

שבת קודש פרשת קרח | מסכת כתובות דף מ"א

**INSIGHTS FROM
 OUR CHABUROS**

**The Half-Damages
 When an Animal Gores**

**STORIES
 OF THE DAF**

**Paying
 the Fine**

תיובתא. והלכתא פלגא נזקא קנסא. תיובתא והלכתא? אין. טעמא מאי איתותב משום דלא קתני כמה שהזיק וכ'.

The Gemara is in the middle of a discussion to understand the nature of the half-payment which the Torah prescribes for damage caused by an ox which has not yet developed a pattern of damaging (שור תם). Rav Pappa is of the opinion that the payment is compensatory. Although oxen are considered domesticated animals, they are not to be treated as tame and under control. The owner has a responsibility to watch them so that they will not gore. If they do damage in this manner, the owner is fully responsible. The Torah is lenient and allows half-payment to be made, because the animal has not yet established a pattern of being dangerous. Rav Huna b. Rav Yehoshua holds that the half-payment is a fine. A domesticated animal is considered tame, and the fact that it gored is a surprise, to no fault of its owner. The owner should be completely exempt, but the Torah obligates him to pay half in order that he increase his vigilance to watch this animal. A Baraisa is cited which states that the only payments that are considered fines are those which pay more than the actual damage. The Gemara infers that wording of the Baraisa indicates that payments which are less than the damage are indeed compensatory (ממונא), thus proving that Rav Pappa is correct. Surprisingly, the Gemara reverses itself and rules that the halacha is that the half-payment for damage is a fine. As far as the wording of the Baraisa is concerned, it did not want to make a general statement that paying less than the damage is always a fine, because there is a payment for damage caused by when pebbles fly out from under the foot of an animal and indirectly cause damage. Based upon a halacha from Moshe Rabeinu at Sinai, this tortfeasor pays only half. This payment is under the category of "foot-argl" and is ממונא. It is noteworthy that in our Gemara, Rashi explains that the halacha from Moshe at Sinai teaches us that the damage of צרות is under the category of "foot-argl." Being that all payments of "foot" are compensatory (ממונא), we automatically determine that this half payment is also ממונא. However, in Bava Kamma (3b) Rashi explains it differently. There he points out that the halacha from Moshe at Sinai teaches us that this half payment is considered ממונא. Rashi notes that although the half payment made when an animal gores is a קנס, a fine, the halacha from Moshe at Sinai teaches that here, regarding צרות the payment is ממונא. Rashi seems to take it granted that although payment in this case is only half, the fact that it is in the category of "foot" and not under the grouping of "horn-קרן" is obvious.

"ואוי תפס לא מפקינן מיניה"

On this week's daf we find that if one did confiscate money due for damages, he may keep it. Once, a businessman paid a surprise visit to his factory, hoping to ensure that the workers were not loafing. At the beginning of his tour of inspection, he noticed a young man leaning against the wall, clearly idling. "Perhaps he is on his break," thought the boss as he continued to tour the big factory. When he finally finished he was glad to see that everyone was working diligently—except for that one young man, who was still leaning in the same place, gazing around with an air of vapid interest. It was clear that he had no intention to get to work anytime soon. The boss was incensed. He approached the loafer and asked brusquely, "How much money do you make a month?" "3000 shekels," was the cool reply. The furious boss indignantly thrust 3,000 shekels into the surprised man's hand and bellowed in front of all the other workers, "Do you think that I am paying loafers here? Take a month's salary in lieu of notice and don't ever let me see you here again!" He grabbed the young man, turned him around, and pushed him bodily through the exit. Feeling somewhat satisfied, the boss approached the manager of the factory and asked him why he had hired such a worthless worker. The manager was taken aback, "What do you mean? He doesn't work here. He works as a delivery boy for a local restaurant. Whenever one of the workers orders food he brings it over. Sometimes he spends a couple of hours here observing." The humiliated young man went to beis din to ask if he could keep the money as payment for having been publicly embarrassed. Rav Yitzchak Zilberstein, shlit"א, responded, "Damages for embarrassment is highly subjective and it needs to be established by the beis din. However, you are definitely entitled to keep the amount that is owed to you—and the money that you were mistakenly handed can be considered seized subject to a future assessment."

PARSHA CONNECTION

In this week's daf the גמרא discusses בושת which is the shame felt by a girl, and her extended family. Similarly יעקב davened that his name would not be mentioned in association with קרח, because it was an embarrassing event. Although יעקב isn't mentioned, we all know that it was his descendent, so how would mentioning his name add to the embarrassment? Additionally, why is לוי mentioned and why wasn't he spared from the embarrassment? Mentioning לוי is relevant to the מחלוקת, because the לויים were all chosen for serving הקב"ה in the משכן, but mentioning יעקב would not be relevant to the מחלוקת and would therefore be embarrassing. Another explanation can be found in the כלי יקר, who writes that יעקב didn't want people to think that קרח was following the lead of יעקב when he took the בכורה בעשו. This would explain why mentioning his name is more embarrassing. Since לוי is mentioned because of his relevance to the fight, we would assume that יעקב being mentioned is also because he is relevant, and it would be very embarrassing to suggest that קרח somehow "followed" in יעקב's footsteps. This is why he davened that his name should not be mentioned.

HALACHA HIGHLIGHT

Raising Dogs

מנין שלא יגדל אדם כלב רע בתוך ביתו

How do we know that a person should not raise a ferocious dog in their home?

Shulchan Aruch¹ rules that it is prohibited to raise a ferocious dog unless it is restrained by an iron chain. One who lives near the border, which is in constant danger of attacks from the other side of the border, is permitted to raise ferocious dogs, but they may only be set loose at night. Rema² adds that according to some opinions since Jews lived amongst hostile, often anti-Semitic, neighbors the custom developed to permit raising ferocious dogs. If, however, there is a concern that the ferocious dog may attack and harm people it must be restrained with an iron chain. Shulchan Aruch HaRav³ notes that the definition of a ferocious dog includes a dog that barks. The reason a barking dog is considered ferocious is that there is a concern that the barking may frighten a pregnant woman and cause her to miscarry. One is permitted to raise a dog that does not bark or bite, although Rav Yaakov Emden⁴ writes strongly against dog ownership unless it is for the purpose of providing protection for one's family or property.

Poskim debate how to categorize a dog that does not bark and will attack only when incited. Is it considered a ferocious dog since it will attack when incited, or is it a calm dog since, on its own, it neither barks nor bites? Rav Yaakov Blau⁵, author of Pischei Choshen, infers from the language of Shulchan Aruch that a dog that can be incited to attack is considered a ferocious dog. Shulchan Aruch writes that if someone incites his friend's dog to attack, the owner of the dog must pay half-damages (חצי זק). The reason is that since the owner knows that his dog will attack when incited he should not have left it where it could be incited to attack. This seemingly indicates that a dog that could be incited to attack is considered dangerous. Rav Yaakov Meir Stern⁶, author of Imrei Yaakov, a commentary to Shulchan Aruch HaRav Choshen Mishpat, argues that when Shulchan Aruch writes that he should not have left it where it could be incited to attack he did not intend to classify such a dog as a ferocious. Rather his intent was to explain why the owner of the dog is responsible to pay for the damages. He therefore disagrees with the conclusion of Pischei Choshen and maintains that it is permitted to raise a dog as long as it will not, on its own, bark or bite.

1. שו"ע חו"מ סי' ת"ט סעי' ג'
2. רמ"א שם
3. שו"ע הרב חו"מ דיני שמירת הגוף ונפש סעי' ג'
4. שו"ת שאילת יעב"ץ ח"א סי' י"ז
5. פתחי חושן נזיקין פ"ה ס"ק צ"ו
6. אמרי יעקב לשר"ע הרב הנ"ל ביאורים ד"ה המגדל כלב רע

MUSSAR FROM THE DAF

Prevent Busha at All Costs

The Gemara brings the opinion of Rebbe Shimon Bar Yochai (Rashi on Shavous 2b says that stam Rebbe Shimon in Shas is Rebbe Shimon Bar Yochai) who holds that a man cannot claim that he seduced a girl and thereby obligate himself to pay her the monetary payment of ופגם בושת. Why not? Because he has no right to embarrass this girl for giving consent. And the Gemara concludes that even if the girl, the father, and the family don't mind this embarrassment, there must be some family member in some place in the world who doesn't want the embarrassment that this situation will bring with it. Therefore, the Bais Din cannot issue a psak that this man has to pay ופגם בושת.

There are many questions to ask on Rebbe Shimon Bar Yochai's opinion. How can this concern affect a choshen mishpat psak? Why does Bais Din go so far and alter a psak based on such a remote concern that we don't even know if it really exists? And lastly, why does Bais Din legitimize this concern of distant family members, since this occurrence really has nothing to do with them personally?

Rav Yerucham Levovitz in Daas Chachma u'Mussar (Chelek 2, Maamar 12) explains the severity of causing embarrassment to another. He elaborates that our major role in this world is to give kavod to Hashem. And that since others are created B'Tzelelm Elokim, then we have an extraordinary responsibility to see to it that every person is honored and not C"V embarrassed. We see that sensitivity in our sugya as well. Even in a situation when the potential embarrassment of a person is almost non-existent, it affects the psak of Bais Din. And even when Chazal can discredit the concern, we see that they validated this embarrassment that one family member may feel as a result of this psak. Incidentally, it seems that Rebbe Shimon Bar Yochai is going לשיטתו in which he was very careful not to cause any embarrassment as he was also the author of the well known Gemara in Bava Metzia 59a אמר רב חנא בר ביזנא אמר ר"ש חסידא ואמרי לה א"ר יוחנן משום רשב"י נוח לו לאדם שיפיל עצמו לכבשן האש ואל ילבין פני חבירו ברבים that it is better for a person to jump into a fiery furnace than embarrassing another. And perhaps since he was the author of the Zohar, which is the penimus of Torah, he also was sensitive to the penimus of a person. We see from the view of Rebbe Shimeon Bar Yochai how one has to exhaust every possible avenue of השתדלות to minimize and remove a potential בושח to a person.

POINT TO PONDER

The Mishnah says since the האומר גבתי משלם את הקרן על פי עצמו the point that the משנה is making relates to NOT paying עצמו קנס על פי עצמו, why does it discuss the payment of the קרן which he is obviously liable for? In the first case of פיתיו the גמרא explains why בושח ופגם are mentioned, but that doesn't apply to a גנב.

Response to last week's Point to Ponder:

ל"ה רש"י ד"ה מי איתיה לעשה כלל writes that we teach her to say no. Is this only applicable in this case of לא תעשה דוחה לא תעשה? Why can't we say the same in a case of יבום where it's לאוין לאוין, and the גמרא says that it's מותר because of עשה דוחה לא תעשה. Why don't we tell her to say no, and thereby avoid the problem?

In the case of יבום if the יבם says that he doesn't want to marry her and does חליצה he hasn't fulfilled the מצוה of יבום. The גמרא says that יבום במקום חליצה because of לאוין לאוין. However in the case of אונס the מצוה is to put her at ease that she will find a husband, therefore if she says no, he fulfilled his obligation. (See תוס' ר"ד).

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

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