

26 Sivan 5776
July 2, 2016



Bava Kamma Daf 32

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

Mishna

If someone was approaching with his *chavis* (barrel) and another with his beam, if the *kad* (jug) broke when it collided with the beam, he (the owner of the beam) is exempt, for they both have permission to walk there.

If the owner of the beam was walking first and the owner of the barrel was walking after him, and the barrel broke from the beam, the owner of the beam is exempt from liability (for the barrel owner sped up into the beam). However, if the owner of the beam stopped, he will be liable. If the owner of the beam told the owner of the barrel to stop, he (the owner of the beam) will not be liable.

If the owner of the barrel was walking first and the owner of the beam was walking after him, and the barrel broke from the beam, the owner of the beam is liable (for the beam owner sped up into the barrel). However, if the owner of the barrel stopped, the beam owner will not be liable. If the owner of the barrel told the owner of the beam to stop, he will not be liable.

And the same *halachos* apply to a case where one came with a candle and the other with his flax. (31b – 32a)

Damaging his Wife during Relations

Rabbah bar Nassan inquired of Rav Huna: If a man injures his wife during marital relations, what is the *halachah*? Do we say that since he performed this act with permission,

he is exempt from any liability, or perhaps he should have been more careful?

Rav Huna replied to him. We have learned in our *Mishna*: [*If someone was approaching with his chavis (barrel) and another with his beam, if the kad (jug) broke when it collided with the beam, he is exempt*] for they both have permission to walk there. [*Evidently, one is exempt from liability if he has permission to do what he is doing, even though he could possibly have avoided damaging if he was more careful.*]

Rava said: There is a *kal vachomer* to the contrary: If in the case of a forest (where the Torah states: *As when a man goes into the forest with his fellow to chop wood, and his hand swings with the axe to cut down the tree, and the iron slips from the wood and lands upon his fellow, who dies; he shall flee to one of these cities and live*) where this one (the murderer) was entering into his own domain, and the other (the victim) was entering into his own domain, it is nevertheless considered as if he (the murderer) entered his fellow's domain, and he is liable (for he should have been more careful), then regarding this case, where the husband was actually entering the domain of his fellow (his wife), should he not certainly be liable to pay for the damages!?

The *Gemora* asks: But doesn't the *Mishna* state: For they both have permission to walk there (which indicates that one would be exempt where he entered with permission)?



The *Gemora* answers: There, both of the parties were simultaneously active against each other (*since the barrel contributed to the damage*), whereas here, it was only he that committed the action.

The *Gemora* asks: Do we consider the woman not to have participated in the act at all? Is it not written: *And the people that commit them shall be cut off from among their people (evidently, both the man and the woman are regarded as active participants in the forbidden union)?*

The *Gemora* answers: It is true that enjoyment is derived by both of them, but it is only he who performs the action. (32a)

Two Cows

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, it is exempt. If the one lying down kicks the one walking, it is liable.

The *Gemora* attempts to provide support to this ruling from our *Mishna*: If the owner of the beam was walking first and the owner of the barrel was walking after him, and the barrel broke from the beam, the owner of the beam is exempt from liability (*for the barrel owner sped up into the beam*). However, if the owner of the beam stopped, he will be liable.

Now, in this last case (*where the owner of the beam stopped – acting irregularly*), it is comparable to the one lying down kicking the one who was walking, and the *Mishna* rules that he is liable.

The *Gemora* asks: Not only is it not a proof, it may be a refutation of Rish Lakish! It may be inferred from Rish Lakish's ruling that he is only liable if he kicked; however, if the damage happened by itself (*the one walking injured herself by tripping over the one that was lying down*), the

owner would be exempt from liability. But in the case of our *Mishna*, the barrel broke by itself (*by smashing into the beam*), and yet the *Mishna* rules that the owner of the beam would be liable!?

The *Gemora* answers: The *Mishna* deals with a case where the beam blocked the whole road like a carcass (*and the owner of the beam had no choice but to smash into the beam*), whereas here, Rish Lakish was dealing with a case where the cow was lying on one side of the road so that the other cow should have passed on the other side (*and therefore there would only be liability if the lying cow kicks the other one*).

The *Gemora* attempts to provide support to the first ruling of Rish Lakish from our *Mishna*: If the owner of the barrel was walking first and the owner of the beam was walking after him, and the barrel broke from the beam, the owner of the beam is liable (*for the beam owner sped up into the barrel*). However, if the owner of the barrel stopped, the beam owner will not be liable.

Now, in this last case (*where the owner of the barrel stopped causing the beam to smash into it*), it is comparable to the one walking kicking the one who was lying down, and the *Mishna* rules that he is not liable.

The *Gemora* rejects the proof: In the *Mishna's* case, the owner of the beam is walking normally (*and therefore it is understandable that he should be exempt from liability*), however, here it is possible to rule that the walker is liable, for the one lying down may say to the walker: "Your cow may be entitled to walk upon my cow, but she has no right to kick her." (32a)

Mishna

If there were two people walking in a public domain and one was running and one was walking, or if they were



both running, and they caused damage to each other, they are both exempt from liability. (32a)

Running on Erev Shabbos

The *Gemora* notes: Our *Mishna* is not in accordance with Issi ben Yehudah, for it was taught in a *braisa*: Issi ben Yehudah maintains that the man who had been running is liable, since he acted in an unusual manner. Issi, however, agrees that if it were to happen on Friday before sunset, there would be no liability, for running at that time is permissible (*to prepare for Shabbos*).

Rabbi Yochanan stated that the *halachah* is in accordance with Issi ben Yehudah.

The *Gemora* asks: But did Rabbi Yochanan really say like this? But didn't Rabbi Yochanan rule that the *halachah* is in accordance with the ruling of an anonymous *Mishna*, and we learned: If one was running and one was walking, or if they were both running, and they caused damage to each other, they are both exempt from liability?

The *Gemora* answers: Our *Mishna* is dealing with a case that happened on Friday before sunset.

The *Gemora* asks: What proof is there for this interpretation?

The *Gemora* answers: By the fact that the *Mishna* stated: Or if they were both running, and they caused damage to each other, they are both exempt from liability. Now what was the necessity for this to be inserted? If in the case where one was running and the other was walking, there is no liability; could there be any doubt as to the *halachah* where both of them were running? It must therefore mean as follows: If one was running and one was walking, there is no liability; provided, however, it was on a Friday before sunset. For if it was on a weekday, and one was running and the other was walking, the runner would be

liable, whereas where they were both running, they would be exempt from liability, even though it was on a weekday.

The *Gemora* had stated above: Issi, however, agrees that if it were to happen on Friday before sunset, there would be no liability, for running at that time is permissible.

The *Gemora* asks: Why is there permission to run at that time (*for behold, most of the Shabbos preparations were already done during the day*)?

The *Gemora* answers: It is to fulfill Rabbi Chanina's custom, for Rabbi Chanina (*at twilight*) used to say to his students, "Come, let us go out and greet the bride, the queen!" Others said that he used to say, "... to greet the *Shabbos*, the bride, the queen!" Rabbi Yannai would put on his fine clothes and stand and say, "Come, O bride, come, O bride!" (32a – 32b)

Mishna

If one was chopping wood in a public domain and damages in someone else's private domain, or if he was chopping wood in his private domain and damages in a public domain, or if he was chopping wood in his private domain and damages in someone else's private domain, he is liable to pay for the damages. (32b)

Chopping Wood

The *Gemora* explains that it was necessary to teach all three cases of the *Mishna*. He will be liable even if the damage occurs in a place that does not contain many people (*such as someone else's private domain*), and he will be liable even if he was chopping wood in a place where he was acting with permission (*his own domain*). (32b)



Exile

The *Gemora* cites a *braisa*: If a man entered the workshop of a carpenter without permission and a chip of wood flew off and struck him in the face and he died, the carpenter is exempt from going to exile. But if he entered with permission from the carpenter, he is liable.

The *Gemora* asks: Liable for what?

Rabbi Yosi ben Chanina said: He is liable (*due to his negligence*) for the four additional things (*damages, pain, medical expenses, loss of work; he does not, however, pay for embarrassment, for he did not have intention*), whereas regarding the law of going to exile, he is exempt because of the fact that the circumstances of this case are not comparable to that of the (*Torah's case of*) forest. For in the case of the forest, this one (*the murderer*) was entering into his own domain, and the other (*the victim*) was entering into his own domain, whereas in this case, the victim had definitely been entering into the domain of his fellow.

Rava said: There is a *kal vachomer* to the contrary: If in the case of a forest, where this one (*the murderer*) was entering into his own domain, and the other (*the victim*) was entering into his own domain, it is nevertheless considered as if he (*the murderer*) entered his fellow's domain, and he is liable (*for he should have been more careful*) for exile, then regarding this case, where the victim had been entering into the domain of his fellow with permission, should he (*the carpenter*) not certainly be subject to exile!?

Rather, Rava said: When the *braisa* said that he is exempt from exile, it means that the law of going to exile is not sufficient for him, and Rabbi Yosi ben Chanina's reason is that his offence, although it was committed inadvertently, it is bordering on the intentional.

Rava raised an objection on this from a *Mishna*: If an agent of *Beis Din* inflicted on him (*the sinner*) an additional lash, from which he died, he is exiled on his account. Now here, are we not dealing with an offence committed inadvertently, which borders the intentional, for surely he had to bear in mind that people may sometimes die just through one additional lash? And yet, the *Mishna* states that he is liable to exile on his account!?

Rav Shimi of Nehardea answered: The agent made a mistake in the counting of the number of lashes (*and therefore it does not border on the intentional*).

Rava tapped Rav Shimi's shoe and asked him: Is it the agent who is responsible for the counting of the lashes? Did we not learn in a *braisa*: The most prominent judge recites the prescribed verses, the second to him counts the lashes, and the third directs the agent to administer the lashes!?

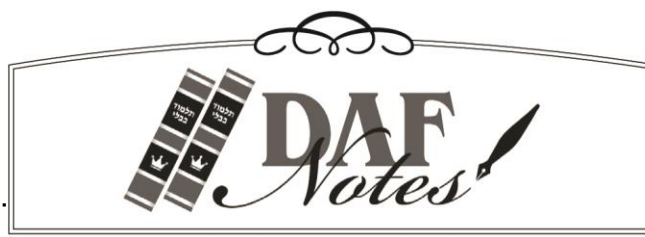
Rather, Rav Shimi of Nehardea answers: It was the judge himself who made the mistake in counting.

The *Gemora* asks on Rava from a *Mishna*: If a man throws a stone into a public domain and kills a person, he is exiled. Now, are we not dealing with an offence committed inadvertently, which borders the intentional, for surely he had to bear in mind that in a public domain many people are usually found, and yet it states, he is exiled!?

Rav Shmuel bar Yitzchak said: The case is where he threw the stone while he was breaking down his wall.

The *Gemora* asks: But should he not have been more careful?

The *Gemora* answers: He was breaking it down at night.



The *Gemora* asks: But even at night time, should he not have been more careful?

The *Gemora* answers: He was in fact breaking his wall down in the day time, but he was throwing the stones towards a garbage dump

The *Gemora* asks: What precisely is the case of this garbage dump? If many people were to be found there (*for it was commonly used as a bathroom*), is it not a case of an intentional murder? If, however, many people were not commonly found there, is it not then an unavoidable accident?

Rav Pappa answered: The *Mishna* is referring to a case where it was customary for people to relieve themselves there at night time, but it was not customary for them to relieve themselves there during the day, but it occasionally occurred that some might come to there to relieve themselves even during the day time. Therefore, it is not a case of intentional murder, since it was not customary for people to relieve themselves there during the day. Nor is it a case of an unavoidable accident since it occasionally occurred that some people did come to relieve themselves there.

Rav Pappa in the name of Rava taught Rabbi Yosi bar Chanina's *halachah* to the first case of the *braisa*: If a man entered the workshop of a carpenter without permission and a chip of wood flew off and struck him in the face and he died, the carpenter is exempt from going to exile. And Rabbi Yosi bar Chanina said: He is liable (*due to his negligence*) for the four additional things (*damages, pain, medical expenses, loss of work; he does not, however, pat for embarrassment, for he did not have intention*), whereas regarding the law of going to exile, he is exempt.

The *Gemora* notes: He who refers this ruling to the last case of the *braisa* (*where the victim had permission to enter*), would hold that it certainly applies to the first case

of the *braisa* (*that he would not be subject to exile*), whereas he who refers it to the first case maintains that in the last case of the *braisa*, where the entrance had been made with the carpenter's permission, he would be liable to go to exile. (32b)

INSIGHTS TO THE DAF

Damages during Relations

Rabbah bar Nassan inquired of Rav Huna: If a man injures his wife during marital relations, what is the *halachah*? Do we say that since he performed this act with permission, he is exempt from any liability, or perhaps he should have been more careful?

The *Gemora* concludes that the husband will be obligated to pay for the damages.

The following question can be asked: The *Gemora* below states that if one damages another while he is running on *Erev Shabbos*, he is exempt from liability because he is rushing to greet the *Shabbos* queen. Similarly, if the storekeeper left his candle outside during Chanukah, and the flax from a camel caught on it and burned a house, the storekeeper is exempt from liability, for it is a *mitzvah* to place the candle outside during Chanukah. If so, shouldn't the husband also be exempt from liability for the damage done to his wife; why behold, there is a *mitzvah* to engage in conjugal relations with one's wife?

Reb Avi Lebovitz answers as follows: We have to focus on what our Sages permitted, and whether there was negligence beyond what they permitted. By the Chanukah candle, they permitted the lighting of the candle outside, knowing that it is prone to damage. They did this without requiring one to stand over his candles guarding them the entire time they are burning. Since it is a *mitzvah*, it becomes authorized by *Beis Din* and they cannot hold you liable for the damages. But, the *mitzvah* to have relations



with one's wife is to act in a way where he is careful not to cause injury. When he has relations in a careless manner, and that results in an injury, his negligence surpassed the permission that he was granted by the Torah, and he is therefore liable.

Causing Damage on the Way to Kiddush Levanah

According to our *daf*, when "a person permitted to run" causes damage, he is exempt from paying. The Gemara is referring to someone who causes damage while running to prepare himself for the Shabbos Queen during *bein hashemashos* [a short time before Shabbos]. Since he was running to do a mitzvah, he is not obligated to compensate the damaged party. On the other hand, when someone runs on *erev Shabbos* but is not engaged in a mitzvah, he must pay for any damages (C.M. 378:8 citing the Ran in our *sugya*). According to the Rambam, if he is running to finish taking care of his own affairs in time for Shabbos, he is also exempt (*Sma* ibid). The *Chavas Ya'ir* (§207) explains that the Torah holds a damager responsible for accidents that take place in the public domain or on another person's property. If, however, an accident takes place in the damager's own domain, he is exempt from compensation. Therefore, says the Gemara, since someone who runs in the public domain to do a mitzvah is "allowed to run," it is as if he were running in his own domain.

Driving to the synagogue: HaRav Eliezer Waldenberg *shlita* (Responsa *Tzitz Eliezer* XII §17) discusses whether the mitzvah of running to the *beis knesses* can even be fulfilled by someone who drives a car. According to those who hold that the obligation to run only applies within close proximity to the *beis knesses*, writes Rav Waldenberg, this mitzvah can also be fulfilled by parking at a slight distance and running from the car to the synagogue.

If running to synagogue and to perform other mitzvos is a mitzvah in itself, is someone who causes damage while running to prayers exempt from payment, or does our *sugya* only apply to someone who runs on *erev Shabbos*? According to *Ben Yehoyada* (on our *sugya*), anyone who runs to perform a mitzvah is considered "permitted to run" and should be exempt from paying for any damages he may cause.

However, the *Beis Yosef* (C.M. 378), quoting the *Mordechai*, rules to the contrary. The *Or Sameyach*, HaRav Meir Simchah of Dvinsk (on our *sugya*) explains that on *erev Shabbos*, when everyone knows people are running to greet the Shabbos, walkers must be careful to avoid runners. However, Chazal did not absolve people of responsibility while running to perform mitzvos at all times since other people are not expecting to encounter someone running to perform a mitzvah and do not take extra precautions.

The *Chavas Ya'ir* (ibid) voices a similar opinion in a case where the *shamash* announced that the moon had emerged from the clouds and one of the congregants ran to the synagogue to recite *Kiddush Levanah*. On his way he "crashed into a shop display, spilling a jug of oil and knocking down several glass vessels, breaking them to pieces. Levi demanded he pay for the damages, but Reuven argued that he was allowed to run since he was rushing to perform a great mitzvah." The *Chavas Ya'ir* required him to pay, introducing a new line of reasoning to explain his ruling: Chazal's exemption applies only during *bein hashemashos* of *erev Shabbos* when time is very limited, and he **must** rush. However, this exemption would not apply to someone who is running to perform the mitzvah of *Kiddush Levanah* (or *tefillah*) with the *tzibur*, since in this case the mitzvah can be fulfilled without a *minyan*. Although, "A multitude of people is a king's glory" (*Mishlei* 14:28), this is insufficient to exempt him from paying for damages.



DAILY MASHAL

Welcoming the Shabbos Bride

The Gemara relates that the Amoraim would usher in the Shabbos Queen with great honor. R. Yanai would stand wrapped in his *talis* and call, “*Bo’i kallah, bo’i kallah*” [Come, O bride! Come, O bride!]. The Rambam (*Hilchos Shabbos* 30:2) also writes that the early *Chachamim* “would gather their *talmidim* on *erev Shabbos*, wrap themselves [in *talisos*] and say: ‘Come, let us go out to greet the Shabbos King.’” Furthermore the *Shulchan Aruch* (O.C. 262:3, citing the *Mordechai*) rules that one should wear nice clothing to welcome the Shabbos, and should be joyful in its coming as if setting out to greet a king or a *chassan* and *kallah*.

Today, the custom in all Jewish communities is to recite “*Lecha dodi*,” which was composed by the sixteenth century kabbalist, HaRav Shlomo HaLevi Alkabetz *zt’l*, and concludes with the words, “*Bo’i kallah, bo’i kallah*.” When saying “*Bo’i kallah*” the congregants turn in the direction of the setting sun. This custom is derived from the Ari *z’l* (*Sha’ar HaKavanos* 64c), who writes, “You should turn your face toward the west where the sun sets. Then close your eyes in awe and fear as if you are standing before the king...then say three times *bo’i kallah, bo’i kallah, bo’i kallah, Shabbos malkesah*.”

The *Kaf HaChaim* (267:12) also cites the Ari *z’l*, writing that when saying “*Bo’i Kallah*” we receive an additional *nefesh*, when responding to “*Barachu*” at the beginning of *Ma’ariv* we receive an additional *ruach* and when we say “*Ufros aleinu*” during the *tefillah* we receive an additional *neshamah*.

Why do some people stand during *Kiddush*? The *Shlah HaKadosh* (cited in *Aruch HaShulchan* 271:24) explains that those who stand during *Kiddush* on Shabbos evening do so because the Amoraim call the Shabbos Queen a

“*kallah*.” Just like the *berachos* for a *chassan* and a *kallah* are recited while standing as a show of honor, one should also stand to honor the Shabbos. [According to the *Remo* (O.C. 271:10) one should sit during *Kiddush*.]

Yom Tov is not referred to as a *kallah*: HaRav Moshe Feinstein *zt’l* (*Igros Moshe*, O.C. V §16) writes that since Yom Tov is not called a *kallah* like Shabbos, those who stand during *Kiddush* on Shabbos do not need to stand on Yom Tov when reciting *Kiddush*. However, the *Kaf HaChaim* (ibid.), citing the Ari *z’l*, says that one should stand during *Kiddush* on Yom Tov as well. The *Ketzos HaShulchan* (79:14) writes that this custom is based on *kabbala*.

Why should we run to do a mitzvah?

Based on the verse (*Hosea* 6:3), “Let us **pursue** knowledge of Hashem,” the Gemara (*Berachos* 6b) infers that it is a mitzvah to run to the synagogue; the *Shulchan Aruch* rules accordingly (O.C. 90:12). The essence of this halacha is to demonstrate our strong desire to fulfill mitzvos (*Tzlach*, ibid.). According to Rabbeinu Yonah (on the *Rif* 3b) running also drives a person to fulfill mitzvos with greater fervor because external actions influence a person’s internal motivation (*Messilas Yeshtarim*, end of Chapter 7).