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Rulings of Damages

Rabbah said: If someone threw a child off a roof and another person caught the child with a sword (*killing him*), the *halachah* would be dependent on a dispute between Rabbi Yehudah ben Beseirah and the Rabbis, for we learned in a *Baraisa*: When ten people beat a man to death with ten sticks, whether simultaneously or successively, they are all exempt from the death penalty. Rabbi Yehudah ben Beseirah says: If they hit successively, the last one is liable, for he hastened his death.

If an ox met (*the child thrown from a roof*) with its horns (*and killed it*), there is an argument between Rabbi Yishmael the son of Rabbi Yochanan ben Berokah and the Rabbis, for we learned in a *Baraisa* (*regarding a mu’ad ox who killed a person*): “*And he will give a kofer for his life.*” This refers to the value of the one who was killed. Rabbi Yishmael the son of Rabbi Yochanan ben Berokah says: It refers to the one who damaged (*i.e. the owner of the ox*). [*Rashi explains that if the redemption money is for the one killed, it is inapplicable in this case, as he was going to die anyway from being thrown off the roof. If it is to atone for himself as his ox killed someone, he must pay.*]

And Rabbah said: If a person fell off a roof and was inserted into a woman (*in a manner in which they were having relations*), he must pay for four types of

compensation (*as a normal wind pushed him off the roof, for this is regarded as intentional*). If the woman was his *yevamah* (*the widow of his childless brother*), he does not acquire her as a wife (*since he is not contemplating cohabitation at all*). He is obligated to pay for damages, pain, healing, and unemployment (*that results from this action*), but not for embarrassment. This is as the *Mishnah* states: One is not obligated to pay for embarrassment unless he intends to cause an injury.

And Rabbah said: If someone fell off from a roof in an abnormal wind (*as opposed to the previous case that dealt with a common wind*) and he damaged and embarrassed someone, he only pays for damages and is exempt from the four additional things. If he fell in a normal wind, he is liable for the four things, but not for embarrassing (*since he did not intend to cause an injury*). If while he was falling, he twisted himself to specifically fall on someone (*in order to cushion his fall*), he is also liable for embarrassment. This is as we learned in a *Baraisa*: Being that the verse states, “*And she will send forth her hand,*” don’t we know that “*she grabbed*” (*his embarrassing place*)? Why does the verse say, “*and she grabbed*”? This teaches us that once a person has intent to damage, even without intent to embarrass, he is also liable for embarrassment.

And Rabbah said: If a person puts a hot coal on someone's heart and he dies, he is exempt (*for the person should not have allowed himself to be burned*). However, if he put it on his clothing (*and it burned*) he is liable to pay (*for the owner plans on claiming the money from him in Beis Din*).

Rava says: Both of these laws are actually taught in *Mishnayos*. Regarding his heart, the *Mishnah* states: If a person held someone else down into a fire or in water and he could not escape and died, the killer is liable. If he could have escaped, he is not liable.

Regarding clothing, the *Mishnah* states: If someone said to another person, "Tear my clothes or break my pitcher," he is liable to pay. If the person said, "On condition that you will be exempt from paying," he is exempt.

Rabbah inquired: What if someone placed a coal on the heart of someone else's slave? Is the slave like one's body (*and he would be exempt from damages, for he could have removed the coal himself*) or one's property (*and the damager would be liable*)? If you will say the slave is like one's body, what if he places it on the heart of someone else's ox?

The *Gemora* concludes: A slave is like one's body (*and he should have taken off the coal*), and an ox is like property (*as it does not always know to shake the coal off its body*). (26b3 – 27a3)

WE SHALL RETURN TO YOU, KEITZAD HAREGEL

Mishnah

If someone placed a *kad* (*jug/barrel*) in the public domain, and somebody else came and tripped over it

and broke it, he is exempt. If the person who tripped was damaged due to the barrel, the owner of the *chavis* (*barrel*) must pay for the damages. (27a4)

Kad and Chavis

The *Gemora* asks: The *Mishnah* starts off using the term "*kad*" - "jug," but ends up using the term "*chavis*" - "barrel." [Why?] Moreover, there is another *Mishnah* that starts off with *chavis* and ends with *kad*. And the *Mishnah* states: If someone was approaching with his *chavis* and another with his beam, if the *kad* broke when it collided with the beam, he is exempt. Moreover, there is another *Mishnah* that says: If someone was approaching with his *chavis* of wine and the other with his *kad* of honey, if a crack was made in the *chavis* of honey and other person spilled out his wine and saved the honey, he only receives his wages. This started with *kad* and finished with *chavis*!?

Rav Pappa answers: The lesson learned from this switching between the terms is that they are interchangeable. Why is this significant? It is significant in business dealings of buying and selling. [If the seller said he is selling him a *chavis* which is usually used to mean a big barrel, he can instead supply a *kad* which is a smaller barrel; see below.]

The *Gemora* asks: What is the case (*where it is significant*)? If the transaction is in a place where a *kad* is not called a *chavis* and a *chavis* is not called a *kad*, how could this be? They are not said to be referring to the same things!?

The *Gemora* answers: Rather, the case is where most people call a *kad* (*small barrel*) a *kad*, and most people call a *chavis* (*large barrel*) a *chavis*, but there are a minority who use the terms interchangeably. One

might think we can force a seller to go after most people's terminology. This is the lesson taught in these *Mishnayos*, that we do not follow the majority with respect to monetary matters. (27a4 – 27b1)

Watch where one is Going

The *Mishnah* had stated: If somebody else came and tripped over it and broke it, he is exempt.

The *Gemora* asks: Why is he exempt? He should have watched where he was going!?

In the Beis Medrash of Rav they said in the name of Rav: The case is where the person filled the public domain with barrels.

Shmuel answers: The case is when it was dark outside.

Rabbi Yochanan says: The case is where it was placed on a corner (i.e. behind a wall). [When the person walking turned the corner he immediately smashed into it and was unable to see it before actually turning the corner.]

Rav Pappa asks: The *Mishnah's* wording is not precise, unless we follow either Shmuel or Rabbi Yochanan, for if it would be according to Rav, why would it say that he tripped? Even if he broke it (*purposely*) he should be exempt (*as the reason he is exempt is that the person has no right to block the public domain with his barrels*)!?

Rav Zevid answers in the name of Rava: The truth is that he would even be exempt if he broke the barrel on purpose. However, the second part of the *Mishnah* wanted to inform us that the owner of the barrel has to pay for damages to the person only if he tripped, not if

he broke it purposely. Why is this the law? It is because if he broke it purposely and damaged himself, he is responsible for damaging himself. Accordingly, the first part of the *Mishnah* also dealt with a case where he tripped.

Rabbi Abba said to Rav Ashi: They say the following in *Eretz Yisroel* in the name of Ulla (*regarding why the person in the Mishnah is exempt from paying for the barrel*). It is not the normal way of people to think carefully about where they are stepping on the road. [He is therefore exempt even in broad daylight.]

There was an incident as described in the *Mishnah* that took place in Nehardea, and Shmuel mandated that the person who tripped should pay for the barrel (*as it was not dark outside when the incident occurred*). A similar incident happened in Pumbedisa, and Rava also ruled that he must pay.

The *Gemora* asks: It is understandable that Shmuel ruled this way, as this in accordance with how he understood the *Mishnah*. Does this mean that Rava understood the *Mishnah* like Shmuel?

Rav Pappa answers: [No, Rava does not hold like Shmuel.] The case in Pumbedisa was where it was a corner next to an olive press. Being that the storeowner has the right to place barrels outside, the person walking there should be careful when he is walking. (27b1 – 27b2)

Taking the Law into Your Own Hands

Rav Chisda sent the following question to Rav Nachman: If someone knees his friend, he pays threesela'im (*for embarrassment*). If he kicks him, he pays five. If he hits his friend with a donkey saddle, he

pays thirteen. If he hits him with the handle or other part of a metal tool, how much does he have to pay?

Rav Nachman sent to him: Chisda, Chisda, are you collecting fines in Bavel? Tell me what happened.

Rav Chisda sent to him: There was a well of water that was owned by two people. Everyday, one of them had the right to draw water from the well (*to water their fields*). One day, the person who did not have the rights to draw water from the well on that day came and started drawing water from the well. The other partner said: It is my day! However, his partner did not listen to him. He therefore took the handle of this metal tool and hit him.

Rav Nachman replied: Let him hit him one hundred times with the handle of this tool! Even according to the opinion that a person cannot take the law into his own hands, if someone else is making him lose money which he will not recover if he does not act, he may take the law into his own hands.

For it was stated: Rav Yehudah said: A person cannot take the law into his own hands. Rav Nachman says: A person can take the law into his own hands. If someone is making him lose money which he will not recover if he does not act, everyone agrees he may take the law into his own hands. They argue regarding a case where there is no immediate loss (*that cannot be recovered if he waits to go to Beis Din*). Rav Yehudah says: A person cannot take the law into his own hands. Being that there is no immediate loss, let him take the person to Beis Din. Rav Nachman says: A person can take the law into his own hands. Being that he is doing the right thing, he does not have to bother to go to Beis Din.

Rav Kahana [however] raised an objection (from the following Baraisa): Ben Bag Bag said: Do not enter into your neighbor's premises for the purpose of retrieving your property without asking permission, lest you will appear to him as a thief. Rather, break his teeth and tell him, "I am taking possession of what is mine." [Does this not prove that a man may take the law into his own hands for the protection of his rights?] — He thereupon said: It is true that Ben Bag Bag supports thy view; but he is only one against the Rabbis who differ from him.

Rabbi Yannai [even] suggested that 'Break his teeth' may also mean to bring him before a court. - But if so, why 'and tell him'? Should it not read 'and they will tell him'? Again, 'I am taking possession of what is mine'; should it not be 'he is taking possession of what is his'? — This is indeed a difficulty. (27b2 – 28a1)

INSIGHTS TO THE DAF

Broken Glasses

According to Ulla, someone who leaves a *keli* in the public domain must pay for damages it causes. Moreover, someone who damages the *keli* while walking is exempt from paying for it because "people do not normally keep their eyes on the road while walking." Animals naturally look down as they walk along (Rabbeinu Peretz in *Shitah Mekubetzes*), but people are immersed in thought as they walk and do not watch their step (Meiri *ibid*). When walking through an area where *kelim* are normally left lying around, such as a jug placed near a winery or near an oil press, pedestrians must watch where they are going. If they stumble over a jug and damage it, they must pay for the damage (Rambam *Nizkei Mamon* 13:5,6). These laws often apply today as well, as is evident in the



following dispute among the *poskim* regarding a yeshiva student who broke another student's glasses.

A yeshiva student asked his friend to wake him up at a certain time. When the friend entered the room to wake up the sleeper, he accidentally stepped on his glasses, which were lying near the foot of the bed, and crushed them irreparably. According to some opinions (*Kaneh Bosem* I §154 by HaRav Meir Bransdorfer *shlita*), since the owner of the glasses asked his friend to wake him, it is as though he gave him explicit permission to enter the room. For him, therefore, the room is like the public domain, where items should not be left lying around. Thus the owner of the glasses was negligent when he left the glasses on the floor near the bed.

On the other hand, other *poskim* (*Pischei Choshen, Dinei Nezikin* 8:10) claimed that although one is not required to watch one's step while walking in the public domain, when he enters an unfamiliar home he must take note of his surroundings. Just as those who walk near an oil press or a winery must be careful not to cause any damage, someone who walks into another person's house must also be careful to watch where he is going.

DAILY MASHAL

Does someone running for his life keep his eyes on the ground?

This question was the focus of a great controversy that took place many years ago. R. Moshe Lipshitz rushed to save a Jewish boy from non-Jews thugs who planned to harm him. The boy, not realizing R. Moshe wanted to help him, turned and fled in fear. While running he fell into a pit filled with water and died. R. Moshe asked

gedolei haDor how to repent. His question aroused a tremendous debate. The dispute was whether the principle taught in our *sugya*, "a person usually doesn't look down at the road when walking," applies to someone who is running away. Perhaps, on the contrary, when someone flees he is more wary of the ground lying ahead.

According to the Maharshal (§96), a person running away generally watches the road more carefully and therefore Moshe Lipshitz did not need to atone or ask forgiveness. However, the Chasam Sofer (*Responsa Kovetz Teshuvos* §18) maintained that someone running away does not watch where he is going any more than a casual pedestrian. However, all of the *poskim* agreed that R' Moshe Lipshitz should not torment himself since his whole aim was to save a Jew's life, and his course of action was the correct one