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### *Type of falling*

The *Mishna* (52a) stated that if an ox fell into a pit due to the sound of one digging in the pit, the owner of the pit's liability depends on how the ox fell: If it fell forward, the owner is liable, but if it fell backward, the owner is not liable.

To understand the *Mishna*, we must define what "forward" and "backward" mean, and, based on that, the rationale for the *halachah* in each case. The *Gemora* relates a dispute between Rav and Shmuel on these definitions, based on their opinions (50b) on what aspect of a pit makes its owner liable. Rav holds that the liability of an owner of a pit is due to the foul airflow encountered by an animal while falling (*hevel*), but not due the impact of the animal when reaching the bottom of the pit (*chavat*). Since the *hevel* affects an animal only through its face, it only occurs when an animal falls into the pit face first. Therefore, Rav explains that "falling forward" means falling face first into the pit, and therefore encountering the *hevel*. In this case, the owner is liable. "Falling backwards" means backwards into the pit, in which case the animal's face will not encounter *hevel*. In that case, the only damage done to the ox is when it hits the bottom of the pit (*chavat*), for which the owner of the pit is not liable. Shmuel, on the other hand, holds that the liability of an owner of a pit is due to *hevel*, and definitely due to *chavat*. Therefore, according to Shmuel, once the ox falls into the pit – whether face first or back first – the owner of the pit is liable, due to the *hevel* and *chavat*. The only case when the owner is not liable is if, due to the sound of the digging, the ox fell backwards on the ground *above* the pit, but not into the pit. In this case, there is no *hevel* nor *chavat*, and therefore no liability.

The *Gemora* brings a *braisa* that states that if an ox falls into a pit, whether "forwards" or "backwards," the owner of the pit is liable. This *braisa* seems to disprove Rav, who says that an ox that falls backwards into a pit does not make the pit owner liable. The *Gemora* offers three answers to this question:

1. Rav Chisda says that this *braisa* is a case of a pit in the owner's property. Since Rav's reason for not obligating the owner of a pit for *chavat* is because the ground is *karka olam* (*ownerless*), when the owner of the pit owns the pit's land, he is also responsible for the *chavat* of the pit. In that case, both falling backwards and forwards would obligate him.
2. Rabbah says that this *braisa* is referring to a case where the animal fell into the pit face forward, but turned around and fell on its back by the time it reached the bottom. Since there was an initial *hevel*, the owner of the pit is responsible for the damages.
3. Rav Yosef says that the *braisa* is discussing a case where the ox dirtied the water that was in the pit. The *braisa* is not discussing the liability of the pit's owner, but rather obligating the ox's owner in the damages of the pit.



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Finally, Rav Chananiah brings a *braisa* that supports Rav. The verse that obligates an owner of a pit says the case is of an animal *"v'nafal" – fell.* Rav Chananiah's *braisa* states that this verse tells us that the obligation is when the animal falls in the usual way, and therefore, if an animal fell into a pit backwards, the owner of the pit is not liable. (52b – 53a)

***Partners in damage***

The *Gemora* then asks a fundamental question about this case, independent of Rav and Shmuel's explanations. Since the direct impetus for the animal falling in the pit was the sound of the person digging, why is the owner of the pit responsible?

To answer this question, the *Gemora* introduces the dispute of Rabbi Nassan and the *Chachamim* in the case of an ox that pushes another ox into a pit. The *Chachamim* hold that only the owner of the ox is responsible, because it was the direct cause of the damage, while Rabbi Nassan holds that the owner of the ox pays half the damages, and the owner of the pit pays the other half. The *Gemora* understands that Rabbi Nassan holds that whatever damages cannot be collected from other joint damagers must be paid by the owner of the pit. Rav Shimi Bar Ashi answers that the *Mishna* is following Rabbi Nassan. Therefore, since the owner of the ox cannot collect damages from the digger, because he only was a *grama* (*indirect cause*) to the damages, he can collect his damages from the owner of the pit.

The *Gemora* brings two versions of the dispute between Rabbi Nassan and *Chachamim*. In the first version, Rabbi Nassan says each owner (*owner of the ox and owner of the pit*) pays half, while in the second version, Rabbi Nassan says the owner of the ox pays one quarter, and the owner of the pit pays the remainder. The first version is in the case of an ox that's *mu'ad* (*habitually gores*), and would pay full damages when damaging alone, while the second version is in the case of an ox that's *tam* (*not used to goring*), and would pay only half damages when damaging alone.

The *Gemora* questions why the uneven distribution of damages in the case of a *tam*. If Rabbi Nassan holds that each damaging party does full damage, then why does the owner of the *tam* only pay one quarter (*half of the normal payment for a tam*), and if Rabbi Nassan holds that each damaging party does half damage, then why does the owner of the pit pay three quarters, more than half of the damages?

Rava says that Rabbi Nassan was a judge, and delved into the depth of this judgment. The *Gemora* presents two versions of the explanation given by Rava for Rabbi Nassan's opinion:

1. Each owner does full damage, but if the ox would pay half, as it would when damaging alone, the owner of the ox would not benefit from the partnership of the owner of the pit. Therefore, the owner of the ox only pays one quarter, and the owner of the pit pays the balance.
2. Each owner only does half damage, so the owner of the ox only pays one quarter. The owner of the dead ox can say to the owner of the pit, "I found my ox in your pit, so you killed it." Therefore, the owner of the damaged ox can primarily bring his claim to the owner of the pit, who must complete any missing damages.

Rava says that Rabbi Nassan and *Chachamim*'s dispute applies in the case of a person who places a stone at the edge of a pit, resulting in an animal tripping on the stone, and falling into the pit. This is true even though (*unlike the ox/pit combination*), the owner of the stone can say that without the pit, the stone would not have caused any damage.


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The *Gemora* discusses a number of joint damage cases.

1. **A regular ox and an ox of *pesulei hamukdashim*** (*a sacrifice which was rendered unfit*). An ox which is *pesulei hamukdashim* is considered property of *hekdesh*, and therefore it is not liable for damages. [*This is true even in the case of a first born animal, which is normally a sacrifice, but which has a blemish. A Kohen can then eat the animal, but it still is property of hekdesh. See Rashi and Tosfos for more discussion on this.*]

   The *Gemora* records two versions of a dispute between Abaye and Ravina as to how much of the damage the regular ox pays:

   a. Abaye – half
      Ravina – one quarter
      There are two options to explain these positions:
      i. Both are discussing a *tam*. Abaye is following Rabbi Nassan, who says a partner pays whatever is necessary, even due to inability to collect from the other partner. Ravina is following *Chachamim*, who only obligate a partner for its share. In this case, there is a halachic dispute
      ii. Both hold like the *Chachamim*, but Abaye is discussing a *mu'ad*, while Ravina is discussing a *tam*. In this case, there is no dispute
   b. Abaye – half
      Ravina – whole
      There are again two similar options to explain these positions:
      i. Both are discussing a *mu'ad*, but Abaye is following *Chachamim*, while Ravina is following Rabbi Nassan. In this case, there is a halachic dispute
      ii. Both hold like Rabbi Nassan, but Abaye is discussing a *tam*, while Ravina is discussing a *mu'ad*. In this case, there is no dispute.

2. **Ox, person, and pit**
   Rava discusses the case of a three-way partnership – an ox and a person who together push something into a pit. There are many types of damages that can result, affecting many types of items, and Rava lists all the *halachos* in these cases. [*Rava is ruling like Rabbi Nassan throughout these cases.*]
   a. *Regular damages (nezikin)* – all are liable.
   b. *Four damage categories (all but nezikin), and the fetus of a pregnant woman* – only the person is liable.
   c. *Killing a person, resulting in paying kofer (free person), or* thirty *shekalim (slave)* – only the ox is liable
   d. *Keilim (utensils), and pesulei hamukdashim* – all except the pit are liable. The pit is not liable for utensils and *pesulei hamukdashim*, as the *Gemora* goes on to discuss.

The *Gemora* asks how we know that a pit is not liable for *pesulei hamukdashim*, and answers that the Torah states that when an ox falls into a pit and dies, *"hameis yihye lo" – the carcass will be his (the owner of the dead ox)*. In the case of *pesulei hamukdashim*, the carcass is not usable by the owner, since it cannot be redeemed at that point, and must be buried, and therefore, the owner of the pit doesn't pay damages. Even though Rava at one point questioned whether this verse teaches us this rule, or instead that caring for the carcass and incurring any losses due to its drop in value (*pachas neveila*) are the responsibility of the killed ox's owner, he later concluded that it also teaches us that the pit is only liable when the ox's owner can keep the carcass. Instead, Rava learns the


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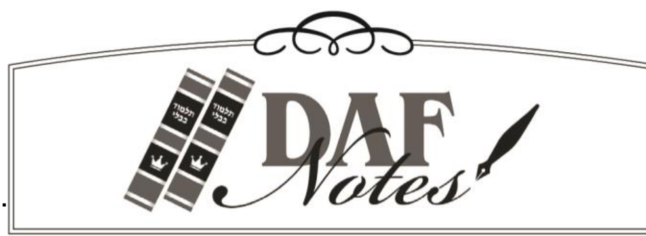

fact that the ox's owner is responsible for the carcass from the identical phrase used by an ox that kills an ox, and the exclusion of *pesulei hamukdashim* from the phrase used by a pit. The reason Rava lines up the rules this way is that a pit already has limitations in its liability (*in the case of utensils*), so it is logical to add to it another limitation. An ox, even though it doesn't always pay full damages (*e.g., if it's a tam*), nonetheless, is never free from damages, and therefore does not get the exclusion of *pesulei hamukdashim*. [*The responsibility of handling the carcass is on the owner of the ox in both cases – see Tosfos.*] (53a – 53b)

***Utensils in a pit***

The *Mishna* had stated that if an ox and its utensils or a donkey and its utensils fell into a pit, and the animal died, and the utensils were also damaged, the owner of the pit must pay only for the animal. The *Gemora* states that this is the opinion of the *Chachamim*, but Rabbi Yehudah holds that a pit's owner is liable for damages to utensils as well. When the Torah states the rules of a pit, the Torah says *v'nafal shama shor **o** chamor – and fell there an ox **or** a donkey*. The *Chachamim* say that the Torah listed *shor- ox* to exclude a person who's killed by a pit, and *chamor – donkey* to exclude utensils. Rabbi Yehudah says that the extraneous word *o-or* includes utensils. The *Chachamim* say that the word is needed to separate ox and donkey – without that word, I may have thought damages are only incurred if both fall in. Rabbi Yehudah learns this from the singular form of the verb used (*v'nafal – and **it** fell*), but the *Chachamim* say that the same form can be used for multiple subjects. (53b – 54a)

**INSIGHTS TO THE DAF**

***Halachic conclusion in Rav and Shmuel's dispute***

The Rif says that even though we generally hold like Shmuel in monetary *halachah*, in this case we hold like Rav, since the *Gemora* brought a *braisa* that supports Rav, and the *Gemora* had a number of *Amoraim* who tried to explain the other *braisa* according to Rav, indicating they also agree with Rav.

The Rashba, however, states that this is not enough to make an exception to the rule that the *halachah* is like Shmuel in monetary issues.

The Rambam (Nizkei Mamon 12:18) has an unclear opinion on this case. There are varying texts, but our standard text states the following categories:

1. If the ox fell into the pit forwards, the owner of the pit is liable
2. If the ox fell into the pit backwards, the owner of the pit is not liable
3. If the ox fell forward outside of the pit, the court doesn't get involved, but if the ox's owner seized assets of the pit's owner, we don't take them away
4. If the ox fell backwards outside of the pit, the owner of the pit is not liable

See the Raavad and Lechem Mishneh for a lengthy discussion of the correct text and explanation of the Rambam's position on this dispute.

The Shulhan Aruch (HM 410:31) rules like Shmuel.

***Partners in damage***

***Chachamim's opinion***

The *Gemora* discusses Rabbi Nassan's opinion at length, but does not offer much detail on the *Chachamim*'s position. The *Rishonim* discuss how much damage the owner of a *mu'ad* ox that pushes an ox into a pit (*the first braisa*) pays according to the *Chachamim*. The Re'ah states that he only pays half, as he only did half damage. Rashi, however, states that he pays full damages, since



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the *mu'ad* ox was the only damager, according to *Chachamim*. However, in the case of two oxen that damage together, each would only pay half, even according to the *Chachamim*, as they both actively damaged.

***Half vs. Full damage***

Tosfos (53b, Ha k'rabanan) points out that the continuation of the *Gemora* on 53b seems to indicate that the correct understanding of Rabbi Nassan is that both damagers do full damage. Tosfos proves this from the fact that the *Gemora* applies Rabbi Nassan to the case of two oxen, one of which is not liable, due to its *pesulei hamukdashim* status. If Rabbi Nassan only obligated the owner of the pit disproportionately because the carcass was found in his pit, this would not apply to two oxen that jointly damage.

Hagahos Maimoni (Nizkei Mamon, 12:3) brings a responsum from R. Meir Mirotenburg who distinguishes between an ox and pit partnership, where the pit was the junior passive partner, and two oxen, where both are active partners. Even if the correct understanding in the case of the pit would be half damages, in the case of two oxen, both would be fully responsible.

***A person's contribution***

If a person and ox kill together, the *Gemora* states they are both liable. Tosfos (53b L'inyan kofer) asks from the *Gemora* in Sanhedrin, where all agree that if ten people hit a person with ten sticks simultaneously, and he dies, that none are liable. In this case as well, why not say that the person and ox are not liable, since they killed together?

Tosfos answers that the case here is that they did it sequentially.

The Rashba answers that in Sanhedrin, each person did a separate action, the combination of which killed the person, and therefore no one is liable. Here, however, both the person and ox pushed the person in one act, and therefore both are liable.

Tosfos (53b Shor) raises the issue of a person's intent. If a person intended to damage the ox, the owner of the pit – who was passive in the damages – should not be liable, just as an owner of a fire would not be liable if someone intentionally burned an object in a fire. However, if the person did not intend to damage, how can he be liable for the four non-*nezek* categories of damages, including embarrassment (*boshes*), since *boshes* is only incurred when done intentionally?

Tosfos answers that the person didn't intentionally push the person in, but knew about it (*and presumably was pleased*) before the person fell into the pit. He is therefore liable for *boshes*.

The Shita Mekubetzes answers that it's possible for the person to have intent to embarrass the pushed person, but not to have pushed him into the pit.

The Rashba states that the four categories are including *nezek*, but not including *boshes*. Even though the ox is liable for *nezek*, it is not liable for the others, and therefore the *Gemora* states it's not liable for the four as a whole.

The Ketzos Hachoshen discusses what the *halachah* is in a case where the person, along with an ox, intentionally pushed an ox into a pit. On the one hand, the owner of the pit can claim (*as explained in the Tosfos above*) that he is not a partner to the person, since the person did it intentionally. On the other hand, the ox's owner can claim that the pit is a partner to his damage, as is always the case when an ox pushes another ox into a pit. Similarly, the person can claim that the ox is a partner to



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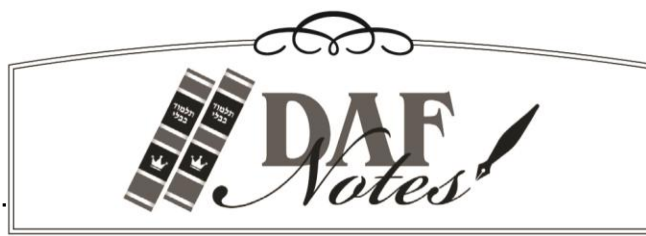

the damages, even though he did it intentionally. He suggests that the person must pay half, and the ox and pit's owners each pay one quarter, but says that from Tosfos it seems that whenever the person intentionally damaged, he pays all the damages himself.

***Filling in missing damages***

The Tur (HM 410) quotes the Rema, who extends the opinion of Rabbi Nassan to a case where two parties damaged, both are liable, but one cannot pay or has run away. Even in this case, states the Rema, the remaining party must pay the full damages.

The Tur disagrees, and states that Rabbi Nassan only said the partner must fill in damages if the other damager is not liable for some halachic reason. If, however, he's liable, but just is not technically paying, this does not obligate the other partner. This has ramifications nowadays for a *tam* that pushed an animal into a pit. Both parties are responsible, but nowadays, we don't collect *tam* damages, as they are a fine. According to the Rema, the owner of the pit would have to pay full damages.

The Taz quotes the Maharshal, who discusses a case where partners (*one Jewish and one non-Jewish*) overcharged a Jewish customer. Both partners are liable, but only the Jewish one is subject to our court system. Even according to the Tur, the Jewish partner will be fully liable. This is due to two distinctions from the Rema's case:

1. In the Rema's case, the partner who is not paying could theoretically pay, if he returned and had money. However, in this case, the non-Jewish partner will never pay.
2. In this case, the Jewish customer relied on the Jewish partner to take care of not overcharging him, and therefore the full liability falls on him.

However, the Maharshal adds that if it's a case that would make the non-Jewish partner liable, even in the secular court system, then this becomes the same as the Rema's case.

See Rabbi Akiva Eiger on this daf for a discussion of two false witnesses who recant, one of which has no money to pay.

***Pesulei Hamukdashim***

The R'ah points out that the phrase *pesulei hamukdashim* on 53b is used to mean two different types of animals. In the first instance, where the ox that's *pesulei hamukdashim* is the damager, it means a blemished sacrifice, which has not yet been redeemed, and therefore, he is not liable for damages. However, in the second instance, where the ox that's *pesulei hamukdashim* falls into the pit, it means a blemished sacrifice, which has been redeemed, but nonetheless is not eligible for damages since the carcass is unusable, since redemption is only to enable human consumption of the meat.

The Shita Mekubetzes raises an interesting question from the statement of the *Gemora* that a pit's owner only is liable if the owner of the ox can use the carcass. If so, why do we need a special exclusion for the case of a person killed – the corpse is not usable for anything, since its benefit is forbidden?

The Shita quotes the Ritz's answer, which is that the exclusion of "*v'hames yihyeh lo*" is only applicable to the items explicitly mentioned in the Torah – animals – and not to other items logically learned from them. See the Shita for other answers.



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