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Bava Kamma Daf 59

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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

***Paying according to the Future***

Abaye said: Rabbi Yosi HaGelili and Rabbi Yishmael said the same thing. Rabbi Yosi HaGellili’s opinion was just stated (*if an animal ate young blades of grain, it has to be considered in the light of the future value of that which was left in the field, for then, it may be determined how much the damaged area would have been worth at the harvest time*). Rabbi Yishmael also holds like this, as it was taught in a *braisa*: “*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*. And do not say that Rabbi Yishmael should be interpreted Like Rav Idi bar Avin, for Rav Idi bar Avin said: 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. This (*says Abaye*) is not the correct explanation, for it is against the accepted principle that if someone is trying to extract money from someone else, the burden of proof is on him.

Rather, Rabbi Yishmael meant that we evaluate the damages based on the best of anticipation. How is this evaluated? It is the value of the field at the time that the produce would have matured (*at the harvest time*).

The *braisa* had stated: Rabbi Shimon ben Yehudah says in the name of Rabbi Shimon: These rulings (*that we evaluate the damaged produce in relationship to the land*) apply where the animal ate sprouts of vines or shoots of fig trees (*even before the budding stage*). We may infer from here that if it would have eaten grapes while they were in the

budding stage, they should be viewed as if they were grapes ready to be plucked off (*independent of the field*). But let us consider the latter part of his ruling: If it ate half-ripe figs or half-ripe grapes, they would be viewed as if they were (*figs or*) grapes ready to be plucked off (*and he would pay the market price for them*). We may infer from here that if it would have eaten grapes while they were in the budding stage, we evaluate the field how much it was worth previously and how much it is worth now (*and he pays the difference*)!?! [The inferences from these two statements contradict each other!?!]

Ravina answered: Bundle the new case into the *braisa* and teach as follows: These rulings (*that we evaluate the damaged produce in relationship to the land*) apply where the animal ate sprouts of vines or shoots of fig trees (*even before the budding stage*), for where it ate grapes in the budding stage, or half-ripe figs or half-ripe grapes, they would be viewed as if they were (*figs or*) grapes ready to be plucked off (*and he would pay the market price for them*).

The *Gemora* asks: If so, Rabbi Shimon ben Yehudah and Rabbi Yehoshua have the same opinions (*regarding grapes in the budding stage*)!?!?

The *Gemora* answers: The depreciation of the vines (*if the grapes had remained there until they were fully ripe, the vines would weaken*) is the difference between them (*the damager benefitted the owner by plucking them early; deducting the savings from the damager’s payment is the disagreement*), but we cannot identify who holds which view.

Abaye said: It can be identified from elsewhere. Who is the *Tanna* that takes into consideration the depreciation of the vine, if not Rabbi Shimon ben Yehudah? For it was taught in a *braisa*: Rabbi Shimon ben Yehudah says in the name of Rabbi Shimon ben Menasya: One who violates a woman is not required to pay for the pain that he inflicted, as the woman would in any case have subsequently suffered the same pain through her husband. They said to him: A woman cohabiting by her free will is not to be compared to one cohabiting by constraint. [It emerges that Rabbi Shimon ben Yehudah considers the future benefit that the victim will enjoy.]

Abaye said: The following *Tannaim* and Rabbi Shimon ben Yehudah said the same thing. Rabbi Shimon ben Yehudah's opinion was just stated. The other *Tannaim* are as follows: Rabbi Yosi said: If one caused a woman to miscarry, deduct the fees of the midwife (that the husband would have paid in order for someone to help his wife with the delivery). [The defendant saved the husband money which he potentially would have paid.] Ben Azzai says: Deduct (the extra) food (which the husband would have been required to provide for her during the pregnancy).

The *Gemora* notes: The one who says to deduct the fees for the midwife would certainly deduct food, but the one who says to deduct the food would not necessarily hold to deduct the fees for the midwife, as the husband might say, "My wife is proficient at giving birth and does not need a midwife." (59a)

### ***Ruling of Sixty***

Rav Pappa and Rav Huna the son of Rabbi Yehoshua, in an actual case, followed the view of Rav Nachman and valued in conjunction with sixty times as much as the damage. According to another version, however, Rav Pappa and Rav Huna the son of Rabbi Yehoshua valued a palm tree in conjunction with a small field (that would hold sixty trees).

The *halachah* is in accordance with Rav Pappa and Rav Huna the son of Rabbi Yehoshua in the case of an Aramean palm tree, but it is in accordance with the Exilarch (that the damager must pay the full value) in the case of a Persian palm tree (for it is extremely valuable).

The *Gemora* relates an incident: Eliezer the young one once put on a pair of black shoes (which was the common practice among mourners) and stood in the market place of Nehardea. When the officers of the house of the Exilarch found him there, they asked him, "Why are you wearing black shoes?" He said to them, "It is because I am mourning on the destruction of Yerushalayim." They asked him, "Are you such an important person (like a Torah scholar) that you would mourn over Yerushalayim?" Considering this to be haughtiness on his part, they took him and placed him in prison. He said to them, "I am a great man!" They asked him, "How can we tell?" He responded, "Either you ask me something or let me ask you one." They said to him, "You ask." He said to them, "If a man cuts down budding dates belonging to his fellow, what should be his payment?" They answered him, "The payment of budding dates." "But," he asked them, "Would it not have grown into ripe dates?" They then replied, "He should pay for the value of ripe dates." "But," he asked them, "Surely he did not take ripe dates from him?" They then said to him, "You tell us." He responded, "We evaluate in conjunction with sixty times as much." They asked him, "Who holds like you?" He answered them, "Shmuel is alive and his *Beis Din* is as well." They sent this question to Shmuel who answered them: He said correct to you that the evaluation should be in conjunction with a field sixty times as much as the damaged date tree. They then released him. (59a – 59b)

### ***Different Types of Produce***

The *Mishna* had stated: Rabbi Shimon says: If it ate ripe produce, he must pay for ripe produce; if it was a *se'ah*, he pays a *se'ah*, and if it was two *se'ahs*, he pays for two.

The *Gemora* explains Rabbi Shimon's source: It is written: *And it consumes in the field of another*. This (*the word "another" is extra*) teaches that we evaluate the damage based on "another" field. This applies only to produce that still needs the field (*something that is still growing*); however, these (*the ripe produce*), since they do not need the field, he pays in full.

The *Gemora* rules: Rav Huna bar Chiya says in the name of Rav Yirmiyah bar Abba: Rav ruled like Rabbi Meir and he said that the *halachah* is in accordance with Rabbi Shimon.

The *Gemora* explains: Rav ruled like Rabbi Meir in the following case: If a husband wrote a contract for the first buyer of a field of his wife, and she did not sign a consent form and then he wrote a contract for another buyer of a field of hers and for that, she did sign, she loses thereby her claim to her *kesuvah* (*if her husband has no free property left; she cannot obviously collect from the second field because she has agreed that the husband should sell it; she cannot recover her kesuvah even from the first buyer since he will claim that when he had bought his field, her husband was still left in the possession of that field which he subsequently sold to the second purchaser*); these are the words of Rabbi Meir. Rabbi Yehudah, however, said: She may claim, "I merely meant to please my husband; what claim can you have against me?"

He said that the *halachah* is in accordance with Rabbi Shimon like we learned in our *Mishna*: Rabbi Shimon says: If it ate ripe produce, he must pay for ripe produce; if it was a *se'ah*, he pays a *se'ah*, and if it was two *se'ahs*, he pays for two. [*The Tanna Kamma did not distinguish between the types of produce.*] (59b)

### **Mishna**

If one piles his grain in someone else's field without his permission and an animal belonging to the owner of the field eats the grain, he is exempt from paying. If the animal gets injured from the grain, the owner of the grain is liable.

However, if he piled his grain with permission, the owner of the field is liable (*if his animal eats the grain*). (59b)

### **Accepting Responsibility**

The *Gemora* notes: It seems from the *Mishna* that we are not following Rebbe's opinion, for Rebbe had stated that the owner of the field is not liable unless he explicitly states that he is accepting responsibility on the objects placed in his field (*and the Mishna says that the owner of the field is liable as long as he gives permission for the grain to be there*).

Rav Pappa said: Our *Mishna* is referring to a case where he is a watcher of the granary, for once he says, "Bring in your grain," it is as if he said, "Bring it in and I will watch it." (59b)

### **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. If he sends the fire in the hands of a competent person, the competent person is liable.

If one person brought the fire and a second person brought the wood, the one who brought the wood is liable. If one person brought the wood and a second person brought the fire, the one who brought the fire is liable (*for if not for the last one, the first one did not do anything*). If another person came and fanned the fire, he is liable. If the wind fanned it, they are all exempt from liability. (59b)

### **Type of Fire**

Rish Lakish had stated in the name of Chizkiyah: He is only exempt under the laws of man 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 damaged caused by such an act. Rabbi Yochanan, on the other hand, says that even in the case of a ready flame, he is



not liable, because he maintains that it was only the holding of the deaf-mute that caused the damage. There will not be liability unless he gives him chopped wood, wood chips and an actual flame. (59b – 60a)

## INSIGHTS TO THE DAF

### *Evaluation*

The *Gemora* explains Rabbi Yishmael to mean that we evaluate the damages based on the best of anticipation. How is this evaluated? It is the value of the field at the time that the produce would have matured (*at the harvest time*).

Reb Meir Simcha writes that although we learned that if an animal damages in a public domain through *shein* or *regel*, he is liable to pay for what he benefitted, this is not a compensatory payment for the damages, for the Torah teaches us that one is exempt from paying for *shein* or *regel* in a public domain. He is paying, not because he is a damages; but rather because he is regarded as a debtor to the owner of the field. Accordingly, he would not pay according to the anticipated value of the produce at the time of the harvest either, for that is a *halachah* which applies only by a damager.

### *Deducting the Food*

Rabbi Yosi said: If one caused a woman to miscarry, deduct the fees of the midwife (*that the husband would have paid in order for someone to help his wife with the delivery*). [*The defendant saved the husband money which he potentially would have paid.*] Ben Azzai says: Deduct (*the extra*) food (*which the husband would have been required to provide for her during the pregnancy*).

The *Gemora* notes: The one who says to deduct the fees for the midwife would certainly deduct food, but the one who says to deduct the food would not necessarily hold to deduct the fees for the midwife, as the husband might say, “My wife is proficient at giving birth and does not need a midwife.”

The Rashba quotes Rabbeinu Tam that the food we are discussing is the food that the woman would eat after the birth of her child, for then she requires special sweet food.

Another explanation is that we are referring to the sustenance of the child, which the father would have been required to provide.

Accordingly, the Raavad explains that we would deduct the cost of the child’s food for six years, for it is until that age that the father has an obligation to provide for his child.

The Rashba asks that if so, it would emerge that the cost of the food (*for six years*) would be more than the worth of the child, and what would the attacker pay?

### *Black Shoes*

The *Gemora* relates an incident: Eliezer the young one once put on a pair of black shoes (*which was the common practice among mourners*) and stood in the market place of Nehardea. When the officers of the house of the Exilarch found him there, they asked him, “Why are you wearing black shoes?” He said to them, “It is because I am mourning on the destruction of Yerushalayim.” They asked him, “Are you such an important person (*like a Torah scholar*) that you would mourn over Yerushalayim?” Considering this to be haughtiness on his part, they took him and placed him in prison.

Tosfos comments that it would appear from this story that it was not the norm to wear black shoes.

It is also apparent like this from a *Gemora* in Taanis (22a), where Rav Broka asked a Jewish prison warden: Why don’t you have *tzitzis* on your garment and why do you wear black shoes, unlike other Jews?” The man answered, “I mix with non-Jews and want to conceal my Jewish identity from them. In this way when I hear that the government is plotting



against the Jews, I run to tell the rabbis that they may pray and nullify the decree.”

Tosfos challenges this from a *Gemora* in Beitzah (15a) that indicates the opposite. The *Mishna* rules that it is forbidden to send a white shoe to someone during the Intermediate Days of Yom Tov because we are concerned that an effort will be made to blacken them in a manner that is forbidden. Evidently, it was common practice to wear black shoes!?

Rabbeinu Tam answers that Jews did wear black shoes, but the shoelaces were white. Eliezer the young one added black laces to his black shoes as an expression of mourning and the prison warden did the same in order not to be recognized as a Jew.

Tosfos concludes that this is the reason why the *Gemora* in Sanhedrin (74b) rules that during a time when the idolaters are trying to force the Jewish people to assimilate and convert to their religion, it is even forbidden to wear shoelaces like those of non-Jews, and it is obligatory for a Jew to die rather than comply with their oppressors' instructions to the contrary. This is further proof that the Jewish people's shoelaces were of a color different than that of their non-Jewish neighbors.

#### DAILY MASHAL

##### **Black as a Sign of Mourning**

Our daf tells us that Eliezer Zeira fastened his shoes with black straps as a sign of mourning for the destruction of the *Beis HaMikdash*. When *Chachamim* saw that he stood out from other Jews, who wore white straps, they suspected him of haughtiness and rebuked him, but they changed their minds when they realized he was a *talmid chacham*, and acknowledged that his mourning for the *churban* was indeed sincere.

Our Sages established several acts of mourning for the *Beis HaMikdash*. The *Gemara* (*Bava Basra* 60b) relates that after

the *churban* of the second *Beis HaMikdash* some Sages even wanted to forbid meat and wine, but this position was rejected because the general public could not maintain such a difficult decree.

**Painting with black paint:** One of these practices, stated in the *Shulchan Aruch* (O.C. 560:1), is to leave one square *amah* opposite the front door to one's home without plaster (see *Levush, Shlah, Magen Avraham, Ateres Zahav* and *Pri Megadim*). However, the *Eliyahu Rabba*, citing the *Agudah*, writes that painting the area black is enough to remember the *churban*. According to HaRav Moshe Feinstein *zt'l*, “Many pious and devout people have followed this practice, and certainly a way should be found to justify it” (*Igros Moshe, O.C. III §86*).

HaRav Feinstein uses our daf as a source. Eliezer Zeira wore black straps as a sign of mourning for the *Beis HaMikdash*, even though as a *talmid chacham* he was commanded to wear respectable attire. This shows that a “sign of mourning” does not make the house ugly and is not considered unattractive clothing. Apparently the *Eliyahu Rabba* held that black is a sufficient reminder of the *churban* since the intent of the original decree was not to leave an ugly mark, but merely a symbol of mourning.

**The true loss over the destruction of *Beis HaMikdash*:** The Tzanzer Rebbe *zt'l* asks why the *Chachamim* objected to Eliezer Zeira's apparent haughtiness until they realized that he was a *talmid chacham*. Can't an unlearned person mourn for the *churban* as well?

In his Responsa (*Divrei Yatziv, O.C. §238*) he explains that the main reason for mourning the loss of *Beis HaMikdash* is not because we are unable to settle on our own land, but because of *bitul Torah*; as the *Gemara* (*Chagigah* 5b) teaches us, “There is no greater *bitul Torah* than the exile of the Nation of Israel.” Therefore only someone who engages in Torah study can sincerely mourn the destruction of the *Beis HaMikdash*, for only he is aware of the tremendous spiritual loss to the Jewish People as a result of the *churban*.