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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

A certain ox fell into a pond which supplied water to the neighboring fields. The owner immediately slaughtered it, but Rav Nachman declared it tereifah. Rav Nachman said: ‘ad the owner of this ox taken a kav of flour and come to the study hall where he would have learned that ‘an ox that [suffered a fall and] lasted at least twenty-four hours [before being slaughtered] it would be permitted,’ he would not have squandered an ox which was worth several kabin of flour. Evidently, Rav Nachman held that an impact can cause death even by an excavation less than ten tefachim deep.

Rava raised an objection to Rav Nachman: Where, however, they were less than ten tefachim [deep], and an ox or a donkey fell into them and died, there would be exemption. Now, isn’t the reason of this [exemption] because there was no deadly impact there? No; it is because there was no foul air there. But if so, why where it was injured in such a pit would there be liability since there was no foul air there? — He replied: There was not foul air there sufficient to kill, but there was foul air there enough to injure.

A further objection was raised: The scaffold for stoning was twice the height of a man. And it has been taught in a Baraisa regarding this: When you add the height of the convict there will be there the height of three people. Now, if you assume that a fall can be fatal even from a height of less than ten tefachim, why was such a great height as that necessary? — But even according to your

argument, why not make the height ten tefachim only? This must therefore be explained in accordance with Rav Nachman, for Rav Nachman stated that Rabbah bar Avuha had said: Scripture says: And you shall love your fellow as yourself, [which implies], ‘you shall choose for him a favorable death.’ - But if so, why not raise it still higher? — He would then become disfigured altogether.

A further objection was raised (from a Baraisa discussing the laws of erecting a ma’akeh for a roof): Because a falling one may fall from it, ‘from it’ (the roof), but not into it (from the ground into the roof). How is that so? Where the public domain was ten tefachim higher than the roof, and a man might fall from the former on to the latter, there is no liability [in respect of a ma’akeh], but if the public domain was ten tefachim lower than the roof, and a man might fall from the latter on to the former, that there will be liability [in respect of a ma’akeh]. Now, if you assume that a fall could be fatal even from a height of less than ten tefachim, why should it be necessary to have the public domain lower by [a full] ten tefachim?¹ — It was said in answer: There is a difference in the case of a house, since if it is less than ten tefachim [in height] it could not be designated as a ‘house’. - But if so, even now when from the outside it is ten tefachim high, were you to deduct from that the ceiling and the plaster, from the inside it would surely not have the height of ten tefachim? — To this it was said in reply: [We are dealing here with a case] where, e.g., the owner of the house sank the floor from within.² - But if so, even where the height from the

¹ Why should there be no liability to construct a ma’akeh even where the public domain was lower by less than ten tefachim.

² So that the vertical height inside was not less than ten tefachim.

outside was not ten tefachim, it could still be possible that from the inside it was ten tefachim, as for instance where he sank the floor still more? — The reason of Rav Nachman must therefore have been this: He considered that from the abdomen of the ox to the level of the ground must be [at least] four tefachim, and the irrigation canal feeding the fields must be six tefachim; this makes ten tefachim, with the result that when the ox received the blow it was from the height of ten tefachim that the blow was given. — But why then does the Mishnah say: Just as a pit can cause death, being ten tefachim [deep], so also all [other similar obstacles] must be such as can cause death, [i.e.] ten tefachim [deep]? Shouldn't six tefachim be enough? — We could reply that the Mishnah deals with a case where the ox rolled itself over into the pit. (50b4 – 51a2)

MISHNAH: Where there is a pit of two partners, if the first one passes by and does not cover it, and the second one also [passes by and does] not cover it, the second would be liable. (51a2)

They say: How can a pit of two partners be found [to exist]? True, we can understand this if we take the view of Rabbi Akiva, who said that a pit in a private domain would involve liability, in which case such a pit could be found where they jointly own the ground and also a pit in it, and while they abandoned the ground [surrounding the pit], they did not abandon the pit itself. But if we take the view that a pit in a private domain would involve exemption, in which case liability could be found only where it was in a public domain, how then is it possible for a pit in a public domain to be of two partners?³ [For if you say that] both of them appointed an agent and said to him, "Go forth and dig for us," and he went and dug for them, [we reply that] there can be no agency for an act of transgression. If again you say that the one dug five

tefachim and the other one dug another five tefachim, [then we would point out that] the act of the former has become eliminated?⁴ - It is true that according to Rebbe we can find a pit [of two partners] in respect of mere injury, but in respect of death even according to Rebbe, or in respect whether of death or of mere injury according to the Rabbis, where could we find such a pit? — Rabbi Yochanan thereupon said: [We find such a pit] where e.g., both of them uprooted a clump [of earth] at the same time and thereby made the pit ten tefachim deep.

What is the opinion of Rebbe and what is the opinion of the Rabbis [was referred to above]? — It was taught in a Baraisa: Where one had dug a pit of nine tefachim [deep] and another one came along and completed it to a depth of ten tefachim, the latter would be liable. Rebbe says: The last one is responsible in cases of death, but both of them in cases of injury.

What is the reason of the Rabbis? — Scripture says: If a man shall uncover . . . or if a man shall dig . . . Now, if for mere uncovering there is liability, should there not be all the more so in the case of digging? [Why then mention digging at all?] It must be in order to lay down the rule [also] for [the case of] one person digging [in a pit] after another, [namely,] that [in such a case] the act of the one who dug first is regarded as eliminated. - And Rebbe? — He might rejoin that it was necessary to mention both terms, as explained elsewhere [50a]. - And do not the Rabbis also hold that it was necessary? — The reason of the Rabbis must therefore have been that Scripture says: If a man shall dig [indicating that] one person but not two people [should be liable for one pit]. Rebbe, on the other hand, maintained that [the expression 'a man'] was needed to teach that if a man shall dig a pit [there would be liability] but not where an ox [dug] a 'pit'. - And the Rabbis? [They might point out] 'a man . . . a pit' is inserted

³ For it is the one who dug it that should be responsible.

⁴ For it was the latter's act that made the pit complete and capable of causing all kinds of damage.

twice [in the same context]. - And Rebbe? — He [could rejoin that] having inserted these words in the first text, Scripture retained them in the second also.

Now [according to the Rabbis who hold that Scripture intended to make only one person liable], from where could it be proven that it is the last person [that dug] who should be liable? Why not make the first person [who dug] liable? — Let not this enter your mind, since Scripture has stated: And the carcass shall be his, [implying that the liability rests upon he] who made the pit capable of killing. - But wasn't this [verse] 'And the carcass shall be his' required for the lesson drawn by Rava? For did Rava not say: If an ox, that was a disqualified offering, falls into a pit, there would be exemption, as Scripture says: And the carcass shall be his, [implying that it is only] in the case of an ox whose carcass could be his [that there would be liability]? — To this I might rejoin: Can you not [at the same time] automatically derive from it that it is the man who made the pit capable of killing with whom we are dealing? (51a3 – 51a5)

Our Rabbis taught in a Baraisa: If one person has dug a pit to a depth of ten tefachim and another person comes along and completes it to a depth of twenty, after which a third person comes along and completes it to a depth of thirty, they all would be liable. A contradiction was here pointed out: If one person dug a pit ten tefachim deep, and another came along and lined it with plaster and cemented it, the second would be liable. Are we to say that the former statement follows the view of Rebbe,⁵ whereas the latter follows that of the Rabbis?⁶ — Rav Zevid thereupon said that the one statement as well as the other could be regarded as following the view of the Rabbis. For even there [in their own case] the Rabbis would not say that the last digger should be liable, except in a case where the first digger did not make the pit of the

minimum depth capable of killing, whereas [in this case] where the first digger made the pit of the minimum depth capable of killing, even the Rabbis would agree that all the diggers should be liable. - But, [what of] the case of [the second] lining it with plaster and cementing it, where the first digger made the pit of the minimum depth capable of killing, and yet it was said that the second would be liable? — It may be answered that the case there was where the foul air was not sufficient to kill,⁷ and it was the other person who, by diminishing the size of the pit, increased the dangerous effect of the air so as to make it capable of killing.

Some reported that Rav Zevid said that the one statement as well as the other could be regarded as following the view of Rebbe. About the statement that they would all be liable there is [on this supposition] no difficulty. And as for the other statement that the second digger would be liable, this refers to a case where e.g., the foul air was sufficient neither to kill nor to injure, and it was the other person who by diminishing the size of the pit increased the dangerous effect of the air so as to make it capable of both killing and injuring. (51a5 – 51b1)

Rava said: The case of a man putting a [one-tefach high] stone at the edge of a [nine-tefach deep] pit and thereby completing it to a depth of ten tefachim is one which brings us face to face with the difference of opinion between Rebbe and the Rabbis.⁸ - Is this not obvious? — You might perhaps think that [the difference of opinion] was only where the increase in depth was made at the bottom, in which case it was the foul air added by the second digger that caused death, whereas where the increase was made from the top, in which case it was not the foul air added by him that caused the death, it might

⁵ Who in the case of mere injury makes them all liable.

⁶ Making the second liable in all cases.

⁷ As where its width was more than its depth.

⁸ As to whether the second person or both of them would be liable in cases of injury

have been said that there was no difference of opinion.⁹
We are therefore told [that this is not the case].

Rava inquired: Where [the second digger – the one who dug the tenth tefach] filled in the one tefach [which he had previously dug] with earth, or where he removed the stones [which he had previously put at the edge of the pit], what would be the law? Are we to say that he has undone what he had previously done, or rather perhaps that the act of the first digger had already been merged [in the act of the second] and the entire pit had since then been in the charge of the second? — Let this remain undecided. (51b1 – 51b2)

Rabbah bar Bar Chanah said in the name of Shmuel bar Marta: Where a pit is eight tefachim deep, but two tefachim out of these are [full] of water, there would be liability, the reason being that each tefach [full] of water is equivalent [in its capacity to cause death] to two tefachim without water.

The question was thereupon raised: Where a pit is of nine tefachim but one of these is full of water, what should be the law? Should we say that since there is not so much water there, there is not [so much] foul air, or rather that since the pit is deeper there is there [a quantity of] foul air?

[Again], where the pit is of seven tefachim and out of these three tefachim are full of water, what would be the law? Should we say that since there is much water there, the foul air is there [in proportion], or rather that since it is not deep, there is no [great quantity of] foul air there? — Let these queries remain undecided. (51b2)

Rav Shizvi inquired of Rabbah: If the second digger makes it wider, what would be the law? — He replied: Does he

not thereby diminish the foul air? Said the other to him: On the contrary, does he not increase the risk of injury? — Rav Ashi thereupon said: We have to consider whether [the animal] died through foul air, in which case [the second digger could not be responsible as] he diminished the foul air, or whether it died through the fall, in which case [the second digger should be responsible as] he increased the risk of injury.

Some reported that Rav Ashi said: We have to see whether [the animal] fell from this side [which was extended], in which [case the second digger would be responsible as] he increased the risk of injury, or whether it fell from the other side, in which case [the second digger would not be to blame, as] he diminished the foul air in the pit.

It was stated: In regard to a pit as deep as it is wide [there is a difference of opinion between] Rabbah and Rav Yosef, both of whom made their respective statements in the name of Rabbah bar Bar Chanah, who said it in the name of Rabbi Mani. One said that there is always foul air in a pit unless where its width is greater than its depth, the other said that there could never be foul air in a pit unless where its depth was greater than its width. (51b2 – 51b3)

The Mishnah had stated: If the first one passes by and does not cover it (and the second one also [passes by and does] not cover it, the second would be liable).

The Gemara asks: From what point of time will the first one be exempt from responsibility? — [There was a difference of opinion here between] Rabbah and Rav Yosef, both of whom made their respective statements in the name of Rabbah bar Bar Chanah, who said it in the name of Rabbi Mani. One said, from the moment when the first partner leaves the second in the act of using the

⁹ And that according to both Rebbe and the Rabbis the second person should not be liable.



well; the other, from the moment when he hands over the cover of the well to him.

[The same difference is found] between the following Tannaim: If one [partner] was drawing water from a well and the other came along and said to him, "Leave it to me as I will also draw water," as soon as the first left the second in the act of using it he would become exempt [from any responsibility]. Rabbi Eliezer ben Yaakov said: [The exemption commences] from the time that the first hands over the cover to the second. In regard to what principle do they differ? — Rabbi Eliezer ben Yaakov held that there is bereirah¹⁰ [so that] the one [partner] was drawing water from his own¹¹ and so also the other [partner] was drawing the water from his own,¹² whereas the Rabbis maintained that there is no bereirah.

Ravina thereupon said: They have followed here the same line of reasoning as elsewhere, as we have learned in a Mishnah: If two partners vowed against deriving benefit from each other, they are both forbidden to enter the courtyard (*because that would be regarded as benefiting from the other; this Tanna is of the opinion that indulgence (something that the owner would normally give away without charging for it) is forbidden for one who has been forbidden benefit by a Neder*). Rabbi Eliezer ben Yaakov said: Each one of them is permitted to enter into his own portion of the courtyard. In regard to what principle did they differ? — Rabbi Eliezer ben Yaakov held that there is bereirah so that the one partner would thus be entering his own and the other partner would similarly be entering his own, whereas the Rabbis maintained that there is no bereirah. (51b3 – 51b4)

Rabbi Elazar said: If a man sells a pit to another, as soon as he hands over the cover of the pit to him, the fellow

has acquired it. - What are the circumstances? If money was paid, why was the conveyance not completed by the money? If he wants acquisition through chazakah, why was the conveyance not completed by chazakah? — In fact, we suppose the intention was to acquire it through chazakah, and it was still requisite for the seller to say to the buyer, "Go forth, take possession and become the owner," but as soon as he handed over the cover to him, this was equivalent [in the eyes of the law] to his saying to him, "Go forth, take possession and complete the conveyance." (51b4 – 51b5)

DAILY MASHAL

"If a man shall uncover a pit, or if a man shall dig a pit and not cover it, and an ox or a donkey fall into it...." (21:33)

Why is the first "bor" (pit) written with a "vav" and the second "bor" without a "vav"?

The Koznitzer Maggid explains based upon our Gemara: The law of responsibility concerning digging a pit in the ground which caused fatal damage applies only to a pit ten tefachim deep. A person who uncovers a pit ten tefachim deep is considered to have dug the entire pit and he is responsible for the damages. Similarly, one who adds a tefach to an already-existing pit nine tefachim deep is also fully responsible as if he had dug the entire pit. The first part of the passuk is referring to the instance where a pit ten tefachim deep was uncovered, while the latter part refers to the case where one digs the tenth tefach. Therefore, in the first part of the passuk, in which one makes the entire pit, "bor" is written with a "vav". But where one only digs the one tefach (and becomes responsible for the pit), it is written without a "vav."

¹⁰ A retroactive clarification, so that a subsequent selection or definition determines retroactively a previous state of affairs that was undefined in its nature.

¹¹ Though this water which he subsequently drew was by no means defined at the time when the partnership was formed.

¹² So that one partner does not use the water of the other to become thereby a borrower of it and thus enter into responsibility regarding it.