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Kal Vachomers

The *Gemora* asks: Let *shein* and *regel* in a public domain obligate the owner to pay with the following *kal vachomer*: If *keren* in the damagee's property obligates the owner to pay only half damages, and if it happens in a public domain, he is obligated to pay, then *shein* and *regel*, which in the damagee's domain obligates the owner to pay full damages, should it not certainly obligate the owner to pay in the public domain!?

The *Gemora* answers: It is written: *And it consumes in the field of another*. This teaches us that he will not be liable for *shein* and *regel* in a public domain.

The *Gemora* asks: Perhaps the verse is teaching us that he is only liable for half damages, for that is what we sought to learn through the *kal vachomer*?

The *Gemora* answers: There is another verse which states by *keren*: *and they shall divide **its** money*. This teaches us that he pays half damages only by *keren*, not be *shein* and *regel*.

The *Gemora* asks: Let *shein* and *regel* in the damagee's domain obligate the owner to pay only half damages with the following *kal vachomer* from *keren*: If *keren* in the public domain obligates the owner to pay, and if it happens in the damagee's domain, he is obligated to pay half damages, then *shein* and *regel*, which in the public domain he is exempt from paying at all, should it not certainly obligate the owner to pay not more than half damages in the public domain!?

The *Gemora* answers: It is written: *yeshalem*. We learn from here that he should pay a complete payment.

The *Gemora* asks: Let *keren* in a public domain be exempt from liability completely from the following *kal vachomer*: If *shein* and *regel* in the damagee's domain obligates the owner to pay full damages, and in the public domain he is exempt from paying at all, then *keren*, which in the damagee's property obligates the owner to pay only half damages, should it not certainly be the *halachah* that in the public domain he is exempt from paying at all!?

Rabbi Yochanan answered: It is written: *they shall divide*. This teaches us that the law of half damages is not divergent – not in the public domain, nor in the private domain (*keren* is always half damages).

The *Gemora* asks: Let a person be obligated to pay *kofer* (*"redemption money" money paid when a mu'ad ox kills a person*) with the following *kal vachomer*: If an ox, that does not obligate the owner (*when it damages*) to pay the additional four things (*pain, doctor bills, loss of work and humiliation*), nevertheless obligates the owner to pay *kofer* (*when it kills a person*), then a person, who is liable in the four additional things (when he damages another person), should he not certainly be liable to pay *kofer* (when he kills someone)!? [*The Gemora is referring to a case where he did not receive a warning beforehand and therefore, he will not incur the death penalty. Accordingly, the principle of kim leih bid'rabbah mineih will not apply.*]

The *Gemora* answers: It is written: *whatever shall be assessed **against him***. We derive from here that it is the ox owner alone who pays *kofer*, not one who kills with his own hands.

The *Gemora* asks: Let the ox owner be obligated to pay the four additional things with the following *kal vachomer*: If a person, who is not obligated to pay *kofer*, is nonetheless liable to pay the four additional things, then an ox owner, who is obligated to pay *kofer*, should he not certainly be liable to pay the four additional things!?

The *Gemora* answers: It is written: *And if a man inflicts a blemish on his fellow*. This teaches us that only then will he pay the four additional things, but not when his ox damages a person. (25b3 – 26a2)

Kofer for Regel

The *Gemora* inquires: If an animal stepped on a child and killed it in the damagee's property, is the ox owner required to pay *kofer* (*like by keren mu'ad*) or not? Do we say it should be compared to *keren*, and just like *keren* after two or three times it becomes normal and there would be a *kofer* obligation, so too over here (*he should pay kofer, for even the first time it is normal*)? Or perhaps, *keren* is different, for the animal intends to inflict damage, but here it does not!?

Come and hear (from the following Baraisa): In the case of an ox having been allowed [by its owner] to trespass upon somebody else's yard and there goring to death the owner of the premises, the ox will be stoned, while its owner must pay full *kofer* whether [the ox was] *tam* or *mu'ad*. This is the view of Rabbi Tarfon. Now, from where could Rabbi Tarfon infer the payment of full *kofer* in the case of *tam*, unless he shared the view of Rabbi Yosi HaGelili maintaining that *tam* involves the payment of half *kofer* for manslaughter committed in a public domain, in which case he could rightly have inferred *kofer* in full [for manslaughter on the plaintiff's premises] by means of a kal vachomer from the law applicable to *regel*? This thus proves that *kofer* has to be paid for [manslaughter committed by] *regel*.

Rav Shimi of Nehardea, however, said that the Tanna might have inferred it from the law applicable to [mere] damage done by *regel*. - But [if so] cannot the inference be refuted? For indeed what analogy could be drawn to damage done by *regel*, the liability for which is common also with Fire [whereas *kofer* does not apply to fire]? — [The inference might have been] from damage done to hidden goods [in which case the liability is not common with fire]. - Still what analogy is there to hidden goods, the liability for which is common with pit [whereas *kofer* for manslaughter does not apply to pit]? — The inference might have been from damage done to inanimate objects [for which there is no liability in the case of pit]. - Still what analogy is there to inanimate objects, the liability for which is again common with fire? — The inference might therefore have been from damage done to inanimate objects that were hidden [for which neither fire nor pit involve liability]. - But still what comparison is there to hidden inanimate objects, the liability for which is common at least with man [whereas *kofer* is not common with man]? — Does this therefore not prove that he must have made the inference from *kofer* [for manslaughter] in the case of *regel*, proving thus that *kofer* has to be paid for manslaughter committed by *regel*? — This certainly is proved.

Rav Acha of Difti said to Ravina: It even stands to reason that *kofer* has to be paid in the case of *regel*. For if you say that in the case of *regel* there is no *kofer*, and that the Tanna might have made the inference from the law applicable to mere damage done by *regel*, his reasoning could easily be refuted. For what analogy could be drawn to damage done by *regel* for which there is liability in the case of *regel* [whereas this is not the case with *kofer*]? Does this [by itself] not show that the inference could only have been made from *kofer* in the case of *regel*, proving thus that *kofer* has to be paid for [manslaughter conmitted by] *regel*? — It certainly does show this. (26a2 – 26a4)

Mishnah

Man in all circumstances is a *mu'ad*, whether he damaged unintentionally or intentionally, whether awake or asleep (*for he always must make sure that he does not inflict any damage, and if he does damage, he will be liable to pay full damages*). If he blinds the eye of his fellow, or he breaks utensils, he is required to pay full damages. (26a4)

Unintentional Injury

The *Gemora* notes: By the fact that the *Mishnah* lumps the case of blinding the eye of his fellow together with the case of breaking utensils, we can learn the following: if one unintentionally blinds the eye of his fellow, he pays only for actual damages, but he is not obligated to pay the additional four things (*pain, doctor bills, loss of work and humiliation*). [*He is only obligated to pay for these four things if he intentionally injured his fellow*.]

From where are these things known? Chizkiyah said, and thus taught a Tanna of the School of Chizkiyah: The verse states: Wound in place of a wound — to impose the liability [for depreciation] in the case of inadvertence as in that of intentional, in the case of compulsion as in that of willingness. - [But] wasn't that [verse] required to prescribe [indemnity for] pain even in the case where depreciation is independently paid? — If that is all, the Torah should have stated: 'Wound for a wound', why state: [wound] in place of a wound, unless to indicate that both inferences be made from it? (26a4 – 26b1)

Rabbah's Rulings

Rabbah said: If a stone was lying in a person's lap without his ever having knowledge of it, and he stood up and it fell down, the *halachos* are as follows: Regarding damage, there will be liability, but he will not be required to pay for the four additional things (*for the damage was unintentional*); concerning *Shabbos* (*if the stone came to a stop more than four amos away from him in a public domain*), he will not be liable, as the Torah only prohibits one to perform a *meleches machasheves*, a calculated labor (*he will not bring a chatas either, for the liability for a korban is if he intended for the act, but he did not realize that it was Shabbos, or he did not realize that this act was forbidden*); with regard to exile (*for accidentally killing a person*), he will not be liable (*for he was never aware that the stone was in his lap*); regarding the release of his Canaanite slave (*if the stone blinded his eye or knocked out his tooth*), there exists a dispute between Rabban Shimon ben Gamliel and the Rabbis, as it was taught in a *braisa*: If his master was a doctor and the slave asked him to heal his eye and he ended up blinding him, or to heal his tooth and he ended up taking out the tooth, he has toyed with his master and goes free. Rabban Shimon ben Gamliel says: The verse says, "*And he will destroy it*," implying that it (the blinding of the eye or the knocking out of his teeth) needs to be done (in order to be set free) with intent to destroy (*not heal*).

If the stone was lying in the person's lap and he did have knowledge of it but now he forgot about it, and he stood up and it fell down, the *halachos* are as follows: Regarding damage, there will be liability, but he will not be required to pay for the four additional things (*for the damage was unintentional*); with regard to exile (*for accidentally killing a person*), he will be liable, for he was once aware that the stone was in his lap (*and a Scriptural verse teaches us that this is sufficient for him to be liable to exile*); concerning *Shabbos* (*if the stone came to a stop more than four amos away from him in a public domain*), he will not be liable, as the Torah only prohibits one to perform a *meleches machasheves*, a calculated labor; regarding the release of his Canaanite slave (*if the stone blinded his eye or knocked out his tooth*), there exists a dispute between Rabban Shimon ben Gamliel and the Rabbis, as it was taught in a *braisa*: If his master was a doctor and the slave asked him to heal his eye and he ended up blinding him, or to heal his tooth and he ended up taking out the tooth, he has toyed with his master and goes free. Rabban Shimon ben Gamliel says: The verse says, "*And he will destroy it*," implying that it has to be done with intent to destroy (*not heal*).

If he intended to throw the stone two *amos* but he threw it four *amos*, the *halachos* are as follows: Regarding damage, there will be liability, but he will not be required to pay for the four additional things (*for the damage was unintentional*); concerning *Shabbos*, he will not be liable, as the Torah only prohibits one to perform a *meleches machasheves*, a calculated labor; with regard to exile (*for accidentally killing a person*), it is written: *one who did not aim* – this excludes someone who intended to throw two

amos but he threw four *amos* (*there are two explanations in Rashi if he is liable to exile in this case or not*); regarding the release of his Canaanite slave (*if the stone blinded his eye or knocked out his tooth*), there exists a dispute between Rabban Shimon ben Gamliel and the Rabbis.

If he intended to throw the stone four *amos* but he threw it eight *amos*, the *halachos* are as follows: Regarding damage, there will be liability, but he will not be required to pay for the four additional things (*for the damage was unintentional*); concerning *Shabbos*, if he says, "Let it land wherever it pleases," he will be liable (*for then it is considered that his intention was fulfilled*), but otherwise, not; with regard to exile (*for accidentally killing a person*), it is written: *one who did not aim* – this excludes someone who intended to throw four *amos* but he threw eight *amos* (*there are two explanations in Rashi if he is liable to exile in this case or not*); regarding the release of his Canaanite slave (*if the stone blinded his eye or knocked out his tooth*), there exists a dispute between Rabban Shimon ben Gamliel and the Rabbis.

And Rabbah said: If one threw a utensil from the top of a roof and someone else comes and breaks it with a stick, the second person is exempt from liability, for we can say to him (*the owner of the utensil*), "He broke a broken utensil."

And Rabbah said: If one threw a utensil from the top of a roof and there were pillows and cushions underneath it (*which would have prevented it from breaking*), and another person came along and removed them, or even if he himself removed them, he is not liable. This is because at the time that he threw the utensil, "his arrows have ceased" (*since there were cushions below, his act of throwing could not have caused any damages; they cannot be liable for removing the cushions for the damaging is merely causative, and not direct*). (26b1 – 26b3)

INSIGHTS TO THE DAF

A Glass Thrown by a Drunk

During the course of a particularly lively wedding, one of the guests, after consuming several shots of liquor, lifted up a glass and flung it at the wall. A small splinter flew into another guest's eye, damaging his eyesight. When he demanded compensation for his injury the drunken wedding guest claimed he was not required to compensate the injured party since the mishap occurred while he had been under the influence of alcohol. He enumerated several reasons: First of all the Mishnah (87a) teaches that a *shoteh* [insane person] who causes damage is exempt from payment, and a drunk is considered a *shoteh*. Secondly, since people often break glasses during wedding celebrations he was allowed to do so as well, and should be exempt from paying for the resulting damage (*Tosafos, Sukkah* 45a, s.v. *miyad*, *C.M.* 378:9). Thirdly, the halacha states that someone who causes damage during revelry is exempt from paying out compensation (*O.C.* §695, Remo, *Seif* 2). Based on these grounds the wedding guest who smashed the glass rejected the claims against him, but the Bach (Responsa §62) decided that he must pay the damages for the following reasons:
A) Although someone as drunk as Lot, like a *shoteh*, is exempt from performing mitzvos, unlike a *shoteh* however, he **is** required to pay for damages he causes. Our *sugya* teaches that an individual is even responsible for damages he caused while sleeping (see Tosafos 4a, s.v. *kivan*), so certainly someone who chooses to get drunk must pay compensation for any damage he causes. B) Although people often break glasses at weddings, they take basic precautions rather than hurling glasses haphazardly. C) In cases of minor damage—which people generally forgive—revelers may be absolved of responsibility for the damage they cause, but in cases of serious injury, such as partial blindness, surely people are much less forgiving.

Can a Forgotten Prayer be Made Up?

Is someone who forgot to pray considered negligent or is forgetfulness an *oness* [compulsion]? Surprisingly the

answer to this question on *hilchos tefilla* can be found in our own *sugya*, which deals entirely with *hilchos nezikin*.

If someone places a stone on his lap then forgets about it, and when he stands up the stone falls and causes damage, he is required to pay. However, since it was inadvertent, he is exempt from payment for pain and suffering, medical bills, sick pay and embarrassment. Based on this halacha the Ramah (cited in *Nimukei Yosef*, Rif p. 10b) concludes that a busy person who didn't pray at the beginning of the allotted time and then forgot to pray altogether is not defined as having failed to pray intentionally or out of negligence, but is like someone who forgot a stone on his lap. During the following *tefillah* he should pray twice, unlike someone who intentionally skipped his prayers and cannot make up for the missed *tefillah* (*O.C.* 109:8).

The *Nimukei Yosef* (ibid.) disagrees. He maintains that although someone who forgot a stone on his lap is not regarded as negligent, someone who forgets to pray is considered responsible. The Chasam Sofer (*Nedarim* 26a, *C.M.* §42) interprets the *Nimukei Yosef* to mean that a distinction can be drawn between the laws of *nezikin* and *tefillah*.

A person who could have prayed if had he made time earlier is held responsible for his failure. Chazal (*Pesachim* 4a) teach us this principle in their maxim, "*Zerizim makdimim lemitzvos* [eager people rush to perform a mitzvah]," to help us avoid failure. Although later he forgot to pray, he is still held accountable for not praying earlier and is not considered *anus*. However, no one would contemplate prohibiting people from holding a stone on their lap because they might forget it there. Until the stone falls, no claim can be made against the person who holds it. When it falls he cannot be considered to have intent since by then he had forgotten it and is *anus*. The Chasam Sofer and the Magen Avraham (*O.C.* 109:8) disagree whether the forgotten prayer can be made up.

DAILY MASHAL

Tragedy on the Death March

A Jew who had been tormented for years over an incident that took place during the Holocaust brought a horrible question to the Chelkas Ya'akov (Responsa *C.M.* §33). Two brothers were on the infamous death march the Nazis ordered when they sensed defeat was imminent. During this lengthy and grueling ordeal the German soldiers shot any Jew who walked slowly or remained asleep after the short rest breaks they were allowed. During one of the breaks the older brother asked his younger brother to wake him up when they had to resume marching. The younger brother agreed, but he, too, fell asleep. When the S.S. soldiers shouted at the Jews to start marching again the startled younger brother started running to catch up with the rest of the group, and only after a few minutes he discovered to his dismay that his brother was not with him. By then it was already too late for him to return to his brother, who was presumably killed by the Germans. At the end of the war the younger brother asked if he needed to atone for what had happened.

In his reply the Chelkas Ya'akov (Responsa *C.M.* §33) cited our *sugya,* which says that someone who forgets is defined as *anus*, and therefore he was not responsible for the tragedy, particularly in light of the fact that he was disorientated at the time.

Nevertheless the Chelkas Ya'akov added that he should accept upon himself never to embarrass anyone since embarrassing is associated with killing. Furthermore, he advised him to adopt an orphan and support Torah scholars, based on the verses (*Mishlei* 20:27), "A man's soul is the lamp of Hashem," and (*Mishlei* 6:23), "For a mitzvah is a lamp and the Torah is light."