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DAF Notes
Insights into the Daily Daf
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Bava Kamma Daf 58

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

Chasing Away a Lion

The *Mishna* had stated: If it fell into a garden and benefitted from it, he must pay for what it benefitted.

Rav said: The *Mishna* is referring tom a case where the animal was struck by the produce (*it damaged the produce but also derived benefit from it since it lessened the impact of the fall*).

The *Gemora* infers that if it would have eaten them, he would not be required to pay at all!? [*Why would this be the halachah?*]

Shall we say that Rav is following his principle stated elsewhere? For did Rav not say (*regarding a case where someone placed produce into someone else's field and an animal (belonging to the field owner) ate them and became sick, the owner of the food is not liable to pay because he can tell the owner of the animal*), "It should not have eaten them." [*So too here, the owner of the animal should be exempt from paying when his animal fell into the garden and ate the produce*.]

The *Gemora* asks: But how can the two cases be compared to each other? Rav said, "It should not have eaten" only in a case where the animal was injured (*through eating*), for the owner of the produce could say to the owner of the animal, "I will not pay as your animal should not have eaten my produce." But would Rav ever say that he should be exempt from paying in the case where the animal did damage to others?

Rather, Rav's understanding of the *Mishna* is said in a fashion of "it is not necessary." The *Mishna's* ruling does not only apply if the animal eats, and therefore pays what it benefited. One might think that if it fell and was struck by the produce (*reducing the impact of the fall*) that the produce which was damaged should be akin to a case of chasing away a lion from his friend's possessions (*for the owner of the produce is doing a mitzvah by saving his fellow's animal from injury*), and therefore he should not even have to pay what he benefited. This is why the *Mishna* says that even in a case where the animal fell, the owner must pay for its benefit.

The *Gemora* asks: Indeed, why don't we say that this is akin to a case of chasing away a lion from his friend's possessions (*where the friend does not have to pay for the chasing*)?

The *Gemora* answers: The case of chasing away the lion was done (*knowingly and*) willingly, unlike the produce acting as a cushion that was not done with the consent of the owner of the produce.

Alternatively, the *Gemora* answers: When one chases away a lion, he does not incur a loss, as opposed to this case where he did incur a loss (*as his produce was crushed by the animal's fall*). (57b – 58a)

The Way it Fell

The *Gemora* asks: How did the animal fall?

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Rav Kahana says: It slipped on its own urine.

Rava says: Another animal pushed it.

The *Gemora* notes: The opinion that says that it was pushed would certainly agree that the *halachah* would be the same if it slipped on its urine. However, the opinion that says that it slipped on its urine would say that if it was pushed by another animal, the owner of the animal was negligent and he should be liable to pay for what it damaged. This is because the owner of the garden can say to the owner of the the animal that he should have made sure that all the animals passed by this area one by one (*in a way where one animal could not push the other down*). (58a)

With his Knowledge

Rav Kahana says: We only were taught that it pays what it benefited when it ate from the row where it landed. However, if it then went to other rows and ate, it pays what it damaged. Rabbi Yochanan argues: It pays what it benefited even if it goes from row to row, and even if it eats the whole day, until it goes out and returns with the knowledge of the owner.

Rav Pappa explains Rabbi Yochanan's statement: Do not think that it means literally until it goes out with the knowledge of its owner and returns with his knowledge, but rather it means until the owner knows that it went out, even though it returned without his knowledge (*it was locked up properly - meaning that watching it by just closing the door will not be enough anymore*). This is because the owner of the garden can claim: Once it learned (*where there is good food to eat*), whenever it will escape, it will go there." (58a)

Pre-Birth Liquid

The *Mishna* had stated: If it went down normally to someone else's field, he pays what it damaged.

Rabbi Yirmiyah inquired: What if it went down normally and damaged with its pre-birth liquids? This is not a question according to the opinion who holds that when something begins with a negligence and ends with an unavoidable accident that the person is liable. [*Here, too, the owner would be liable.*] The question is according to the opinion that the person is exempt. Do we say that this is a classic case of such behavior, and he is therefore exempt? Or do we say that because he knew that it was going to give birth, this is considered a case that was negligence all the way through, and therefore he should have watched it much better. The *Gemora* leaves this question unresolved. (58a – 58b)

Source for the Evaluation

The *Mishna* had stated: How do we evaluate the payment for "what it damaged"? We evaluate how much a *beis se'ah* in that field was worth (*before the damage occurred*), and how much it is worth now, and the difference in value must be paid.

The *Gemora* asks: How do we know that we evaluate in this manner?

Rav Masnah said: The verse says: *And it consumes in the field of another*. This (*the word "another" is extra*) teaches that we evaluate the damage based on "another" field.

The *Gemora* asks: Didn't we need this verse to teach us that he is not liable if it is in the public domain?

The *Gemora* answers: If that alone were the lesson, it should have said: *And it consumes in the field of his fellow*, or: *And it consumes the field of another*. Why did it say:

And it consumes in the field of another? This teaches us that we evaluate the damage based on "another" field.

The *Gemora* asks: Perhaps the entire point of this verse was to teach this lesson? How do we know that it is also teaching that he is exempt in the public domain?

The *Gemora* answers: If so, the Torah should have written this in connection with the payment, as follows: *The best of his field and best of his vineyard he should pay in the field of another*. Why did the Torah write it in connection with: *And it consumes*? It must be to teach us that it is exempt in the public domain as well. (58b)

Sixty Times

The *Gemora* inquires: How do we make the evaluation of the *beis se'ah*?

Rabbi Yosi bar Chanina answers: We evaluate one *se'ah* out of sixty. [*Rashi explains that the value of a se'ah is judged by the sale of a field of sixty se'ah divided by sixty. The individual sale of a se'ah is rare, and would therefore be marked up in value much more than one sixtieth of the price of a normal sixty se'ah sale. Therefore, we first evaluate how much a se'ah is really worth, and then subtract the damage.*]

Rabbi Yannai says: We evaluate half of a *se'ah* out of sixty *kav* (*which equals thirty se'ah*). [*Rabbi Yanai merely holds that a normal amount to buy is thirty se'ah, not sixty, and therefore the evaluation should be done in this fashion.*]

Chizkiyah says: We evaluate a stalk (*it ate*) with respect to sixty stalks (*we evaluate the decreased value according to the amount eaten among sixty times as much*).

The *Gemora* asks on these opinions from a *braisa*. The *braisa* states: If the animal ate one or two *kav*, we do not say he should pay their value, but rather, we look at it as if it is a small row and evaluate it. This implies that we evaluate it on its own, without looking at the value of sixty times more.

The *Gemora* answers: No, it means that we look at the value of sixty times more.

The *braisa* states: We do not evaluate a *kav*, because this would make it better, and we do not evaluate a *beis kur* (*large amount*), because this would make it less.

What does this mean?

Rav Pappa says: This means that we do not evaluate one *kav* as part of sixty *kav* because this is better for the one who damaged. We do not evaluate one *kur* out of sixty *kur*, as it will be worse for the one who damaged.

Rav Huna bar Manoach asked: If this is the explanation, it should say "not a *kur*." Why does it say "*beis kur*?"

Rather, Rav Huna bar Manoach says in the name of Rav Acha the son of Rav Ika: It means that we do not evaluate a *kav* on its own because this increases the value for the one damaged, and we do not evaluate a *kav* out of a *beis kur* because it lessens the damage for the one damaged, rather we evaluate a *kav* in sixty *kav*. (58b)

Evaluation when a Man Damages

There was a person who cut down his friend's palm tree. He came before the "Reish Galusa" -- "Exilarch." The Exilarch told him: I saw this orchard, and there were three trees next to each other that were worth one hundred *zuz*. Therefore, give him thirty-three and a third *zuz*. The man said: Why should I be judged by a Exilarch who hands down judgment in a Persian fashion (*not according to Torah law*)? He therefore went before Rav Nachman, who said he should pay one sixtieth of the value of sixty such trees (*less than the judgment of the Exilarch*).

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Rava asked Rav Nachman: Just because we see this is the law when one's money (*i.e. animals*) causes damage, is this the law when the person himself damages?

Abaye said to Rava: Why do you say that we do not evaluate this way when the person himself damages? It is because of this *braisa*: If a man destroys the berries from his fellow's vineyard while still in the budding stage, it has to be ascertained how much it was worth previously and how much it is worth afterwards (*and he pays the difference*), but nothing is said of assessing the damage in conjunction with a vineyard sixty times as much. But you cannot prove anything from there, for has it not been taught similarly with respect to damage done by animals? For it was taught in a *braisa*: If an animal breaks a young tree, Rabbi Yosi says that the Legislators of the public enactments in Yerushalayim stated that if the tree was in its first year, two silver *maos* should be paid, but if it was in its second year, four silver *maos* should be paid. If it ate young blades of grain, Rabbi Yosi HaGelili says that it has to be considered in the light of the future value of that which was left in the field (*for then, it may be determined how much the damaged area would have been worth at the harvest time*). The *Chachamim*, however, say that we evaluate the field how much it was worth previously and how much it is worth now (*and he pays the difference*). If it ate grapes while still in the budding stage, Rabbi Yehoshua says that they should be viewed as if they were grapes ready to be plucked off. But the *Chachamim* say that we evaluate the field how much it was worth previously and how much it is worth now (*and he pays the difference*). Rabbi Shimon ben Yehudah says in the name of Rabbi Shimon: These rulings (*that we evaluate the damaged produce in relationship to the land*) apply where it ate sprouts of vines or shoots of fig trees (*even before the budding stage*), but where it ate half-ripe figs or half-ripe grapes, they would be viewed as if they were (*figs or*) grapes ready to be plucked off (*and he would pay the market price for them*).

Now (*Abaye concludes his proof*), it is stated in the *braisa*: the *Chachamim* say that we evaluate the field how much it was worth previously and how much it is worth now (*and he pays the difference*), and it is not said that the assessment will be made in relation to a field sixty times as much!? You must say (*although the braisa does not explicitly state this*) that we do evaluate according to a field sixty times as much. So too, here (*in the case where a person damages*), we evaluate according to a field sixty times as much. (58b – 59a)

INSIGHTS TO THE DAF

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Tosfos rules that the lion chaser is not entitled for compensation only in cases where it is not definite that the lion will cause a loss, for instance, where the lion is far away from the sheep, but he is concerned that it might come closer. However, if he would chase away the lion when the damage is imminent, for instance, where the sheep is already in the mouth of the lion, he is entitled for compensation.

Tosfos cites several proofs for this. One of the proofs is from a *Gemora* in Bava Metzia (31b) which rules that one who is returning a lost article is entitled to be compensated for his time. This, explains Tosfos, is because of the fact that if the finder will not get involved with the lost article, it will cause a definite loss to the owner.

The Rashba disagrees with the proof: He says that the only time he is not entitled to be compensated is if he gets involved willingly. By the case of returning a lost article, he has no choice, for the Torah commands him to pick it up and return it. The Torah does not instruct people to lose their own money in order to return someone else's.

Paying for a Broken Window

According to the Chafetz Chaim *zt'l* our *sugya* demonstrates the limitations of a mortal's intelligence, which cannot compare to the insight of the Torah (cited in *Or LeTzion* I *C.M.* §4). When asked how much one should pay for breaking a window, most people would reply that the owner should be reimbursed for the cost of replacing the window. However, as will be shown below, our *sugya* proves that the damager is actually exempt from payment.

Break a window, pay nothing: In a case where a row of garden vegetables is damaged, Rabbi Shimon holds that the owner must be compensated for the cost of the ripe vegetables, and the halacha follows this opinion (*C.M.* 394:4). On the other hand, based on the verse, "or it grazed in another's field" (*Shemos* 22:4), the Gemara teaches that to calculate the amount one must pay for damaging a row of *unripe* vegetables, the value of the field without that row is deducted from the value of the whole field. This method of damage assessment is advantageous to the damager, since assessing the value of a single row of vegetables would generate a much higher figure.

According to the Chafetz Chaim, this method should be used to calculate all damages. A broken window does not diminish the apartment's selling price, because one window has a negligible impact on the price of the apartment, and so based on our *sugya,* the damager would not have to pay a cent.

Repairable versus irreparable: However, the Chazon Ish disagrees (*Bava Kamma* 6:3). He maintains that this means of assessment cannot be applied to other types of damage. The harm done to a row of vegetables is irreparable and the damager cannot make amends to the owner except by compensating him for the damaged produce. In such a case, the Torah teaches us that the value of the row must be assessed in relation to the cost of the whole field. But breaking a window is different because the damage *can* be repaired, and therefore he must pay the amount needed to cover the costs.