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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 Yehoshua’s Cases

Rabbi Yehoshua had stated that there are four things which a person does where he is exempt from liability under the laws of *Beis Din*, but for which he is liable under the laws of Heaven. The first one was a case where someone broke down a fence that was in front of his friend’s animal (*and consequently, the animal escaped*).

The *Gemora* explains the case: If it was referring to a strong fence, he should be liable (*to pay for the wall*) even under the laws of *Beis Din*? Rather, it must be referring to a rickety fence (*which would have been dismantled anyway; it therefore has no value*).

His second case was one where one bent his friend’s stalks towards a fire.

The *Gemora* explains the case: If it was referring to a case where a normal wind brought the fire to the stalks, he should be liable even under the laws of *Beis Din*? Rather, it must be referring to a case where an abnormal wind brought the fire to the stalks (*and he therefore is not liable for he could not have anticipated that the fire would reach the grain*).

Rav Ashi suggests that he is referring to a case where he made the stalks “hidden” (*the lighter of the fire would have been liable to pay for the stalks; by making the stalks “hidden,” the lighter is exempt from liability; he indirectly caused a loss to the owner of the stalks; for this, he is only liable under the laws of Heaven*).

The third case was one where he hired false witnesses to testify.

The *Gemora* explains the case: If it was referring to a case where he hired the witnesses to testify on his behalf, he should be responsible to return this money under the laws of *Beis Din*? Rather, he is referring to a case where he hired false witnesses to testify for someone else.

The last case was one where a person knew testimony for his friend and did not testify.

The *Gemora* explains the case: If it was referring to a case where he was one of two witnesses, it is obvious (*that he is liable under the laws of Heaven*), for the verse explicitly states: *If he does not testify, he shall bear his iniquity!*? Rather, he must be referring to a case where he was going to testify by himself (*and he could have forced the defendant to take an oath; if he would have chosen not to swear, he would be liable to pay; therefore, we obligate this single witness to pay under the laws of Heaven, for if he would have testified, he might have caused the defendant to pay*). (55b – 56a)

No Other Cases?

The *Gemora* asks: And are there no other cases for Rabbi Yehoshua to mention (*where he is only liable under the laws of Heaven*)? But behold, there is the following case which was taught in a *braisa*: If someone works with water designated for the *chatas* water (*the water which was mixed with the ashes of the red heifer*) or the red heifer itself (*both which become unfit if work is done with them*), he is exempt from paying under the laws of *Beis Din* (*for the damage is not discernible to the eye*), but is obligated to pay under the laws of Heaven!?

And behold, there is the following case which was taught in a *braisa*: If a person places poison in front of his fellow's animal (*and the animal eats it and dies*), he is exempt from paying under the laws of *Beis Din* (*for the animal ate the poison on its own accord*), but is obligated to pay under the laws of Heaven!?

And behold, there is the following case which was taught in a *Mishna*: If a person sent a fire in the hands of a deaf-mute, a deranged person or a minor, he is exempt from paying under the laws of *Beis Din* (*for it is the second person who actually caused the damage*), but is obligated to pay under the laws of Heaven!?

And behold, there is the following case which was taught in a *braisa*: If someone screams into his friend's ear (*causing deafness*), he is exempt from paying under the laws of *Beis Din* (*for the damage is indirect*), but is obligated to pay under the laws of Heaven!?

And behold, there is the following case which was taught in a *braisa*: If someone's pitcher broke in a public domain 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 obligated to pay for the damages, but the *Chachamim* say that he is exempt from paying under the laws of *Beis Din*, but is obligated to pay under the laws of Heaven!?

The *Gemora* answers: While it is true that there are many other cases, Rabbi Yehoshua only mentioned those four, for we might have thought that in those cases, the perpetrator will not even be liable to pay under the laws of Heaven; Rabbi Yehoshua teaches us that he is liable under the laws of Heaven.

The *Gemora* explains the necessity for each of the cases: In the case where someone broke down a fence that was in front of his friend's animal, I would have thought that he should not even be liable to pay under the laws of Heaven, for since the wall is destined to be dismantled anyway, what

did the perpetrator really accomplish; Rabbi Yehoshua teaches us that he is liable under the laws of Heaven (*for he should have warned the owner before breaking his fence*).

In the case where one bent his friend's stalks towards a fire, I would have thought that he should not even be liable to pay under the laws of Heaven, for he can claim, "How should I have known that an abnormal wind will come and blow the fire towards the stalks?" Rabbi Yehoshua teaches us that he is liable under the laws of Heaven. And according to Rav Ashi who explained the case where he made the stalks "hidden," I would have thought that he should not even be liable to pay under the laws of Heaven, for he can claim, "I covered it (*in order that it should not burn quickly*)"; Rabbi Yehoshua teaches us that he is liable under the laws of Heaven (*for ultimately, he did cause a loss*).

In the case where he hired false witnesses to testify, I would have thought that he should not even be liable to pay under the laws of Heaven, for he can claim, "If you hear the words of your Master (*Hashem; telling you not to commit this transgression*) and the words of the student (*the sender*), who should you listen to?" Rabbi Yehoshua teaches us that he is liable under the laws of Heaven (*since he paid them to testify, it is regarded as if he expected them to testify falsely*).

In the case where a person knew testimony for his friend and did not testify, I would have thought that he should not even be liable to pay under the laws of Heaven, for he can claim, "Who says that if I would have testified, he would have admitted (*and paid*); perhaps he would have taken a false oath (*to deny the claim*); Rabbi Yehoshua teaches us that he is liable under the laws of Heaven (*for his intent was to cause a loss*). (56a)

Digging Under

The *Mishna* had stated: If the pen broke during the night or robbers broke in, and the sheep subsequently went out and caused damage, he is exempt.

Rabbah said: The owner of the sheep is only exempt in a case where the animal dug beneath the wall (*causing the wall to fall, for the animal's damaging was unexpected*).

The *Gemora* asks: What then of the case where it did not dig underneath the wall? He would then be liable? What would be the circumstances? If we were referring to a strong wall, why then, even where it did not dig underneath the wall should there be liability? What else could he have done? But if, on the other hand, the wall was rickety, why, even in the case where the animal dug underneath the wall should there be exemption? Is this not a case where there is negligence at the beginning (*by leaving the animal inside such a fence*) and results in a mere accident at the end?

The *Gemora* notes: It would be correct if we hold that whenever there is negligence at the beginning and an accident at the end there is exemption, but if we take the view that where there is negligence at the beginning, even though the damage resulted from an accident at the end, there is liability, what can be said?

The *Gemora* emends Rabbah's statement: The ruling of the *Mishna* refers to a strong wall and even to a case where the animal did not dig underneath the wall. For the statement of Rabbah was made with reference to the *Mishna's* latter clause: If he left the sheep in the sun, or he gave them to a deaf-mute, a deranged person or a minor, and they went and damaged, he is liable. Rabbah thereupon said: This would be so even where it dug underneath the wall. For if it did not dig underneath the wall (*but it escaped in a regular manner*), there would be no doubt that the owner would be liable, as there was negligence throughout, but even where it did dig underneath the wall, the owner would still be liable. You might have said that it should be regarded as a case of negligence at the beginning but accident at the end. Rabbah teaches us that it is regarded as a case of negligence throughout, for the plaintiff will say to the owner, "You should surely have realized that since you left it in the sun, it will use every possible tactic to escape." (56a)

The Robbers are Liable

The *Mishna* had stated: If the robbers took the sheep out, they are liable for the damage.

The *Gemora* asks: Is this not obvious, seeing that as soon as they took it out, it is regarded as being in their possession in all respects?

The *Gemora* answers: The ruling was necessary in a case where they merely stood in front of it (*thus steering it towards someone else's grain*). [*The robbers would be liable as "a damager" even though they did not acquire it.*]

This is the same ruling as the statement made by Rabbah in the name of Rav Masnah, who said it in the name of Rav: If a man stands the animal of one person near the standing grain of another, he is liable.

They asked: Is the case where he actually stood it on top of the grain? Would it not be obvious?

They had answered: The ruling was necessary in a case where he merely stood in front of it (*thus steering it towards someone else's grain*).

Abaye said to Rav Yosef: Did you not explain to us that the ruling of Rav referred to a case where the animal was (*not steered towards the grain, but rather*) hit with a stick (*causing it to go towards the grain; he is acquiring the animal through meshichah – pulling it, or making it move*)? In the case of robbers also, the *Mishna* is similarly referring to a case where they hit it. (56a – 56b)

Takes his Place

The *Mishna* had stated: If he gave them to a shepherd to watch, the shepherd takes his place.

They asked: Whose place does the shepherd take? If you say that he is taking the place of the owner of the animal, have



we not already learned this elsewhere? The *Mishna* states: If an owner gives over his animal to an unpaid guardian, a borrower, a paid guardian or to a renter, each of them would enter into the responsibilities of the owner!?

Our *Mishna* must therefore mean that the shepherd is taking the place of a different guardian. [*The Mishna is referring to a case where the owner gave it over to a guardian and he gave it over to a shepherd. The shepherd is just as responsible as the first one was.*]

The *Gemora* asks: And the first guardian would be exempt altogether. Would this not be a refutation of Rava? For Rava said: If one custodian gave over an object he was watching to another custodian, the first custodian is liable to pay (*if anything happens to the deposit by the second custodian, even if it was an unavoidable accident*).

Rava might reply that the *Mishna* is referring to a case where the shepherd handed it over to his apprentice, as it is indeed the custom of the shepherd to hand over his sheep to the care of his apprentice (*and the owner would expect that the apprentice will watch it*).

There were those who recorded the above discussion in the following manner: Since the *Mishna* said: If he gave them to a shepherd to watch and it did not say: if he gave them over to another person, it can be proven that the meaning of the *Mishna* is that the shepherd gave them over to his apprentice, as it is indeed the custom of the shepherd to hand over his sheep to the care of his apprentice, whereas if he would have given it over to another person this would not be so (*rather, the first guardian would be liable*).

May we say that this supports the view of Rava? For Rava said: If one custodian gave over an object he was watching to another custodian, the first custodian is liable to pay (*if anything happens to the deposit by the second custodian, even if it was an unavoidable accident*).

The *Gemora* rejects this proof: For the *Mishna* perhaps merely mentioned the usual case, though the same ruling would apply to a case where it was given over to another person altogether. (56b)

DAILY MASHAL

Laws of Heaven

The *Gemora* cites a *Mishna*: If one sends out a fire in the hands of a deaf-mute, an imbecile or a minor (*and it consequently burned someone's haystack*), he is not liable to pay according to the laws of man, but he is liable according to the laws of Heaven. If, however, he sent out the fire in the hands of a competent person, the competent person is liable to pay for the damages.

It would seem that in the case where the sender sent the fire with a competent person, the sender is not liable at all, even under the laws of Heaven!

The Ram"za (C" M: 32:2) rules that if one sends out false witnesses to testify against someone, and they cause that fellow a loss, the sender is not liable at all, even under the laws of Heaven. This is because we say that there cannot be a *shliach* to commit a transgression.

The Sha"ch disagrees and maintains that the sender will be liable to pay under the laws of Heaven. He explains the distinction between the two cases. The sender will always be liable under the laws of Heaven. The only reason that the sender is not required to pay at all in the case of the fire is because once the competent person is liable to pay, there is no place for the sender to be liable as well!