



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### **Mishnah**

If someone spills water into the public domain, and the water causes someone to be damaged, he must pay for his damages. 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. (30a1)

### **Spilling Water**

Rav said: The *Mishnah* taught this only if the clothes of the person were soiled by the water, then the person who spilled the water must pay. However, if he himself was damaged due to the water (*as he tripped and fell*) the person is exempt, as we say that it is the ownerless land that caused his damage.

Rav Huna said to Rav: This shouldn't be any better than a case of someone who throws dung (*into the public domain*)! [*Here, too, the water mixes with the dirt outside and causes mud to form, making him slip on the mud. This is his mud, so he should be liable!?*]

Rav answers: Do you think the case is where the water does not get absorbed, and instead forms patches of mud? No, the case is where the water has been absorbed in the ground (*but merely makes the surface slightly slippery*).

The *Gemora* asks: Why do we need two similar cases (*the Mishnah earlier discussed a case where someone's barrel*

*broke, causing the water to spill out and damage people's clothes according to Rav*)?

The *Gemora* answers: One case is in the summer (*when one is not allowed to pour water into the street, for the streets are otherwise dry*), and one in the rainy season (*and the Mishnah is teaching us that he is liable even though he had permission to spill the water into the street*). This is as the *Baraisa* states: All those who the Sages said may open their pipes (*and allow sewage to go into the public domain*) and throw their fertilizer (*into the public domain*) were not given permission to do so in the summer. While they may do so in the rainy season, if they do so and it causes damage, they are obligated to pay for the damage. (30a1 – 30a2)

### **Thorns and Glass**

The *Mishnah* had stated: 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.

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.

The *Gemora* asks: Why is he exempt?

Rav Acha the son of Rav Ikka said: He is exempt because people do not normally rub against walls when they are walking.



The *Gemora* cites a *Baraisa*: If someone hides his thorns and glass in his friend's wall, and the owner of the wall knocks down the wall which falls into the public domain and does damage (*due to the thorns and glass hidden inside*), the owner of the thorns and glass is liable.

Rabbi Yochanan said: This was taught only if the wall was unstable. However, if it was a sturdy wall, the one who hid the thorns or glass is exempt, and the owner of the wall is liable.

Ravina said: This indicates that if someone covers his pit with his friend's lid, and his friend comes and removes his lid, the owner of the pit is liable. [*Just as the owner of the glass is liable, for he should have realized that his glass might eventually fall into the street, so too, the pit owner should have realized that the owner of the lid will eventually come and take his lid off the pit.*]

The *Gemora* asks: Is this not obvious?

The *Gemora* answers: One might think that the only reason that the owner of the wall is not liable is because he does not know who the owner of the thorns or glass were, so that he should inform them to take them out before he knocks down the wall. However, in this case, the owner of the lid knows who the owner of the pit is, and perhaps he should be obligated to inform the owner of the pit that his lid is being taken away. This is why Ravina has to say that this is an incorrect assumption, and the owner of the pit is still liable.

The *Baraisa* states: The early pious ones used to hide their thorns and glass in their fields (*in order that they should not cause damage*), and they used to dig three *tefachim* down so that it shouldn't disrupt plowing.

Rav Sheishes would throw them into a fire, and Rava would throw them into the Tigris River.

Rav Yehudah said: If someone wants to be pious he should fulfill the laws discussed in Tractate *Nezikin*. Rava said: He should fulfill that which is written in *Pirkei Avos* (*Ethics of our Fathers*). Some say: He should fulfill the laws of Tractate *Brochos*. (30a2 – 30a3)

### **Mishnah**

If someone puts his straw and stubble out to the public domain in order that it should become fertilizer (*after they rot*), and a person is damaged by them, he is liable for the damages. Whoever is the first to take the straw has acquired them. Rabban Shimon ben Gamliel states: All those who place hazardous objects in the public domain and cause damage are liable to pay for the damages, and whoever is the first to take them has acquired them (see *Rashi* for two explanations of the argument between the *Tanna Kamma* and Rabban Shimon).

If someone turns over dung in the public domain and someone else gets injured by it, he is liable for the damage. (30a3)

### **Straw and Manure**

The *Gemora* asks: Let us say that our *Mishnah* is unlike the opinion of Rabbi Yehudah, for we learned in a *Baraisa*: Rabbi Yehudah said: When manure is being taken out, a person may take it out to the public domain and pile it there for thirty days in order that it should be stepped on by the feet of people and animals. This is based on the fact that Yehoshua gave them possession of the land on condition that this would be tolerated. [*This seems to be unlike our Mishnah, which implies that one is liable for any damages caused by these things.*]

The *Gemora* answers: Our *Mishnah* could still be in accordance with the opinion of Rabbi Yehudah. Rabbi Yehudah can maintain that if the manure causes damage, the owner must pay (*even though the behavior is tolerated*).



The *Gemora* asks a question from a *Mishnah*, where Rabbi Yehudah said: If the Chanukah candle (*which was placed outside*) caused a damage, he is exempt, because it was done with permission. It must be he is not liable because he acted with permission from *Beis Din*. [How, then, could Rabbi Yehudah say that he is liable for damage caused by the manure?]

The *Gemora* answers: No! The exemption of the Chanukah candle is because he acted (*with permission*) regarding a *mitzvah*. This is as the *Baraisa* states: Rabbi Yehudah said he is exempt regarding damage from Chanukah candles because he acted with permission (*from Beis Din*) regarding a *mitzvah*.

The *Gemora* asks from the following *Baraisa*: Those that had permission to place hazardous objects into the public domain, if they damage, they are liable to pay for the damages. Rabbi Yehudah said: He is exempt from damages. [This implies Rabbi Yehudah indeed argues on our *Mishnah*!]

Rav Nachman said: Our *Mishnah* agrees with Rabbi Yehudah's opinion. It is merely talking about when it is not in season to put the manure in the public domain. [In such a case, even Rabbi Yehudah agrees it is prohibited, and he is therefore liable.]

Rav Ashi said: Our *Mishnah* is referring to straw and stubble that is slippery and easy to fall on (*as opposed to the manure Rabbi Yehudah is referring to which is not as much of a "stumbling block."*) (30a3 – 30b1)

### **The Objects and their Improvements**

Our *Mishnah* said: Whoever is the first to take the straw has acquired them.

Rav said: This refers to both the objects themselves and whatever value they have increased during their stay in

the public domain. Zeiri said: This only refers to their increased value, not the straw and hay itself.

The *Gemora* asks: What is the crux of their argument?

The *Gemora* answers: Rav holds that they penalized even the objects themselves because the improvements were made illegally. Zeiri holds that they penalized him only with regards to the improvements.

The *Gemora* asks on Rav from our *Mishnah*: If someone turns over dung in the public domain and another person gets damaged by it, he is liable for the damage. It does not state that whoever is the first to take it, may acquire it. [Now with regards to dung, there are no improvements, so according to Zeiri, it is understandable why the *Mishnah* would not say that, for there is nothing to acquire; but why, according to Rav, did the *Mishnah* not mention that anyone can take the dung if he so desires?]

The *Gemora* answers: It is stated in the first part of the *Mishnah*, and similarly applies in the second part of the *Mishnah*.

The *Gemora* asks: Isn't there a *Baraisa* that states that it cannot be taken due to stealing?

The *Gemora* answers: When the *Baraisa* states that it cannot be taken due to stealing, it is referring to the entire *Mishnah*, and means that after someone acquires it, nobody may take it from him.

The *Gemora* asks: This does not fit with the following *Baraisa*: If someone brings his straw and stubble out to the public domain in order that it should become fertilizer (*after they rot*), and a person is damaged by them, he is liable for the damages. Whoever is the first to take them, acquires them. And no prohibition of stealing applies. If someone turns over dung in the public domain and another person gets damaged by it, he is liable for the



damage, and they are forbidden to be taken on account of stealing. [*The Baraisa distinguishes between straw and dung; this contradicts Rav!?*]

Rav Nachman bar Yitzchak answers: You are asking from the case of dung? Only something that improves bears a fine that the object itself may be taken because of the improvement. Dung that does not improve does not bear such a fine (*and therefore cannot be taken*).

The *Gemora* inquires: According to the opinion that they can be taken as a fine due to the improvement, does the fine apply immediately or only after improvement?

The *Gemora* attempts to prove that it is even immediately from the fact that the question was asked on Rav from dung (*which does not improve*).

The *Gemora* said: [*This proof is not valid.*] The question was asked before Rav Nachman gave his answer (*above*). After Rav Nachman's answer, it is clear that dung is irrelevant as a question on Rav.

Let us say this is an argument among the *Tannaim*. If a document involves interest, the person owed the money cannot collect the principal or the interest; these are the words of Rabbi Meir. The *Chachamim* say: He may collect the principal, but not the interest. Let us say that Rav holds like Rabbi Meir and Zeiri holds like the *Chachamim*?

Rav will answer: I can even hold like the *Chachamim*. The *Chachamim* only said this regarding the principal, which was loaned in a permitted fashion (*the interest is the problem*). However, in this case, the principal itself is damaging (*which is why it is more understandable that it should also be deemed ownerless*).

Zeiri will answer: I can even hold like Rabbi Meir. Rabbi Meir only said this because a transgression is committed from the time of the writing of the document - when he

obligated the other person to pay interest. However, in this case, it is not clear that it will ever cause damage when it is put out.

Let us say their argument is like the following argument among *Tannaim*. The *Baraisa* states: If someone takes his straw and stubble out to the public domain in order that it should become fertilizer (*after they rot*), and a person is damaged by them, he is liable for the damages. Whoever takes them first has acquired them. They are subject to the *halachos* of stealing. Rabban Shimon ben Gamliel said: All those who place hazardous objects in the public domain and cause damage are liable to pay for the damages, and whoever is the first to take them has acquired them. No prohibition of stealing applies.

The *Tanna Kamma's* statement is difficult. If he said that whoever takes them first acquires them, how can he then say that they are subject to the *halachos* of stealing? It must be that he means that their improvement can be taken, but not the objects themselves. Rabban Shimon ben Gamliel must mean that even they themselves may be taken.

The *Gemora* answers: Indeed, Zeiri agrees this is an argument among *Tannaim*. Is this also the case according to Rav?

The *Gemora* answers: Rav said that while everyone agrees both can be taken, this is an argument regarding whether or not we rule openly that this can be done. [*The Tanna Kamma said that we would tell someone who asks that he cannot take the items themselves, while Rabban Shimon said we would rule that they could be taken.*] For it was stated: Rav Huna said in the name of Rav: The *halachah* is that the objects may be taken, but we do not rule publicly like this. Rav Adda bar Ahavah said: The *halachah* is that the objects may be taken, and we do rule publicly like this.



The *Gemora* asks: Is this so? But Rav Huna ruled that peeled barley left in a public domain may be taken? Rav Adda bar Ahavah ruled that the refuse from the dates is declared ownerless! Now Rav Adda bar Ahavah's ruling is according to his line of reasoning. But what is the explanation for Rav Huna? Did he retract?

The *Gemora* answers: The people who were putting the peeled barley out were warned several times beforehand (and since they ignored all the warnings, we were compelled to rule publicly against them). (30b2 – 31a1)

#### DAILY MASHAL

##### ***Wishes to be Devout***

Rav Yehudah said: If someone wants to be pious he should fulfill the laws discussed in Tractate *Nezikin*. Rava said: He should fulfill that which is written in Pirkei Avos (*Ethics of our Fathers*). Some say: He should fulfill the laws of Tractate *Brochos*.

The Orach Yesharim explains: The *Mishnah* in Avos (1:2) states: Shimon HaTzadik was from the remnant of the Men of the Great Assembly and he used to say: On three things the world stands on Torah, Service (Avodah), and Acts of Kindliness (Gemilas Chassadim).

Two of these are matters that are between man and Hashem. They are: Torah and *Tefillah*. Acts of kindness is a matter that is between one man and his fellow. Rav Yehudah is teaching us that in order to be regarded as a devout person, it is not sufficient to be pious in matters that are between man and Hashem. One must be scrupulously ethical in matters that are between his fellow man as well. And quite possibly, he is telling us that a person must first be heedful of respecting his fellow man, and only then can he elevate himself further by fulfilling those laws that govern the relationship between man and Hashem.

In his sefer, *Boruch She'amar*, Harav Boruch Epstein asks: Why is it that by observing these three areas, one is regarded as devout? Pirkei Avos deals with common sense, practical, and intelligent behavior. Observing the laws of *Brochos* is also not an issue of piety, since the *Gemora* (*Brochos* 35a) states: One who eats without a brocha is robbing from the Almighty." And finally, civil laws that relate to *Nezikin*, damages, are certainly not issues of piety, but rather of civil obedience!?

He answers, as explained by Reb Hershel Solnica that the *Gemora* has a deeper and more subtle meaning. In Pirkei Avos, we are taught: A fence to wisdom is silence. This seems to be a matter of common sense. However, a Jew with a soul understands this to mean that not only is silence golden, but words must be measured and be dignified. Too many pious, religious, and fine Jews lose control of their mouth and lavish its use with Lashon Hara, idle talk, and abusive and vulgar language. *Brochos* is not simply thanking God for what we eat and what we have, but saying that we appreciate these gifts, for were it not for the grace of God, we wouldn't be able to survive an hour.

Observing civil law – *Nezikin* - implies more than merely not damaging another's possessions. It implies that we should consider the money or property of your neighbor as if it were yours. We don't merely avoid breaking another's objects. Rather, we care and respect it as we respect our own. These attitudes constitute the core of the soul of a Jew. They do not constitute *halachah* and they are difficult to concretize, but they are clear to the sensitive eye and heart.