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Explaining Rabbi Yehudah

The Mishnah had stated: Rabbi Yehudah said: If the owner of the pitcher had intent, he is liable (if his pitcher breaks and someone slips on the water); otherwise, he is not.

What is the case of intention? Rabbah explains: Rabbi Yehudah is referring to a case where he intended to bring the pitcher down from his shoulder. [Rabbi Yehudah maintains that one who stumbles is negligent and that is why he is liable in this case. If it broke by falling off his shoulder, he is not liable, for this is an unavoidable accident.]

Abaye asked him: Do you mean to say that Rabbi Meir (the Tanna Kamma of the Mishnah) would hold that he is liable even if the pitcher disintegrated (while it was on his shoulder)!?

Rabbah replied: Yes! Rabbi Meir would hold the owner of the pitcher liable even in such a case (where the pitcher disintegrated) and he was left holding its handle.

The Gemora asks: But how can this be? This was an unavoidable accident, and the Torah exempts one from liability in such cases! For it is written (regarding a betrothed girl who was violated) [Devarim 22:26]: But unto the girl you shall not do anything. [Evidently, an unavoidable action is regarded as if it happened by itself, and not committed by the person.]

Perhaps you will make a distinction between a case involving the death penalty (where one will not be responsible if it was an unavoidable accident) and a case involving damages (where one will be responsible), this is not the case, for we learned in a Baraisa: If his pitcher broke and he did not remove it, or if his camel fell down and he did not stand it up, Rabbi Meir holds that he is liable for their damage (for he maintains that tripping is a negligence) and the Chachamim hold that he is exempt from liability under the laws of man, but he is liable under the laws of Heaven. And the Chachamim agree to Rabbi Meir in a case where one placed his stones, knives, and packages at the edge of his roof, and they fell off the roof due to a common wind and caused damage, he would be liable (for he was negligent by placing them in a place where they can easily fall off). And Rabbi Meir agrees to the Chachamim in a case where one brought jars to the top of a roof for the purpose of getting dry from the sun and fell down because of an abnormal wind and did damage, that he is exempt from liability. [This proves that even Rabbi Meir holds that one is exempt from liability by damages in a case where it is an unavoidable accident.]

Rather, Abaye explains that Rabbi Meir and Rabbi Yehudah argue about two things: They argue regarding a damage that occurred at the time of the fall (before he had a chance to remove them), and they argue about a damage that occurred after the fall (after he had time to clear it up). The difference of opinion regarding damage done at the time of the fall of the pitcher arises on the question whether one who stumbles is considered negligent or not. Rabbi Meir maintains that one who

stumbles is considered negligent, whereas Rabbi Yehudah is of the opinion that one who stumbles is not considered negligent. The difference of opinion regarding the case of damage done after the fall is regarding one who abandons his hazardous objects. Rabbi Meir maintains that one who abandons his hazardous objects is liable, whereas Rabbi Yehudah holds that he is exempt from liability.

And how is this known? The Gemora proves this is so from the fact that the Mishnah states two cases: If someone slipped on the water or he was injured by the shards. Are they not the same exact case? Rather, this is what it is saying: If someone slipped on the water at the time that the pitcher fell, or he was injured by the shards after the fall (he declared the shards ownerless).

The Gemora asks on Abaye: If the Mishnah is referring to two cases, then the Baraisa (cited above) is also discussing two cases. Now the case dealing with his pitcher can be explained as happening at the time of the fall and afterwards, but the case of the camel cannot! The case dealing with after the fall can be explained when the owner abandoned the carcass of the camel, but how can we explain the case when it happened at the time of the fall (the owner cannot be faulted for his camel tripping; what should he have done)?

Rav Acha answers: It can be referring to a case where the camel was led in water along the swollen banks of a river (and the argument is if this is considered negligent or not).

The Gemora asks: What are the circumstances? If there is another way, then he is certainly negligent (for taking the slippery one), and if there is no other way, it is an unavoidable accident (what should he have done)?

The Gemora answers: The case can be where the owner stumbled which caused the camel to stumble over him.

The Gemora asks: What does Rabbi Yehudah mean when he said, “If he had intent” with regards to the case where he abandoned his hazardous objects? [With respect to the first case, he meant that the owner intended to break the pitcher in the street; in that case, he will be liable.]

Rav Yosef said: It means that he intended to acquire the shards (then he will be liable). And Rav Ashi also explained that he intended to acquire the shards. (28b3 – 29b2)

Rabbi Elazar said: It is regarding damage done at the time of the fall that there is a difference of opinion. But how in the case of damage done subsequently to the fall? Would everyone agree that there is exemption? Surely there is Rabbi Meir who expressed [his opinion] that there is liability! - What else would you suggest? That in this case everyone agrees that we should impose liability? Surely there are the Rabbis who stated [their view] that there is exemption! — Therefore, what he means [to convey by his statement] ‘damage done at the time of the fall’, is that there is difference of opinion ‘even regarding damage done at the time of the fall’, making thus known to us [the conclusions arrived at] by Abaye.

Rabbi Yochanan, however, said: It is regarding damage occasioned after the fall [of the pitcher] that there is a difference of opinion. - But how in the case of damage done at the time of the fall? Would everyone agree [to grant an] exemption? Surely Rabbi Yochanan's statement further on that we should not think that the Mishnah [there] follows the view of Rabbi Meir who maintains that tripping constitutes carelessness, implies that Rabbi Meir imposes liability. What else would you suggest? That everyone agrees that we should impose liability? Surely the very statement made further on by Rabbi Yochanan [himself] that we should not think that the Mishnah [there] follows the view of Rabbi Meir, implies that the Rabbis would exempt! — Therefore, what he [Rabbi Yochanan] intends to convey to us is that abandoned hazards have only in this connection been exempted from

liability by the Rabbis since the very inception [of the hazards] was by accident, whereas abandoned hazards in other circumstances involve liability [even according to the Rabbis]. (29a2 – 29b1)

Abandoning Hazardous Objects

It was stated: Regarding one who abandons his hazardous objects, Rabbi Yochanan and Rabbi Elazar dispute this. One of them says that he is liable, and the other disagrees.

The Gemora comments: Shall we say that one of them is saying like Rabbi Meir, and the other like the Rabbis!?
The Gemora suggests that they do not argue according to Rabbi Meir (they would agree that the owner is liable). Their dispute is only according to the Rabbis. The one who holds that he is not liable is in complete agreement with the Rabbis. The one who holds that he is liable maintains that when the Rabbis exempted the person who abandoned his hazardous objects from liability, they did so only in a case where its inception was done by accident; however, in an ordinary case, where one abandons his hazardous objects into a public domain, he will be liable.

The Gemora proves that Rabbi Elazar is the one who holds that the owner is liable, for Rabbi Elazar said in the name of Rabbi Yishmael: There are two things which are not legally in one's possession and the Torah views them as if they are in his possession. One thing is a pit that one digs in a public domain, and even though he does not own the public domain, he is responsible for any liability that occurs regarding the pit. Similarly, one cannot have benefit from chametz after the sixth hour on the fourteenth of Nissan, and the chametz is rendered as ownerless, but one who retains chametz after the sixth hour is considered to have violated the transgression of owning chametz when it is prohibited to own chametz. This indeed is a proof.

The Gemora asks: Did Rabbi Elazar actually say this? But as a matter of fact, he said the contrary, for we learned in a Mishnah: If one turns over dung in a public domain and someone gets damaged by it, he is liable to pay for the damages. And Rabbi Elazar said that this is the halachah only if he intended to acquire it. However, if he did not intend to acquire it, he is not liable. We see that if one abandons his hazardous objects, Rabbi Elazar holds that he is not liable!?

Rav Adda bar Ahavah answers: Rabbi Elazar understands the Mishnah to be referring to a case where he returned the dung back to its original position (he therefore will not be liable unless he acquires it, for it is as though he didn't touch it in the first place).

Ravina said: The following can be used as an analogy to Rav Adda bar Ahavah's case: If someone found an open pit, covered it and then uncovered it (he will not be liable, for it is as though he didn't touch it in the first place).

Mar Zutra the son of Rav Mari asked Ravina: Are the two cases comparable to each other? There, the initial action (of the first person – when he dug the pit) was not undone (when the second fellow covered it; hence, the first person can still be liable); here, the initial action (of the first person – when he placed the dung down) was undone (when the second fellow picked it up). [Therefore, the second fellow should be held liable!?] Rather, it should be compared to a case where someone found an open pit. He then filled it up and afterwards dug it anew. Since the initial action was undone, it should now become the responsibility of the second fellow!?

Rather, Rav Ashi explains that Rabbi Elazar understands the Mishnah to be referring to a case where he picked up the dung less than three tefachim off the ground (in which case, he did not acquire it).

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

But what influenced Rabbi Elazar to make the [Mishnah's] ruling refer to one who turned over the dung within the first three [tefachim off the ground], and thus to confine its application only to one who intended to acquire title to the dung, excluding thereby one who did not intend to acquire title to it? Why not indeed make the ruling refer to one who turned over the dung above the first three tefachim, so that even where one did not intend to acquire title to it the liability should hold good? — Rava [thereupon] said: Because of a difficulty in the Mishnah's text [which occurred to him]: Why indeed have 'turning up' in the Mishnah's text and not simply 'raising,' if not to indicate that 'turning up' implies within the first three tefachim [off the ground].

The Gemora notes: Since we have proven that Rabbi Elazar holds that one is liable for damages caused by his abandoned hazards, it must be that Rabbi Yochanan maintains that he is not liable.

The Gemora asks: Did Rabbi Yochanan actually say this? But we learned in a Mishnah: If one hides a thorn or glass in a public domain, or if he builds his fence out of thorns, or if his fence fell into a public domain and another person was damaged by them, he is liable to pay for the damages. And Rabbi Yochanan said: When he builds his fence out of thorns, he is liable only where the thorns were projecting into the public domain. However, if the thorns were confined to his domain, he will not be liable. Why will he be exempt in the case where the thorns were confined to his domain? The reason must be because he is merely creating a hazard in his own property. We can assume that Rabbi Yochanan holds that the liability for a pit is in a public domain. Evidently, he holds that one would be liable if he abandons his hazardous objects!?

The Gemora answers: No! In truth, Rabbi Yochanan holds that one is not liable if he abandons his hazardous objects. The reason why he is not liable in a case where the thorns were confined to his domain is because it was stated regarding this case: Rav Acha the son of Rav Ikka said: it is because people do not normally rub against walls when they are walking.

The Gemora asks: But did Rabbi yochanan indeed say this? Why, Rabbi Yochanan has said that the halachah always follows the ruling of an anonymous Mishnah, and we learned in a Mishnah: If one digs a pit in a public domain and an ox or a donkey fall into it, he is liable. [Evidently, he holds that one would be liable if he abandons his hazardous objects!?]

Rather, it is clear that Rabbi Yochanan holds that one is liable if he abandons his hazardous objects.

The Gemora notes: Since we have proven that Rabbi Yochanan holds that one is liable for damages caused by his abandoned hazards, it must be that Rabbi Elazar maintains that he is not liable.

The Gemora asks: But doesn't Rabbi Elazar say in the name of Rabbi Yishmael etc. (a pit that one digs in a public domain, and even though he does not own the public domain, he is responsible for any liability that occurs regarding the pit)?

The Gemora answers: This is not difficult, for although he himself holds that one is not liable, his teacher holds that he is liable. (29b1 – 30a1)

INSIGHTS TO THE DAF

As though it is in his Possession

Rabbi Elazar said in the name of Rabbi Yishmael: There are two things which are not legally in one's possession and the Torah views them as if they are in his possession. One thing is a pit that one digs in a public domain, and even though he does not own the public domain, he is responsible for any liability that occurs regarding the pit.

Similarly, one cannot have benefit from chametz after the sixth hour on the fourteenth of Nissan, and the chametz is rendered as ownerless, but one who retains chametz after the sixth hour is considered to have violated the transgression of owning chametz when it is prohibited to own chametz.

Rashi seems to say that the chametz is regarded as his only in the sense that he is held accountable for violating the two commandments of "chametz being seen in his possession" and "leaven being found in his house." However, he does not actually own the chametz.

Similarly, the Meiri writes with respect to the pit. If there is water in the pit, everyone is allowed to draw water from there. The digger of the pit cannot prevent them from drinking the water by saying that he is the owner, for the Torah considers him the owner only with respect to liability for the damages.

The Chasam Sofer writes that if one would have chametz on Pesach and on Pesach, he would sell it to a gentile, he still would be liable, for the Torah considers it his. And so too, the halachah would be by a pit – if a gentile would acquire the pit, it would still be regarded as the digger's pit with respect to liability for its damages.

The Noda Beyehudah disagrees and maintains that if without the prohibition of chametz, it would not be in the Jew's possession, we do not say that the Torah treats it as if it is in his possession.

DAILY MASHAL

There are two things that do not belong to a person, but the Torah makes him responsible for them as if he owns them: a pit he dug in a public domain, and chametz after the sixth hour on erev Pesach. Even though a public domain does not belong to any one particular individual, if one were to dig a hole in the public domain which ends up causing damage to another, he is responsible for that damage as if the hole belonged to him.

Regarding chametz, the Torah tells us that we are not allowed to own chametz after the sixth hour on the fourteenth day of Nissan, and therefore, will not. However, warns the Torah, if one does not deliberately and halachically dispose of any chametz that belonged to him until the forbidden time erev Pesach, the Torah will hold him culpable for keeping chametz on Pesach.

That a person is responsible for damage due to a pit he dug in a public domain is perfectly reasonable. That the Torah commands a Jew to relinquish all ownership of chametz during Pesach, especially given all of chametz's symbolic meaning, and holds him responsible for not doing so, is also reasonable.

However, what is not obviously logical is the Talmud's need to teach both laws in one breath. In other words, is there any other connection between these two, seemingly different laws that can provide an insight into the holiday of Pesach?

To answer that question, Rabbi Pinchas Winston asks another one: Does a public domain belong to no one in particular, or, to everyone in particular? "What," you may ask, "is the difference?" The difference is "partnership." If a public domain is a joint partnership, then every individual to which that specific public domain is relevant owns a piece, albeit a small one, of every part of the public domain–including the pit he digs.

However, if that were true, then the Talmud should not have stated that the pit does not belong to the one who dug it, which seems to imply, even partially. If so, then this means the man is not being held accountable for his property that has damaged another, but rather, for having committed an irresponsible act against the public itself–the collective whole–of which he is an integral part.

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"How does this concept apply to the holiday of Pesach," you should be asking. The answer is, because there is an uncanny insistence on unity and collective responsibility during the week of Pesach. We don't sense it as much in our time, because we no longer go through the procedure of being listed as part of a group for a certain Pesach Offering, nor do we "stuff" ourselves onto the Temple grounds as part of one of three large groups that simultaneously offered the Pesach Offerings. However, had we lived during those times–*achdus*–national unity and the concept of "every Jew is a guarantor for his brother" would have been real for all us–intensely real.

Therefore, though it is true that finding and demolishing (or even selling) chametz is a personalized experience. However, the actual carrying out of the mitzvah and the keeping of all the laws of Pesach (and all of Torah for that matter) is not; it is, instead, a collective, national experience. And, therefore, when even one single Jew is negligent in disengaging himself from his chametz according to law and tradition, even only out of ignorance of the laws, it affects all Jews. That's right–all Jews!

Because, despite all of our arguing, internecine and bitter fighting, and outwardly-revealed "dislike" of one another, we are still one people. Or better yet, like one family. In a family, there are parents and children. To the children, each child is just one of many, different types of members of a family, each destined to break off and go in its own direction. There might be sibling rivalry, and in some cases, unfortunately, dislike for one another.

But to the parents, it is always only one family, no matter how many children there may be, or how different each child may be from the other. Should the children grow up, get married, and move away to different parts of the world, still, to the parents it is always one family. In fact, it often seems that a good large part of being a parent is just making sure the family remains this way.

From our point of view, the many disparate parts of the Jewish people may as well be different nations. However, to G-d, our Father in Heaven, it is always only one family, one Jewish people.

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