



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Tzvi Gershon ben Yoel (Harvey Felsen) o”h

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The Back of an Animal or Person

There was a goat that saw a turnip on the edge of a barrel. He climbed up and went to it, and ended up eating the turnip and breaking the barrel. Rava made its owner pay full damages (*on the turnip on account of shein, and on the barrel on account of regel*). Why? Being that it is normal for eat turnips, it is also normal for it to climb on to the barrel to get it.

Ilfa said: If an animal is in the public domain, and it stretches out its neck to eat something that is on the back of another animal, its owner is obligated to pay. Why (*there is no liability for shein in a public domain*)? The back of an animal is considered like the domain of the damaged party.

Let us bring a proof to Ilfa’s *halachah* from the following *Baraisa*: If one’s box (*i.e. backpack*) was slung over his shoulder and an animal stretched out its neck and ate from it, the animal’s owner is liable. [*This must be because something on the back of a person or on the back of his animal is considered like it is in his domain.*]

The Gemora rejects the proof: Just as Rava said elsewhere: “where she jumps.” Here also, the case of the *Baraisa* is where the animal jumped, which is abnormal. [*He therefore pays only half damages because of keren; not full damages as in the case of Ilfa.*]

The Gemora asks: Where did Rava originally state his law (*regarding jumping*)? The Gemora answers: It was about this statement: Rabbi Oshaya said: If an animal is in the public

domain and walks and eats, it (the owner) is exempt. If it stands and eats, it is liable.

The Gemora asked: What is the reason for the exemption of walking and eating? It must be because it is normal animal behavior. Standing and eating is also normal animal behavior!? Rava answered: The case where it went and ate is talking about a case where it jumped (*and therefore is considered keren in the public domain, which is liable for half of the damages*).

Rabbi Zeira inquired: What about rolling? The Gemora asks: What is Rabbi Zeira’s case? The case is where a bunch of hay was in the private domain, and the animal proceeded to roll the hay into the public domain and eat them. What is the law? [*Do we relate to the damage as being done in the private domain, where he would be liable, or as “teeth” in the public domain, for which he is not liable?*]

The Gemora attempts to answer the question from a *Baraisa* taught by Rabbi Chiya: If a bag (*containing barely, see Rashi*) was half inside his domain and half outside, the *halachah* is as follows: If the animal ate the inner part she (the owner¹) is liable, and if she ate the outer part she is not. What is his case? It must be where the animal either rolled the entire bag to the inside or outside. [*He is therefore stating that we look at where the eating was done.*]

The Gemora rejects the proof: No. It could mean that if she ate what was originally inside, she is obligated, and if she ate from what was originally outside, she is exempt.

¹ Please note that the Gemora uses the term “she” or “it.” This, however, is referring to the animal’s owner.

Alternatively, the *Gemora* answers: It could be referring to long stalks (*instead of barley, which are both inside and outside*). (20a1 – 20a2)

Acting Irregularly Against Someone who Acted Irregularly

The *Mishnah* had stated: An animal is *mu'ad* to eat fruits and vegetables. If she ate clothing or utensils, she would only pay half damages. This is only if she damaged in the property of the damaged party; however, if she damaged in the public domain, she is not liable.

The *Gemora* asks: Regarding what is the *Mishnah* stating that if it is done in the public domain, she is exempt?

Rav says: Everything (*even on its eating clothes and vessels, despite the fact that this is seemingly keren in the public domain*). Why is he exempt? This is because when someone does something unusual (*i.e. leaving vessels or clothes in the public domain*), and someone else does something unusual to that thing, the second person is free of liability. Shmuel says: The *Mishnah* is referring only to fruits and vegetables. One is liable for (*his animal*) eating clothes and vessels in the public domain.

Rish Lakish agrees with Rav. This is in accordance with a different statement that he made. Rish Lakish said: If there are two cows in the public domain, one lying down and one walking, and the one walking kicks the one lying down, she is exempt. If the one lying down kicks the one walking, she is liable.

Rabbi Yochanan says: The *Mishnah* is referring only to fruits and vegetables. One is liable for (*his animal*) eating clothes and vessels in the public domain.

The *Gemora* asks: Should we therefore say that Rabbi Yochanan also disagrees with Rish Lakish's statement about two cows? The *Gemora* answers: No. It is normal for a person to put down a load of clothing (*he is carrying*) in the public domain (*in order to readjust his burden*). It is abnormal for an animal to lie down in the public domain. (20a2 – 20a3)

Paying for Pleasure

The *Mishnah* had stated: However, if she had pleasure from the food, the owner would be required to pay for the pleasure.

The *Gemora* asks: How much is this? Rabbah says: This is the amount it would cost him to satiate the animal with hay (*instead of costly barley*). Rava says: He should pay the value of cheap barley (*when it is on sale for two-thirds of the regular price*).

There is a *Baraisa* that supports Rabbah and a *Baraisa* that supports Rava. that support each opinion. The following *Baraisa* supports Rabbah's opinion: Rabbi Shimon ben Yochai states: He pays only the amount it would cost him to satiate the animal with hay. There is a different *Baraisa* that supports Rava: If she benefits, he pays what she benefitted. What is the case? If she ate a *kav* or two (*of barley*) we do not say he has to pay their value. Rather, we estimate how much a person would pay to feed his animal something appropriate even though he does not usually feed it such food. Therefore, if she eats wheat or something that hurts the animal, he is exempt from paying. (20a3)

Benefit, but no Loss

Rav Chisda said to Rami bar Chama: You weren't near us, within the boundary (*of Shabbos*) last night, when we asked about good things. He replied: What were the good things?

Rav Chisda said: The question arose whether or not someone who lives in his friend's courtyard without his knowledge must pay him rent.

The *Gemora* inquires: What is the case? If the courtyard is not up for rent and the dweller is not someone who usually pays for his lodging, he is obviously exempt from payment. This is because one (*the dweller*) is not benefiting and one (*the owner*) is not losing! If the case is where it is up for rent and the dweller usually rents, it is a case where one person is benefitting and the other is losing out (*so he certainly*

should be obligated to pay! The case must be where the courtyard is not up for rent, but the dweller usually rents. What is the law? Can the dweller say, "What are you losing (*because I lived there*)?" Or can the owner say, "You benefitted!"

Rami bar Chama said to Rav Chisda: This can be answered by a *Mishnah*. Rav Chisda asked: Which *Mishnah*? Rami bar Chama said: First serve me (*and then I will tell you*). Rav Chisda proceeded to fold his head scarf. Rami then said: The *Mishnah* says that if it had pleasure from the food, the owner would be required to pay for the pleasure.

Rava remarked: The lack of sickness and (*bad*) feeling that someone has when Hashem helps him is tremendous! [*He meant that Rami was fortunate that he was not challenged about his statement.*] Even though this case is not similar to our *Mishnah*, Rav Chisda accepted his answer. The *Mishnah's* case is where one fellow benefitted and the other lost out, while this case is where one fellow benefitted and the other did not lose.

The *Gemora* asks: Indeed, how could Rami bar Chama have made the comparison? The *Gemora* answers: Rami will say that if someone has fruit in the public domain, it is almost like a status of being ownerless (*for they would eventually become destroyed anyway*).

The *Gemora* attempts to resolve this inquiry from the following *Mishnah*: If someone (*owned fields surrounding the field of his friend and*) put up fences around three sides (*separating their fields*), we do not make the owner of the inner field pay (*for the cost of building the fence, for it does not really help him, since his field is left opened on one side*). This implies that if he (*the outer owner*) would put up a fourth wall, he (*the inner owner*) would have to pay. This teaches us that if one person benefitted and the other one did not lose, he still must pay!

The *Gemora* rejects this proof: This case is different, as the owner of the outer fields can claim that he would not have

needed inner walls (*to separate their borders*) if the inner field was not present (*and therefore it is regarded as if he is in fact losing*).

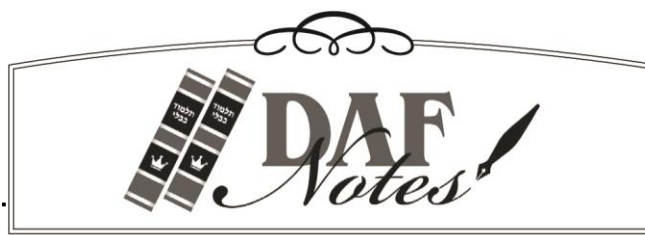
The *Gemora* attempts to resolve our inquiry from the end of the *Mishnah* regarding the above case. Rabbi Yosi says: If the one being surrounded makes the fourth wall, he is obligated to pay his share in all of the walls (*for he has demonstrated that he approves of the building of the other three sides*). This implies that only if he puts up the fourth wall is he obligated. If the other owner puts up the fourth wall, he is exempt. This implies that if one benefits and the other one is losing, he is exempt from paying!

The *Gemora* rejects the proof: [*He wouldn't be totally exempt from paying.*] He could claim that he would have sufficed with a thorn wall and not a stone wall.

The *Gemora* attempts to resolve our inquiry from another *Mishnah*: If a first floor of a house and the upstairs owned by two different people fell in, and the owner of the upstairs asks the owner of the first floor to rebuild it (*so he can then build the upstairs*), and he is not interested, the owner of the upstairs can rebuild the house and live in it until he receives payment for his expenses from the owner of the first floor. The *Gemora* infers from here that he does not have to pay rent for living there. The implication is that if someone benefits and the other one loses, he does not have to pay!

The *Gemora* rejects this proof: That case is different, as the owner of the first floor has an obligation towards the owner of the upstairs (*and the owner of the upstairs has a legal claim to live there without paying rent*).

The *Gemora* attempts to resolve our inquiry from the end of that *Mishnah*: Rabbi Yehudah states: Even someone who lives in his friend's courtyard without his knowledge must pay him. [*Certainly the owner of the upstairs who lived downstairs must pay rent!*] This implies that someone who benefits while someone else loses must pay the person who loses!



The Gemora rejects this proof: This case is different, as he causes the walls (*of the newly built downstairs*) to turn black (*and therefore he is losing somewhat*). [*However, he would not have to pay if it was an old house.*]

They sent this question to Rabbi Ami. He responded: What did the dweller do to the owner? What loss did he cause him? How did he damage him (*that he should have to pay*)? Rabbi Chiya bar Abba said: Let us look into this matter. They again sent the question to Rabbi Chiya bar Abba. He replied: You keep sending this question to me. If I would have had an answer, don't you think I would have replied?

It was taught: Rav Kahana said in the name of Rabbi Yochanan that no payment is necessary. Rabbi Avahu said in the name of Rabbi Yochanan: He must pay.

Rav Pappa said: Rabbi Avahu's statement was not due to an explicit statement of Rabbi Yochanan, but rather an implication of Rabbi Yochanan. The Mishnah states: If the Temple treasurer took a stone or beam from *hekdesh*, he did not transgress *me'ilah* (*for he did not remove it from the domain of hekdesh*). If he gave it to his friend, he transgressed, but not his friend. If he built it into his house, he only commits *me'ilah* when he lives underneath it and gains benefit worth a *perutah*. Shmuel said the case is where he placed the beam or stone on top of a window (*it wasn't built into the building; otherwise, he would have committed me'ilah right away*). Rabbi Avahu sat before Rabbi Yochanan and said over in the name of Shmuel: This implies that if someone who lives in his friend's courtyard without his knowledge must pay him rent (*for the fellow is living in the house without the knowledge of hekdesh, and hekdesh did not suffer a loss*). Rabbi Yochanan was quiet. Rabbi Avahu thought that this must mean he agreed. However, in fact, he merely did not pay attention to his statement, for Rabbah had stated: Benefitting from *hekdesh* without their knowledge is akin to benefiting from an ordinary person with his knowledge (*for Hashem is the owner of hekdesh and He knows*). (20a3 – 21a1)

INSIGHTS TO THE DAF

Moving a Refrigerator Through a Neighbor's Kitchen

Our daf discusses whether someone who occupied a vacant apartment is required to pay rent. The halacha (C.M. 363:6) states that in such a situation the squatter is exempt from paying rent because "he benefits while the other party does not suffer a loss." Since the apartment was not for rent, the owner cannot claim he incurred a monetary loss because someone lived there while it was left vacant.

Hatching eggs under a neighbor's chicken: The poskim cite numerous variations of this halacha. The Chida (Responsa §7) presents the following scenario: Reuven placed eggs under his own hen to hatch. Then Shimon sneaked into Reuven's yard and placed another five eggs under the hen. Later Reuven demands payment for his share of Shimon's chicks, reasoning that since the chicks hatched because of his hen, he should receive a share of the profits. But the Chida refuted this argument. He absolved Shimon of all payment since Reuven incurred no loss when his hen sat on Shimon's eggs as well.

The Tosafos in our sugya (20b, s.v. *ha is'hanis*) explain that all of the opinions concur that an apartment owner cannot be forced to allow others to use his unoccupied apartment. His objections are not considered "characteristic of Sodom," where anything beneficial to another person was illegal. R. Shimon Shkop *zt'l* (Shiurei Bava Kamma 19:3) explains that a person feels his ownership is violated when someone else uses his possessions without his consent. Since the apartment owner's behavior is perfectly normal, his refusal to give consent is not "characteristic of Sodom." However, demanding payment for the use of his apartment retroactively is "characteristic of Sodom," since he incurred no monetary loss (see *Pnei Yehoshua* in our sugya). However, this principle that the owner cannot be forced to allow someone else to use his property varies from case to case. It must be determined on an individual basis whether



the owner will feel impinged upon if forced to allow someone else the use of his property.

Moving a refrigerator through a neighbor's kitchen: A few years ago a dispute arose over a new refrigerator. When the deliverymen tried to carry it into the buyer's apartment they found that the doorway was too narrow; even removing the refrigerator door would not be enough to squeeze it through. The lady of the house came up with a novel idea. The deliverymen would bring the refrigerator through the upstairs neighbor's apartment, which had a wider doorway, and then lower it down from the neighbor's window and in through his own window. But the neighbor flatly refused. All of his downstairs neighbors' entreaties and the deliverymen's threats were in vain. He remained firmly opposed to the idea.

Setting up scaffolds in a nearby yard: In another case, a contractor preparing to renovate an apartment wanted to set up scaffolding in the yard of the adjacent building for one month. In this case as well the contractor faced staunch opposition by the building's residents.

These two incidents appeared before two different batei din and in both cases the plaintiffs claimed that their respective neighbors' conduct was "characteristic of Sodom." Meanwhile, the defendants argued that according to halacha one cannot be forced to allow someone else to use his property and that the halacha of acting in a way "characteristic of Sodom" only applies after the fact, i.e., retroactive payment for use cannot be demanded.

The batei din decided differently in each of these two cases. They upheld the objection to the scaffolding but rejected the neighbor's objection regarding the refrigerator. Putting up scaffolds in a yard for an extended period definitely makes a person feel his property encroached upon (Kovetz Shuras Hadin II pg. 323 from HaRav M. Farbstein). However, the neighbor who refused to let the deliverymen bring the refrigerator through his apartment had no reason to feel deprived of something that belonged to him. Since it would

require the use of his apartment only for a short time, the argument that the *beis din* may not force someone to allow the use of his property was not admissible, because he is acting in a way "characteristic of Sodom" (*Emek HaMishpat* III §1).

Preventing airplanes from flying overhead: Similarly one cannot prevent planes from flying over one's field (when no damage is done), even though the airspace above the field belongs to the landowner. Since people do not usually consider this an impingement on their ownership, objecting to planes flying overhead is "characteristic of Sodom."

The Gemara (81b) also says Shlomo HaMelech decreed that it is permitted to pass through an empty field when it is not about to be sown. Even if the owners object, since people usually do not care, one is allowed to pass through.

DAILY MASHAL

Rava said: How spared from sickness and worry is the person whose Master has helped him (as he is protected by special providence).

The Skvere Rebbe expounded as follows: Until a person become sick Heaven-forbid, he doesn't realize that his Master has helped him, but after he becomes sick, the Omnipresent should save us, then he fully realizes how the Holy One, Blessed be He, helps and protects him at every moment.