

11 Tishrei 5778  
Oct. 1, 2017



Sanhedrin Daf 77

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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

### ***Damage and Murder Rulings***

A certain man confined his fellow’s animal in a place exposed to the sun, so that it died. Ravina held him liable for the loss. Rav Acha bar Rav ruled that he was exempt from paying.

The *Gemora* explains: Ravina held him liable by a *kal vachomer* argument from a murderer. If a murderer, in whose case an inadvertent murder is not treated as deliberate, nor is an accident treated as intention, is nevertheless executed for confining someone (*in a place where he will die*), then with respect to damages, where an inadvertent damage is treated as a deliberate one (*and he is liable*), and an accident is treated as intention, surely he should be liable for confining the animal.

Rav Mesharshiya explains why Rav Acha bar Rav holds that he is not liable: The verse, *he is a murderer*, teaches us that it is only regarding murder that one is liable for confining, not with respect to damages.

Rava said: If one ties another fellow and he dies from hunger, the murderer is exempt from liability (*for that which caused him to die was not present at the time of the murderer’s action*).

And Rava said: If one ties another fellow in the sun and he dies; or, if he ties him in the cold and he dies, the murderer is liable (*for that which caused him to die was present at the time of the murderer’s action*). If, however, he tied him in a place where the sun or cold will eventually come and he died, the murderer is exempt from liability.

And Rava said: If one ties another before a lion and he dies, the murderer is exempt from liability (*for he would have died anyways*). If, however, he tied him before gnats and he dies, the murderer is liable (*for he could have avoided death if he was not tied up*). Rav Ashi said that he is exempt from liability even when he tied him before gnats, for the gnats that were present when he tied him up went away and the gnats that eventually killed him came (*and since they were not present at the time of the murderer’s action, he is not liable*).

It was stated: If one overturned a barrel upon a man (*who ultimately died of suffocation*), or broke open a hole in the ceiling above him (*while he was sleeping, and he eventually died because of the cold*), Rava and Rabbi Zeira differ: One ruled that he is liable, and the other ruled that he is not.

The *Gemora* proves that it was Rava who ruled that he is not liable, for he said: If one tied another fellow and he dies from hunger, the murderer is exempt from liability (*for that which caused him to die was not present at the time of the murderer’s action; so too in these cases – that which ultimately caused him to die was not there at the time of his action*).

The *Gemora* asks: On the contrary! It can be proven that it is Rabbi Zeira who ruled that he is not liable, for Rabbi Zeira said: If one brings another fellow into a marble chamber and lit a candle there, and the victim died from the fumes, he is liable. Now, the reason he is liable is only because he lit the candle; but had he not lit the candle (*and the victim*



died from the air created by the murderer – similar to the case of the overturned barrel), he would be exempt! [Which one of these Amoraim ruled that he is liable?]

The Gemora answers: In the case of the marble chamber, without the candle, the foul air (created from his breathing) would not have commenced its effects at the time of the murderer's action (and therefore Rabbi Zeira would rule that he is exempt from liability); but in the case of the overturned barrel, the foul air – even without the lighting of a candle – commences immediately (and therefore Rabbi Zeira would rule that he is liable).

(Mnemonic: Ladder, shield, medicines, in a wall.)

Rava said: If one pushed another into a pit, and there was a ladder in the pit (so that he could have climbed out), and another person came along and removed it, or even if himself went and removed it, he is not liable (for the victim's death), because at the time that he threw him in, he could have climbed out of the pit. [His action of pushing him in was not a murderous one, and the removal of the ladder is an indirect action – one which he cannot be executed for.]

And Rava said: If one shot an arrow at another, and he was holding a shield, and another person came along and snatched it away, or even if he himself went and took it, he is not liable, because when he shot the arrow, it would have been stopped (by the shield). [His action of shooting the arrow was not a murderous one, and the taking of the shield is an indirect action – one which he cannot be executed for.]

And Rava said: If one shot an arrow at another, and who the victim had medicine in his hand (which could have been used to heal the wound), but another person came and dashed it out of his hand, or even if he himself (the arrow-shooter) did so, he is exempt from liability, because when he shot the arrow, he could have been healed.

Rav Ashi said: Therefore this would be true even if there was medicine in the market (that the victim could have purchased).

Rav Acha the son of Rava asked Rav Ashi: What if he came across medicine by chance (it was not there at the time of the shooting)?

He replied: Behold, he has left *Beis Din* as an innocent man.

And Rava said: If one threw a stone at a wall, which rebounded and killed someone, he is liable. And a *Tanna* has taught like this in a *braisa*: If murder is committed by a man playing with a ball - if it was intentional, the thrower is executed, and it is not regarded as a doubtful warning; if it was unintentional, he is exiled to the refuge cities.

Rav Tachlifa of the West said before Rabbi Avahu the following *braisa*: If unintentional murder is committed by a man playing with a ball, if the victim was within four cubits of the wall, the thrower is exempt (from exile); if he was beyond four cubits, he is liable to exile.

Ravina asked Rav Ashi: How is this case? If he desired the ball to rebound, he should be liable even for a short distance; and if he did not, he should not be liable (to exile) even for a greater distance (for this was not his intended act; exile is only for an unintentional murder, but it was an intended action)?

He replied: The closer they are to the wall, the more is the average player pleased (for the greater force will allow the ball to travel further; it is therefore assumed that they do not want the ball to rebound less than four cubits). (76b – 77b)

#### INSIGHTS TO THE DAF

- **Lighting in a Glass Box**
- by: Meoros HaDaf HaYomi

The *halachah* (*Shulchan 'Aruch, O.C. 675:1*) is that “kindling accomplishes the *mitzvah*”. That is, the *mitzvah* is not fulfilled by the lights burning but by the act of lighting them, as indicated in the *berachah*: “to **kindle** the light of Chanukah” (*Mishnah Berurah, ibid, S.K. 1*). Still, the lighting must ensure that the lights burn a certain time. Someone, then, who lit the lights to burn for the required time has observed the *mitzvah* even if they suddenly blow out. Nonetheless, if he lit them where they were exposed to a strong wind that extinguished them, he has not observed the *mitzvah* as the actual lighting was defective.

**How do we light Chanukah lights in glass cases?** Anyone lighting Chanukah lights in a fixture designed for them knows that if he doesn't close the glass door quickly, the lights will be extinguished by the usually strong winter wind. Though he intends to close the glass immediately, the lighting is apparently defective, as the lights can't burn in such an exposed position. Is the lighting valid, then, if he intends to close the glass immediately? Let's examine our *sugya*.

Our *sugya* rules that if someone shoots an arrow toward a shield and a second person removes the shield, resulting in the death of the person behind the shield, both the shooter and the person removing the shield are exempt from punishment. The shooter is exempt even if it was planned that the other would remove the shield and we thus learn that intention is separate from action: since he aimed the arrow at the shield, he is not regarded as an actual murderer and is not punishable by a *beis din*.

Thus, apparently, someone who lights Chanukah lights while the glass door is open does not observe the *mitzvah* as the wind is likely to extinguish them and even though he

intends to close the glass immediately, we cannot combine his intention with his action. Indeed, Rav Y.L. Diskin took special care and lit his lights in an almost completely closed case by means of a long candle (*Mikraei Kodesh, Chanukah, 17*).

At any rate, the common custom is otherwise, as the Chazon Ish distinguishes between the shooter of an arrow and a person lighting Chanukah lights. If we want to combine intention with action to give the action a different character, we must be sure the intention will be carried out for if not, we cannot rely on it. The removal of the shield causes a person's death and we cannot regard his intention to remove the shield as an intention that will definitely materialize as he is transgressing a prohibition and perhaps he will change his mind. Ordinary intentions, however, are different. We may rely on the person lighting the Chanukah lights to close the glass immediately after lighting and his lighting is therefore valid (*Yemei HaChanukah, p. 24*).

This fascinating topic is not finished. HaGaon Rav S.Z. Auerbach considered an opposite case in which a person lights Chanukah lights in a place with no wind but at the time of lighting intends to extinguish them immediately. Should we combine his intention with his action and disqualify his lighting or should we learn from our *sugya* that we don't combine the intention of removing the shield with the action of shooting the arrow?

Rav Auerbach referred to the difference between our *sugya* and lighting Chanukah lights from a different viewpoint. Punishment for a transgression relates only to the transgression. He who commits the transgression is punished and who does not, is not. An action, then, which is meaningless without an intention does not incriminate. On the other hand, fulfillment of a positive *mitzvah* is not accomplished if there is an opposite intention. One who lights Chanukah lights with the intention to extinguish them immediately harms the observance of the *mitzvah* and his lighting is invalid (*Kovetz HaMo'adim, Chanukah-*

*Purim*, p. 86, see his discussion if the person ultimately didn't extinguish the lights, in which he concludes that the issue needs further research).

### **Electricity on Shabbos**

In 5643 the first two electric power plants were built to produce electricity in London and New York and halachic authorities were required to define electricity halachically with many implications, most of which affected Shabbos prohibitions. All the *poskim* ruled that one who puts on electricity on Shabbos transgresses a prohibition of the Torah and it is interesting to explore the source of this decision, which is based also on our *sugya*.

Our *sugya* explains that a person who removed a shield in front of a flying arrow, which then killed another, is not regarded as a murderer but as someone who **causes** a murder. Removing a factor preventing an act is not equivalent to the act itself.

Putting on an electric light involves the connection of two wires, one of which contains constantly flowing electricity. This is a *melachah* forbidden by the Torah since the person connecting the wires is actively igniting the electric light. Sometimes, however, the wires are connected but some insulating material over them prevents the flow of electricity. Pressing a switch, then, does not connect anything but merely removes the insulating material and the light goes on. The person pressing the switch, of course, does not create or move electricity. He only removes what prevented the flow of electricity to the light. Is this not like someone removing a shield before the flight of an arrow which, as explained in our *sugya*, is only considered as "causing" an action (*grama*)? This idea was brought to the attention of Rav Chayim Ozer Grodzhinski (Responsa *Achi'ezer*, III, 60). He rejected it completely, emphasizing that he visited an electrician in his workshop, and those asking the question did not fully understand our *sugya*:

Our *Gemora* further explains that if a person tied up

another in front of a dam and opened the dam so that the water drowned him, he is regarded as a murderer. Apparently, though, how is this case different from the remover of the shield? Both, after all, remove a barrier. The *Yad Ramah* explains that the cases are different: the dam supports the water, which weighs down on it and any change in the dam is regarded as an act done to the water itself. On the other hand, the arrow is not touching the shield and any act done with the shield is not considered as an act done with the arrow. We thus learn that removing an object directly connected to the force it is blocking is regarded as activating that force. (We can sharpen this difference by considering the following two instances: (1) A truck is rolling down a slope and someone removes a barrier so that it continues down till it kills another. (2) The truck is stopped by the barrier and then someone removes it and the truck continues downhill).

Now, since the insulating material is constantly stopping the electricity, its removal constitutes a direct act of making the electricity flow and may be compared to opening a dam rather than removing a shield, which does not touch the arrow.

This section only treats one aspect of switching on electric appliances. We should also mention the Chazon Ish's basic ruling that aside from making a fire, a person creating an electric circuit transgresses the prohibition of *boneh* (building).