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Bava Kamma Daf 98

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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

Halachos of Damaging

Rabbah says: If someone strikes the hand of his friend and his coins fly out into the Great Sea, he is exempt because he can say, “It is right here and you can retrieve it.” This is true only when the water is clear and the coin can be seen (*even though he now must hire a diver to retrieve his coin, this is regarded as a gerama – causative damage, and he is exempt from liability*).

If he took the coin and then he threw it into the water, he is liable to pay because he has stolen it first and he is obligated to return the stolen object.

Ma’aser Sheini may not be redeemed with money that is not presently in his possession, such as if it is far away or it fell into the sea.

Rabbah says that if someone bangs the coin of his friend with a hammer and effaces the image on the coin, he is exempt because it is only a *gerama* – causative damage.

If he rubs out the image on the coin with a file, he is liable because since he rubbed out some of the metal, he is considered a damager (*and must pay for the entire loss of the coin*).

If someone hits his slave in the eye and blinds him, or on his ear and deafens him, the slave goes free.

If he hits the slave next to the eye or ear and blinds him or deafens him, the slave doesn’t go free

Rabbah says that he who makes his father deaf is subject to capital punishment, for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear.

Rabbah says that if someone cuts the ear of the cow of his friend (*rendering it unfit to be used as a korban*), he is exempt because the cow is not worth any less and even though it has a blemish, not every cow is brought as a *korban*.

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. The novelty of this *halachah* is that although the damage is not recognizable, he is still liable under the Laws of Heaven.



Rabbah said: One is not liable for burning his fellow's documents (*even though the fellow lost his ability to enforce the lien that was written into the documents*).

Rava explains that we are referring to a case where there were no witnesses who know what was written on the document, but the one who burned the document believes the holder of the document regarding the amount that was written in it.

The *Gemora* attempts to link Rabbah's statement with a dispute between Rabbi Shimon and the *Chachamim*. Rabbi Shimon states in a Mishna: If someone stole a *korban* that was a *neder* (*the owner pledged to bring this type of korban, even if it is not this animal*), he must pay *keifel*. This is because he holds that something that causes monetary value is considered to have monetary value.

The *Gemora* rejects this linkage, for Rabbi Shimon only holds this way with respect to something that is inherently money (*such as a korban or chametz*). However, with respect to something that has no intrinsic value (*such as the document*), Rabbi Shimon would not hold that it is considered money (*and the destroyer of the document will not be liable*).

Ameimar says that according to the opinion that a person is liable for *garmi* (*causing a loss to someone else – although there was no physical damage*), the person who burns the document must pay the full amount written in the document.

If a person steals *chametz* and Pesach passed by while it was still in the robber's possession (which

renders the *chametz* prohibited for any benefit), he may say to the owner, "That which is yours, keep it."

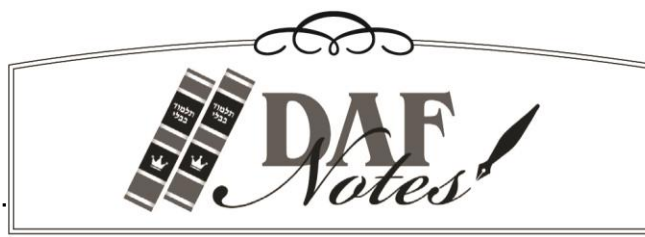
If an ox killed a person, the *halachah* is as follows: Before they reached a guilty verdict, if the owner sells it, it is sold; if he consecrates it, it is consecrated; if he slaughters it, it is valid; if the guardian returns it to the owner, it is considered returned. If a guilty verdict was already reached, the *halachah* is as follows: If the owner sells it, it is not sold; if he consecrates it, it is not consecrated; if he slaughters it, it is not valid; if the guardian returns it to the owner, it is not considered returned.

Rabbi Yaakov says that even if the guardian returns the ox after a guilty verdict has been reached, it is considered returned.

Rav Chisda says: It would seem that the argument is dependent upon the following issue: Can we say, "that which is yours, keep it" with respect to something that is forbidden for benefit or not?

Rabbah rejects this logic and states that the argument hinges on a different matter: Can we try a case regarding the ox when the ox is not present or not?

Rabbah bar Shmuel cited the following *braisa* to Rav Chisda: If someone steals a coin and it became disqualified, or fruit and it partially rotted, or wine and it turned into vinegar, or *terumah* and it became *tamei* or *chametz* and Pesach passes by, or an animal and a transgression was done with it, or an ox that killed a person before the guilty verdict has been



reached, he may return it as is and say, "That which is yours, keep it."

If someone gives something to a craftsman to fix and he breaks it, he is liable. If a carpenter is given a chest to fix and he breaks it, he is liable.

A builder who was hired to demolish a wall and he broke some of the stones, he is liable.

If he was demolishing the wall on one side and the wall fell in on the other side, he is exempt, but if his excessive banging caused it to break, he is liable.

Rav Assi says that the carpenter is only liable if he was given a completed chest to fix, but if he was given wood and he made a chest and then he broke it, he is exempt (*from paying for the improvements*) because a craftsman acquires the improvements of the utensil.

INSIGHTS TO THE DAF

The Permissibility of Photographing People

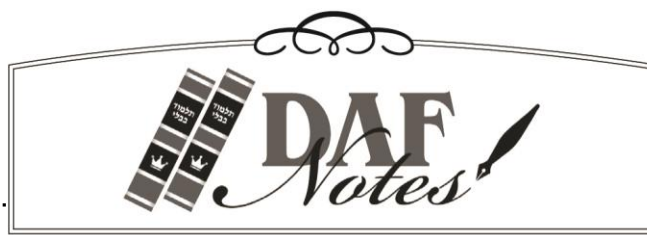
Our sugya describes how already in ancient times it was the custom to honor great people by engraving their likeness on coins. So it was with Dovid and Shlomo, and before them with Avrohom and Yitzchok. Tosafos (S.V. Matbeya Shel Avrohom) contends that it was not their image on the coins, as it is forbidden to forge a human image, rather it was their names that were inscribed.

The source of the prohibition to create a human likeness even for decoration is found in the posuk

(Shemos 20:20), "Do not make with me gods of silver and gods of gold" (Rosh Hashana 24b, Rambam Hilchos Acum 3:10, Chinuch Mitzva 39). The Rambam explains the reason for this prohibition is so that a casual observer should not mistakenly reach the conclusion that these images were meant to be avoda zora.

There is a debate amongst the Rishonim as to what comes under the prohibition. According to the Ravad (ibid) and the Ramban (see Tur Y.D.141) included are engraving, embossing, or painting of a human image. However, they do express a lenient ruling as to the ownership of engraved or painted images if they are found; but not an embossed (protruding) image. The Rambam differs and maintains that there is no prohibition to make an image by engraving or painting; the Torah forbade exclusively embossing. Though the Shulchan Oruch (141:4) rules in favor of the Rambam, the Taz insists that in the matter of making human images one should not adopt any leniencies.

When the Gaon R' Eliezer of Brod was installed as Chief Rabbi of Amsterdam, one of the local Jews decided to mark the festive occasion in a unique manner. He issued a commemorative medallion which bore the likeness of the new Rav. The Yavetz writes (responsa Sheilos Yavetz, I:170) that upon seeing this he was shocked to his very core. Though the Shulchan Oruch (ibid 7) forbids only an image of a full human, whereas the image of just a face is permitted, the Yavetz takes the more stringent view of the Smag, the Taz (ibid S.K. 15) and some Rishonim who forbid this as well. The Yavetz further points out that even according to the more lenient poskim it is



only a featureless face that is allowed. (See the responsa for how the Yavetz derives this from the Tosafos in our sugya.) In the end, declares the Yavetz triumphantly, the medallion was banned by the Dutch king who viewed the matter as an impingement of his royal status.

The Painting of the Chacham Tzvi: The Yavetz's father, the Chacham Tzvi, was extremely strict for himself and would not even allow his face to be drawn. We know this from his son who describes with great emotion how, "The true saint, my father and rebbe, our great master, may Hashem be with him forever... went to visit the Sephardic Kehilla in London. He was greeted with great respect the like of which is unheard of. He was escorted into town in a royal floatilla amidst great jubilation." The kehilla, relying on the majority of poskim had commissioned an artist to draw his countenance. The Chacham Tzvi, due to his "great saintliness and holiness" refused to permit this. The hosts were unable to restrain themselves and the artist managed with great speed and unusual talent to paint an extraordinary painting. So true was his rendition that the Yavetz declares, "All that is missing is the breath of life."

Taking a Snapshot. The Taz's opinion that even a flat image is forbidden has led Poskim to question the legitimacy of photographing people. A reason to be lenient is explained by R' Moshe Sternbuch, Shlit"a (Teshuvos V'Hanhagos Vol. III, 263). The prohibition includes only image making formed by direct action. The process of photography and film development does not fit into this category, since the reactions of chemical to light rays cause the picture to appear. He

concludes that customarily photography is permitted.

DAILY MASHAL

It is interesting to note that many Gedolim for Kabbalistic reasons insisted not to be photographed. Someone drew a picture of the Steipler Gaon, zt'l, during his army service in Russia. The Steipler paid an entire day's ration for the picture and immediately destroyed it (Toldos Yaakov, p. 30).