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Halachos of Damaging

Rabbah says: If someone strikes the hand of his friend and his coins fly out into the Great Sea, he is exempt because he can say, "It is right here and you can retrieve it." This is true only when the water is clear and the coin can be seen (*even though he now must hire a diver to retrieve his coin, this is regarded as a gerama – causative damage, and he is exempt from liability*), but if the water is murky, where he does not see it, he will not be exempt from liability. And this applies only when he knocked the coin [into the sea], but if he took the coin and then he threw it into the water, he has stolen it first and he is obligated to return the stolen object.

Rava asked from the following Baraisa: Deconsecration [of ma'aser sheini] cannot be made by means of money not in one's actual possession, such as if he had money in Kistera or in Har Hamelech, or if his purse fell into the Great Sea; no deconsecration could then be effected. — Rabbah said: The case [of deconsecration] of ma'aser sheini is different, as it is required there that the money should be [to all intents and purposes] actually in your hand, for the Merciful One says: And you shall bind up the money in your hand, which is lacking in this case.

Rabbah says: If someone bangs the coin of his friend (with a hammer) and effaces the image on the coin, he is exempt. Why is this? Because he has done nothing (to reduce the substance of the coin; it is only a *gerama* – causative damage). This applies only Where he banged it with a hammer and so made it flat, but where he rubbed the stamp off with a file, he has diminished it (as he rubbed out some of the metal; accordingly, he is considered a damager and must pay for the entire loss of the coin).

Rava asked from the following Baraisa: If someone hits his slave in the eye and blinds him, or on his ear and deafens him, the slave goes free. If he hits the slave next to the eye and he no longer sees, or next to his ear and he no longer hears, the slave does not go free. [Does this not prove that even where the substance was not reduced, such as in the case of deafening, still so long as the damage was done there is liability?]

The Gemara answers: Rabbah is following his reasoning, as Rabbah said [elsewhere]: One who makes his father deaf is subject to capital punishment, for it is impossible to cause deafness without first making a bruise through which a drop of blood falls into the ear.[1]

And Rabbah said further: If someone nicks the ear of the cow of his friend (*rendering it unfit to be used as a korban*), he is exempt. What is the reason? Because the cow stands as it did before (i.e., it is not worth any less), for he did nothing at all, as not every cow is brought (as a *korban*) upon the Altar.

Rava asked from the following Baraisa: If someone works with water designated for the *chatas* water (*the water*

[1] And for the same reason the slave would be set free.

which was mixed with the ashes of the red heifer) or the red heifer itself (*both which become unfit if work is done with them*), he is exempt from paying under the laws of *Beis Din* (*for the damage is not discernible to the eye*), but is obligated to pay under the laws of Heaven. Now surely this is so only where mere work was done with it, in which case the damage [done to it] is not recognizable, whereas in the case of nicking, where the damage is noticeable there would also be liability according to the laws of *Beis Din*.? — It may, however, be said that the same law would apply in the case of nicking, where he would similarly be exempt [according to the laws of *Beis Din*], and that what we are told here is that even in the case of mere work where the damage is not recognizable, there would still be liability according to the judgments of Heaven.

And Rabbah said: One who burns his fellow's loan documents is exempt, (*even though the fellow lost his ability to enforce the lien that was written into the documents*), for he can say to him, "I burned a mere paper of yours."

Rami bar Chama asked: What are the circumstances? If there are witnesses who know what were the contents of the document, why not draw up another document which would be valid? If, on the other hand, such witnesses are not available, how could we know [what were the contents]?

Rava explains that we are referring to a case where (there were no witnesses who know what was written on the document, but) the one who burned the document believes the holder of the document regarding the amount that was written in it.

Rav Dimi bar Chanina said: The ruling of Rabbah is dependent upon a dispute between Rabbi Shimon and the Rabbis: [Rabbi Shimon states in a Mishnah: If someone stole a *korban* that was a *neder* (*the owner pledged to bring this type of korban, even if it is not this animal*), he must pay *keifel*. This is because he holds that something that causes monetary value is considered to have monetary value.] According to Rabbi Shimon who held that an object whose absence would cause a loss of money is reckoned in law as money there would be liability, but according to the Rabbis who said that an object whose absence would cause a loss of money is not reckoned in law as money there would be no liability.

Rav Huna the son of Rav Yehoshua rejects this linkage, for Rabbi Shimon holds that an object whose absence would cause a loss of money is reckoned in law as money only with respect to something that is inherently money, such as the case that Rabbah discussed, for Rabbah said: If chametz was stolen before [the arrival of] Pesach and someone else came along and burned it, if this took place during the festival he would be exempt as at that time all are obligated to destroy it, but if after Pesach there would be a difference of opinion between Rabbi Shimon and our Rabbis, as according to Rabbi Shimon who held that an object whose absence would cause a loss of money is reckoned in law as money, he would be liable, while according to our Rabbis who said that an object whose absence would cause a loss of money is not reckoned in law as money, he would be exempt. However, with respect to something that has no intrinsic value (*such as the document*), would we say that (that Rabbi Shimon that it is considered money)? [No, we wouldn't and the destroyer of the document will not be liable.]

Ameimar says: According to the opinion that a person is liable for *garmi* (*causing a loss to someone else – although there was no physical damage*), the person who burns the document must pay the full amount written in the document. But according to the one who does not adjudicate liability in an action for damage done indirectly would here rule that he is liable only to the extent of the value of the mere paper.

It once happened that in such an action Rafram compelled Rav Ashi and damages were collected [in full] like a beam used for images. (98a1 – 98b2)

The Mishnah had stated: If a person steals *chametz* and Pesach passed by while it was still in the robber's possession (which renders the *chametz* prohibited for any benefit), he may say to the owner, "Behold, that which is yours is before you."

Who is the Tanna who, in regard to things forbidden for any use, allows [the offender] to say, "Behold, that which is yours is before you"? — Rav Chisda said: He is Rabbi Yaakov, as indeed taught in a Baraisa: If an ox killed a person, the *halachah* is as follows: Before they reached a guilty verdict, if the owner sells it, it is sold; if he consecrates it, it is consecrated; if he slaughters it, its meat is permitted; if the guardian returns it to the owner, it is considered returned. If a guilty verdict was already reached, the halachah is as follows: If the owner sells it, it is not sold; if he consecrates it, it is not consecrated; if he slaughters it, its meat is prohibited; if the guardian returns it to the owner, it is not considered returned. Rabbi Yaakov says: Even if the guardian returns the ox after a guilty verdict has been reached, it is considered returned.

Now, is the argument not dependent upon the following issue: Rabbi Yaakov holds that when it comes to something forbidden for benefit, we can say: "Behold, that which is yours is before you," whereas the Rabbis maintain that when it comes to something forbidden for benefit, we cannot say: "Behold, that which is yours is before you."

Rabbah rejects this logic: No; in truth everyone holds that when it comes to something forbidden for benefit, we can say: "Behold, that which is yours is before you," for otherwise, they should be arguing regarding chametz on Pesach. Rather, Rabbah states that the argument hinges on a different matter: Can we try a case regarding the ox when the ox is not present or not? The Rabbis hold that sentence cannot be pronounced over an ox in its absence so that the owner may plead against the custodian thus: "If you had returned it to me [before the passing of the sentence], I would have driven it away to a swamp, whereas now you have surrendered my ox into the hands of those against whom I am unable to litigate." Rabbi Yaakov, however, maintains that sentence can be pronounced over the ox even in its absence, so that the custodian may retort to the owner thus: "In any case the sentence would have been passed on the ox, even in its absence. (98b2 – 98b4)

Rav Chisda came across Rabbah bar Shmuel and said to him: Have you been taught anything regarding things forbidden for benefit? — He replied: Yes, I was taught [the following Baraisa]: *He shall restore the stolen object*. What is the point of the additional words, *that he stole*? [It is that] so long as it was intact he may restore it. Hence did the Rabbis declare that if one stole a coin and it became disqualified, fruits and they became rotten, wine and it became sour, terumah and it became tamei, chametz and [it became forbidden for any use because] Pesach passed by, an animal and a transgression was committed with it, or an ox and [it subsequently became subject to be stoned, but] its judgment was not yet concluded, he can say to the owner, "Behold, that which is yours is before you." Now, which authority can you suppose to apply this ruling only where the judgment was not yet concluded, but not where the judgment was already concluded, if not the Rabbis, and it is at [the same time] stated that [if he stole] chametz and [it became forbidden for any use because] Pesach passed by, he can say to him, "Behold, that which is yours is before you"? — He replied: If you happen to meet them [please] do not tell them anything [of this teaching]. (98b4)

The Mishnah had stated: [If one stole] fruits and they became rotten . . . he can say to him: "behold, that which is yours is before you."

But did we not learn in our Mishnah: [If he stole] fruits and they became rotten . . . he would [certainly] have to pay according to [the value at] the time of the robbery? — Rav Pappa said: The latter ruling refers to where they rotted in their entirety, the former to where only parts of them became rotten. (98b4)

MISHNAH: If an owner gave a craftsman [some articles] to fix and they ruined them, they would be liable to pay. Where he gave a carpenter a chest, a box or a closet to fix and he ruined it, he would be liable to pay. If a builder undertook to demolish a wall and he broke the stones or damaged them, he would be liable to pay, but if while he was demolishing the wall on one side another part fell on another side, he would be exempt, though, if it was caused through the blow, he would be liable. (98b5)

GEMARA: Rav Assi said: The Mishnah's ruling could not be regarded as applying except where he gave a carpenter a chest, a box, or a closet to knock a nail in and while he was knocking in the nail he broke them. But if he gave the carpenter timber to make a chest, a box or a closet and after he had made the chest, the box, or the closet, they were broken by him, he would be exempt, the reason being that a craftsman acquires title to the increase in [value caused by the construction of] the article.

But we have learned in our Mishnah: If an owner gave a craftsman [some articles] to fix and they ruined them, they would be liable to pay. Does this not mean that he gave them timber to make utensils? — No, [he gave them] a chest, a box or a closet. - But since the concluding clause in the text mentions 'chest, box or closet,' is it not implied that the opening clause refers to timber? — It may, however, be said that [the latter clause] only means to expand the earlier [as follows]: In the case where an owner gave craftsmen some articles to fix and they ruined them, how would they be liable to pay? As, e.g., where he gave a carpenter a chest, a box, or a closet.

There is also good reason for supposing that the text [of the latter clause] was merely giving an example. For should you assume that the opening clause refers to timber, after we have been [first] told that [even] in the case of timber they would be liable to pay and that we should not say that the craftsman acquires title to the increase in [value caused by the construction of] the article, what necessity would there be to mention afterwards chest, box and closet? — If only on account of this, your point could hardly be regarded as proved, for the latler clause might have been inserted to reveal the true meaning of the earlier clause, so that you should not think that the earlier clause refers to [the case where he gave the carpenter a] chest, box and closet, whereas [where he gave him] timber the law would not be so; hence the concluding clause specifically mentions chest, box and closet to indicate that the opening clause refers to timber, and that even in that case the craftsman would be liable to pay. (98b5 – 98b6)

INSIGHTS TO THE DAF

The Permissibility of Photographing People

Our sugya describes how already in ancient times it was the custom to honor great people by engraving their likeness on coins. So it was with Dovid and Shlomo, and before them with Avrohom and Yitzchok. Tosafos (S.V. Matbeya Shel Avrohom) contends that it was not their image on the coins, as it is forbidden to forge a human image, rather it was their names that were inscribed.

The source of the prohibition to create a human likeness even for decoration is found in the posuk (Shemos 20:20), "Do not make with me gods of silver and gods of gold" (Rosh Hashana 24b, Rambam Hilchos Acum 3:10, Chinuch

Mitzva 39). The Rambam explains the reason for this prohibition is so that a casual observer should not mistakenly reach the conclusion that these images were meant to be avoda zora.

There is a debate amongst the Rishonim as to what comes under the prohibition. According to the Ravad (ibid) and the Ramban (see Tur Y.D.141) included are engraving, embossing, or painting of a human image. However, they do express a lenient ruling as to the ownership of engraved or painted images if they are found; but not an embossed (protruding) image. The Rambam differs and maintains that there is no prohibition to make an image by engraving or painting; the Torah forbade exclusively embossing. Though the Shulchan Oruch (141:4) rules in favor of the Rambam, the Taz insists that in the matter of making human images one should not adopt any leniencies.

When the Gaon R' Eliezer of Brod was installed as Chief Rabbi of Amsterdam, one of the local Jews decided to mark the festive occasion in a unique manner. He issued a commerative medallion which bore the likeness of the new Rav. The Yavetz writes (responsa Sheilos Yavetz, I:170) that upon seeing this he was shocked to his very core. Though the Shulchan Oruch (ibid 7) forbids only an image of a full human, whereas the image of just a face is permitted, the Yavetz takes the more stringent view of the Smag, the Taz (ibid S.K. 15) and some Rishonim who forbid this as well. The Yavetz further points out that even according to the more lenient poskim it is only a featureless face that is allowed. (See the responsa for how the Yavetz derives this from the Tosafos in our sugya.) In the end, declares the Yavetz triumphantly, the medallion was banned by the Dutch king who viewed the matter as an impingement of his royal status.

The Painting of the Chacham Tzvi: The Yavetz's father, the Chacham Tzvi, was extremely strict for himself and would not even allow his face to be drawn. We know this from his son who describes with great emotion how, "The true saint, my father and rebbe, our great master, may Hashem be with him forever… went to visit the Sephardic Kehilla in London. He was greeted with great respect the like of which is unheard of. He was escorted into town in a royal floatilla amidst great jubilation." The kehilla, relying on the majority of poskim had commissioned an artist to draw his countenance. The Chacham Tzvi, due to his "great saintliness and holiness" refused to permit this. The hosts were unable to restrain themselves and the artist managed with great speed and unusual talent to paint an extraordinary painting. So true was his rendition that the Yavet"z declares, "All that is missing is the breath of life."

Taking a Snapshot. The Taz's opinion that even a flat image is forbidden has led Poskim to question the legitimacy of photographing people. A reason to be lenient is explained by R' Moshe Sternbuch, Shlit"a (Teshuvos V'Hanhagos Vol. III, 263). The prohibition includes only image making formed by direct action. The process of photography and film development does not fit into this category, since the reactions of chemical to light rays cause the picture to appear. He concludes that customarily photography is permitted.

DAILY MASHAL

It is interesting to note that many Gedolim for Kabbalistic reasons insisted not to be photographed. Someone drew a picture of the Steipler Gaon,zt'l, during his army service in Russia. The Steipler paid an entire day's ration for the picture and immediately destroyed it (Toldos Yaakov, p. 30).