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Damage by the Borrower

The master said: When the *Mishnah* said: "when he damages, the one who damaged must pay," it includes a person who watches an item for free, a borrower, a paid custodian, and a renter.

The *Gemora* asks: What are the circumstances? If you will say that the owner's ox damaged the borrower's ox (*and the owner will be liable*), why should that be? Let the owner say to the borrower, "If my animal (*when it was in your possession*) would damage someone else's ox, you would be liable to pay (*for you accepted to watch it*); now that it damaged your animal, will I be obligated to pay you"? [T*hat is illogical*!?] Rather, it must be that the borrower's ox (*his own*) damaged the owner's ox (*and regarding this the braisa rules that if the animal was a tam, the owner will pay half damages, and if it was a mu'ad, the owner will pay in full*). But why should this be? Let the owner say to the borrower, "If my ox (*that I lent you*) would have been damaged by some other ox, you would be obligated to pay me in full (*for a borrower is liable on all accidents*); now that it was your animal that damaged mine, will you only pay me for half the damage (*you should pay me in full*)"?

The *Gemora* answers: Indeed, the *Baraisa* is dealing with a case where the owner's ox damaged the borrower's ox, and the owner would be liable to pay, for the case is where the borrower accepted responsibility that the ox will not get damaged, but he did not accept responsibility to guard the animal from damaging others (*and this is why the owner would be liable to pay the borrower*).

The *Gemora* asks: If this is so, let us consider the next case of the *Baraisa*: If a wall enclosing the animal broke open during the night, or it was broken by thieves, and the animal proceeded to go out and damaged things, he (the person responsible for the animal) is exempt. It can be inferred from here that if this would have occurred during the day, the borrower will be liable for the damages. Why should this be? He did not accept responsibility to guard the animal from damaging others!?

The *Gemora* answers: This is the explanation of the *Baraisa*: If he would have accepted responsibility to guard the animal from damaging others, he would be liable. However, if a wall enclosing the animal broke open during the night, or it was broken by thieves, and the animal proceeded to go out and damaged things, he is exempt. (13b4 – 14a1)

Jointly Owned Yard

[*The Gemora returns to Rabbi Elozar's ruling that the owner is exempt from the liability of shein and regel when the damage took place in a jointly owned yard, for the verse states that he is liable when it is in "the field of another."*] The *Gemora* asks on Rabbi Elozar: Is that so? But Rav Yosef taught the following *Baraisa*: In a yard belonging to partners or in an inn, one would be liable if his animal damages by *shein* or *regel*!? This is seemingly a refutation of Rabbi Elozar.

Rabbi Elozar would answer: Is this a refutation? Isn't this issue actually a matter of a *Tannaic* dispute? For we learned in a *Baraisa*: Four general rules were stated by Rabbi Shimon ben Elozar that apply to the *halachos* of damages: In the case of a damage that was done in the premises of the damaged party, and not at all for the damager, there is liability in full. If the damage was done in the premises of the damager, but not of the damaged party, he is totally exempt. If it is in a place that is of this one and of the other, e.g., a yard owned by partners or a valley, the damager is exempt from paying for *shein* and *regel*, whereas for goring, pushing, biting, pouncing, and kicking - if it is a *tam*, the owner will pay half damages, and if it is a m*u'ad*, the owner will pay full damages. If it is in a place that is not for this or for the other, e.g., a yard not belonging to both of them, the damager is liable to pay for *shein* and *regel*, but for goring, pushing, biting, pouncing, and kicking - if it is a *tam*, the owner will pay half damages, and if it is a m*u'ad*, the owner will pay full damages.

It emerges from the *Baraisa* that in a yard owned by partners or in a valley, the damager is exempt from paying for *shein* and *regel*.

The *Gemora* asks: The two *Baraisos* are contradicting one another!?

The *Gemora* answers: The latter *Baraisa* speaks of a case where the yard was set aside for both of them for the purposes of both keeping produce and their oxen (*it is therefore not regarded as "the field of another," and he would not be liable for shein and regel*), whereas Rav Yosef's *Baraisa* deals with a yard set aside for keeping produce in but not oxen, in which case, as far as *shein* is concerned, the yard is regarded as the yard of the damaged party (*because the damager has no permission to bring his ox in*).

This can be inferred from a careful reading of the Baraisos as well, for in the Baraisa here the jointly owned premises are put on the same footing as an inn whereas in the Baraisa there they are put on the same footing as a valley. This is indeed proved.

Rabbi Zeira challenged this explanation: In the case where the yard was set aside for keeping produce in (*for both of them*), how can there be liability for *shein* and *regel* when the field does not fulfill the condition of being "the field of another" (*since the damager has the right to keep his produce there as well*)?

Abaye said to him: Since the yard is not set aside for keeping oxen in, it may well be termed "the field of another."

Rav Acha of Difti said to Ravina: May we say that just as the Baraisos are not divided on the matter, so also are the Amoraim not divided on the subject? He answered him: Indeed, it is so; if, however, you think that they are divided [in their views], the chalenge of Rabbi Zeira and the answer of Abaye form the point at issue. (14a1 – 14a3)

The *Gemora* quotes from the *Baraisa* cited above: Four general rules were stated by Rabbi Shimon ben Elozar to apply to the *halachos* of damages: In the case of a damage done in premises for the damaged party, and not at all for the damager, there is liability in full. - The *Baraisa* did not say that he is liable "for all" (*which would have meant all types of damages*); rather, it said "in all." This means that he will be liable to pay full damages (*even for keren*). Who holds like this? It is Rabbi Tarfon, for he said that for an abnormal *keren* (*tam*) in the damaged party's domain, the damager must pay full damages.

The *Gemora* asks: But let us consider the last rule of the *Baraisa*: If it is in a place that is not for this or for the other, e.g., a yard not belonging to both of them, the damager is liable to pay for *shein* and *regel*. What does it mean that

"it is in a place that is not for this or for the other"? If you say that it means that the yard belongs to someone else, how can there be liability for *shein* and *regel* when the field does not fulfill the condition of being "the field of another" (*for the damage did not take place in the damagee's property*)? Rather, it must mean that it is a yard that is not set aside for both of them, but it is set aside for one of them (*the damagee*), and nevertheless, the *Baraisa* states that if it is a *tam*, the owner will pay half damages and if it is a m*u'ad*, the owner will pay full damages. This is reflecting the opinion of the *Chachamim*, who hold that for an abnormal *keren* (*tam*) in the damaged party's domain, the damager pays only half damages. Is the first rule of the *Baraisa* in accordance with Rabbi Tarfon and the last rule in accordance with the *Chachamim*?

The *Gemora* answers: Yes, for Shmuel said to Rav Yehudah: Sharp one! Let the *Mishnah* be (*do not try to explain it according to one Tanna*) and come after me. The first rule of the *Baraisa* is in accordance with Rabbi Tarfon and the last rule is in accordance with the *Chachamim*.

Ravina in the name of Rava suggests an alternative answer: The entire *Baraisa* is in accordance with Rabbi Tarfon, and when the *Baraisa* in the last rule states: "if it is in a place that is not for this or for the other," it means that it is not set aside for both of them to keep their produce; rather, it is set aside for one of them – the damagee, but it is set aside for both of them to bring their oxen in. With respect to *shein*, the premises are regarded as the damagee's property (*since he is the only one who has a right to keep his produce there; and that is why the damager is liable to pay*), whereas with respect to *keren*, it is regarded as a public domain (*since they both have rights to bring their oxen in; and that is why even Rabbi Tarfon would hold that the damager is only liable for half damages*).

The *Gemora* asks: If so, there are really only three rules (*for this rule is a combination of the first and the third rule*)?

Rav Nachman bar Yitzchak answers: There are three rules that apply in four different places. (14a3 – 14b1)

Mishnah

The payment (*for damages*) is with an assessment of money. It is with something that is worth money. It is done before a court, and on the basis of witnesses, who are free men and members of the covenant. Women are included in damages and the damagee and the damager are involved in the payments. [*The Gemora will explain each one of these rules.*] (14b1)

Explaining the Mishnah

The *Gemora* asks: What does the *Mishnah* mean when it says that the payment (*for damages*) is with an assessment of money?

Rav Yehudah answers: This assessment must be on the basis of money. This was taught by our Rabbis elsewhere in a *Baraisa*: In the case where a cow damaged a garment while the garment also damaged the cow, it should not be said that the damage done by the cow is to be offset against the damage done to the garment and the damage done to the garment is to be offset against the damage done to the cow; rather, the respective damages have to be estimated at a money value (*and the one who caused greater damage to his fellow shall pay the difference*).

The *Mishnah* had stated: The payment (*for damages*) is with something that is worth money.

This is explained by what our Rabbis taught in a *Baraisa*: This teaches us that *Beis Din* will not deal with anything except real property. Nevertheless, if the damagee

himself seized some movables beforehand, *Beis Din* will collect payment for him from them.

The master stated: "worth money" implies that Beis Din will not involve itself with anything but real property. How is this implied? Rabbah bar Ulla said: The article of distress has to be worth any amount of money (that one pays for it). What does this mean? An article which is not subject to the laws of price fraud? Aren't slaves and deeds also not subject to the laws of price fraud? — Rabbah bar Ulla therefore said: An article, title to which is acquired by means of money. Aren't slaves and deeds similarly acquired by means of money.

Rather, Rav Ashi explains why the term "worth money" implies that *Beis Din* will not deal with anything except real property. It is because real property is worth money, but it is not money itself, whereas movables (*including slaves and documents*) are regarded as actual money (*for they can be taken from place to place*).

Rav Yehudah bar Chinana noted the following contradiction to Rav Huna the son of Rav Yehoshua: We learned in a *Baraisa* that *Beis Din* will not deal with anything except real property. And yet, we learned in another *Baraisa*: It is written: *He shall return the money*. This teaches us that the damager can pay with objects that are worth money - even something like bran!?

The *Gemora* answers: The *Baraisa* which states that *Beis Din* collects only with real property is dealing with orphans (*for they are only required to pay for their father's damages from real property*).

If it is dealing with orphans, the *Gemora* asks, how can the end part of the *Baraisa* be explained? The *Baraisa* states: Nevertheless, if the damagee himself seized some movables beforehand, *Beis Din* will collect payment for him from them. Why would this be true?

The *Gemora* answers: It can be explained like Rava said in the name of Rav Nachman: The *Baraisa* is dealing with a case where the damagee seized the movables while the father was still alive. (14b1 - 14b3)

The Mishnah had stated: Before *Beis Din*. This [apparently] exempts a case where the defendant sold his possessions before having been summoned to *Beis Din*. May it therefore be derived that in the case of one who borrowed money and sold his possessions before having been summoned to *Beis Din*, the *Beis Din* does not collect the debt out of the estate which has been disposed of? — Rather it excludes a *Beis Din* consisting of common judges (*rather, they must be ordained*). (14b3)

The *Gemora* explains that when the *Mishnah* states that a case of damages requires witnesses, it is coming to exclude a case where one admits on his own to a penalty and witnesses come afterwards testifying that he is guilty. The *Mishnah* is teaching us that he is not liable (*for the principle is that one is not liable if he admits on a penalty*).

The *Gemora* asks that this is understandable according to the opinion that holds that where one admits on his own to a penalty and witnesses come afterwards testifying that he is guilty that he is exempt, but according to the opinion that maintains that one would be liable where one admits on his own to a penalty and witnesses come afterwards testifying that he is guilty, what is there to say? – It is the latter part of the Mishnah which is necessary, where it states: who are free men and members of the covenant. 'Free men' excludes slaves; 'members of the covenant' excludes gentiles. And it was essential to exclude each of them. For if the exemption had been stated only in reference to a slave, we would have thought it was on account of his lack of [legal] pedigree, whereas a gentile who possesses a [legal] pedigree might perhaps have been thought not to have been excluded. Had, on the other hand, the exemption been referred only to a gentile, we should have thought it was on account of

his not being subject to mitzvos], whereas a slave who is subject to mitzvos might have been thought not to have been excluded. It was thus essential to exclude each of them independently. (14b3 – 15a1)

INSIGHTS TO THE DAF

Ubi'er

The *Gemora* explains that one *Baraisa* speaks of a case where a yard was set aside for both of them for the purposes of both keeping produce and their oxen (*it is therefore not regarded as "the field of another," and he would not be liable for shein and regel*), whereas Rav Yosef's *Baraisa* deals with a yard set aside for keeping produce in but not cattle, in which case, as far as *shein* is concerned, the yard is regarded as the yard of the damaged party (*because the damager has no permission to bring his ox in*).

Rabbi Zeira challenged this explanation: In the case where the yard was set aside for keeping produce in (*for both of them*), how can there be liability for *shein* and *regel* when the field does not fulfill the condition of being "the field of another" (*since the damager has the right to keep his produce there as well*)?

Abaye said to him: Since the yard is not set aside for keeping cattle in, it may well be termed "the field of another."

Reb Elchonon Wasserman explains the dispute as follows: It is written regarding *shein*: *ubi'er b'sadeh acher – and it consumes in the field of another*. The argument is regarding the word *ubi'er*. Is it in reference to the act of damaging, or is it in reference to that which is damaged?

Rabbi Zeira holds that it is in reference to that which is damaged. The produce is what is getting damaged. And since with respect to the produce, they both had permission to keep their produce in the yard, it is regarded as a jointly owned courtyard – and with respect to the damage of *shein*, it is considered a public domain, and the damager is exempt from liability.

Abaye, however, holds that the word *ubi'er* is in reference to the act of damaging. The ox is the one who committed this damage. And since the damager has no right to bring his ox into the yard, it is regarded as the "field of another," and therefore, he would be liable.

DAILY MASHAL

There is a rule that if someone voluntarily admits that he committed an act that is subject to a punitive payment, he is exempt from the fine. Our Gemara then discusses what would happen if witnesses testified to the event after the confession. This is the subject of a disagreement, with Rav saying that he is still exempt from paying the fine, whereas Shmuel is of the opinion that due to the arrival of the witnesses, he loses the exemption.

There is a well-known verse "V'solachti la'avoni ki rav hu" – You shall forgive my sin for it is great (Psalms 25:11). The Arizal writes that if someone confesses to his sins, then even after he dies and the prosecuting angels that are created by his sins testify that he committed the sins, he will still be exempt from punishment – ki rav hu – because the halachah above follows the opinion of Rav.

R' Shmelke of Nikolsburg adds that the reverse is found in a different verse; "Oy mi yichye msumu el" – Alas! Who can survive these things from God (Bamidbar 24:23). This can also be read as – Alas! Who can survive with (the opinion of) Shmuel.