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Inadvertent Desecration

[*Rabbi Yochanan had ruled that one is not liable to the death penalty for desecrating Shabbos if he burns something and he does not need the ashes, for there is no beneficial purpose for his actions. The Gemora had asked from our Mishnah which seemed to say that one is liable to the death penalty for burning someone's grain although there is no beneficial purpose!?*]

Rava answers: Our *Mishnah* (*when it rules that one is exempt from paying*) is dealing with a case where he unintentionally burned the grain on *Shabbos*, and it is in accordance with that which the Beis Medrash of Chizkiyah taught us that there is an analogy between a person who kills another person (*where he gets killed, but is not required to pay*) and a person who hits an animal (*that he is obligated to pay*). There is no difference if when the person hit the animal, he did so inadvertently or deliberately, with intention or without intention, whether his blow was downwards or upwards. In all cases, he is obligated to pay (*for a person is always liable for his actions*). Similarly (*regarding a person killing a person, where the Torah says that the penalty is death and not payment*), there is no difference if the person hits his fellow inadvertently or deliberately, with intention or without intention, whether his blow was downwards or upwards. In all cases, he is not required to pay. [*In both cases, the law is absolute, which implies that a person would never incur a monetary obligation when killing someone (only death). So too regarding Shabbos, one would be exempt from paying even if he does not incur the death penalty.*]

The Rabbis said to Rava: How can you interpret the *Mishnah* to be referring to an inadvertent act, when the *Mishnah* clearly says that he is exempt from paying because he is punished by death?

The *Gemora* answers: The *Mishnah* means as follows: Since if he would have done it intentionally, he would incur the death penalty, and this would be in a case where he needed the ashes, so too, if he did it inadvertently, he also is exempt from payment. (35a1 – 35a2)

Mishnah

If an ox was pursuing another ox and the ox being chased was found injured, and this one (*the owner of the damaged ox*) says, "Your ox caused the injury," and this one (*the chaser*) says, "Not so; but it injured itself (*while scratching itself*) due to a rock," the *halachah* is that whoever is attempting to take money from his fellow, he is the one who must bring the proof.

If two oxen (*owned by two different people*) were pursuing one (*and the ox being chased was found injured*), and this one (*one of the owners of the two oxen*) says (*to the other owner*), "Your ox caused the injury," and this one says, "Your ox caused the injury," both are exempt (*for the damagee cannot prove who the guilty party is*). If both of them belonged to one person, both are liable.

If one was big and one was small, and the injured party says, "The big one caused the damage" (*for a tam pays not more than the worth of the body of the animal, and if*

it was the big one, he can collect his full "half damages") and the damager says, "Not so; but the small one was the one that caused the damage." Or if one was a *tam* and one a *mu'ad*, and the injured party says, "The *mu'ad* caused the damage," and the damager says, "Not so; but the *tam* caused the damage," the *halachah* is that whoever is attempting to take money from his fellow, he is the one who must bring the proof.

If there were two injured, one big and one small, and two injurers, one big and one small, and the injured party says, "The big one injured the big one and the small one injured the small one," and the damager says, "Not so; but the small one injured the big one, and the big one injured the small one." Or if one was a *tam* and one a *mu'ad*, and the injured party says, "The *mu'ad* injured the big one and the *tam* injured the small one," and the damager says, "Not so; but the *tam* injured the big one and the *mu'ad* injured the small one, the *halachah* is that whoever is attempting to take money from his fellow, he is the one who must bring the proof. (35a2 – 35b1)

Money in Doubt

Rabbi Chiya bar Abba says: This *Mishnah* is saying that Sumchos' colleagues disagree with Sumchos who said that whenever money lies in doubt, it is to be divided by the two parties. [*Our Mishnah rules that the owner of the chasing ox is not required to pay the damaged party at all, whereas Sumchos would rule that the money should be divided between them.*]

Rabbi Abba bar Mammal asked Rabbi Chiya bar Abba: Did Sumchos rule in that manner even when both parties claim that they are certain of their claim?

He replied: Yes, Sumchos says this even when both parties claim that they are certain of their claim.

The *Gemora* asks: How did Rabbi Chiya bar Abba know that our *Mishnah* was a case where both parties were claiming with a certainty?

The *Gemora* answers: It is because the Mishnah stated: This one (*the owner of the damaged ox*) says, "Your ox caused the injury," and this one (*the chaser*) says, "Not so."

Rav Pappa challenged this: If the first part of the *Mishnah* is referring to a case where both parties were claiming with a certainty, then the latter part of the *Mishnah* is also discussing such a case. Let us consider the case: If one was big and one was small, and the injured party says, "The big one caused the damage" (*for a tam pays not more than the worth of the body of the animal, and if it was the big one, he can collect his full "half damages"*) and the damager says, "Not so; but the small one was the one that caused the damage." Or if one was a *tam* and one a *mu'ad*, and the injured party says, "The *mu'ad* caused the damage," and the damager says, "Not so; but the *tam* caused the damage," the *halachah* is that whoever is attempting to take money from his fellow, he is the one who must bring the proof. We can infer from the *Mishnah* that if no proof would be brought, the damaged party would only collect as much as the damager said. Let this be a refutation of Rabbah bar Nassan, for he said: If the plaintiff claimed wheat from a defendant, and the defendant admitted that he owed him barley, he is exempt from paying even for barley. [*By the fact that the plaintiff claimed wheat and not barley, he, in effect, is admitting that he is not owed barley. The very same thing could be argued in the case of the Mishnah, where the claim was made in respect of the big one or the mu'ad, he, in effect, is admitting that it was not the small one or the tam that did the damaging; so why would he be obligated to pay as if it was the small one or the tam one?*] It must be (*in order to reconcile Rabbah bar Nassan's opinion*) that the *Mishnah* is discussing a case of a "certainty and perhaps" (*one has a definite claim and the other does*

not)!? [*This is against Rabbi Chiya bar Abba's interpretation of the Mishnah!?*]

The *Gemora* analyzes Rav Pappa's explanation of the *Mishnah*: Who was the one claiming "certainly," and who was the one claiming "perhaps"? If it was the damagee who was claiming with a certainty and the damager was not sure (*and the Mishnah rules that the damager must pay as if it was the small one or the tam*), it would still be a refutation of Rabbah bar Nassan (*for the damagee is admitting that it was not the tam that damaged, but nevertheless, the damager is required to pay*). Rather, it must be that the damagee was claiming "perhaps," and the damager was claiming with a certainty (*and accordingly, the damagee is not conceding that the small one or the tam did not damage; he simply does not know*). Now, if the latter ruling of the *Mishnah* is dealing with a "certainty and perhaps," then the first case is also discussing such a case (*the damagee said, "Perhaps it was your ox that damaged mine," and the damager replies, "No, it was a boulder that damaged your animal"*). Would Sumchos hold that the money should be divided in such a case? [*Definitely not!*]

The *Gemora* answers: The first part of the *Mishnah* is a case of a "certainty and perhaps," but in reverse. The damagee said, "Your ox damaged mine," and the damager was uncertain. - But [even in that case] the opening clause is not parallel with the concluding clause? — I can reply that [a case where the plaintiff is] certain and [the defendant] doubtful and [a case where the claimant is] doubtful and [the defendant] certain are parallel whereas [a case where the claimant is] certain and [the defendant also] certain is not parallel with [a case where the claimant is] doubtful and [the defendant] certain. (35b2 – 35b3)

The above text states: Rabbah bar Nassan said: If the plaintiff claimed wheat from a defendant, and the defendant admitted that he owed him barley, he is exempt from paying even for barley. - What does this tell us? Have we not already learned [in a Mishnah]: where the plaintiff claimed wheat and the defendant admitted barley he is not liable? - If we had only [the Mishnah] there to go by, I might have argued that the exemption was only from the value of the wheat, while there would still be liability for the value of barley; we are therefore told by Rabbah bar Nassan that the exemption is complete.

The Gemora asks: We have learned in our Mishnah: If there were two injured, one big and one small etc. [Now this implies that] where he does not produce evidence he will get paid in accordance with the pleading of the defendant. But why not apply here [the principle of complete exemption laid down in the case of] wheat and barley? — The plaintiff is entitled to get paid [only where he produces evidence to substantiate the claim], but will have nothing at all [where he fails to do so]. - But has it not been taught; He will be paid for [the injury done to] the little one out of the body of the big and for [the injury done to] the big one out of the body of the little one? — Only where he had already seized them.

We have learned in our Mishnah: Or if one was a *tam* and one a *mu'ad*, and the injured party says, "The *mu'ad* injured the big one and the *tam* injured the small one," and the damager says, "Not so; but the *tam* injured the big one and the *mu'ad* injured the small one, the *halachah* is that whoever is attempting to take money from his fellow, he is the one who must bring the proof. [Now this implies that] where he does not produce evidence he will get paid in accordance with the pleading of the plaintiff. But why should [the principle of complete exemption laid down in the case of] wheat and barley not be applied here? — The plaintiff is entitled to get paid [only where he produces evidence to substantiate the claim] but [failing that he] will have nothing at all. - But has it not been taught: He will be paid for [the injury done to] the little one in accordance with the regulations applying to

mu'ad and for [the injury done to] the big one out of the body of the *tam*? — Only where he had already seized them. (35b3 – 36a1)

INSIGHTS TO THE DAF

Damaging Rare Coins

Our *daf* teaches that the *mazik* [damager] is not obligated to give the *nizak* [damaged party] a new article. He is only required to pay for monetary loss, i.e. the difference between the article's present value and its value before the damage took place. This amount is calculated according to its market value at the time the damage occurs, and not the value at the time the claim was made. However, the halacha is different in a case where one person's ox kills another person's ox, and the carcass subsequently increases in value, such as when the price of the (non-kosher) meat increases. The *mazik* and *nizak* then split the profit. For instance, if the ox was worth $1,000 while it was alive and the dead animal is worth only $200, the *mazik* pays $800. But if before payment its value increased to $300—the *mazik's* obligation decreases by $50, i.e. half the increase in the value of the meat. The *Sma* (403:3) explains that the Torah pities a man whose ox causes damage (while he himself did nothing), and grants him a share of the appreciation in value.

This halacha only applies when the value of the damaged article itself increases. If the owner of the article also profited as an indirect result of the damage, this profit is not taken into account when the damage is estimated, as illustrated by the following incident.

DAILY MASHAL

Two rare silver coins

About fifty years ago a coin collector in Yerushalayim had two rare pounds sterling in his collection. Each coin was worth £200—two hundred times its face value. One day someone took one of the coins and ground it into powder. Naturally the coin collector demanded compensation for his loss. The *mazik,* however, claimed that the moment he destroyed the coin, the value of the other coin—now even more rare—increased. He maintained that he owed the numismatist nothing since before the incident he would have received £400 liras for both of his coins, and now the remaining coin alone was worth £400 liras.

According to our *sugya,* writes the *Or LeTzion* (I, *C.M.* §11), the *mazik* only receives part of the increase in the value of the carcass when his **ox** gored the other ox, but not when direct damage was caused by a person. Furthermore, even when an ox causes damage, the *mazik* only receives a share of the increase in value if the price of the carcass itself appreciated. But if the gains were derived indirectly as a result of the damage, the *mazik* is not entitled to a share. Therefore, ruled the *Or LeTzion,* since in the case of the destroyed coin the increased value of the remaining coin was through an indirect gain, the *mazik* must pay the value of the coin that he destroyed.

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