing with a case where the ox was a mu'ad to fall upon people in pits.

The Gemora asks: But if so, should it not have already been killed [on the first occasion]?

Rav Yosef said: The ox was looking at some vegetation [growing near the opening of the pit] and thus fell [into it]. [As it killed unintentionally, it does not get killed; the owner will, however, pay kofer if it does it four times, as then it will be a muad.]

Shmuel, however, said: This ruling is in accordance with Rabbi Yosi HaGelili, who held that [killing by] tam entails the payment of half kofer.

Ulla, however, said: It accords with the ruling laid down by Rabbi Yosi HaGelili in accordance with Rabbi Tarfon, who said that unusual damage (keren) in the plaintiff's premises entails the payment of full damages. So here the liability is for the payment of full kofer.

The Gemora asks: Ulla's answer satisfactorily explains why the text [of the Mishnah] says: the owner's father or his son was inside the pit (for they have a right to be there, and it is therefore regarded as the domain of the plaintiff). But if we take the answer of Shmuel, why [is the ruling stated] only with reference to his father and his son? Why not with reference to any other person?

The Gemora answers: The Mishnah took the most usual case. (48b)

The Mishna had stated: If he brought them in with permission, the owner of the premises would be liable etc.

It was stated: Rav said: The law is in accordance with the first Tanna, whereas Shmuel said: The law is in accordance with the view of Rebbe (that the homeowner is not liable unless he explicitly accepted responsibility).

The Gemora cites a braisa: [If the owner of the premises says:] 'Bring in your ox and watch it,' should the ox then damage, there would be liability, but should the ox suffer injury, there would be no liability. If, however, [the owner says], 'Bring in your ox and I will watch it,' should the ox suffer injury there would be liability, but should it do damage, there would be no liability.

The Gemora asks: Doesn't this statement contain a contradiction? You say that [where the owner of the

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

premises said:] 'Bring in your ox and watch it,' should the ox do damage there would be liability, but should the ox suffer injury there would be no liability. Now the reason for this is that he expressly said to the owner of the ox 'watch it' — and that is why the owner of the ox will be liable and the owner of the premises exempt; from which I infer that if no explicit mention was made [as to the watching], the owner of the premises would be liable, and the owner of the ox exempt, indicating that without express stipulation to the contrary, the former takes it upon himself to safeguard [the ox].

Now, consider the concluding clause: But [if he said]: 'Bring in your ox and I will watch it', should the ox suffer injury there would be liability, but should it do damage there would be no liability. The reason for this is because he expressly said to him 'and I will watch it' — and that is why the owner of the premises would be liable and the owner of the ox exempt; from which I infer that if there is no express stipulation, the owner of the ox would be liable and the owner of the premises exempt, as in such a case, the owner of the premises does not take it upon himself to safeguard [the ox]. We have arrived at the view of Rebbe, who said [there would be no liability upon him] unless where the owner of the premises had taken upon himself to safeguard. Is then the opening clause in accordance with the Rabbis, and the concluding clause in accordance with Rebbe?

Rabbi Elozar said: The contradiction [is obvious]; he who taught one clause cannot have taught the other clause.

Rava, however, said: The entire braisa can be explained as being in accordance with the Rabbis; since the opening clause deals with a case where he said, "Watch it," there were correspondingly inserted in the concluding clause the words, "And I will take care of it" (however, in truth, the homeowner would be responsible even if he didn't say anything).

Rav Pappa, however, said: The entire braisa is in accordance with Rebbe, for he holds like Rabbi Tarfon, who holds that the unusual (keren; i.e. tam) damage occasioned in the plaintiff's premises must be compensated in full. It therefore follows that where he expressly said to him, "Watch it," he certainly did not transfer a legal right to him to any place in the premises, so that the case becomes one of keren doing damage in the plaintiff's premises, and keren occasioned in the plaintiff's premises must be compensated in full. Where, however, he did not expressly say, "Watch it," he surely granted him a legal right to place in the premises, so that the case is one of [damage done on] premises of joint owners, and [as we know] where keren does damage on premises of partners, there is no liability to pay anything but half damages. (48b)