

Stimulate your mind, explore engaging laws, and inspire your soul with these practical applications of Tractate Bava Kamma.

Praise for Daf Delights:

“Rabbi Zev Reichman, a rising star in the Jewish firmament for his prodigious scholarship no less than for his deep devotion and acts of chessed, has done us all a great service in artfully compiling these insights into each daf of Maseches Bava Kamma. Appropriately entitled “Daf Delights,” this work is a true delight to read, incorporating as it does the works of contemporary poskim who bring the issues of the Gemara to life with vivid and relevant applications, together with a unique focus on the spiritual side of the Talmud.” Rav Menachem Genack, Rosh Yeshiva at Yeshivas Rabbeinu Yitzchok Elchanan, Rav of Congregation Shomrei Emunah (Englewood, NJ), and CEO of OU Kosher.

“Rav Reichman Shlit” a succeeds with his book to bring the learner to curiosity. These essays trigger a holy urge discover more, to know, hear, understand, and comprehend. Choosing engaging topics and stimulating concepts, Rav Reichman succeeds to demonstrate the treasure and special genius of Torah and to make its study appealing.” Rav Yosef Zvi Rimon, Rav of Alon Shvut South, Rosh Batei Midrash of the Lev Academic Center, and founder and chairman of Mercaz Hahalacha Ve’horaa

“My esteemed colleague, Rav Zev Reichman, has written a wonderful compilation of halakhic insights. He illuminates every page of Bava Kamma...” Rav Mordechai Willig, Rosh Yeshiva at Yeshivas Rabbeinu Yitzchok Elchanan, Rav of Young Israel of Riverdale, Segan Av Beth Din, Beth Din of America.

Daf Delights

BAVA KAMMA

RABBI ZEV REICHMAN

Daf Delights

שעשועי הדף

Interesting Halachos, Fascinating Discussions,
and Delightful Insights

- BAVA KAMMA -

BY RABBI ZEV REICHMAN

מזכרת
מבת המצווה של אילת נאווה רייכמן
לעילוי נשמת

נאווה בת הרב דר. יעקב הלוי אפלבוים הי"ד
תנצב"ה

זכתה אילת נאווה הי"ו, בת המצווה להיקרא על שמה

שעשועי הדף

בבא קמא

שעשועי הדף

בבא קמא

Daf Delights

Bava Kamma

Rabbi Zev Reichman

2017/5777

In loving memory of

יהודה ע"ה בן יוסף חיים

Whose smile, love of life,
and sweetness will forever live in our hearts.

תנצב"ה

Dedicated to the eternal memory of

שלמה יצחק בן יעקב

Mr. Peter Schwalbe

A man of kindness, generosity, and love.

תנצב"ה

Dedicated to the memory of
a dear friend, communal leader,
generous Baal Tzedakah, and devoted father

מנחם מנדל בן הרב יואל דוד באלק ע"ה
Mr. Mendel Balk, o.b.m.

May the Torah learning from this work serve as
an eternal testament to his love of Torah, deep
integrity, and dedication to Hashem.

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by Ariela Balk and family

Dedicated to the eternal memory of
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and Jack Gabel

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Joyce and Daniel Straus

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and in Honor of Helen Elbaum

by David and Cookie Fishel

Le'iluy nishmat

Moshe ben Makhlouf ve Leah
and Dov ben Zalman.

By the Bousbib Family

מוקדש לעילוי נשמת

מרגלית בת מרדכי לוי

ובנה

רונן בן יהושע לוי

מאת בני משפחתם

יצחק ושולמית אשכנזי

Dedicated to Moshe and Ida Baruch.

By their children, grandchildren,
and great-grandchildren,

Howie, Razy, Julia, David,
Ari, Shaina, Shimmy, Evan and Zach

ספר זה מוקדש
לעילוי נשמות זקנינו

ר' חיים אליהו בן ר' זאב רייכמן ז"ל
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ה' חסין תשס"ז

כבוד ראשי ה' חסין תשס"ז

I humbly recommend to
you the series *Chochmas Chochmas*
compiled by my son *Chochmas Chochmas*.
These *Chochmas* are a delight to the reader-
full of profound insights and wonderful
stories to enrich the study of *Chochmas*.

May all of you be blessed
with *Chochmas* in your learning the
- *Chochmas* by the *Chochmas* -
Chochmas *Chochmas* *Chochmas*

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ראש ישיבת ר' יצחק אלחנן



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לימוד דף יומי מאפשר דבר הנראה כבלתי אפשרי -
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נעשה פעמים רבות בצורה שטחית, ולא מאפשר
לטעום טעם למדני או מעמיק.

זכה ידידי היקר הרב זאב רייכמן שליט"א לכושר הסבר
מיוחד. בכשרון רב הוא מצליח להאיר כל דף בעניינים
מרתקים ועמוקים, בשילוב של עיון ולמדנות, הלכה
ומעשה, חסידות ואמונה.

הרב רייכמן שליט"א מצליח בספרו להביא את הלומד לסקרנות, לרצון ללמוד,
לדעת, לשמוע, להבין ולהשכיל. בבחירת נושאים מעניינים ומעוררי מחשבה, מצליח
הרב להאחז את התורה ולהראות את העושר והחכמה המיוחדת שיש בה. אמנם,
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ולהרחיב עוד ועוד, לאור ההפניות של הרב.

פעמים רבות, ביקרתי בקהילתו של הרב רייכמן שליט"א. גם בקהילה זו, ישנם
אנשים מסוגים שונים, ברמות דתיות שונות. אולם, הרב מצליח להגיע לכולם, גם
דרך תורה, דרך לימוד תורה, דרך לימוד גמרא, תנ"ך, מחשבה וחסידות.

דבר נוסף שניחן בו הרב הוא יסוד האהבה. הרב רייכמן אוהב את כל המתפללים
בקהילתו, הרב רייכמן נעים הליכות, והשילוב שבין לימוד תורה ונעימות הרב, מביא
אנשים רבים להתקרב לתורה ולמצוות.

גם ספר זה הוא ספר של לימוד מסקרן ומעמיק, אולם, לימוד שמגיע מתוך אהבה
ומתוך עין טובה. רק מי שיראתו קודמת לחכמתו – חכמתו מתקיימת.

נברך את הרב רייכמן שליט"א שיזכה להמשיך להגדיל תורה ולהאדירה, שיזכה ביחד
עם רעייתו, הרבנית חנה תחי', להמשיך ולהוביל את קהילתו למחוזות גבוהים
ומאירים, ושיזכו יחד להמשיך ולגדל בנים ובנות, המאירים את העולם בתורה
ובמעשים טובים.

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כב' ודיואי אן ודיואי הר"ר זצ"ל נ"י -
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13 Mar Cheshvan 5777
Nov. 14, 2016

My esteemed colleague, Rav Zev Reichman, has written a wonderful compilation of halachic insights. He illuminates every page of Baba Kama, enabling English speakers unable to decipher rabbinic Hebrew to enjoy and be inspired by the brilliance of our holy Torah and its premier expositors.

This volume, as its predecessors, reflects Rav Reichman's passion to share the beauty of Torah with a broad cross-section of the Jewish community. As a teacher at Yeshiva University, and a rabbi in Englewood, he has shared his infectious enthusiasm and unconditional love with students and congregants on all levels of scholarship and observance. May he, and his dedicated and multitiered rebbeim Chana, be blessed together with good health and great nachas from their children, as they continue their holy work for Hashem and His people. *Mordechai Willig*

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ערב ראש חודש כסלו תשע"ז

Rav Meir Shapiro, the great Lubliner Rav and founder of Daf Yomi, once pointed to a passage at the end of *Maseches Yevamos* (121a) as the inspiration for his revolutionary Daf Yomi program. The Gemara tells us that while traveling at sea, R. Gamliel witnessed the shipwreck of a neighboring vessel with R. Akiva on board, and R. Gamliel experienced great distress. Yet upon R. Gamliel's arrival to dry land, none other than R. Akiva came before him to discuss a point of halachah. When R. Gamliel asked R. Akiva how he was saved, R. Akiva responded that he chanced upon a plank (*daf*) at sea, and with this *daf* he was able to overcome all the waves of the sea. Rav Meir Shapiro concluded that it is learning the *daf* that allows us to overcome the many waves that threaten to engulf us each day. In our very hectic modern lives we face one wave after another, but the *daf* keeps us afloat.

Rabbi Zev Reichman, a rising star in the Jewish firmament for his prodigious scholarship no less than for his deep devotion and acts of *chesed*, has done us all a great service in artfully compiling lucid and compelling insights into each *daf* of *Maseches Bava Kama*. Appropriately entitled "Daf Delights," this work is a true delight to read, incorporating as it does the works of contemporary *poskim* who bring the issues of the Gemara to life with vivid and relevant applications, together with a unique focus on the spiritual side of the Talmud. I wish Rav Zev *shli"u* a much *hatzlachah* with this important *sefer*, and as the waves of daily life crash down upon us, may he continue to guide us through the deep and serene *Yam HaTalmud*.

דוד פונד
David Fund

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Introduction

The Steipler Gaon pointed out that one of the blessings recited prior to the study of Torah is unusual.

The first blessing on Torah study is standard. It thanks the Almighty who has sanctified us with His commandments and ordered us to be involved in the Torah. However, the language of the second blessing is surprising. *V'ha'arev na* is a plea that Hashem make Torah sweet in our mouths. It is a request that we enjoy learning. Why do we pray to enjoy Torah study? Why do we not pray to feel the sweetness of Shabbos or the delights of Yom Tov? Why have a blessing about the sweetness of the words of Torah?

The Steipler answered that the blessings on Torah study differ from the blessings before other *mitzvos*. We usually consider two types of blessings, *birchos ha-mitzvos* and *birchos ha-nehenin*. We recite a blessing prior to performing a commandment and we recite a blessing before experiencing a pleasure, such as eating delicious food or smelling a sweet aroma. For most commandments, the blessing merely thanks Hashem for the mitzvah. Torah study is unique. The blessings on the mitzvah are also *birchos ha-nehenin*. The blessings are an expression of thanksgiving for the pleasure of Torah. To remind us that we are thanking God for the pleasure of Torah, as one of the blessings, we appeal to experience the sweetness of Torah (Introduction to *Chashukei Chemed*, *Kiddushin*). The sweetness of

Torah helps root Torah thought in our souls. Pleasurable Torah study interests our minds, engages our hearts, and connects our souls to our Maker.

We have been blessed in our *shul* with a vibrant culture of Torah study. Our Torat Moshe Daf Yomi Group is one of the pillars of our communal experience. The study of a daily page of Talmud each day has added to many, both a mitzvah and pleasure. This publication is an attempt to spread the joy of the daily *daf* to an audience wider than those who come each morning. I have attempted to cull insights related to each *daf* from a variety of sources, and to translate them into English, and spread them for others to enjoy. I am sure that this work happened due to the merit of our holy community, East Hill Synagogue. May it bring blessings to all who learn the *daf* with us and to the entire community who are partners in the spread of Torah.

These essays deal with halachic topics. They are not intended to be the final word. Please ask a competent halachic authority to determine your actual practice about any of the issues the articles cover. The essays are merely an attempt to trigger interest and study.

This year our family and community lost dear individuals. The essays were initially dedicated to their memory and this book is dedicated to their memory as well. May these words of Torah add merit to these special souls.

Mr. Mendel Balk, *a"h*, was an exceptional father, dear friend, and communal leader. Mendel appreciated the value of learning Hashem's word. He had study partners come to his office and home. Even while battling illness and the hardships of his treatments, he set aside time for Torah learning. Mendel built Torah and holiness in Englewood and throughout the Jewish world. He has engraved a legacy of dedication to family, Torah and *mitzvos* in all our hearts. Mendel brought me and my family to the twelfth Siyum Hashas in Metlife Stadium, even though it was the day before his son, Elan's

bar mitzvah. The experience of celebrating the completion of *daf yomi* inspired our *daf yomi* class in our *shul*, which then inspired this work. May the words of Torah from this book add to his eternal merits. May these words of Torah also serve to honor his special family whom he loved so fiercely.

This book is also dedicated to a precious young child and dear friend, Evan Levy, *a"h*. Through his countless treatments and hospitalizations, Evan inspired all with his infectious love of life. Earlier this year Evan left us. Evan's heroism and ability to smile through every challenge are sorely missed. His ability to make the ordinary extraordinary are lessons imprinted on our souls forever. It is our hope that these words of Torah are fitting for him. Evan loved to smile. These Torah thoughts are delights intended to bring smiles to the faces of those who read them. May the moments spent studying these Torah insights bring added Aliyah to the soul of Yehuda, *a"h*, ben Yosef Chaim, *sheyichyeh*.

As this work was completed, the Jewish nation lost a most exceptional mentor, supporter, and leader, Mr. Peter Schwalbe, Shlomo Yitzchok ben Ya'akov, *a"h*. Peter had the heart of a lion. He would always volunteer to support our *shul*, Torah projects, Jews in need, and the people of Israel. His passing is a terrible loss to his family and our nation. May the Torah in this work be eternally linked with his radiant personality and legacy.

There were many who helped this project come to completion.

These essays first appeared as weekly emails to the East Hill Synagogue community and as articles in *The Jewish Link of New Jersey* newspaper. Mr. Raz Haramati toils faithfully each week to edit, typeset and email the essays. I owe him a great debt. I am also thankful to Rabbi Moshe Kinderlehrer and his staff at *The Jewish Link of New Jersey* for graciously printing a weekly feature made up of selections from these essays. Rabbi Alec Goldstein edited and typeset the book and was helped by Rabbi Yeshayahu Ginsburg.

These articles would not have come to print if not for the generous support of dear friends. Years ago, Raphael and Linda Benaroya, Daniel and Joyce Straus, the Schwalbe family, Daniel and Claire Kahane, Mendel and Ariela Balk, the Herschmann family, Howard and Raizy Baruch, and Nader and Mandana Bolour kindly set up a fund to sponsor these kinds of Torah books. I am humbled and grateful for their support, trust, and friendship. I am extremely thankful to the dear friends who sponsored the publication of this work. I especially thank Polly and Gabriel Bousbib who strongly encouraged this work and volunteered to anchor the Daf Delights project. You are partners in all the Torah study this work will hopefully engender.

Mrs. Bella Wexner, *a"h*, and Ms. Susan Wexner first exposed me to the joy of spreading Torah through the written word. I hope this book is a credit to their efforts. Yeshiva University has been a home for me for years. I am deeply indebted to President Richard Joel, Rabbi Daniel Rapp, Rabbi Yonasan Shippel, Rabbi Yona Reiss, Rabbi Yosef Kalinsky, and Rabbi Menachem Penner for their support. May they be blessed in all their holy work.

My family and I are beholden to the East Hill Synagogue community which is not only our home but truly our family. Our shul president, Mr. Zvi Rudman and all the volunteers of the *shul* have our eternal gratitude.

Finally, my wife, Chana and I feel overwhelming gratitude to Ha-Kadosh Boruch Hu for all the ברכות He has bestowed upon us. May Hashem bless all of us with the sweetness of Torah. May He place the delights of Torah in our hearts and keep them there forever.

Zev Reichman
Purim, 5777

Damages and Salvation

The Gemara in tractate *Shabbos* (31b) provides a beautiful description for each order of Mishnah. The order of Mishnah that we call *Nezikin* deals with laws of damages, monetary issues, and court proceedings. It is described there as *yeshuos*, “salvations.” Why characterize the study of laws of damages as “salvations”? Avoiding damaging another person’s property seems like elemental human decency. Why would the laws about torts and damage payments be considered redemptive?

Commentators answer based on a lesson of the Ramban. The Ramban taught that initially the world was a peaceful place. When man was first created and situated in the Garden of Eden, all creatures were naturally peaceful. No animal would harm another. Human sin caused all of nature to change. Man is the soul of creation. When Adam ate from the Tree of Knowledge he brought a lowly character to all. His stature was reduced due to his sin. Just as he fell, all creatures became more violent and aggressive, and beings began to harm and damage each other.

The study of *Nezikin* entails the discovery of Jewish laws about damages. The nature of this study is that it moves swiftly from intellect, to heart, and finally to action. One who studies these laws finds himself becoming more sensitive and considerate toward others. Once we are careful not to damage another person’s property,

it causes a change in the nature of creatures. Creatures then have less of a desire to damage other beings. The world as a whole becomes a more peaceful place. That is why these laws are called *yeshuos*: these laws bring us closer to the realm of redemption and salvation. These laws make the world more peaceful. The study of the laws about damages hastens the Messianic era, when wolf will live peacefully with the lamb, and when *Lo yareiu ve-lo yashchisu*, “they will not do evil nor will they destroy” (*Yeshayahu* 11:9).

Perhaps this is the rationale underlying the statement of the Rambam in his commentary to the first Mishnah of *Bava Kamma*. The Rambam teaches about priorities in community building.

Suppose a judge is appointed to lead a city and he notices that they have many needs: the weights in the stores are dishonest, workers are not getting paid in a timely manner, and people are allowing their animals to run wild and cause damage. Which issue should he seek to address first?

The Rambam writes that the first job of a judge is to stop the animals from damaging. *Nezikin* begins with *Bava Kamma*, which deals with animals that damage, to teach that the first priority of a judge is to stop damages. Stopping damages takes precedence over improving the way workers are treated or other monetary issues.

Perhaps the reason why stopping damages is so important is that stopping damages brings redemption closer, for it causes a reversal of the impact of Adam’s sin (*Yosef Da’as, Chashukei Chemed*).

Bava Kamma 2

Someone set up a Beehive to Produce Honey. A Tourist Walked by and Was Stung. Is the Owner of the Beehive Responsible to Pay?

Rav Yitzchok Zilberstein raised the following question: Someone lived in a suburban area. He decided that he wanted to go into the business of producing and selling natural organic honey. He filed all his papers with the town and legally set up a beehive at the end of his property near a forest. The beehive developed and honey started to flow. One day a tourist walked by the beekeeper's home and was stung by the bees. He was treated in the local hospital and released that same day. When he received the bill in the mail, he forwarded it to the beekeeper. Who has to pay the medical bills: the beekeeper or the tourist?

The tractate *Bava Kamma* begins with a Mishnah which teaches that an owner is liable to pay for the damages caused by his property. It gives four examples of this principle. First, if a man owns an ox and the ox gored someone else's ox, the owner of the damaging ox must pay for the monetary loss. An ox that gores is called *keren*, "horn," after the part of its body that inflicts the damage. Second, if a man dug a pit in the public street and then an animal fell into the pit and

was injured, the digger of the pit is considered to be the owner of the pit, and he must reimburse the owner of the animal. The laws of pits and stumbling-blocks are called *bor*, “pit.” Third, the Mishnah states that in the case of *maveh*, there is also payment of damages. The Gemara has a dispute whether *maveh* means a person who damages, or it means if one’s ox entered the field of another and ate produce, causing damage. Finally, it mentioned that if one lit a fire and then allowed it to spread and damage the property of others, he who lit the fire is considered to own the fire, and he must pay for the damage. This type of damage is called *eish*, “fire.”

These types of damages have differing halachic consequences. When an ox gores, it is called *keren ha-mazzik*, and the owner must pay for goring that occurs, even if it happened in a public domain. The first three times the animal gores, the owner only pays half the damage. However, once the animal has gored three times and has been established as a habituated goring creature (*shor ha-mu’ad*), then the owner must pay the full cost of the damage. If a man damages another man, then in addition to paying for damages, the perpetrator must pay his victim for his lost wages, healing costs, humiliation, and pain. When oxen gore and other types of property cause damage, the owner only pays for the damage, but need not pay doctor bills, lost wages, pain costs, or a reimbursement for the humiliation.

Bees do not enjoy stinging. A bee that stings is seeking to harm and cause damage, rather than doing so for pleasure. Therefore, a bee that stings is in the category of *keren*, since it is most analogous to an ox that gores. The owner of a goring animal must pay for damage. Damage is defined as a reduction in value. If a person was gored, we would calculate the damage by reckoning how much this person would have fetched on the slave market before he was gored and how much less he would have been purchased for after he was gored. The

owner of the ox who gores is responsible for the damage, but he is not responsible for healing costs. Only when a person assaults another person is there a legal responsibility to pay for healing costs.

In our case, Rav Zilberstein pointed out, the bees pained the tourist and caused medical expenses to be incurred, though they did not cause a permanent reduction in value. Had slave markets existed, the tourist's value would not have been reduced just because he was stung and had to spend an hour in the hospital. We all know that a sting heals quickly. The actions of the property of the beehive owner did not create damage; rather they created pain and medical costs. Therefore, the owner of the beehive does not have to pay for medical bills.

Rav Zilberstein felt that while the owner of the bees would not have to pay money, the court should coerce him to remove the bees. Having an active beehive is a threat to the safety of the community, so the court should excommunicate him until he removes the beehive (*Chashukei Chemed*).

Bava Kamma 3

Prayer and Damage

Our Mishnah described one of the primary forms of damage as *maveh*. Rav explained the term to mean a man who damages. He proved it from a verse *amar shomer asah voker ve-gam lailah im tiva'un be-ayu*, “The watchman says, ‘Morning is coming, and also night; if you inquire, inquire’” (*Yeshayahu* 21:12). Rav argues that the prophet described man as a praying being and used a word formed from the root *בעה* to characterize man as a supplicant.

The Rishonim ask a basic question. If the intent was to teach that a man is responsible for the damage that he performs, why did the Mishnah not simply use the term *adam*, “man,” instead of the more obscure *maveh*? Many answers have been offered to this question.

The *Nimmukei Yosef* explains that the term *adam* might have been understood to refer to one’s slave and maidservant. Had the Mishnah written that there is a responsibility to pay in the case of *adam ha-mazzik*, one might have thought that if a slave caused damage, the master would be responsible to pay, but later in the tractate we learn that the master does not need to pay when his slave damages. This is why the Mishnah used the word *maveh*. In the verse it referred to a *Yisrael*, a free man. By describing a man who damages as *maveh*, the

Mishnah teaches that only the damage caused by a free man must be paid for and not damage caused by a servant.

The *Shittah Mekubbetzes* offers another explanation. He points out that the first instance in the Torah of man causing damage to his neighbor was a thief. The damage caused by a home intruder is done by his searching. *Maveh* is thus a fitting word, since it literally means one who “seeks out.” Using *maveh* reminds the reader that the original source of a man who damages is the burglar seeking property in the home of his victim.

The Netziv explains that the Mishnah was only discussing a man who damaged by mistake, but not a man who intentionally ruined property. Proof to this is the discussion of the Mishnah about ox and *maveh*. The Mishnah stated that had Hashem only explicitly obligated payment when an ox created damage, we would not have known that *maveh* is liable. If *maveh* means a man who deliberately causes damage, then there would be no reason to say that a person must pay for his ox’s damage, but that he would be exempt for the damaged he caused by himself. The Mishnah is teaching that even though the damage was caused by mistake, the damager must pay.

It is difficult for a person to guard against accidents. In order to avoid even unintentional harm, we must *daven* constantly to Hashem for help. In this regard, man is referred to as a *maveh*—one who must ask and seek assistance from Hashem regarding his daily interactions.

Rav Shlomo Zalman Auerbach went further. He taught that lack of prayer is the reason for financial liability for damage. A man who prays correctly that Hashem should save him from causing damage will merit that no damage will occur through him. Due to his prayers, Hashem will ensure that no damage will occur through him. Since he must pray to avoid causing damage, if damage occurred by his

actions—even if the actions were unintentional, the actions occurred because he did not pray enough. The real root of his liability is his insufficient prayer. That is why a damager is defined as *maveh* and not *adam*. His lack of heartfelt prayer is what obligated him.

The masters of homiletics, such as Rav Eliyahu Feinstein of Pruzhana, offer another answer. The Mishnah is teaching that to damage the property of others is subhuman. A human being who is a descendant of the first man and who deserves the appellation “Adam” would treat the property of others with respect and avoid causing damage. Only one who cannot be called “Adam” would damage property of others, and that is why he is called *maveh* (Daf Digest, *Chashukei Chemed*).

If the Damage Added Value, Must the Damager Still Pay?

Mishpatei ha-Torah records a classic question: Reuven owned two rare paintings from a deceased artist. Each painting was worth 100,000 shekel. There are very few works from this master; no further pieces will ever be produced, and as a result each work was extremely valuable. Shimon was also an art collector, and he was jealous of Reuven. One day when Shimon was in the home of Reuven he tore up one of the paintings. There were now even fewer works of the master extant, so Reuven’s surviving painting increased in value. It was now worth 250,000 shekel. Reuven wanted Shimon to pay him 100,000 shekel for having destroyed a painting worth 100,000 shekel. Shimon claimed that he did not owe Reuven any money, since he had ultimately added to Reuven’s bottom line by increasing the value of his assets. Did Shimon have to pay?

Bava Kamma 3 teaches that—based on the verses in *Parashas Mishpatim*—we derive that an owner of an ox must pay for the damage his ox caused by eating, both in the case of *michlaya karna*, where the principal was destroyed, and in the case of *lo michlaya karna*, where the principal was not destroyed. Commentators struggle to try and define the two scenarios. Tosfos explain that the case of the principal being destroyed is when an animal enters the field of another and eats vegetation. The vegetation was lost, and as a result, the scenario is described as the principal being destroyed. The case of when the principal was not destroyed was when the animal entered the field of another person and released excrement on the plants. The plants stayed extant. As a result, it is said that the principal was not destroyed. However, because they were soiled, they were of less value. The owner of the animal would have had to pay for the diminished value.

Rashba and Rashi provide a different explanation. They teach that *michlaya karna* refers to an animal that ate the entire plant, while *lo michlaya karna* refers to a case when an animal entered the field of another and only ate some of the leaves. The plant will grow back. It will likely grow back better because the animal ate from it. Many farmers would deliberately send animals to eat young growth to stimulate further propagation. Even so, the owner of the animal must pay for the leaves that his animal consumed. The owner of the field did not want his sprouting plants to be eaten. As a result, the owner of the animal must reimburse him for the loss. The novel insight of *lo michlaya karna* is that even though ultimately the damaged party gained, since in the immediate term he lost an item of value, he must be reimbursed.

Based on the rule that *lo michlaya karna* is defined as damage, the *halachah* would make Shimon pay. Even though after one painting

was destroyed the other appreciated, the immediate way to view the actions of Shimon was that he destroyed a valuable painting. As a result, he would have to pay Reuven 100,000 shekel (*Mishpatei ha-Torah, Reshimos Shiurei Maran ha-Grid ha-Levi, Chashukei Chemed*).

Bava Kamma 4

He Knocked the Taxi Driver's Sunglasses out of the Car Before They Were Run Over: Is He Liable?

Two fellows shared a taxi ride together. When they arrived at their destination they realized that they had arrived late to an important meeting. They rushed out of the car. In their haste to exit the cab, one of them knocked the taxi driver's sunglasses out of the car and onto the street. The passenger did not realize that he was causing the sunglasses to fall out of the car, and the driver did not notice that they had fallen from the car. The driver drove off and crushed the glasses. The driver demanded that the passenger pay him for having ruined his sunglasses. The passenger claimed that since the driver had pressed on the gas pedal and run over the glasses with his own car, he was not responsible to replace the sunglasses, since the driver had caused harm to himself. Who is right?

Bava Kamma 4 teaches about the law of a person who damages with his own actions. The Gemara taught that it is to be expected that a sleeping person would cause damage, since when someone is asleep he moves his limbs, and will likely knock over utensils that might be next to him. Tosfos (s.v. *keivan*) quoted a lesson from the

Talmud Yerushalmi, which taught that a man is responsible for the damage he caused while sleeping in an instance in which he deliberately laid down to sleep next to his friend's objects. However, if when he went to sleep nothing was around him, and then someone came and put an object down next to him, if he caused the damage while he was asleep, he would not have to pay. The person who put the object next to the sleeping individual was the guilty party, since he placed the object in a spot where it would likely get damaged. The *Nesivos ha-Mishpat* (*Choshen Mishpat* 291:7:14) codified this principle and ruled that if someone takes an object from a safe spot and puts it in a place that is not safe from damage, that person is responsible for the damage caused to the object and has the status of an *adam ha-mazzik*.

Mishpatei ha-Torah ruled that the passenger who pushed the sunglasses onto the street performed the act of damage. He moved an object that had been safe to a place where damage was likely. A person who damages is even responsible for actions that were mistaken, based on the principle *adam mu'ad le-olam*, man is always fully responsible for the damage he performs. Since the passenger put the glasses in the unsafe spot, he was the damager, and the driver of the cab was like the sleeping man, who is not responsible when others put an object in his way. Rather it is those who placed the object in harm's way who bear full financial liability (*Mishpatei ha-Torah*).

Bava Kamma 5

Does Stress Exempt the Damager?

Rav Zilberstein discussed the following scenario: A terrorist ran into a classroom and committed a terror attack. In order to thwart the terrorist, someone fired tear gas into the room. Once the attacker was neutralized the children were rushed to the emergency room. They each needed drops for their eyes. One nurse was overwhelmed by the scene. She was deeply upset by the many children who needed her care. She became very tense and stressed. She mistakenly gave the wrong type of eye drops to one child. The child unfortunately was injured. The child demanded payment for the injury caused to him. The nurse argued that she was stressed by the situation and as a result it was a mistake akin to an *oness*, a coerced misdeed. She argued *oness rachmana patreih*, Hashem forgives the coerced mistakes, and as a result she should not have to pay anything. Who was right?

Rav Zilberstein pointed out that stress is not a reason to exempt a damager. However, the *halachah* does not obligate payments from a doctor who makes a mistake when attempting to heal.

Bava Kamma 5 mentioned the case of *mefaggel*. Most of the time Rashi explains that the word *mefaggel* refers to a *kohen* who, while performing one of the primary services of the sacrifice, planned to

eat the meat of the sacrifice after the time allowed. However, here Rashi provides a different definition: *Mefaggel* refers to a *kohen* who offered a *chattas* offering as a *shelamim* offering. Since he offered the *chattas* with the wrong thoughts, it was *pasul*.

The Rishonim ask why Rashi gives an unusual definition for *mefaggel* here.

The *Shittah Mekubbetzes* provides an interesting answer. The case of the Gemara dealt with a situation when there were many *korbanos* being offered at that time in the Temple. One might have thought that the *kohen* got stressed, and due to the plethora of sacrifices being offered he mistakenly thought of the wrong sacrifice. We might have thought that since the stress caused the mistake, he should be exempted since *oness rachamana patreih*. Rashi therefore sought to teach *adam mu'ad le-olam*, man is always responsible for his actions. The stress of many sacrifices being offered at once would not exempt a *kohen* who made a mistake about an offering. If a *kohen* is responsible when the rush of offerings caused stress, the nurse should be responsible even though there were many patients being treated at the time.

In actuality, the nurse would not have to pay. Her status is like a doctor. The *Shulchan Aruch* (*Yoreh De'ah* 336) rules that Hashem gave permission to the doctors to heal. Therefore, if a doctor mistakenly causes damage, he is not liable to pay in an earthly court. However, morally, *be-dinei shamayim*, he should pay. This nurse as well would be exempt from payment in a human court, while in Heaven's law she should pay. Stressful conditions do not create an exemption from responsibility, since *adam mu'ad le-olam* (*Chashukei Chemed*).

Bava Kamma 6

Bris Milah with the Help of a Magnet

In a town that did not have an *eruv* there was once the following scenario: A baby boy was born on Shabbos, so he needed a *bris* to be performed on him the next Shabbos. Since there was no *eruv* they had no way of bringing the baby or the knife to the synagogue for the *bris*. The family arranged with a Gentile that he would bring the baby and the knife to synagogue on Shabbos morning. The Gentile brought the baby and the knife. He then left. When the congregants opened the package that he had brought, they could not find the knife for circumcision. They went to look for the knife. They found that it had fallen from the bag right in front of the synagogue. Since there was no *eruv* and the Gentile was gone, they had no way of bringing the knife from the street to synagogue.

The Rabbi had a brilliant solution. He realized that they had a strong magnet in the synagogue. He advised that they bring the magnet and hold it near the door. The magnet would attract the knife and bring it inside. Since nobody was physically lifting up the knife to bring it inside, this would be considered *gerama*, an indirect act, and therefore should be permitted. Had they made the right choice? They brought the question to Rav Zvi Pesach Frank.

Rav Zvi Pesach Frank felt that they had been wrong. He proved it from *Bava Kamma* 6. The Gemara taught that if someone places a stone or package on the roof and then an expected wind comes and knocks it to the ground, the owner of the stone or package would be responsible. The Gemara taught that this situation is a form of the damage called *eish*, “fire.” When one lights a fire, the wind then carries the fire further to damage the property of others, and the person who lit the fire is responsible. Similarly, one who placed a stone on the roof should have known that a wind would likely come and bring down the stone. When the wind brought down the stone it was like the wind that moves flames of a fire. The one who placed the stone is responsible for the actions of the wind and stone, just as one who lights a fire is responsible for the actions of the flames and wind. Rav Yochanan teaches later in the tractate that *eisho mishum chitzav*, “one’s fire is considered like arrows” that a person has propelled with his own strength. The person is legally culpable for the fire spreading once he has ignited it. Similarly, if one placed a stone on the roof and knew that a wind might carry it, it is considered as if he threw the stone and like one who shot an arrow, if the wind knocks the stone over.

By placing a magnet in front of an item of metal, one is harnessing a force to move an item, which is an instance of *eisho mishum chitzav*. It is no different than walking out into the street, lifting the knife, and throwing it into the synagogue. Rav Frank felt that the congregants had violated Shabbos.

The *Shut Chelkas Yaakov* disagreed. He pointed out that in the laws of Shabbos the Gemara teaches that only carrying in the normal manner violates the Biblical prohibition of carrying on Shabbos. To carry with a magnet is unusual. Just as the Gemara stated that carrying an item in one’s mouth on Shabbos is not a Biblical

violation of carrying, carrying through a magnet would not be a Biblical violation. Therefore, they had not violated a Biblical law. He also added that today our streets are not a Biblical public domain. They are merely a *karmelis*, so the prohibition of carrying is only Rabbinic. Thus, carrying by way of a magnet would be a Rabbinic prohibition on top of a Rabbinic prohibition: carrying in a strange way in a place where the prohibition of carrying is only Rabbinic. It would be categorized as *shevus di-shevus*, which can be violated in order to perform a mitzvah. Therefore, for the sake of the mitzvah of circumcision and for the purpose of showing respect to the community by not forcing them to wait longer, it was permitted to import the knife using the magnet (*Mesivta, Me'oros Daf ha-Yomi*).

Bava Kamma 7

Witnesses and Lie Detectors

When the polygraph machine was invented, the *Shut Emek Halachah* was asked if such machines should be used in Jewish courts. The questioner proposed using the polygraph on witnesses. Perhaps if the lie detector tests indicated that the witnesses were being dishonest, then their testimony should be excluded.

Initially he proposed that one might argue that there is historical precedent for use of such a device. The Midrash teaches that King Solomon's throne had a miraculous quality. When a false witness would try and ascend its steps, the throne would throw the lying individual off the chair. When Solomon saw that the person could not climb his steps, he knew that the individual was not truthful and that his testimony should be discarded. Perhaps the polygraph should be used to serve as a modern-day equivalent, pushing away the questionable witnesses.

Ultimately, he concluded that *Bava Kamma 7* teaches to avoid the use of such machines. Our Gemara taught that the Sages avoided certain behaviors, so as to ensure that "doors not lock in front of borrowers." Lenders might avoid lending if they fear that they will not get paid back. If lenders fear a false positive when witnesses testify

with a polygraph, they might not be able to recover the loan. Lenders might fear such eventualities and then curtail their extending of credit to needy borrowers. Therefore, to ensure that the doors not be closed before the borrowers, he ruled that courts should not use the polygraph machine on the witnesses who come to testify.

King Solomon's throne was in use before the Sages had legislated that actions be taken to ensure that doors not close to borrowers. In our day, when we have the mandate of ensuring that doors not be closed to borrowers, we may not use polygraphs regarding witnesses who testify about loans (*Mesivta*).

Bava Kamma 8

Give Dignity

Financial challenges create uncomfortable options. One of the most challenging experiences is being in debt and owing money. If someone needed a loan, borrowed money, and then found it difficult to repay the loan, the lender might find himself facing uncomfortable options. On the one hand, he would like to recover the money he had lent. On the other hand, he does not want to harm his friend. Were he to try to collect he might be asking the impossible from his friend and causing him pain. What is he to do?

One of the options that the lender may utilize is taking a *mashkon*, “collateral.” The Torah describes the laws of taking collateral: “When you shall claim a debt of any amount from your fellow, you shall not enter his home to take security for it. You shall stand outside; and the man whom you shall claim shall bring the security to you outside. If the man is poor, you shall not sleep with his security. You shall return the security to him when the sun sets, and he will sleep in his garment and bless you, and for you it will be an act of righteousness before Hashem, your God” (*Devarim* 24:10-13). The Torah stressed that the lender is to stand outside the home of the borrower when

he seizes the collateral. Why did the Torah command that the lender stay outside the home of the borrower?

The *Sefer ha-Chinnuch* suggests that the Torah wants to teach Jews not to abuse power. In many societies the wealthy have more power than the poor. If the Torah would allow the lender to forcibly enter the home of the poor man and seize the collateral, then the wealthy would learn to coerce the poor and abuse them.

Perhaps our Gemara offers another understanding. Our Gemara taught that according to Ulla, according to Biblical law the lender is only entitled to receive the lowest quality land as repayment of his loan. He proved it from the verse in the Torah that speaks of the borrower bringing out a collateral. What would he bring out? He would bring out the lowest quality.

In light of this law, perhaps we can suggest another rationale behind the law of not entering the borrower's home. The lender must seek to preserve the independence and dignity of the borrower. If he would forcibly enter the home of the borrower and seize collateral, the borrower would feel weak and broken. The law of standing outside ensures that the borrower can decide for himself what he will give as a guarantee. Since he is choosing what to give, he will surely give the lowliest item possible. The law of standing outside is a lesson to the lender to give dignity to the impoverished individual (Rav Udi Schwartz, *Daf Yom Yomi*).

May a Doctor Bill a Patient when it Might Ruin the Peace in Her Home?

The following moral dilemma was presented to Rav Zilberstein: A woman had a medical need. She was not happy with the care

available to her in the state-sponsored health care clinic, so she went to a private doctor. Before he saw her, he told her that he would send her a bill after treatment. She agreed to pay out of pocket for his services. He treated her, and she wrote him a check. When he tried to deposit the check at the bank, it bounced. He sent her bills and she ignored them.

She subsequently married.

The doctor now came with a question to Rabbi Zilberstein. Was he allowed to call the husband to demand payment for the services he had rendered for the woman before she had married? On the one hand, perhaps he could demand payment, for he had never forgiven the debt. On the other hand, she probably had not told her husband about her medical history. If the doctor would send a notice to the family, the husband would find out about his wife's medical condition. That might ruin the peace in the home between husband and wife. *Bava Kamma* 8 mentioned the sensitivity a lender must display to the borrower when trying to collect a debt. Maybe that sensitivity should require him to avoid trying to collect in this instance, when telling the story might ruin the marriage.

Rav Zilberstein pointed out that two questions must be addressed. First, now that the woman has married, did the marriage dissolve the debt or did she still owe the money to the doctor? Second, even if she owed the money, perhaps the doctor should forgive the debt so as to contribute to peace between the husband and wife?

One can suggest that the doctor is entitled to try and collect the debt. The *Shulchan Aruch* rules that when a woman marries and brings land into the marriage, the husband has the status of a *loke'ach*, one who purchased land. *Halachah* teaches that whenever

someone borrows with a contract (*milveh bi-shtar*), the debt becomes a lien on all the property of the borrower. If the borrower sold his land, the lender may seize the land from the purchaser. The husband is like a purchaser. If his wife had entered into a loan by contract, the lender could seize the land from the husband once the loan came due. In this instance, the wife (when she had been single) visited the doctor, and had paid with a bad check. A check is like a loan contract. Therefore, we can suggest that the debt became a lien on her land once the check bounced. The doctor therefore should be entitled to collect payment.

In terms of the second question, Rav Zilberstein thought the answer might depend on how bad an illness she had. If she had a major medical condition that the husband did not know about, then the doctor should try and collect the debt owed to him, even though the husband would find out about the condition. The wife was not right in hiding such a medical condition. Perhaps the entire marriage was invalid as a *mekach ta'us*, a deal made under false representations. Even if it was not significant enough to invalidate the marriage, the husband had a right to know about major medical issues, and the doctor could in good conscience tell all in order to enable the husband to extricate himself from what might be a very difficult life. However, if it was not a major medical issue, the doctor should try to talk to her and not the husband, so as to not harm their relationship. If it was impossible to hide the matter from the husband, then the doctor may tell the husband. It is not the doctor's fault that the wife hid matters from her husband. He is entitled to collect payment and to allow her to feel the ramifications of collecting the debt.

Perhaps this would be analogous to the ruling of the *Chavos Yair* (#213). He allowed a lender to collect a debt from a Gentile ruler,

even though there was fear that the ruler would be very upset and would take out his wrath on innocent Jews and make them give him money. The lender was entitled to get his money back. He did not have to be concerned about the possible negative ramifications for collecting what he was owed (*Chashukei Chemed*).

Bava Kamma 9

An Elephant as the Wall of a *Sukkah*?

Our Gemara teaches that one who gave an ox to a child or imbecile to watch would be liable for the damage the ox causes. The Gemara explains that this ruling is true even when the owner gave the child a tied ox to watch. He cannot claim, “I handed a watched animal to the child,” since animals by nature will try to escape. Rashi explains that animals, including oxen, resist being bound. Therefore, the owner should have realized that the ox would get out of the knots, and as a result, he was negligent in hoping that a child or imbecile would prevent the animal from damaging.

Tosfos disagree with Rashi’s explanation. Tosfos explain the Gemara to mean that a child would untie the ox if he was given the ox to watch. An ox would not get out from the knots that restrain it on its own. However, a child watchman would likely release the ox. As a result, the owner who gave the ox to the child was negligent since he should have expected the animal to be released, and he is responsible to pay for the damage.

This has a ramification to the laws of *sukkah*.

The *Tur* rules that one may not make a *sukkah* with walls made of tied sheets, since the knots might come undone. The owner of the

sukkah may not realize that his walls are no longer taut. As a result, he will end up sitting in a booth that would not be a kosher *sukkah*. However, the *Tur* writes that one may tie up an elephant and use the bound animal as one of the walls of the *sukkah*.

The *Taz*, following the view of Rashi, found this law difficult. If the *Tur* worried that a tied sheet might come undone, he should certainly have worried that an elephant would escape its shackles. Did not Rashi teach in *Bava Kamma* 9 that it is the way of an animal to try and escape its bonds? If the elephant will likely get out of its ropes, the elephant wall should be treated the same as a wall of tied sheets. Therefore, the *Taz* suggests a novel thought. Perhaps the *Tur* only enjoined tied sheets as *sukkah* walls when one intended to use such sheets for all four walls. Then there is a fear that some of the knots might come undone over the course of the festival and the *sukkah* owner would not notice. The same would hold true for a bound elephant. One could not tie elephants and use them on all four sides of the *sukkah* as walls. The *Tur* only permitted a bound elephant if one is using the elephant on one side as a wall and the other sides have proper walls. The *Taz* feels that the *Tur* would allow one to use tied sheets as one wall for the *sukkah* as well, so long as the other sides had proper and correct walls.

Elya Rabbah, however, agreed with Tosfos in *Bava Kamma* 9. He explained that the *Tur* ruled not to use tied sheets, for the knots on tied sheets do get undone. However, he permitted using a tied elephant, since the elephant will not escape on its own. In *Bava Kamma* 9 we were worried that the child would untie the animal. In the case of the *sukkah*, there was no child standing unattended with the tied animal. As a result, the animal would not get out of its ropes on its own. According to *Elya Rabbah*, this is why a bound beast can serve as a *sukkah* wall. He ruled that tied sheets might unravel on their own and as a result they should not be used as a *sukkah* wall (*Me'oros Daf ha-Yomi*).

Must All the Congregants Pay for a *Chazzan* with a Nice Voice?

The Gemara teaches an important lesson about the concept of *hiddur mitzvah*—beautifying a mitzvah. When the Jewish nation crossed the Red Sea we sang: *Zeh Keili ve-anveihu*, “This is my God and I will glorify Him” (*Shemos* 15:2). Our Sages have taught that this verse contains an obligation to glorify *mitzvos* and make beautiful objects for them. One is obligated to acquire a beautiful citron fruit for use as an *esrog* on Sukkos, and to use a beautiful *shofar* on Rosh Hashanah. Our Gemara teaches that one should spend an added third of the cost to acquire a more beautiful mitzvah object. For example, if the standard kosher *esrog* were to cost nine dollars, one should spend an added third to acquire a more beautiful *esrog* if one is available. If acquiring a more beautiful *esrog* would cost eighteen dollars, and there were no beautiful *esrogim* available at a price less than eighteen, one need not purchase the more glorious fruit, and one should fulfill his mitzvah with the more basic *esrog*.

Why did our Sages state that one should add a third to what he intended to spend in order to glorify a mitzvah? Why not double the price? Why not add half the value?

Me'oros Daf ha-Yomi quotes two reasons for this law. The Maharsha suggests that our Sages derived this standard from the laws of the four species. The Gemara in tractate *Sukkah* taught that one is obligated to use a *lulav* that is taller than the myrtle branches (*hadassim*). The *lulav* is to be a third taller. Our Sages understood that this law was due to the need to beautify the mitzvah of the four species. Since beauty in the four species entailed a *lulav* a third taller than other branches, in all *mitzvos* one should spend a third more for the sake of beauty.

The Maharal (*Nesivos Olam* Nesiv ha-Torah chapter 18) provided another source. The verse in *Mishlei* declared, *Ki ner mitzvah ve-Torah or*, “A mitzvah is a candle and Torah is light.” Light refers to the flame. There are three parts to a candle: the wax, the wick, and the flame. Beautifying a mitzvah is a sign of spirituality. It adds to the soul of the mitzvah. Therefore, it should cost an added third, just as with a candle, a third of the candle is the flame, which corresponds to Torah and soul.

Everybody agrees that this law does not apply to all. Someone who has funds must spend a bit more to purchase a beautiful mitzvah object. However, one who does not have enough money for his basic living expenses does not need to spend money to purchase a more beautiful mitzvah object. He is to purchase only the least expensive object that is fit for use in a basic manner. This was the ruling of the Rashba when he answered an interesting question that was presented to him by a community that had both wealthy and poor members.

There was a practice in the past for communities to hire a *chazzan* to lead the prayers. Hundreds of years ago there was a dispute in a community about how to divide the cost of the Chazzan's salary among the members of the synagogue. Some claimed that each family should contribute according to the members in the family. Those with large families, it was argued, should pay more. They were benefiting more from the prayer leader, as they had more individuals who were being inspired by his services. This point of view argued that the small families, who had fewer individuals gaining from the Chazzan, should pay less. Others argued that the costs should be split up based on financial ability. Those who were wealthier should pay more. Those who had less money should pay less. The Rashba (*Shut* 5:15) issued a ruling for the community. He agreed that conceptually all families benefited from the Chazzan and therefore those fathers

who had more individuals in their household should pay more than smaller families, since each person was gaining equally from the services. However, he pointed out that if the community had hired a *chazzan* who was more expensive than an alternative cantor because he had a sweeter voice, the poor members of the community should not be asked to pay toward that added cost. The reason for his ruling was that only one who can afford it is obligated in the law of *hiddur mitzvah* (beautifying a mitzvah). The verse states, *Kabbed es Hashem me-honecha*, “Honor God from your wealth” (*Mishlei* 3:9). This verse teaches that only one who possesses wealth is obligated to honor the Almighty by acquiring the more beautiful mitzvah object (*Me’oros Daf ha-Yomi*).

Bava Kamma 10

Who Should Pay For the Driver's Ticket?

The following question was raised in the book *Mishpatei ha-Torah*: One extremely hot day in Israel, a factory owner decided to help his employees and order a van to transport them from the industrial zone back to Bnei Brak. A van with seating for eight came to pick up the workers. Twelve workers wanted a ride. Eight sat in the van. Another four tried to get in. The driver shouted, "Out! Out! I do not want to get a ticket and a large fine for transporting twelve people in an eight-seater." The employees responded, "Don't worry. You won't get caught. If you do, we will pay the fine." They started driving, but they were quickly pulled over, and the driver got a ticket and a large fine. The workers started to argue. Those who had gotten into the van first argued that they should not have to pay. "We came in first. There were eight legal seats. Had it only been us there would have been no fine. You pushed your way in and created the cost. You need to pay for the ticket." Those who had gotten in last argued, "The ticket was for the fact that there were twelve in the van. All of us were in the van. We should all pay equally." Who was right?

Our Gemara discussed a case of five people sitting on a bench, then a sixth person, who was very overweight, came and sat down

as well, and the bench broke. The Gemara taught that only the last person was responsible to pay for the broken bench. The Gemara asked, “Without the first five, the bench would not have broken, so maybe everyone should be responsible?” The Gemara answered that the case was when the last man held the others down. He did not allow them to get up. As a result, he is the one solely responsible for breaking the bench. It thus emerges that if the last man would not have held the others down, all would be responsible. We would tell the first five, “You should have gotten up once you saw the big man trying to join you on the seat. Since, you did not get up, you contributed to breaking the bench and are equally liable.”

The *Mishpatei ha-Torah* ruled that in the instance of the van all the employees must pay for the ticket. The first eight could have gotten out of the van once they saw the last four jumping in. They chose not to. The ticket was a damage caused equally by all twelve, akin to a bench that broke from all six who sit on it. The Gemara said that only the sixth one would be responsible if he held the others in place; otherwise all share in the responsibility. Here nobody coerced the first passengers to stay in the car; therefore, all shared in the responsibility equally (*Me'oros Daf ha-Yomi*).

Bava Kamma 11

Who Must Bring the Vehicle to the Garage?

A young disabled child had an electric wheelchair. One day, a man backed his car into the chair and damaged it. The disabled child could not bring the vehicle to the garage due to his physical infirmity. Did the driver of the car have to bring the vehicle to the garage for it to be repaired?

The *Chashukei Chemed* points out that *Bava Kamma 11* seems to shed light on this issue. The Gemara sought to understand what two Sages in a Baraisa were arguing about. The Baraisa taught that first opinion (*tanna kamma*) interpreted a verse about a watchman to mean that the guard is to bring witnesses that the deposit was damaged by forces that were impossible to control and then he would be exempt from paying for the damage. Abba Shaul interpreted the verse differently. Abba Shaul taught that the verse meant to teach that when a watchman has an ox to watch and it was killed, he is to bring the carcass to the court. All agree that if damages occurred *be-oness* (through events that no one can control), there is no liability. If so, what were the Sages arguing about? The Gemara ultimately proposes that Abba Shaul and the *tanna kamma* are disputing the question of the responsibility of the damager to bring the damaged ox to court.

According to Abba Shaul, if an ox fell into a pit, or if a watchman was negligent and the ox he was supposed to guard got killed, then the owner of the pit or the guard are to lift the ox out of the pit and bring it to the court. According to the *tanna kamma*, if an ox fell into a pit, the owner of the ox need not lift it out of the pit.

The Rambam rules like Abba Shaul, writing, *al ha-mazzik litroach ba-neveilah ad she-mamtzi osah la-nizzak*, “It is the responsibility of the damager to toil with the dead carcass until he delivers it to the damaged person.”

According to the Rambam, then, the driver of the car must bring the damaged motorized chair to the garage. As a damager, he must bring the carcass, the ruined object, to the place where it can be repaired. The *Even ha-Ezel* explained that the Rambam was of the opinion that the damager is to actively deal with the ruins of the object, and not merely reimburse the damaged person if he were to spend money to get his ox out of the pit. Therefore, in our instance, the driver of the car must get involved personally and bring the damaged motorized chair to the garage (*Chashukei Chemed*).

Levi Damaged a Car Opened by Shimon: Who Must Pay?

Reuven owned a car. Shimon broke open the door to Reuven's car. Shimon, however, did not know how to drive. He asked Levi, an acquaintance of his who was walking by at the time, to drive the car for him. He told Levi that it was his car and that due to a suspension of his license he needed Levi to drive the car for him. Levi drove wildly and crashed the car, causing significant damage. Reuven found out that his car had been stolen and damaged. He demanded

payment from Shimon. Who needed to pay, Shimon or Levi? How much had to be paid?

According to the *halachah*, moving an object constitutes an act of theft. Shimon merely opened the door to the car. Levi was the one who moved it. One might therefore argue that Levi was halachically the thief. However, the *Shach* (*siman* 348:5) teaches, *Yesh shaliach li-devar aveirah*, “one has the status of representative even when performing a sin” if the emissary is unaware that his act was a sin. Levi did not know that he was committing theft. He had been told that it was Shimon’s car. Thus, when Shimon asked Levi to drive the car, he was making Levi his emissary, and the act was considered the deed of Shimon. Therefore, Shimon was the thief. Shimon moved the car through his emissary Levi.

Bava Kamma 11 teaches that there is a difference in payment between what a damager must pay and what a thief must pay. In a scenario of damage, such as if Shimon were to take a baseball bat and smash the windows of Reuven’s parked car, the damager merely pays for the damage. Shimon would have to pay for the cost of the windows. The broken car would remain Reuven’s property. Reuven would have to get the car repaired. However, if Shimon stole Reuven’s car by driving it off and then damaged it, Shimon would have to pay Reuven the total cost of the car and Shimon would have to deal with repairing the broken parts of the vehicle. A damager must pay for the damage, and the damaged person is left with the pieces, while a thief who damages a stolen item must pay for the entire item and is stuck with the pieces of what he stole.

In our case Reuven had demanded payment from Shimon. Since Shimon was the thief, Shimon had to pay Reuven for the total value of the car. Since it was payment for an act of theft, Shimon was allowed to keep the broken vehicle. Levi was Shimon’s emissary.

Levi had driven recklessly and caused damage. Man is always liable for his actions that damage, since *adam mu'ad le-olam*, “A person is always fully responsible.” Shimon could demand that Levi pay him for the damage caused to the car. Through the act of theft, Shimon had *kinyanei geneivah* (acquiring an object by means of theft) in the car. Were Shimon to demand payment from Levi, Levi would have to pay Shimon for the damage Levi caused by driving recklessly. Like any other damaged party, Shimon would be stuck with the broken pieces from the car, and if he wished to repair it, he would have to go through the bother of arranging the repairs (*Mishpatei ha-Torah*).

Bava Kamma 12

When May One Lie?

Our Gemara seems to relate a troubling anecdote about intellectual honesty. Ulla taught in the name of Rabbi Elazar that one may collect a debt from slaves. Rav Nachman challenged this statement. He asked, “Did Rabbi Elazar mean that if a man borrows money, a lien gets created on his slaves, so that if he would die, the lender could even collect the debt from the slaves that would now be in the possession of the orphans?” Ulla responded to Rav Nachman that Rabbi Elazar had not meant that. Ulla claimed that Rabbi Elazar meant to teach that if the borrower had designated his slaves as collateral, by stating that the loan will definitely be collected from the slaves, then even if the slaves were sold to another party, the lender could seize them as payment for the debt. Rabbi Elazar’s novel idea was that placing a designation on a slave would create a lien. Placing such a designation on an ox would not create such a lien, since designations about slaves would be talked about while designations about animals would not become well known.

The Gemara relates that after Rav Nachman left, Ulla admitted that he had misrepresented the view of Rabbi Elazar. In truth, Rabbi Elazar felt that slaves had the legal status of land. As a result, just

as when one borrows, his land becomes obligated, so too when one borrows, a lien is created on the slave. In fact, the lender can collect the debt by seizing the slaves that the children have inherited from their father, who borrowed from the lender.

How could Ulla misrepresent the position of Rabbi Elazar to Rav Nachman? Isn't there an obligation to always speak truthfully?

Apparently, Ulla's behavior was allowed, since we are allowed to lie for the sake of peace. The *Chazon Ish*, *zt"l*, explained that if one is afraid that a sage may have erred and will be publicly embarrassed by his stated opinion, he may lie about what the sage said. Sparing the sage from shame is merely lying "to preserve the peace." The definition of lying to preserve the peace is expansive.

The *Daf Yomi Digest* records that Rav Shlomo Zalman Auerbach, *zt"l*, had a very low tolerance for falsehood, yet he had an expansive view of lying for the sake of peace. When he was a guest at weddings, he would frequently be offered a ride home. He would always ask, "But are you traveling to Sha'arei Chesed regardless of me?" Inevitably, the response was, "Yes, Rebbe, our route home takes us through Sha'arei Chessed." Students would ask Rav Shlomo Zalman, "Isn't it transparent that those offering the rides are misrepresenting the facts? They are not all traveling through Sha'arei Chesed to get home." He would answer, "They are not lying." The individuals were seeking to perform a kindness and did not want their teacher to feel bad that he was causing them to travel out of their way. To say things that will make the teacher feel better is an act of kindness, and permitted under the rubric that one may lie to preserve the peace (*Daf Yomi Digest*).

Bava Kamma 13

An Exterminator Was Not Paid so He Released the Snake. The Snake Caused Damage. Must He Pay?

The *Mishpateh ha-Torah* describes the following fascinating scenario: There was a building in Israel filled with apartments owned by the residents. They discovered that they had a dangerous snake in their courtyard, so they called an exterminator. They asked him to catch the snake. He put out bait and traps. He caught the snake and removed it. He then turned to the head of the co-op board and asked for payment. He presented a bill for seven hundred shekel. The residents decided that the amount was too high. They refused to pay the bill. He then told them, "If you won't pay me, I will release the snake." They maintained their stance. He released the snake and left. The snake then bit someone and caused damage. Was the exterminator liable to pay for the damage?

Our Gemara teaches that the laws of responsibility for damage done by property are limited. The verse states, *Ve-huad be-ba'alav... ve-heimis ish*, "And it was warned before its master... and it killed a man" (*Shemos* 21:29). The Gemara derives from this verse a law that one is only responsible for his own property. The master would only

have to pay if the ox was owned by its owner at the time that it caused damage, was put on trial, and convicted. If an ox caused damage and before it could be put on trial, its owner renounced his rights to it, and made it *hefker* (ownerless), he would not have to pay for the damage. Certainly, if a person made his animal *hefker* and after he made it ownerless it caused damage, he would not have to pay. The Torah obligates the owner of property: *Ve-lo yishmerennu ba'alav*, “if its owner did not guard it,” he must pay. However, when there is no owner, there is no obligation to pay.

The exterminator who released the snake was making the snake *hefker*. He had no intention of keeping ownership of the snake. He was upset that he was not being compensated, and as a result, he released the snake and made it *hefker*. The owners of the building also did not wish to own the snake. The snake therefore was ownerless property that caused damage. No one would have to pay for what it did (*Mishpatei ha-Torah*).

Bava Kamma 14

Feelings Do Not Have a Price

Our Gemara taught about determining the price of the damage. It taught that when Reuven damaged the ox of Shimon, the court is to ascertain how much Shimon's ox was worth at the time of the damage. Based on that valuation, Reuven will have to pay. This rule can create a leniency and a stringency. If Reuven damaged Shimon's item and the object later depreciated in value, there would be a stringency. Reuven would have to pay the amount of money that the damage was assessed when the damage occurred. However, if the item were to appreciate in value, this law would produce a leniency. If the damaged item was a rare item and because of the damage it became even harder to obtain and more expensive, the damager would still only need to pay what the damage was worth at the time of the damage and he would not have to pay the more expensive price (*Chazon Ish to Bava Kamma 8:15*).

What about an object whose value is hard to assess? Consider, in our societies there isn't a strong demand for second-hand clothes. It is therefore hard to assess the value of a used suit. Suppose someone bought a suit for two hundred dollars, then he wore the suit four times,

and then the suit was damaged. How much should the damager pay? The true value of the suit should be close to two hundred dollars. It had only been worn a handful of times. It still looks new. On the other hand, because there is hardly a market for used clothes, were he to sell the suit, it would probably only garner less than a hundred dollars. Does the damager pay two hundred dollars? Perhaps he should only pay less than a hundred dollars?

What about an item that was personalized? Consider someone who had contact lenses crafted personally for him. Only he can wear the lenses. To all others they would be worthless. They were crafted based on the shape of his eye. Were he to try and sell the lenses, he would probably get nothing. If someone damaged the personalized lenses, how much should he pay?

Do we assess the lenses based on what they would fetch in the market or is their value set by what they are worth to their owner?

The *Chazon Ish* (*Bava Kamma* 6:3) reached the conclusion that a damager must pay, even when the object he damaged only has value for the person who owned the object. The object is valuable, and we follow what it is worth to the original owner. We ignore the fact that in the market not many people would buy a second-hand suit or custom-made contact lenses.

How much should he pay in these scenarios where there is no market that will tell us the price? Rav Dov Landau (*Zecher Tov* 8:17) taught that we are to evaluate the damages with a conversation with the owner of the contact lenses. We are to find out from him how much he would pay to avoid his lenses getting ruined. That amount of money is what the damager who ruined the personalized contact lenses must pay.

There is a case of damage when the damager need not pay at all. If a person owns a photograph that is precious to him for it contains

his grandparents or parents, but to everyone else in the world, it is worthless, for it is an undistinguished photograph, if someone were to destroy the photo, there would not be any payment. Sentiments are not given a price. The damager would have to pay for the torn paper; however, he would not have to pay anything more (*Me'oros Daf ha-Yomi*).

Bava Kamma 15

May We Take Serum from a Killer Snake?

Rav Zilberstein addressed the following question: A snake killed a person. You caught the snake. Can you take serum from it and use the serum as a medicine? Can you take the skin of the snake? Perhaps you have to kill the snake and derive no benefit from it?

The Gemara discusses the law of an ox that kills. It teaches that the owner and the ox are tried before a court of twenty-three sages. If the court convicts the ox, it must be stoned to death and no one may benefit from its remains. However, a snake might have a different status because snakes are never domesticated and always in a state of being possible killers. The Rambam (*Sanhedrin* 5:2) rules that if a bear, lion, or cheetah were domesticated, owned as pets, and they then killed someone, they are to be tried before the court of twenty-three; however, if a snake kills, then anyone can kill it. There is a dispute among the later commentaries how to understand the Rambam's ruling.

The *Minchas Chinnuch* (52:6) understood that a snake easily attains the status of a killing creature. One may not derive any benefit from a *shor ha-niskal*—an ox that has killed. Since snakes are irrevocably dangerous, a snake that kills gets the status of *shor ha-*

niskal, even without a trial and conviction by the court of twenty-three. Anyone who sees the snake may kill it, but then may not benefit from it at all, just as one may not benefit from the remains of a *shor ha-niskal*.

The *Yeshuos Yisrael* derived a different interpretation of the Rambam's ruling from the Ran. All killing beasts, even animals that we expect violence from, only receive the status of *shor ha-niskal* once they are convicted before the court of twenty-three judges. The Rambam felt that one may kill a snake even if it has yet to kill. One can kill a snake, since all snakes are a danger to people. The Rambam ruled that even in our days, when we no longer have courts of twenty-three sages who can rule on matters of life and death, one can kill a snake after it killed, for one was even allowed to kill it before it killed, since it was always a hazard. Rav Elchonon Wasserman also argued that according to the Rambam a snake is not killed based on the laws of *shor ha-niskal* but for a different reason. He felt that if one killed a snake one may derive benefit from the remains. The prohibition of *shor ha-niskal* only applies if the animal was killed by the court. According to Rav Wasserman, if a snake kills, one should kill it, according to Rambam, based on the verse of *lo tasim damim be-veisecha*, "Do not leave a dangerous item in your home" (*Devarim* 22:8). This verse does not prohibit one from benefiting from the remains.

Rav Zilberstein therefore pointed out that the ruling for his scenario would be a matter of dispute between the authorities. According to the *Minchas Chinnuch*, even in our days, a snake can have the status of *shor ha-niskal*. Therefore, if a snake killed, you should kill it, but you would not be allowed to use its skin. However, according to the *Yeshuos Yisrael* and Rav Elchonon Wasserman, in our days, it is not possible to create the legal status of *shor ha-niskal*, from which no benefit may be derived. If a snake killed, you should kill it, since it is a dangerous creature; however, you may use the skin.

Rav Zilberstein argued that everyone would agree that it would be permitted to take serum from the snake and use it to heal. Healing the sick is a mitzvah. The Torah prohibited us from deriving benefit from a *shor ha-niskal*. However, we have a rule that mitzvah observance is never classified as a benefit: *Mitzvos lav leihanos nitnu*, “mitzvos were not given for enjoyment.” Therefore, one may take the serum from the killer snake to perform the mitzvah of saving a life (*Chashukei Chemed*).

Bava Kamma 16

The Suddenly Violent Gorilla

Rav Zilberstein addressed the following question: A psychologist was raising a gorilla in his home to treat mentally ill children with it. He felt that the animal was domesticated. It once happened that the gorilla escaped his home and jumped into the apartment of his friend and broke items in that house. Was the doctor liable to pay for the damages his beast caused?

The Mishnah in *Bava Kamma* 16 taught that the wolf, lion, bear, leopard, cheetah, and the snake are considered to be habitual damagers from birth. Rabbi Elazar taught they can be tamed. If they were domesticated they would not be considered an expected damager, with the exception of the snake, which can never be domesticated. The Netziv in his *Meromei Sadeh* finds this lesson troubling. Any animal that is owned is governed by the same rules as an ox that is owned. If one is to expect that the ox will damage, for it has gored three times, it is treated as a habituated damager. One should expect that all other animals would follow this model. What novel insight is the Mishnah teaching? The Netziv answers

that the Mishnah is teaching that only these wild animals cannot be domesticated. The lion, wolf, bear, leopard, cheetah, and snake, even if the owner thought he had domesticated them, do not have the status of peaceful creatures, and if they damage, the damage is to be expected, and it is included in the law of trampling (*regel*), which teaches that animals act according to their nature and therefore cause damage. All other wild animals can be domesticated. A gorilla is a wild animal, and is prone to damage.

The Talmudology blog records damage caused by chimpanzees to a student in South Africa: “The chimps tore away his scalp down to the skull. His ears and nose were gone, and he could not close his right eye. He had wounds on his trunk and all four limbs. He lost most of his fingers, and his right forearm had been eaten, the tendons gone. He lost parts of his feet, and his right ankle was destroyed.”

However, according to the Netziv, since the Mishnah did not list the chimpanzee, it was teaching that it is possible for a chimp to be domesticated.

Therefore, Rav Zilberstein ruled that the doctor who felt that his gorilla had been tamed was entitled to think that the beast would not cause damage. When the animal suddenly escaped and caused damage to the neighbor, that would be in the category of *keren she-hizzik* (the damage of horn), i.e., damages that were unexpected. Unexpected damages, called *keren she-hizzik* or *meshunneh*, are only liable for fifty percent of the damage for the first three acts of damage. Thus the psychologist only had to pay for half of the damages that the gorilla caused.

The Gemara had a dispute whether the initial *keren* payments are considered *mamona*, a monetary payment, or *kenasa*, a fine. The

halachah concludes that the fifty-percent payment of *keren she-hizzik* is merely a fine. Fines can only be collected by a court of Rabbis who are part of the unbroken ordination chain that traces back to Moshe Rabbenu. None of our Rabbis are *semuchin*. Our courts are therefore unable to collect fines. As a result, it would be impossible for the neighbor to force the psychologist to pay for the damage that his gorilla caused (*Chashukei Chemed*).

Bava Kamma 17

A Yeshiva on a Grave?

Our Gemara teaches about the unique homage the Jewish nation displayed to their beloved regent when King Hezekiah passed away. They set up a yeshiva on his grave. Some said the students learned there for three days, others said they learned there for seven days, and others said they learned there for thirty days.

Tosfos (s.v. *she-hoshivu*) asked: how could they set up a yeshiva on his grave? Doesn't this violate *lo'eg la-rash*, "mocking the impoverished"? One may not display the *tzitzis* he is wearing in front of a grave, nor may one perform any other *mitzvos* in front of the deceased, for such behavior appears to be mocking the deceased, who are unable to perform *mitzvos*. If so, how could they learn Torah at the grave of King Hezekiah? Once Hezekiah passed away, wasn't it cruel mockery to learn in his presence?

Tosfos answer that they were close to the grave but not on top of the grave. They distanced themselves four cubits (about six feet), and set up the learning group there. Since they were four *amos* away from the grave, there was no violation of *lo'eg la-rash*.

The *Kesef Mishneh* (*Hilchos Avel* 3:9) quotes the idea of Tosfos and records the view of the Ramah, who provided another solution.

Ramah taught that *mitzvos* done to honor the deceased are not considered *lo'eg la-rash*. The Mahari Abuhav taught that this principle was the reason why people recite verses of *Tehillim* and eulogize the deceased with words of Torah in cemeteries and next to graves. The Psalms and Torah are all for the honor of the deceased and, therefore, their recital is not *lo'eg la-rash*.

The *Shulchan Aruch* (*Yoreh De'ah* 344:17) in fact rules that one may recite verses and teach Torah within four cubits of a grave, if one is doing so to honor the deceased. The *Taz* (5) issued a warning: One is only allowed to study Torah and recite verses in the presence of the deceased to give them honor. Therefore, when Rabbis deliver eulogies they must be careful. They should not deliver extended Torah lessons that are intended to impress the listeners. They should focus their words of Torah on lessons that add honor to the deceased. If they forget themselves, and start to flaunt their breadth of Torah knowledge while standing at a grave, they may be violating *lo'eg la-rash*.

A fascinating idea was presented by the Chida in his work *Shem he-Gedolim*. The Chida also asked: how can people pray, recite *Tehillim*, and learn Torah at the graves of *tzaddikim*? Isn't there a law prohibiting the study of Torah, prayer, and the recital of *Shema* in the presence of a corpse? He answered that *tzaddikim* never really die. The body of a *tzaddik* is not considered by Jewish law to be a deceased corpse. The *Sefer Chasidim* (*siman* 1129) taught that Rabbenu ha-Kadosh would visit his family each Friday night and recite Kiddush for them, even after he had passed from this world. To show that *tzaddikim* are still alive, it is proper to pray and study in their presence. The prohibition of *lo'eg la-rash* only would apply to the remains of simple people, who Jewish law does consider deceased (*Mesivta*).

Bava Kamma 18

A Candle Fell on a Sleeping Man, His Dog Pulled the Candle away from Him and on to the Neighbor's Roof. Does the Owner of the Dog Have to Pay for the Damage the Candle Caused?

Rav Zilberstein addressed the following scenario. A man who lived in a second-story apartment was sleeping on his porch. His pet dog was sitting next to his lounge chair and guarding him. A candle was lit on the table next to the bed. Suddenly, the candle fell on him. The dog sensed the danger. It jumped, grabbed the candle, and dragged it away. It dropped the candle off the porch and on to the roof of the first-floor apartment. The rafters of the roof caught fire. The roof was destroyed in the ensuing conflagration. When the person woke up, he realized what had happened. He praised the Almighty for endowing his dog with the wisdom and foresight to save his life from death by fire.

Does the owner of the dog have to pay the owner of the first-floor apartment for the damage that was caused?

Bava Kamma 18 talks about a fire set by a dog. The discussion occurs in the midst of teaching about *tzeroros*, “pebbles,” that an animal propelled through the air by stepping firmly on the ground, thereby causing damage. The owner must pay full damages when his animal tramples on an object. However, if his animal propelled an object, and damaged with his force instead of his body, it is called *tzeroros*. According to the Sages, in such a case, the owner pays half damages, while Sumchos was of the opinion that the owner must pay full damages. On *Bava Kamma* 18 the Gemara mentions a case of a dog who seized a flaming piece of toast that belonged to a friend; it ate the bread, and set off a fire that consumed a neighbor’s pile of hay. The Gemara taught that the dog owner must pay full damages for the bread. It is normal for an animal to eat bread, so it is in the category of *shein ha-mazzik* (eating; literally, “the tooth that damages”), and for that there is full liability. However, the owner of the dog merely pays half the value of the hay pile. A fire is not the body of the dog. A dog that brings flames to a location is damaging with his force, like an animal who propels a pebble through his steps. The Sages are of the opinion that in cases of *tzeroros* the animal-owner must pay half the damages; so too, here, he must pay half the value of the hay pile.

Presumably, our case is similar to the scenario of the Gemara. The dog that set fire to the downstairs roof is like a dog who sets fire to a pile of hay. The owner of the dog should owe the half damages of *tzeroros*.

Rav Zilberstein suggested that in his scenario the owner of the dog would be completely exempt. In the Gemara’s case the dog was performing the damage of *shein* when he set off the fire. However, when the candle fell on the sleeping man, the dog did not perform an act of damage. There was no intent to damage, so it is not considered *keren*; it was not a routine act, so it was not an act of *regel* (trampling);

and it was not an act done for its appetite, so it was not *shein*. It was not an act of damage at all; rather it was an act of salvation. Many explain that the reason the owner of an animal who damages must pay is that he is guilty for having been negligent in not guarding his animal from causing damage. Here, there was no deficient watching of the dog. The dog did something laudable. The animal did not do an act of damage. The animal performed an act of saving its owner. The Torah obligated the owner to pay for the destructive acts of his animals. This was a constructive act. It cannot be defined as destructive. Therefore, Rav Zilberstein ruled that there was no obligation for the owner of the dog to pay anything at all (*Chashukei Chemed*).

Bava Kamma 19

Man Should Calm Himself Down

The *Shut Mishneh Halachos* dealt with the following question: Reuven and Shimon were neighbors. Reuven was very wealthy, Shimon very poor. Reuven and Shimon got into a dispute. Reuven was so upset with Shimon that he built a large wall on his yard and blocked all the sunlight from Shimon's windows. Shimon was very upset. He was upset about the fight. He was upset that Reuven was spending so much money to cause him aggravation. He complained to other neighbors. He asked them to talk to Reuven to convince him to settle the dispute. They spoke to Reuven but he refused to see the other point of view. The neighbors told Shimon that they had failed in their attempts at mediation. Shimon took the news very badly. That night he had a heart attack. He survived for a few days in the hospital, and then passed away. Reuven came with a question to the author of the *Mishneh Halachos*. Did he need to perform actions of penance to garner atonement for having caused the death of Shimon?

The *Mishneh Halachos* pointed out that the Gemara feels a man has the ability to calm himself down. If a Jew owns a Gentile slave, the Torah mandated that if the master were to wound the slave and permanently damage a limb, the slave would go free. The Gemara

in *Kiddushin* (24b) and *Bava Kamma* (91a) makes the following distinction. If the master hit the slave and blinded an eye of the slave, the slave would go free. However, if the master hit the wall in front of the slave, which made a noise, and as a result of the fright, the slave went blind, the slave would not go free. The Gemara challenges this lesson from what was taught in *Bava Kamma* 19. Our Gemara discusses a chicken which put its head into a glass container because it saw seeds in the container. If it then clucked, and its voice cracked the container, the owner of the chicken must pay for the container. Since sound waves can cause damage, the source of the sound is liable. So, too, we would think that when the owner hit the wall and created a sound, he should be liable for his slave's subsequent blindness, and the slave should go free.

The Gemara answers that there is a difference between a person and an object. A person can calm himself down. A person need not ever panic. If the slave was frightened and as a result lost his power to see, he harmed himself. The owner does not lose his slave when the slave harms himself by choosing to get upset. A glass utensil clearly has no ability to calm itself. When sound damaged the utensil, the source of the sound bears responsibility.

In light of the expectation that a person calm himself, the *Shut Mishneh Halachos* taught that Shimon could have calmed himself. Shimon should have relaxed. Reuven is not guilty for the fact that Shimon refused to relax himself and took things very badly. However, Reuven was wrong in creating a fight, causing a neighbor pain, and maintaining a dispute. Therefore, he ruled that Reuven had to take a *minyana* to Shimon's grave, and he had to publicly apologize to Shimon's soul for the pain he caused him. In addition, he was obligated to solemnly accept upon himself to never cause pain to another Jew. Third, if Shimon had left orphans, then Reuven was

obligated to help them in all their financial needs. Finally, he had to add fast days (*BeHaB*) when the penitents fast, in addition to the usual fast days all Jews observe, to gain atonement for his actions (*Chashukei Chemed*).

Bava Kamma 20

I Gained, He Did Not Lose: Must I Pay?

Our Gemara discusses the famous issue of *zeh neheneh ve-zeh lo chaser*, “This one gained, but the other one did not lose.” Reuven owns a courtyard. He does not rent the courtyard out. Shimon is looking for a place to sleep. Shimon would pay for the ability to sleep somewhere. If Shimon slept in Reuven’s courtyard without telling Reuven, would Shimon then have to pay? Perhaps Shimon can claim, “I did not cause you any loss. You were not intending to rent the courtyard out. I owe you nothing.” On the other hand, perhaps Reuven can claim, “You had no permission to use my courtyard. I never allowed it. Its use was valuable. You must reimburse me for the benefit that you received.” The *halachah* is in accordance with the opinion that *zeh neheneh ve-zeh lo chaser patur*, “If this one gained, but the other one did not lose, he is exempt.” Shimon does not have to pay Reuven.

What is the logic underlying this law?

Tosfos and *Pnei Yehoshua* explain that Jewish law demands that we not act like the people of Sodom. The people of Sodom were cruel. They refused to help anyone. They were uncaring. Even if it would not cost them anything, they would refuse to do a favor for others.

Once a person has already slept in a courtyard that was not going to be rented, it would be Sodom-like behavior to demand payment. Even though Shimon benefitted by sleeping in the courtyard, Reuven did not lose out. Reuven had no intention to rent out the facility. As a result, Shimon is exempt from paying.

However, if Reuven had communicated to Shimon before Shimon entered the courtyard that Reuven is particular, and that Shimon has no right to enter the space, and if he would do so he would need to pay, the law would be different. If Shimon ignored the explicit instructions and slept in the courtyard without permission, he would owe money to Reuven.

Why wouldn't we say in this scenario as well that it is Sodom-like to prevent Shimon for using that which would otherwise not be rented out?

The *Sha'arei Yosher* explains that a property owner feels violated when others use his possessions against his will and without his approval. If one owns a courtyard and knows that others are trespassing, it is not Sodom-like to demand that they not enter. It is hurtful to own property and to see others treating it as their own. Only when he did not know that others were using his possessions without his approval, then, after their actions, it would be Sodom-like to demand payment; however, an owner is entitled to enjoin others from using his property.

In light of this explanation of the law, Rav Yitzchok Zilberstein issued a ruling that benefited a grocery-store owner:

In Bnei Brak there was a small store that sold newspapers. Many residents were poor and they could not afford to purchase the daily paper. The store-owner would try to entice purchasers by having a stand outside the store where the different papers were displayed. Some would walk by, stop, read the front page of the headlines, and

then walk away. The store-owner put up a sign stating that nobody was allowed to read the newspaper without buying it first. Customers continued to walk by, stop, and read the headlines. They justified their actions with the rule of *zeh neheneh ve-zeh lo chaser*. They argued that they did not have enough money to buy the paper. They would never buy the daily paper. Therefore, they were causing the store-owner no loss, while they were benefiting by reading the news. The store-owner complained about their actions to Rabbi Zilberstein.

Rav Zilberstein ruled that they were not allowed to stand and read the paper. They owed the store-owner money for the paper for doing so. An owner is entitled to insist that others not use or take his property. Even when he has a courtyard that he does not usually rent out, if he demanded that no one enter it without paying, no one may enter, and if someone did he would have to pay. Therefore, the residents were not allowed to read the papers that belonged to the store-owner, as he had explicitly demanded that no one read his paper. Intrinsic to private property is the right to demand that no one else use it. Only in the absence of such a demand before the action is there a concept that Jewish law coerces people not to act like the people of Sodom, and the courtyard owner cannot collect rent after his neighbor squatted in his yard (which was not going to be rented) without his knowledge (*Chashukei Chemed*, *Daf Notes*, *Me'oros Daf ha-Yomi*, *Mesivta*).

Bava Kamma 21

He Slept in His Friend's Apartment without Permission. It Caused the Municipality to Bill His Friend for Taxes. Must He Pay?

A question: Reuven had an apartment in Tel Aviv that he was not using, since he was spending the year in the United States. When an owner would be absent for a lengthy period, the municipality would exempt him from paying the municipal taxes. Reuven had applied for such a tax-exemption. One night Shimon slept in Reuven's apartment without first getting Reuven's permission. The neighbors saw the apartment in use. They recorded the activity and filed a report with the tax authorities. They claimed that Reuven was using the apartment and therefore should have to pay his taxes. The city sent Reuven a tax bill. Reuven demanded that Shimon pay for the night that he slept in the apartment. Was Shimon responsible to pay for the benefit he received?

Our Gemara discusses the principle that *zeh neheneh ve-zeh lo chaser patur*, "If this one gained, but the other one did not lose, he is exempt." As a result, one who lives in the courtyard of his friend without first having gotten permission need not pay, if the courtyard would not have otherwise been rented out. What is the reason for this law?

Tosfos and *Pnei Yehoshua* explain that it is based on the rationale that *kofin al middas Sedom*, “The court coerces Jews to avoid acting Sodom-like.” It would be Sodom-like cruelty to demand payment from one who gained when I did not lose by his action.

However, in this instance, Reuven did lose. He has good reason to be upset. It is not Sodom-like for him to be upset that because of Shimon’s actions he was forced into a huge tax bill. This is a scenario where Shimon gained but he also caused a loss to Reuven. Shimon would not have to pay the tax bill, for he was merely a *gerama*, indirect cause, of the damage of the taxes. However, since his actions caused loss, he must pay for the benefit he received. As a result, he had to pay Reuven for the night in which he had not purchased a hotel room and instead slept in Reuven’s apartment (*Chashukei Chemed*).

Peace at a Price?

The following question was brought to Rav Zilberstein: There was a synagogue in town that was used often and hosted many *minyanim*. Frequently, they would hold *minyanim* in the courtyard. They even set up tables and chairs and had youth learning in the courtyard. The neighbors were very upset with all the bustle. They demanded that the courtyard not be used at all. A compromise was suggested. The synagogue would give the neighbors some of the yard. The neighbors would then agree not to fight with the congregants further.

Was the leadership of the synagogue allowed, for the sake of peace, to give away some of the synagogue’s property? Perhaps they should be obligated to fight for the congregation’s rights? Maybe

they had to persist and fight the neighbors and assert their rights to use their yard?

Rav Zilberstein thought that a careful reading of *Bava Kamma* 21 indicates that for the sake of peace it is correct to pay a price, and the synagogue leaders would be correct in giving away some of the yard to gain peace with the neighbors.

Bava Kamma 21 relates a story about Rav Nachman. Orphans had owned a piece of land set aside as a garbage dump. It was not land that many wanted to rent. A squatter had built a palace on the land. Rav Nachman seized it from him. The Gemara explained that, initially, there had been a band of Gentiles who lived in tents on the land, and they used to give the orphans a little bit of rent. The squatter who built the palace had caused the orphans to lose that minimal income. Rav Nachman had told the builder to give the orphans something to compensate for the losses he had caused them. When the builder refused, Rav Nachman seized his palace. The *Terumas ha-Deshen* pointed out that the tale is most unusual. If the squatter had caused damage, it was *zeh neheneh ve-zeh chaser*, “This one benefited and this one lost.” In such a case, he should have owed to the orphans all the benefit that he received. Why did Rav Nachman merely initially request that he give the orphans a little bit?

The *Terumas ha-Deshen* answered that it is most uncomfortable to be stuck in a fight. The court has a responsibility to look out for the interests of the orphans. As a result, the court was correct in telling the builder to give a little bit. Even though the orphans were entitled to more, it is better to settle earlier and lose some money than to be caught up in a dispute. Rav Nachman only seized the palace when the builder refused to do even that small act. If the courts would give

up money of orphans to keep orphans out of fights, it is correct for the synagogue leadership to give up property to settle a dispute and restore a spirit of peace with the neighbors (*Chashukei Chemed*).

Bava Kamma 22

Eisho Mishum Chitzav: The Eventual Damage Was Included at the Start of the Process

Our Gemara has the famous dispute between Rav Yochanan and Reish Lakish as to the understanding why one who lights a fire is responsible for the damage caused by the flames.

Rav Yochanan felt, *eisho mishum chitav*, “His fire is like his arrows.” Just as if one picks up a rock and throws it, he is responsible for the damage, even though he did not own the rock, for it is his force that damages; when one lights a fire and the flames spread, he is responsible for the damage, since the flames are considered his force. Reish Lakish taught that the flames are considered his property. Just as one must pay for the damage that his ox causes, the one who lit the fire must pay for the damage that his fire caused, for he owns his fire.

The *Nimmukei Yosef* made an important comment on this discussion. The *Nimmukei Yosef* asked: if according to Rav Yochanan the flames are considered an item propelled by a person, how can one light candles and fires on Shabbos eve and allow them to burn into Shabbos? It should be viewed that the person is violating Shabbos by propelling flames?

He answered that Rav Yochanan was precise in calling a fire an arrow. When one shoots an arrow, once he releases the string on the bow, the arrow flies on its own. It is not possible for the shooter to get the arrow back. His action started and was completed when he shot the arrow. The damage the arrow will cause was included in the act of firing it. So it is with fire. The subsequent fire and damage are considered by Jewish law to have been part and parcel of the initial act of lighting the fire. Since all is included in the initial act, one may light a candle that will burn into Shabbos. The eventual burning gets ascribed to the initial act of lighting the flames. The flames are lit on Friday.

In light of this insight of the *Nimmukei Yosef*, *Poskim* permitted the use of timers that would light bulbs on Shabbos. When the technology of Shabbos timers was first developed, people asked *Poskim* whether they could be used. Was it permissible to set up a Shabbos clock on Friday, when you know that it will cause a light bulb to go on during Shabbos? *Poskim* pointed out that just as the *Nimmukei Yosef* taught that based on *eisho mishum chitzav* the entire eventual act was included in the initial act, the initial act of placing the trigger pegs in the timer on Friday and plugging it in to the socket on Friday does not count as a Shabbos violation. What would happen on Shabbos gets ascribed to Friday. As a result, it was permitted. In light of this reasoning, however, one would not be allowed to remove pegs from a timer on Shabbos to ensure that the timer turn off lights after the Shabbos. Even though the lights will only be impacted after Shabbos, since the act that set up that eventuality was done on Shabbos, the later event gets ascribed to when the person acted. Just as in the case of a fire, the conflagration gets ascribed to the moment when the person lit the flame and set the “arrow” loose, the light bulbs turning off gets ascribed to when the person set the pegs. If he

set the pegs on Shabbos, it is considered that he violated the Shabbos, based on this rule of *eisho mishum chitzav*.

The *Noda bi-Yehudah* employed the insight of the *Nimmukei Yosef* to explain why we fast for the destruction of the Temple on the ninth day of the month of Av. The Gemara teaches that the majority of the building was burned on the tenth of Av. Why then do we mourn on the ninth? Shouldn't the tenth of Av be the day of mourning? The Temple was burned by fire. The subsequent damage was included in the initial setting of the fire. Since the flames to burn the Temple were ignited and thrown into the Mikdash on the ninth of Av, the eventual destruction was ascribed to the ninth of Av.

In light of the understanding of the *Nimmukei Yosef*, the following novel ruling was made. What would the law be if someone lit a fire, then died, and then the fire burned his neighbor's hay? Would the victim be able to collect from the property that had belonged to person who set the fire? According to the *Nimmukei Yosef*, the answer is yes. Since the eventual damage gets ascribed to the initial act, his property then became obligated to the one damaged at the time he lit the fire. The one who was damaged was therefore entitled to his compensation from the estate of the one who had done the damage to him.

The *Chazon Ish* extended the novel idea of the *Nimmukei Yosef* to a person who dug a pit. If someone dug a pit in the public domain, then he died, then an animal fell into the pit, the *Chazon Ish* ruled that the heirs must use the property of their deceased father to pay for the damage to the animal. When the man dug the pit, the damages the pit would cause were included in his act, and his property became obligated then. Even though he died, his property was already obligated, so his children would have to give from it to pay for the damages.

Rav Zilberstein applied the ruling of the *Chazon Ish* to an unfortunate modern scenario. Reuven stopped his car in the middle of the highway. He got out of the car. At that moment a truck sped by and killed him. A few moments later another car came by and ended up in an accident with the car stopped suddenly in the middle of the way. The driver of the second car was badly hurt by the crash. He demanded that Reuven's children pay him for his damages. Rav Zilberstein argued that according to the *Chazon Ish*, Reuven's stopping his car on the highway should be considered a person creating a pit/stumbling-block in the public domain. The subsequent damage was included in the first act. When the car stopped, Reuven was alive. Therefore his property carried a burden to reimburse the driver of the second car. The children of Reuven should give from his assets that they inherited to the driver of the second car (*Mesivta, Me'oros Daf ha-Yomi, Chashukei Chemed*).

Bava Kamma 23

A Child Playing with a Ball Broke a Neighbor's Window: Must the Father of the Child Pay?

A young child was playing with a ball in his parents' home. He threw the ball hard and it flew outside and broke the neighbor's window. Was his father liable to pay for the damage?

Rav Zilberstein discussed this question. Initially, he felt that presumably in this scenario the father need not pay. The Gemara in *Bava Kamma* (87a) teaches that if a child, imbecile, or deaf-mute is hurt by others, those who cause injury must pay; however, if they damage another person, they need not pay. Here, a child caused damage. As a result, he and his father should be exempt.

On second consideration, Rav Zilberstein suggested that the father was liable. *Bava Kamma* 87a discussed a child who damaged with his own hands. Our scenario dealt with a child who damaged with a ball that belonged to someone other than himself. The father owned the ball. By leaving the ball in a place where the child could get to it, it is like one who places a stone on a roof and the stone then fell in an anticipated wind. When one leaves an object in a place where he knows it is likely to end up being used to cause damage, the owner of the object is responsible. *Bava Kamma* 23 discusses the case

of a dog that took a flaming piece of toast, ate the toast, and started a fire in a hay stack. The dog owner must pay full damages for the toast and half damages for the haystack. The Gemara asked: why isn't the owner of the coals also responsible for what was done to the hay stack? Apparently, since he owned the fire, he should be responsible for what the fire did, even though another living creature contributed to the damage. Similarly, the father who owns the ball should be responsible for the damage done by his ball, even though there was another living being, his child, who played a role in contributing to the damage.

In his final analysis, Rav Zilberstein exempted the father from paying. *Bava Kamma* 22b has a question. According to Reish Lakish's view that fire is viewed as property, why did the Mishnah teach that a man is exempt when he handed fire to his child and the child spread the flames? Let his actions be viewed as a man who entrusts a goring ox to the guard of a child?

The Gemara answered that Reish Lakish would obligate a man who gave a flame to a child. In such a case, it was clear that damage would occur. Reish Lakish interpreted the Mishnah to mean only that a father who gave a coal to a child and the child enflamed it and spread it was exempt. One need not worry that a child would create a flame from embers and spread the flames. Since it was unanticipated, the father would be exempt. It is normal for a child to play with a ball and not cause damage. The fact that the child used the ball to break a window was unanticipated. As a result, the father should be exempt.

However, if the father left unwatched an object that its use usually leads to damage, and as a result, his child took the object and caused damage with it, the father would be responsible to pay for the damage (*Chashukei Chemed*).

Bava Kamma 24

Someone Triggered a Dog's Response: Is the Dog Owner Exempt?

Two men were walking together. One of them had his dog with him. One tripped and fell onto his friend by mistake. The dog jumped to protect its owner. It bit the man who slipped, and tore his suit. Must the owner of the dog pay for the damage his dog caused?

Rav Zilberstein points out that the discussion in our Gemara about one who incites a dog is recorded in the *Shulchan Aruch* (*Choshen Mishpat* 395:1), which rules that if Reuven incited Shimon's dog to bite and damage Levi, Reuven is exempt in the court of man but obligated by laws of Heaven to pay. Shimon should pay half damage. Since he knew his dog could be incited, he was negligent when he allowed it out unmuzzled. If Shimon incited Reuven's dog and the dog bit Shimon, Reuven would be exempt. The rule is that when one acts in an unusual and incorrect manner, if others act in an unusual manner back to him, there is no financial liability. Perhaps in our case the man who fell on his friend incited the dog against himself and the dog owner would be exempt from paying?

Rav Zilberstein concludes that in this case, the dog owner would have to pay. In our case the man tripped and fell. He did not intend

to incite the dog. He did not do an unusual act. The rule that one who acts unusually does not get reimbursed when he is hurt should not apply. Furthermore, the *Yam shel Shlomo* taught that the rule of one who acts unusually does not get paid when others acted unusually to him is not universal. If the damager's actions were far more unusual than the deeds of the one damaged, there is liability. It was much more unusual for a dog to bite a man and tear his garments than for a person to stumble and fall into someone. Therefore, the owner of the dog should be liable for the *keren* action performed by his dog, and he would owe half damage, even though his animal's actions were provoked by his friend (*Chashukei Chemed*).

Bava Kamma 25

When Would a Man, in Our Days, Who Is not a Convert, Have to Recite a Blessing for Immersion in a *Mikveh*?

Generally, in our days, there is a difference between when a woman immerses in a *mikveh* and when a man immerses. When a woman immerses she recites a blessing. A man does not recite a blessing for the immersion, since he has no mitzvah to immerse. Only a male convert gets to recite a blessing for the mitzvah of immersion. Is there a scenario where a man would have to recite a blessing on immersion?

Rav Zilberstein pointed out that due to concerns of *pikkuach nefesh*, it is necessary for Jewish security professionals to walk on the Temple Mount in Jerusalem. One who has *tumah* due to a discharge from his body may not enter the Temple Mount. If his presence was needed on the Temple Mount for national security he would be obligated to first go to the *mikveh*. His immersion would be halachically needed and significant. He would have to immerse in a valid *mikveh*. He would have to remove all possible *chatzitzos*, barriers between the water and his body, before immersing. And he would have to recite a blessing on the immersion.

A *zav* is an example of someone who is impure with a *tumah* due to a discharge from the body. *Zivah* in a man is a discharge similar to gonorrhea that occurred three times. *Bava Kamma* 25 teaches that the discharge itself, the spittle of the *zav*, his urine, and his seed would create *tumah* if they were carried. If a soldier in the Israeli army was a *zav* and he was needed on the Temple Mount, he should watch what he carries. If he went to the *mikveh* but then carried a plastic tube holding his spittle that exited when he was a *zav*, he would need to go to the *mikveh* a second time before ascending to the Temple Mount. Transporting the liquid would make him impure again, and he would need a kosher immersion to become pure and be permitted to go to the Temple Mount (*Chashukei Chemed*).

Bava Kamma 26

Damage on Purim

On Purim we have a mitzvah to get drunk. What is the law if a person got drunk on Purim and then damaged another person's property? Would he be liable to pay for the damage? Perhaps one should be exempted from damage caused when one could not control his actions?

Poskim teach that the drunk would be held responsible for the damage. The Mishnah taught, *adam mu'ad le-olam*, "Man is always fully liable and responsible." Whether damage was caused by mistake, or even while a person was sleeping, the damaging man must pay. The *Yam shel Shlomo* argues that even if one is as drunk as Lot, one would be responsible for his actions. It was his fault that he became drunk to the point of being unable to control himself. If a man would be exempt of the damage that he causes while drunk, each enemy of a person would drink to a stupor and then damage property knowing that he would be exempt from paying. The *halachah* certainly does not allow for such abuse. Man is always responsible for his actions, even when he is drunk. The *Yam shel Shlomo* argued further that the Rambam (*Hilchos Megillah* 2:15) teaches that on Purim one should drink a bit more wine than usual and go to sleep. Therefore, a drunk

person who damages on Purim is certainly liable for the damage. He should never have drunk to the point of being unable to control himself. He could have fulfilled his Purim obligation by drinking a bit more than usual. He was wrong in drinking to the point of being unable to control himself and damaging. He is therefore held fully responsible for the damage that he caused.

The *Shut ha-Bach* dealt with a similar question. At a wedding celebration all the guests got drunk. One drunken reveler took a glass and threw it against the wall. The glass shattered. One of the shards blinded another guest. The guest demanded payment. The reveler claimed that he should not be held responsible for actions that occurred when he was drunk and could not control himself. The *Bach* ruled that the drunken celebrant was liable. He was at fault for allowing himself to drink to the point of not being in control at all. In regards to all *mitzvos*, a drunk person is fully obligated and considered like a sober person. It is only in regards to prayer that one who is drunk is exempt. However, a drunk person has all the other halachic obligations. He was at fault in drinking so much. He must pay for the damage that he caused while under the influence of alcohol (*Mesivta*).

Is Forgetting Considered Negligence or an Innocent Mistake?

The *Shut Chelkas Yaakov* (*Choshen Mishpat* 33) records a horrific question which was resolved from our Gemara. During the Holocaust the Germans sought to destroy the Jews while first exploiting them for financial gain. The Germans would steal Jewish property. Then they would enslave the able-bodied Jews. As the war was coming to

a close, the Germans worried that the Allies might discover their camps filled with starving inmates. To avoid discovery, they would lead Jews on the infamous Death Marches. The Jews would be forced to walk for hundreds of miles with little water, little sleep, and no shelter, to avoid the Allied troops, and go to another camp deep in Germany or Austria.

During the terrible treks the Nazis were horribly cruel to the prisoners. They would give them very little to eat or drink. They would hardly let them rest. If a Jew fell behind they would shoot him dead. If a Jew left the group to drink water or pick some vegetation they would kill him as well. Sometimes they would give them a short thirty-minute break in which they were allowed to sleep briefly. They would rouse them with a whistle and march again. If anyone did not wake up, they would shoot him dead.

Two brothers were on a Death March. On this journey the Nazis hardly allowed any rest. When the Nazis would give a break, if anyone fell asleep and did not wake up in time, the Nazis would shoot the person. The Nazis gave a break. One brother was exhausted. It was impossible for him to stay awake. He asked his other brother to wake him when the Nazis started the walk again. The brother agreed to do so. His brother went to sleep. The other brother found himself exhausted as well. Sleep overcame him. The whistle blew. The brother woke up disoriented. He quickly ran to catch up with the others who were marching. He forgot to wake his brother. After a few minutes, he remembered that he had promised to wake his brother. He could not turn back and march back to where they had stopped, for the Nazi guards would then surely kill him. He looked for his brother and could not find him among the other prisoners. He never saw his brother again. He was wracked by guilt. He had slept and had not

woken his brother. He was sure that his brother had been murdered by the Nazis. Was he at fault? What atonement could he attain for having caused the death of his brother?

The *Chelkas Yaakov* pointed out that *halachah* does not consider forgetting to be an act of negligence. *Bava Kamma* 26 stresses the fact that a man is liable for the damage that he causes by mistake. If a person deliberately damages another person, the damager must pay for the damage as well as for doctor bills, lost wages, and pain. If the act was a mistake that was borne of negligence, *shogeg karov le-meizid*, the damager must pay for damage and for the other payments. However, if a person mistakenly damages another person, based on an innocent error, *shogeg*, he only pays for damage. In a case of damage created by an innocent mistake, the man does not need to pay for the doctor bills, lost wages, or pain; he only pays for the damage. The Gemara states that if a man knew that he had a stone on his lap, then he forgot, then he stood up, and then the stone fell off the lap and injured another person, he would have to pay for damage but not for the doctor bills, pain, or lost wages. When one forgets, one is making an innocent mistake, it is *shogeg*; forgetting is not negligence, it is not *peshiah*.

The *Chelkas Yaakov* argued: if regular forgetting is considered an innocent mistake, certainly a person who forgot because his exhaustion made him fall asleep was not negligent in any way. The brother who fell asleep against his will woke up disoriented. His forgetting to rouse his brother at that moment was not negligence. He was in no way liable for anything that he failed to do. His forgetting was *oness gamur*, an event that was completely beyond the control of the individual. He did not need any atonement.

However, if he wished to do something, the *Chelkas Yaakov* encouraged him to resolve to never humiliate anyone. Humiliating someone is like killing someone. By his avoidance of shaming others, he would show himself to be a person who avoids killing. In addition, he advised him to adopt an orphan and to support Torah scholars, for such actions are considered giving life to others (*Daf Notes*).

Bava Kamma 27

Do You Need to Look Before You Walk?

Our Mishnah taught that if a person placed a barrel in the public domain and someone came and tripped on it and thereby broke it, the one who tripped need not pay for breaking the barrel. The Gemara challenged this law. It asked, “Shouldn’t he have looked and then walked?” The Gemara quoted Rav Ulla who answered by rejecting the premise of the question. People are not responsible to look and then walk. People can walk in the street without looking down. Tosfos Rabbenu Peretz added that man walks upright, while animals walk with their heads down. Since man typically is upright, he is not responsible to look down before he takes a step. The person who placed the barrel in the street was negligent.

However, if it would be the season of pressing olives, then in certain locations the one who tripped and broke the barrel in the public domain would be responsible. All know that olive-presses sometimes get overwhelmed. When there are too many people in the press, some take their barrels of olives and place them in the street. Then, the one walking should have paid attention when he walked by the olive-press. If he broke a barrel near the olive-press, at the time of olive oil production, he would be liable for the damage.

These laws have practical ramifications. A young student in a yeshiva dormitory once asked his friend to come to his room to wake him up after his nap. The other young man came into the dark room to wake his friend. When he walked into the room he stepped on his friend's glasses, which were on the floor, and he broke them. Did the second student have to pay for the damage that he caused to the glasses?

The *Shut Kneh Bosem* argued that the second student was not liable. Just as one is not expected to look before he steps in the public domain, and one need not suspect that there are utensils underfoot, one need not suspect that there are glasses on the floor of a dorm room. The first student was negligent in putting his glasses on the floor. The second student was not expected to look and then walk.

The *Pischei Choshen* questioned the ruling of the *Kneh Bosem*. Only in the street is there a rule that a man need not look and then walk. However, next to an olive-press, during the olive oil manufacturing season one must look before stepping, because it is likely for barrels to be on the street there. Perhaps a dorm room should be considered a place where it is likely for objects to be lying around, and one must look before he steps. On the other hand, perhaps the first student was negligent. He invited another student in. He knew the second student would come into an unfamiliar and dark room. Even so, he left his glasses on the floor. Perhaps such negligence renders him the party who is at fault and as a result the second student need not pay (*Mesivta, Me'oros Daf ha-Yomi*).

Bava Kamma 28

Lying to Retrieve Property

Our Gemara contains the lesson of Ben Bag Bag. Ben Bag Bag taught that if your friend has your object and he is not returning it to you, you should not enter his courtyard without permission to retrieve your object. If you would do so, you would look like a thief. One should not present oneself in a manner that might lead others to think that he is a thief. Rather, you should openly bring your friend to court and reclaim your possessions.

The *Sha'ar Mishpat* (348:1) quotes the *Smak* in the name of Rabbenu Yonah that Ben Bag Bag's words are more than merely advice. Ben Bag Bag was teaching that there is an actual prohibition. Reuven may not steal his objects back from Shimon who stole them from him. If he were to do so, he would appear to be a thief. One may not appear to be a thief.

However, the Rambam does not record this law. The *Minchas Chinnuch* explained that according to the Rambam, Ben Bag Bag was merely giving advice. It is not wise to act in a way that would make one appear to be a thief. However, according to the Rambam, one is allowed to lie to retrieve what is rightfully his. The *Smag* seems to present it as a Biblical obligation not to appear as a thief. The

Rashba in his responsa (3:81) also ruled that you may not lie or act deceptively to retrieve money that someone else owes you.

The *Shut Rav Pe'alim* argued that the dispute between the different authorities is limited. If the person who is holding your money is dishonest and will not listen to the ruling of the court, all agree that you may lie, act deceptively, and be crooked to retrieve your funds. Yaakov Avinu was tricky in his dealings with Lavan. He explained that he had to act in that way as, the verse states, *Ve-im ikkesh tittappal*, “And with the crooked be devious” (2 *Shmuel* 22:27). There is only a dispute regarding a person who will honor the ruling of a court: The Rambam seems to allow one to lie to retrieve his funds, and the *Smag* ruled that one may not lie to retrieve property. According to the *Smag* if you want your money back you have to go to a court and prove that you are entitled to it (*Mesivta*).

Bava Kamma 29

How to Remove Damagers

The *Pischei Choshen* pointed out (*Nezikim* chapter 8 footnote 14) that our Gemara contains a cautionary lesson. Suppose a person sees a stone which is a stumbling-block in the public street, and since he wants to do good, he kicks the stone to the side of the road, and he then continues on his way. According to our Gemara, the person might become liable for the damage that the stone causes.

Our Gemara taught that if there was excrement in the street and someone lifted it and then someone was damaged by it, the one who lifted it would be liable. Rabbi Elazar explained that if the object was not lifted very high, it was only lifted less than three *tefachim* (handbreadths), and it was returned back to its original spot, then, if the lifter intended to acquire it, he would be responsible for the damage. However, if he lifted it more than three *tefachim* from the ground, he would be responsible for the damage, even if he did not intend to acquire the object. When lifting it three *tefachim* from the ground, he removed the risk of causing damage; by then putting it back on the ground, he is considered the person who placed a stumbling-block in a public space. At that point, the original person is no longer part of the equation. The *Chazon Ish* ruled that this would

apply to one who moved the object laterally as well. The excrement had been in one place. If someone moved it to another spot, even though he did not raise it three *tefachim* high, that person was the one who placed it in a spot where it could cause damage. The one who places the stumbling-block is responsible.

Therefore, if you see a stumbling-block in a public domain, you should pick it up and place it down in a spot where it can no longer cause any damage. If you move the stone to the side of the road, you created a hazard on the side of the road, and you would be responsible for the damage that might happen if people got hurt by it (*Mesivta*).

Bava Kamma 30

He Painted His Fence, Did Not Warn Anyone; A Passerby's Suit Was Ruined. Is He Liable?

A question: A man had a yard next to the street. Around his yard he had a fence. One day he painted his fence with a new coat of paint. He did not put up a sign to warn others that the fence had wet paint on it. Someone walked by, and his suit was ruined when he brushed against the fence. Did the owner of the fence have to pay for the loss of the suit?

Rav Zilberstein pointed out that the damage caused by a wall would be in the category of *bor*, a pit. There is a verse that decreed that one need not pay for damage to utensils caused by a *bor*. A suit is not a living animal. It is an inanimate object. The *ba'al ha-bor* (owner of the pit) need not pay for *nizkei kelim*.

The *Birkas Shmuel* was of the opinion that an owner of a pit is obligated in the laws of Heaven for damage to utensils. Perhaps the owner of the fence was obligated morally to pay for the damage to the suit that his paint caused. However, our Gemara teaches that it is not the way of people to walk at the edges of a road and squeeze themselves against the wall. Since people do not typically walk against walls, if someone hid glass shards or thorns inside his wall, he would

not be liable if someone walked by his wall and was damaged by the thorn or glass inside of the wall. Similarly, the owner of the fence was entitled to assume that no one would squeeze his body against the fence. Therefore, he would be exempt, even *be-dinei shamayim*, from paying for the damage to the suit that occurred when the person walked by his freshly painted fence.

Rav Elchonon Wasserman argued that since the Gemara said that it was not the way of a person walking to squeeze against the wall, if one were to squeeze against the wall, the owner of the wall would be considered an *anuss*. It was forced on him. Legally, he had no reason to think it would happen. Therefore, he would be exempt, even *be-dinei shamayim*.

If the person's wall was a low wall near a bus stop, and the owner of the wall allowed people to sit on the wall, if he painted the wall and did not tell people, then he would be morally responsible for damaging a suit. If people usually sat on his wall, he should have anticipated that people would continue to sit on his wall, and he should have warned them when he added a fresh coat of paint. If he did not, and objects were damaged, he would be morally responsible to pay (*Chashukei Chemed*).

Why Study *Daf ha-Yomi* Before *Davening*?

The Amoraim quoted on *Bava Kamma* 30 offer several pieces of advice for those who would like to reach the level of *chasidus* (piety). One of the ways to reach this level is “to be most careful in matters related to *berachos*.” According to Rabbenu Chananel, this means one should be careful to recite *berachos* properly, since it is forbidden to benefit from this world without a *berachah*.

The Rashba takes a different approach. He notes that the Gemara says that everyone must be careful to recite *berachos* properly, not just *chasidim*. The Gemara in *Berachos* teaches that one who benefits from this world without a blessing is a corrupt sinner. If so, what is meant by stating that the key to piety is to be careful with blessings?

The *Chida* (*Devarim Achadim*, *Drush* 17:2) and Rashba explain that the Gemara is referring to the Mishnah in *Berachos*: “The early *chasidim* would tarry for an hour before praying in order to direct their hearts to Hashem.” One who wishes to be pious should be careful to prepare for prayer with an hour of meditation.

The *Shulchan Aruch* (*Orach Chaim* 93:1) rules that one should wait an hour before praying. The *Magen Avraham*, however, writes that this *halachah* applies only to *chasidim*, who serve their Creator with great devotion. The basic halachic requirement of preparation for prayer is not as demanding. It is also stated in the *Shulchan Aruch* (*Orach Chaim* 90:20) that one should wait long enough to walk eight *tefachim* (about two and a half feet) before praying.

The *Pri Megadim* (*Eshel Avraham* 93:1) writes that his congregation would pray slowly while reciting *Pesukei de-Zimra* and the blessings of *Shema*. In this way, they would luxuriate on the words for an hour before reciting *Shemoneh Esreih* so as to reach the level of the pious. The *Kaf ha-Chaim* (*ibid.*, *se’if katan* 1) records a similar practice. He added that this *halachah* can be fulfilled at Minchah and Ma’ariv as well, by studying in a fixed *shiur* before prayer. Studying *Daf Yomi* in synagogue for an hour before *Shemoneh Esreih* would be a way for an individual in our era to attain the status of a *chasid*.

What is the purpose of this hour of preparation before *tefillah*? According to the Tosfos Yom Tov (*Berachos*, *ibid.*), the purpose of the meditation is not so that we will concentrate properly on the meaning of the words of the prayer; rather it is to help us become

aware that we are standing before the King of Kings, the Holy One, Blessed be He. There are two intents a praying person must have. One, the meaning of the words. The second, to feel constantly that he is standing before the Almighty. The Rambam (*Hilchos Tefillah* 4:16) writes about the person praying, “He should remove all thoughts from his heart and imagine that he standing before Hashem’s Divine Presence.” Through preparation, one creates that feeling.

The feeling of standing before Hashem is most essential to successful prayer. Rav Chaim Soloveitchik of Brisk, *zt”l*, maintained that if someone had intent about the words during the first *berachah* of *Shemoneh Esreih* but then lost his concentration for the rest of the *Amidah*, he does not need to repeat the *tefillah* (O.C. 101:1). On the other hand, if at any point he was not aware that he was standing before Hashem, it is as if he did not pray at all. His words of *tefillah* were totally insignificant, and he failed to fulfill his obligation. He would have to pray again.

The *Chazon Ish* disagreed with Rav Chaim. He felt that anyone who begins to pray has some knowledge that he is praying to Hashem, and *be-di’eved*, this vague cognizance is enough to fulfill the obligation of having the intent that one is standing before Hashem while reciting the *Amidah*.

Having a regular hour of Torah study before prayer is most helpful to strengthening this essential devotion, the feeling that one is standing before the Infinite Creator (*Me’oros Daf ha-Yomi, Mesivta, Daf Notes*).

Bava Kamma 31

A Driver Suddenly Stopped His Car. The Car Behind Him Crashed into Him and Sustained Damage: Is the Driver Liable?

A practical question: Reuven was driving his car and suddenly stopped in the middle of the street. Shimon was driving a car behind Reuven. He did not expect Reuven to stop. When Reuven stopped his car, Shimon did not react quickly enough, and his car crashed into Reuven's. His car suffered a lot of damage. Was Reuven liable for the damage?

The *Pischei Choshen* (*Hilchos Nezikin* 1:79) argued that it would seem that Reuven is liable. Our Gemara discusses a case where two people were walking in the street: one in front was carrying a beam and the person behind him was carrying a barrel. If the person in front were to stop suddenly and the man holding the barrel then walked into the beam, the beam-carrier is liable. He had no right to suddenly stop. He is responsible for the damage he caused. The *Shulchan Aruch* records this law. He writes (*Choshen Mishpat* 379:2) that if the beam-carrier stopped to rest and as a result the barrel-carrier walked into him and the barrel broke, the beam-carrier is responsible, even if the beam did not fill the street. A man carrying

a barrel in entitled to walk straight ahead. He need not walk around simply because the beam-carrier chose to suddenly stop fully in the public domain. If so, the *Pischei Choshen* thought that if someone stopped his car suddenly, he is like the beam-carrier who stopped to rest in the street. He did an unusual act. He should be responsible for the damage he causes to the other car.

One might challenge this thought. The commentators have a problem with the law in our Gemara. If a person digs a pit which causes damage, the Torah exempts him from paying for damage to utensils: *shor ve-lo adam, chamor ve-lo keilim*, “There is obligation for an ox but not for (death) of person; there is an obligation for damage to a donkey, not for damage to objects.” If a person’s beam damaged, that should be the damager of *bor*. Why then should he pay for the damage to the barrel, when pits never create obligations to reimburse for utensil damage?

The *Nimmukei Yosef* answered that since the beam was on the person’s shoulder, it is considered an extension of the person. The beam-carrier who damages with his beam is considered *adam ha-mazzik*, a person who damages, and not *bor*. Rabbenu Peretz answered that a walking man’s sudden stop is considered an act. Therefore, the beam-carrier is *adam ha-mazzik*. It was not his stationary beam that damaged. It was his sudden stop, his action, that damaged, and an *adam ha-mazzik* must pay for damages to utensils.

The *Chazon Ish* (*Bava Kamma* 1:1) suggested that a man who stopped and thereby damaged with his beam is a composite damager of both *bor* and *adam*. The responsibility is derived from the fact that there is an obligation to pay both for pit damages and for what a person damages. He is mostly categorized as *adam ha-mazzik*, and that is why there is liability for damages to utensils.

If we accept the answer of the *Nimmukei Yosef* for the Gemara, in our case, Reuven should be exempt. A car does not rest on a body like a beam. A car is not an extension of the body like a beam on a shoulder. Therefore, the man who stopped his car, according to the *Nimmukei Yosef*, would be someone who created a *bor* and not an *adam ha-mazzik*. Since *bor* has no liability for damage to utensils, Reuven should have no liability for the damage to Shimon's car, which is merely a utensil.

Rabbenu Peretz taught that a sudden stop is considered an action. It would only be an action immediately. After a short period though, he would agree, the beam is a *bor*. Thus, even according to Rabbenu Peretz, in our case, when the second car crashed several moments after the first car stopped, it should be *nizkei keilim ba-bor*, and there should be no obligation. Only the *Chazon Ish*, who defined the beam-carrier as a damager who is a composite of *bor* and *adam*, would convict Reuven who stopped the car for the damages caused to Shimon's car that crashed into his.

The *Chashukei Chemed* argued that in our day Reuven would be exempt. The Gemara taught that if the beam-carrier stopped suddenly to rest in the street but he loudly called out a warning to the barrel-carrier to stop walking, he would be exempt, even if the barrel-carrier did not stop and then the barrel broke. When a car stops in the street there are brake lights. Those brake lights should have the status of a warning. As a result, Reuven is exempt from the damage to Shimon's car.

Secondly, secular law holds the second car responsible. To maintain safety there are laws prohibiting tailgating. The law demands that a car keep a safe distance from the car ahead, so that if the car in the front were to suddenly stop, the car behind him would have the time to react appropriately and stop as well. It is therefore the norm

to keep distance and stop in time. Shimon, who was too close to Reuven, is therefore the guilty one; he was acting in an unusual way and would not be entitled to any compensation (*Daf Yomi Digest, Pischei Choshen, Chashukei Chemed*).

Bava Kamma 32

Why Stand for Friday Night Kiddush?

The *Rema* (*Orach Chaim* 271:10) taught that one should sit while reciting Kiddush on Friday night. Nevertheless, the kabbalists guided their students to stand. Why should one stand for Kiddush on Friday night? The *Shelah ha-Kadosh* (quoted in *Aruch ha-Shulchan*, *Orach Chaim* 271:24) taught that it is based on our Gemara.

Our Gemara taught that Isi ben Yehudah was of the opinion generally that if one man was walking in the public domain and someone else was running, and the runner hurt the walker, the runner must pay for the damages, for he had no right to run. However, if he was running on a Friday as the day was coming to a close, he would not have to pay, for he was entitled to run. The Gemara asked, “What entitled him to run on Friday?” It answered that as Shabbos nears, everyone must rush out to greet the Sabbath Queen. It then quoted Rav Chanina, who would tell his students as Friday would end, “Let us dance out and greet the bride who is the Queen.” We learn from our Gemara that the Amoraim called the Shabbos the bride. When reciting the blessings for a bride and groom under the *chuppah*, the ones who recite the blessing are to stand to give honor to the bride

and groom. Since Shabbos is a bride, the *Shelah* argued that Kiddush of Friday night should be recited while standing to honor the bride.

Based on the explanation of the *Shelah*, Rav Moshe Feinstein (*Igros Moshe, Orach Chaim* 5:16) argued that on the nights of Yom Tov all should sit while reciting Kiddush. Yom Tov is not considered a bride anywhere. Therefore, even those who stand for the Kiddush of Friday night should return to the ruling of the *Rema* and sit for the recital of Yom Tov Kiddush. However, the *Kaf ha-Chaim* quoted the Ari that one should stand even for the Kiddush recited on the night of Yom Tov. The *Ketzos ha-Shulchan* (79:14) taught that there is a secret reason for this custom (*Me'oros Daf ha-Yomi*).

Is There Liability When One May Run?

Our Gemara taught that Isi would exempt a person who damaged while running in the public domain, if he was running on a Friday afternoon. The Mordechai (Chapter 39) explained the ruling of Isi. On Friday afternoon, one is likely to run out of time in trying to prepare for Shabbos. When faced with a time pressure, the *halachah* allows one to run in the public domain. In light of this explanation, if one was running in the street in order to get to a yeshiva to learn, and he caused damage, he would be liable. Only when faced with an imminent time deadline would one be allowed to run in the street and be exempt from the damage he caused. The fact that one is rushing to do a mitzvah is not sufficient reason to exempt one from paying for damages. The *Daf Yomi Digest* quotes the ruling of *Chavos Yair* about a case similar to the lesson of the Mordechai.

The following scenario was presented to the *Chavos Yair*: Reuven had been running in the street in order to recite *Kiddush Levanah*

with a *minyan*. In the process he ran into Levi's stand and broke a number of jars. The collision caused Levi's oil to spill. Levi wanted Reuven to reimburse him for his loss, but Reuven claimed that since he was running to perform a mitzvah he should be exempt. The *Chavos Yair* responded that Reuven was obligated to pay for the loss he caused Levi. His reason was similar to the understanding of the Mordechai. The Gemara's exemption from liability was limited to Friday evening, where one is pressed for time. It cannot be applied to other mitzvah observances. *Kiddush Levanah* does not necessitate running, since it can be recited without a *minyan*. There was no time deadline that would have justified his running; therefore, he was responsible for the loss of the oil.

The *Aruch ha-Shulchan* (*Choshen Mishpat* 278:19) cites the ruling of the *Chavos Yair*, but adds that if someone was running to save another person's life from a fire or a flood, he would be exempt from liability for property that he damages, since he is authorized under such conditions to run in the public domain. The *Teshuvos Shevet ha-Levi* (9:293) was asked whether an ambulance driver who damaged cars on his way to an emergency, lifesaving mission was liable to pay for the damage he caused on the way, or was exempt because he was authorized to drive quickly through the public domain. He ruled that the driver was exempt. He based his ruling on *Shulchan Aruch's* ruling that one is exempt from paying for damages caused while trying to save Shimon from Reuven who is pursuing him. The reason for the law is that if one would be liable for damages when he attacks a pursuer, people would avoid getting involved in saving potential victims from pursuers. The *halachah*, therefore, granted an exemption to encourage bystanders to intervene and save victims. Similarly, if an ambulance driver would be liable for the damage he inflicts while rushing to save a life, no one would choose to fill that role.

The community needs first responders. Therefore, the community surely allows the emergency personnel to hurry to save lives, and it exempts them from whatever damage they may cause.

Rav Zilberstein referenced these ideas for the following case: A dog was chasing a teenager. The teen was terrified and running from the dog. Another young man saw what was happening. To try and save his friend he threw a stone at the dog. The stone missed the dog, but it broke the display window of the store on the street. Did the teen have to pay for breaking the window since *adam mu'ed le-olam*, man is always fully liable?

Rav Zilberstein pointed out that just as Jewish law exempts the person who damages a pursuer from having to pay to encourage people to step in and save lives, the teen who threw the stone is to be lauded and not held liable for damages from his act of saving. Secondly, Isi taught that one who damages while running on Friday afternoon is exempt, for he had permission to run, so too the one who threw the stone had permission to do so. Throwing a stone at a pursuing dog is a fulfillment of the mitzvah, *Lo sa'amod al dam rei'echa*—do not stand by when your brother's blood is being spilled. The Gemara in *Kiddushin* 8b states explicitly that it is a mitzvah to try and impede a dog who is pursuing a person. Since the teen's stone-throw was permitted, he would not have to pay for the damage to the store window (*Daf Yomi Digest, Chashukei Chemed*).

Bava Kamma 33

A Court Officer Was Bitten By a Dog: Does the Dog-Owner Need to Pay?

Rav Zilberstein addressed the following question: Reuven decided to sue Shimon. He went to *beis din* to file his claim. *Beis din* sent its emissary to bring the suit claim to Shimon. When the emissary arrived at Shimon's home, the door was locked. He rang the doorbell.

"Who is there?"

"It is me, Yaakov from the Jerusalem Bet Din. I have papers of Reuven's suit against you that I must deliver to you."

"Don't you dare come in! I have a violent dog. You have no permission to serve me with papers!"

Yaakov forced his way in. He was bitten by the dog. Was Shimon liable?

Rav Zilberstein argued that our Gemara proves that Shimon is liable for the damages when his animal bites a court officer.

Our Gemara quoted a Baraisa. The Baraisa recorded a dispute about liability in the following case. If workers entered the home of their employer to demand payment and the employer's dog bit them, did the owner of the dog need to pay? The first opinion (*tanna kamma*) believed that the owner of the dog was exempt. Others

(*acherim*) argued that the workers were entitled to demand payment, and therefore the owner of the dog was liable. The Gemara stated that if the employer was not readily available around town, and the only way to get to him was to enter his home, everyone would agree that the workers were entitled to enter his home to demand their wages, and he would be liable for his dog's actions.

The Gemara suggested that the dispute was only when the employer was sometimes available in the town. Since the employee might be able to get his wages in town, there is no automatic assumption that he is entitled to enter the home of the employer to demand pay. He had come to the door and called to the employer. The employer said, "yes." *Acherim* are of the opinion that "yes" means "please enter." The *tanna kamma* is of the opinion that "yes" means that the employer intended to go out to the employee and not that the employee could enter his home.

It emerges from the Gemara that if an employee was entitled to forcibly enter the home of the employer, for that was the only way he could get payment, the employer would be responsible for the damage his dog might cause to the employee.

An emissary of the court must deliver papers to the one being sued. The fact that he rang the bell and informed Shimon was not enough. He was allowed to enter the home, just as workers may enter the home of their employer to demand their wages. Shimon was not allowed to set his dog on the court officer. The court officer was permitted to enter to fulfill his task. Shimon would be liable for the damage that his dog caused (*Chashukei Chemed*).

Bava Kamma 34

Order of Claims in Bankruptcy

An interesting question was brought to Rabbi Nissim Chaim Moshe Mizrahi (d. 5509), the Rishon LeZion of Jerusalem, about a law from our Gemara. Our Gemara teaches that if someone owes money to multiple lenders, then those who lent him funds first are the ones who collect from his property first. The *Shulchan Aruch* (*Choshen Mishpat* 104:1) rules that if someone has many individuals to whom he owes funds, the one whose loan document was executed first is the one who has the first claim to collect land or movables from the debtor. Therefore, if the debtor does not have sufficient assets to pay all of his debts, those who lent to him first are the ones who might get to collect first, and those who lent later might end up receiving nothing.

In the days of Rabbi Mizrahi, a prominent merchant's business had taken a turn for the worse. He could not pay all the individuals to whom he owed money. One of the creditors approached Rav Mizrahi with the following interesting claim.

This creditor had not lent money to the merchant. He had sold goods to the merchant. The majority of the creditors demanded that

Torah law be followed. They argued that whoever had lent to the merchant earlier was entitled to receive from his assets before those who had entered into loan arrangements with him later. However, the supplier of inventory protested. The merchant had never paid him for the goods. Now the merchant was going bankrupt. He argued that since the merchant had yet to pay him, the goods were still his, even though he had delivered them to the possession of the merchant. He therefore claimed that he should be able to reclaim his goods. He felt that other creditors should only be allowed to seize assets after he received his inventory back, and then the earlier lenders should receive before the later lenders. He argued that it was inconceivable that creditors to whom the famous merchant owed debts should be entitled to seize his property. It was not the property of the store-owner; it was still the property of the supplier, and as such he argued that he should be able to seize it back first.

Rav Mizrachi ultimately ruled against the supplier.

The *Bach* (*Tur Choshen Mishpat* 96:23) agreed with the argument of the supplier. The *Bach* writes that inventory is indebted to its supplier until the store-owner pays for the goods. Since the merchant had never paid for the goods, and was now bankrupt, the supplier could reclaim his goods, and he need not wait for earlier lenders to get paid. However, the Chida (*Shut Chaim Sha'al* 1:74) records the view of many *Poskim* who disagree. These halachic decisors ruled that when someone sells goods to a store or a merchant, the sale is complete once the goods were delivered and the debt was recorded in the ledger. The merchant had signed that he owed money to the supplier. The goods now belonged to the merchant, and the supplier became a lender like other lenders. Since the other lenders had lent

earlier, they were entitled to collect first. The supplier would only be able to seize property from the merchant after the earlier lenders had collected what they were owed (*Me'oros Daf ha-Yomi*).

Bava Kamma 35

An Arsonist Lit a Car on Fire on Shabbos: Must He Pay the Firefighters Who Put out the Flames?

Rav Zilberstein addressed the following scenario: A criminal was upset with his friend. His friend parked his car in the lot underneath his building. To harm the friend, the lowlife decided to light the car on fire. On a Friday night he set the vehicle ablaze. The neighbors noticed the fire and smoke. They called the fire department. The firemen extinguished the fire. They gave the neighbors a bill for their work. Did the arsonist have to pay the firefighters?

Our Gemara discusses a Mishnah. The Mishnah taught that there are actions that if done by an ox they create a monetary obligation while if done by the owner of the ox there would be no obligation to pay. The Mishnah gives an example of this rule. If an ox lit a fire on Shabbos and the fire caused damage, the owner of the ox would have to pay for the damages. However, if the owner of the ox lit a fire on Shabbos and burned down a hay pile, he would not have to pay.

There is a rule, *kim leih bi-de-rabba minei*, “It was set for him in the greater punishment.” Burning a hay pile on Shabbos is a capital crime, since it is desecration of Shabbos. Since the man deserves

death, the death includes whatever monetary payments his act should have triggered. An ox that lights a fire on Shabbos does not deserve death. As a result, the owner of the ox does not have the rule of *kim leih* to exempt him from paying for the damage his ox caused.

Perhaps in our scenario, since the arsonist lit the fire on Shabbos, the rule of *kim leih* should be invoked. His act was one that triggered a capital punishment. For technical considerations our courts do not actually punish with capital punishment. However, since the act was deserving of capital punishment there would be no financial liabilities.

Rav Zilberstein pointed out that this claim is partially true. The arsonist would be exempt from paying for the car he burned on Shabbos. However, his obligation to pay for the firefighters was not a payment of damage. The firefighters did him a favor. They saved him from killing people. By extinguishing his flames they reduced the amount of Shabbos violations he was guilty of. Since fire is an extension of one's actions (*eisho mishum chitzav*), when one lights a fire on Shabbos, each moment the fire burns is viewed by the law as a new act of violating the Shabbos by igniting a flame. The firefighters helped the arsonist by saving him from multiple acts of Shabbos violation through putting out his flames. When one helps someone else he deserves payment as reimbursement. Payments to one who does a favor for me are not punishment. *Kim leih bi-de-rabba minei* is a law similar to the law of double jeopardy. It means that one receives the most severe punishment and not lesser punishments. Paying for a service is not a punishment at all. Therefore, while the arsonist would not be liable to pay for the damage he caused to the car by lighting it on Shabbos, for that is a punishment, he would be obligated to pay the firefighters for the service and benefit they provided to him (*Chashukei Chemed*).

Do Animals Feel Pain?

The French philosopher René Descartes (1596-1650) argued that animals did not feel pain. His student wrote about animals, “They eat without pleasure, cry without pain, grow without knowing it; they desire nothing, fear nothing, know nothing.” Our Gemara felt otherwise. Our Gemara relates that wise animals seek out pain relief. An animal might light a haystack on fire to then roll in the ashes to alleviate a wound. In fact, “There was an ox in the house of Rav Pappa that had a toothache. It went inside, pushed the cover off a beer barrel, drank the beer, and was healed” (*Bava Kamma* 35a).

Rav Pappa’s ox sought to relieve pain with beer. Very recent evidence has shown that it’s not just oxen who like to have their pain relieved. So do fish. In a 2011 paper in *The Journal of Consciousness Studies*, Lynn Sneddon demonstrated that not only can fish feel pain, but that they are willing to pay a price to get pain relief. The experiment was with zebrafish. Zebrafish, like humans, prefer an interesting environment to a boring one. When given a choice, these fish swim in an enriched tank with vegetation and objects to explore, rather than in one that is bare. Sneddon, from the University of Liverpool in the UK, injected the tails of the zebrafish with acetic acid, which no doubt annoyed them, but did not cause any change in their preference for the interesting tank over the one that was bare. Then she injected the fish with acetic acid, but added a painkiller into the water of the bare tank. This time, the fish chose to swim into the bare but drug-filled tank. Fish who were injected with saline as a control remained in the enriched tank and did not swim into the drug-enhanced bare tank. The conclusion: zebrafish are willing to pay a cost in return for getting relief from their pain.

DAF DELIGHTS

Our Gemara was written more than 1500 years ago. Our Sages already knew these truths. Rav Pappa's ox felt pain. It would go to lengths to find a pain killer to help it feel better (Talmudology Blog).

Bava Kamma 36

May Someone Call Someone Else “Mr. Nose”?

As Jews, we are obligated to watch our speech. The law enjoining *lashon hara*, negative speech, is very significant. We are not allowed to speak negatively. We may not say things that are insulting or negative about others. The *Shut Torah Lishmah* was asked if a man could refer to his friend who had a very distinctive nose as “Mr. Nose.” Would such a moniker be offensive? Is it *lashon hara*? Is any comment about someone else’s physical appearance necessarily disrespectful and wrong?

The *Shut Torah Lishmah* pointed out that our Gemara might shed light on this question. Our Gemara has a phrase that appears elsewhere in *Shas*. Shmuel told Rav Yehudah not to worry about the Mishnah. Rav Yehudah was concerned that the beginning of the Mishnah seemed to accord with the view of Rabbi Yishmael, while the end followed the view of Rabbi Akiva. Shmuel told him, “*Shinana*, I have told you before do not be concerned with resolving the beginning and the end of a Mishnah. The beginning followed the view of Rabbi Yishmael and the end was the view of Rabbi Akiva.”

What is the meaning of the word *Shinana*? The *Aruch* has two possibilities. First, he proposes that it means, “sharp one,” as in a

person who is very bright. His second interpretation is that it means, “Mr. Teeth,” from the word *shein*. According to this interpretation, Shmuel, in a term of endearment, would sometimes call Rav Yehudah, “Mr. Teeth.” If Shmuel would refer to Rav Yehudah by his physical appearance, it is apparently not offensive to comment on one’s physical appearance. Therefore, one would be allowed to call someone else “Mr. Nose.”

Ultimately, the *Shut Torah Lishmah* rejected the proof from our Gemara. In the society in which Shmuel lived, it was not considered offensive to comment about physical appearance. Shmuel could call Rav Yehudah “Mr. Teeth,” for among those people it was not considered offensive to make a comment about a person’s body. However, in societies where it is considered offensive to notice features of someone’s body, one may not talk of those features. In our settings, calling someone “Mr. Nose,” is widely viewed as disrespectful. Therefore, to call someone “Mr. Nose” would not be allowed, as it would be viewed as *lashon hara* (*Mesivta*).

Bava Kamma 37

An Ox Goring on Yom Tov

Our Mishnah taught that it is possible for an ox to be a *mu'ad* on Shabbos and a *tam* during the week. If the ox would gore each Shabbos for three consecutive Saturdays, then if it gored on the next Shabbos, the owner would have to pay full damage. However, it would still be a *tam* during the week. If it were to gore on a weekday the owner would only have to pay half the damage.

The Rishonim struggle to understand the logic in this law. Why not establish that a goring animal is to be watched from goring and let its owner pay full damage even when it gored during the week?

Rashi explains that an animal might be more irritable on Shabbos. There is a mitzvah in the Torah to ensure that one's domesticated animals rest on the Shabbos. Just as a man may not plow on the Shabbos, he may not allow his animal to plow on Shabbos. In fact, one may not even rent out an ox to a Gentile for Shabbos, lest he use it for *melachah*. Therefore, during the week, the ox might be occupied with work. However, on Shabbos, when he may not work, he might find the free time upsetting. As a result, on Shabbos he gores. The owner who saw him gore three times on three Shabboses should have anticipated that the ox would gore again on a Shabbos. However, were

he to gore during the week, the owner would be rightfully surprised that the ox gored when he was busy with work, and therefore, for that act of damage he would only need to pay half of the cost.

Tosfos provided a different explanation. During the week most people wear drab, grey, workman clothing. On Shabbos everyone wears festive and colorful outfits. The ox that gored on Shabbos might be an animal who no longer recognizes his owner and neighbors due to their special outfits, and as a result, he then forgets his manners and gores.

A difference between these points of view would occur if the ox gored on Yom Tov. If an ox gored on three Shabboses and then it gored on Yom Tov, would the owner have to pay full damage? According to Tosfos, he would certainly have to pay full damage. The logic of a *mu'ad* for Shabbos is that the holiday clothing disorients the animal. On Yom Tov all wear special garments as on Shabbos. However, according to Rashi, the reasoning behind a *mu'ad* for Shabbos is that the animal became destructive due to his forced break from work and labor. According to the *Rema* (*Orach Chaim* 246:3) one may rent his animal to a Gentile who will use it for labor on Yom Tov. If so, on Yom Tov, the ox might be working. If it was working and nevertheless it damaged, the owner would only have to pay half damages, for it would be treated as a *tam*, even though it had gored on three Shabboses (*Sho'el u-Meishiv* 1:2:66) (*Me'oros Daf ha-Yomi*).

Bava Kamma 38

The Intrinsic Reward for Good Deeds

Our Gemara teaches about the reward Gentiles receive for doing good deeds. Initially, the Almighty gave the sons of Noah seven commandments. They accepted their *mitzvos*. Then, they did not fulfill them. As a result, the Almighty took away from their reward. Even if they would fulfill them now, they would only get reward as a person who is not obligated who fulfills; they would not get the better reward, that which comes to a *metzuvveh ve-oseh*, one who was obligated and fulfilled.

The Netziv limited the scope of this lesson. He taught that there are two aspects to reward for a mitzvah. One reward is intrinsic. Performing a mitzvah makes a person more spiritual. The holy deed elevates the person and brings him closer to Hashem. It is like taking a medicine. Taking a medicine intrinsically heals. One does not get better as a reward for having listened to the doctor. One gets better from the medicine for it is inherently therapeutic. A mitzvah is inherently edifying. It lifts a person and makes him more soulful and closer to the Almighty. However, there is also a second aspect to the reward of *mitzvos*. Because mitzvah observance sustains the world, one who performs a mitzvah is rewarded for helping the globe.

When the nations ignored their responsibilities, Hashem removed their responsibility to sustain the world. As a result, when they do good deeds, they will not get the reward for keeping the world going. However, the intrinsic impact of a mitzvah is there for the Gentile, just as it is there for a Jew. A Gentile who performs a mitzvah will find that the act edified and elevated him.

The *Meishiv Davar* dealt with an interesting question. A man presented himself as a great *tzaddik*. He told others that he had performed thousands of *mitzvos* in his lifetime. He offered to sell the reward of all these good deeds. In return for money, 22,000 rubles, he would gift to someone else all his reward. A simple man fell for the offer. He agreed to the purchase. After a few days the simpleton started to doubt the wisdom of his decision. He asked the Netziv if he was obligated to pay the 22,000 rubles or could he withdraw from the deal. The Netziv told him that the primary meaning of reward for a mitzvah is the intrinsic reward. The mitzvah changes a person for the good just as medicine heals a person. No one can say to another, "Give me money and in return the medicine I have been taking for the last few years is now given to you." The *mitzvos* changed the person who performed them; he cannot give that change away to someone else in return for money. Therefore, there was nothing to sell. Nothing was sold, and the simpleton did not need to give thousands of coins to the so-called *tzaddik* (*Me'oros Daf ha-Yomi*).

Bava Kamma 39

He Trained a Pigeon to Steal, the Pigeon Damaged in the Act: Is the Trainer Liable for Full Damage?

Rav Zilberstein dealt with the following question. He was told about a bad man who trained a pigeon to steal diamonds. The man had taught the pigeon to fly to the shop where diamonds were polished and cut, and then to swoop down and swipe envelopes filled with diamonds and bring them back to him. What would the law be if the pigeon snagged an envelope of diamonds but then tore open the paper and caused some of the diamonds to be lost? Would the trainer have to pay the full cost for the diamonds?

Rav Zilberstein suggested that this case would be subject to a dispute between the Rambam and the Ra'avad. The Mishnah on *Bava Kamma* 39 teaches that a stadium ox would not be put a death. If someone trained an ox to gore and fight with a gladiator in a stadium, if the ox killed the sportsman (or anyone else), the ox would not be put to death. The Torah describes the killer ox with the words *ki yiggach*, “when [an ox] will gore,” which teaches *ve-lo she-yaggichuhu acherim*, “and not when others make it gore.”

The Rambam extends this law beyond the realm of an ox who kills. The Rambam (*Hilchos Nizkei Mamon* 6:5) writes, “Oxen that entertain people and are trained to gore each other are not considered *mu’adim* to each other. Even if they kill a person they are not put to death for the verse stated, *ki yiggach—ve-lo she-yaggichuhu acherim*.” The Ra’avad noticed that the Rambam went further than the Mishnah. The Mishnah discussed the law of putting a killing ox to death. The Rambam extended it to the law of *mu’ad*. The Ra’avad challenges the ruling of the Rambam. He points out that the Gemara taught that an ox can become a *mu’ad* to gore in response to hearing the *shofar* sound. If the Rambam is right, such an animal should not be a *mu’ad*, for it is others that are making him gore. Second, the Gemara taught that if someone incites a dog to bite, the owner of the dog is responsible, for he should have watched his dog from getting incited. Why is there an obligation in such a case? According to the Rambam, the animal should be exempt, for others made it act and the animal did not act on its own.

The *Or Sameach* and the *Griz* defend the Rambam’s views. They teach that the Rambam feels a *mu’ad* is an ox that gores from its own habits. If the deeds of a trainer are needed to make it damage, the Rambam feels it is others making it gore; it has not become habituated, and it would have the status of *tam* with a liability of merely *chatzi nezek*. An ox that responds to *shofar* blasts with goring is performing its own action. However, a trained animal is not doing its own act. Its trainer is making it perform in that way. Remove the trainer, and the ox would not perform. Only in such a case does the Rambam feel that it is a *tam* and not a *mu’ad*.

It emerges from the *Or Sameach* and *Griz* that a trained animal is different from an animal that reacts negatively to certain stimuli. An animal that responds to loud noises or incitement with goring might

become a *mu'ad*. It has developed a nature to damage in certain settings. There is full payment for the damage it causes by its natural acts. However, a trained animal is always dependent on the trainer and his reinforcement of the behavior. Remove the trainer and the animal will not continue with performing the tricks. The Rambam feels a trained animal is never a *mu'ad*. The Ra'avad disagrees. He feels that a trained animal is a *mu'ad*.

Rav Zilberstein felt that in the case of the pigeon trained to seize envelopes with diamonds, according to the Rambam the owner of the pigeon—who is also its trainer—would have to pay half damages. It is never the nature of a pigeon to seize envelopes. His trainer is making him do it. As a result, he is a *tam* with half damage liability. However, according to the Ra'avad he would have to pay full damages (*Chashukei Chemed*).

An Orphan Is Very Wild: May the Community Spend His Assets to Hire a Tutor to Guide Him?

There was an orphan who was very wild. He misbehaved all the time. He would even damage property. The state put him into an institution that tried to reform his behavior. This child had assets that he had inherited from his deceased father. A question was brought to Rav Zilberstein: Could the religious court take some of the assets of the orphan and use them to hire a tutor? The tutor would teach the child Torah. Hopefully, he would guide the young man to the ways of Torah observance and good character.

Rav Zilberstein initially suggested that a comment of the *Nimmukei Yosef* on our Gemara might lead us to think that the

court may not spend his funds for such an expense. Our Gemara teaches that if an orphan's ox gores three times, *beis din* would hire an *apotropis*, executor, to watch the ox to prevent it from damaging. If it would damage, even with his watching, then as a *mu'ad*, there would be full liability. The *Nimmukei Yosef* asks a powerful question. Elsewhere in *Bava Kamma* we have learned that if a child damages with his hands or with a fire, he need not pay. Why wouldn't the court appoint an executor to watch the child to prevent him from damaging? If they would appoint an *apotropis* there could be liability if there was damage.

The *Nimmukei Yosef* answered that it is not doable for the executor to watch the child constantly. If the court would appoint an *apotropis* to watch the actions of the orphan, the orphan might end up losing huge amounts of money. He would damage often, and his assets would be depleted. However, it is doable for someone to watch an ox. That is why the court would appoint an executor to watch the goring ox of an orphan. It sounds from this comment that the court is not to appoint an *apotropis* to watch the body of the orphan. Therefore, in our case as well, perhaps we may not use his assets to hire a tutor for him. The tutor is directly impacting the orphan. Based on the *Nimmukei Yosef*, perhaps we are to derive that the court only gets involved with property of the orphan but not with his person.

Ultimately, Rav Zilberstein was of the opinion that the court should use his funds to hire the tutor for the orphan. The tutor is not going to watch the child from damaging. Watching an orphan from damage may not be a benefit for the child, since it will end up costing large amounts of money. A tutor is different. The tutor will help the orphan by teaching him Torah. The tutor will give him life. The Gemara in *Gittin* (52a) teaches that a court-appointed *apotropis* may spend the wealth of the orphans to buy a mitzvah object for them,

such as a *lulav* on Sukkos. Therefore, it is certainly a mitzvah for the community to spend the orphan's money for a teacher who will teach him Torah, which is the key to many, many blessings throughout life (*Chashukei Chemed*).

Bava Kamma 40

He Borrowed a Car and It Got Stolen, the Owner Did Not Have Insurance: Was the Borrower Liable?

Rav Zilberstein was asked about the following case: A man borrowed his neighbor's car in order to use it to travel to a wedding. They had agreed that he would return the car the next day. The borrower went to the wedding. He returned home and parked his car in front of his house. The next morning the car was gone. It had been stolen. He told his friend, "Unfortunately, your car was stolen. Please inform the insurance company so you will be reimbursed." The owner of the car responded, "Please pay me for the car. As a borrower, you are responsible for everything, even damages that happen out of your control. I do not have insurance on the car to cover theft." The borrower then said, "I was sure that you had insurance. There are unfortunately many thefts where we live. Most car owners insure against theft. I would never have borrowed a car that was uninsured. The borrowing was a mistake and as a result, I am not liable." Was the borrower liable?

The Maharik (*siman* 155) proved from our Gemara that a watchman appointed in error is not responsible for damage. Our

Gemara discussed a case of a mistaken borrower. The borrower sought to borrow a *shor tam*, an ox that was innocent of any goring history and for whom it was unexpected that he would damage. Instead, the owner of the oxen gave him a *mu'ad* ox to use. The ox gored. Would he be liable to pay full damage? The Baraisa taught that he only needed to pay half of the cost of the damage and the owner of the ox had to pay the other half. The Gemara then asked: why should the borrower pay at all? He thought he was borrowing an innocent, peaceful animal? The Gemara answered that the case of the Baraisa dealt with an ox that readily presented itself as a wild, frisky, goring beast. The borrower knew he would need to expend effort to watch it. The Gemara asks: but he thought it was a *tam*, it turned out to be a *mu'ad*? The Gemara answers, the borrower thought he was getting a wild *tam*. Therefore, he needs to pay half of the damage, just as he would have had to pay half the damage if he had received a *tam*. The owner needs to pay the other half. The Gemara seems clear. The borrower needed to pay half, for he knew the ox was a wild one. Had he sought to borrow a peaceful ox and would have been given a wild *mu'ad* ox he would have been exempt from liability. Apparently, a totally mistaken borrowing does not create any obligation or liability. Therefore, the Maharik ruled if a man gave someone a set of books to transport for pay and assured him that the tax authorities would not charge taxes for books, if the customs officials did charge for the books, the transporter would be exempt if the books were stolen. The transporter only agreed to the job of bringing the books because he thought they would not cause any bother. He had never agreed to the inconvenience of dealing with the tax authorities. He was a mistaken watchman. An object in one's domain due to deception does not create watchman liability.

The *Sha'ar ha-Melech* disagreed with the Maharik. The *Sha'ar ha-Melech* argued that even if one is watching a particular object based on a mistake, one is liable. He proved this from the following law. If someone sought to borrow a silver coin and in fact was given a gold coin, he is responsible for a silver coin. Why don't we say that the coin he had was not what he wanted, there was a mistake, and as a result, he was not a watchman at all? He should be exempt. Apparently, even a mistaken deposit must be watched, and there is liability if it was not watched. Our Gemara only sought to exempt the mistaken borrower for the lender had neglected to tell him information he needed to watch it and prevent it from damaging. He wished to borrow an innocent ox. Such an ox would not have required much attention. Instead, the lender gave him a *mu'ad*. If he did not know he was getting a *mu'ad* he did not know that he needed to watch it well. If it damaged, it would have been the fault of the lender, who had neglected to inform the watchman of information needed to prevent damage. That is why the Gemara said that the borrower was responsible for the half damages, since he saw that it was a wild ox and he knew he had to watch it closely. Had he thought it was peaceful he would not have known to try and watch it. However, if he thought he was getting silver and he received gold, he would still be liable for damages if he was negligent and as a result the object was stolen. The fact that he was mistaken did not lead to the damage. He would still be liable for the damage.

The *Or Sameach* agrees with Maharik. He argues that if a watchman is under a misimpression, he is in essence not giving permission for the owner to put this object in his domain. He would have no responsibility for the object. The *Machaneh Efraim*

agrees with the *Shaar ha-Melech*. He feels even if there was a misrepresentation, if that misrepresentation was not the cause of the damage, the watchman would be liable for the damages.

In our case, since most people have insurance against theft, the borrower is believed when he stated that he would never have borrowed a car that was not insured. His borrowing was a mistaken depositing. According to the Maharik and *Or Sameach*, he would not have to pay for the stolen car (*Chashukei Chemed*).

Bava Kamma 41

Honoring a *Rebbe Muvhak*

Our Gemara quoted the famous discussion between Shimon ha-Amsuni and Rabbi Akiva. Shimon would derive laws from each instance of the word **את** in the Torah. For example, the Torah states, **כבד, את אביך**, “honor your father.” It could have written, **כבד אביך**. Shimon taught that the word **את** was added **לרבות אחיך הגדול**, to include your eldest brother. One must honor one’s father and the family member who is like one’s father and included together with one’s father, the oldest brother. However, when he got to the verse about fearing God, **את ה' אלוךך תירא**, “Fear Hashem your Lord,” he had a problem. Who could be included with God? Who is secondary and subordinate to the Infinite? Who deserves a bit of Hashem’s honor?

As a result of these questions he rejected all his interpretations and derivations.

Rabbi Akiva came and (perhaps inspired by Shimon’s integrity) taught that the verse added **את** to include Torah scholars. Just as one must display reverence to God, we are to give regard to sages.

Tosfos find the lesson of Rabbi Akiva difficult. There is an explicit verse that teaches about honoring sages. The Torah stated, **מפני שיבה**,

זקן, “Before old age rise and give honor to the face of the wise.” Why would we need the word *את* in *תירא את ה' אלוֹקֵיךָ תירא*?

Tosfos answer that the verse of *תקום שיבה תקום* applies to a regular teacher, while *תירא את ה' אלוֹקֵיךָ תירא* teaches that one must show extra honor to *רבו מובהק*, one's primary teacher and to a *חכם מופלג*, a great Torah giant.

If a Torah teacher passes away, one is to tear his garment; however, he may then repair the tear. Upon the passing of one's primary teacher or the passing of the *gadol ha-dor*, one must tear his garment and he may never repair the tear. For a regular Torah scholar you are to rise once they enter within your four *amos*. However, for one's primary teacher and for a *gadol ha-dor* you should stand once you see him, even if he is still far from where you are sitting. If you find a lost object that belongs to your father, and a lost object that belongs to a regular teacher, you are to first return the object of your father. However, if you find an object belonging to your father and an object belonging to your *rebbe muvhak*, you are to first return the object of your *rebbe muvhak*.

Why would a *gadol ha-dor* have the status of *rebbe muvhak*? Perhaps this person never met the *gadol* and never learned from him—why must he first return his object, stand for him once he sees him, and never repair a garment torn for his passing? Why give a stranger so much respect?

The Chida explained this law. In each generation there is a great Torah scholar. The scholar of the generation has a bit of the soul of Moshe Rabbenu. Moshe received the Torah and gave it to us all. This is why we each must give such great honor to the Torah giant of the generation. When one stands for him or returns his object one is giving honor to the piece of Moshe Rabbenu that is inside of him. We all have benefited from Moshe a great deal. Every piece of Moshe deserves tremendous regard and honor (*Me'oros Daf ha-Yomi*).

Bava Kamma 42

How to Study

Our Gemara teaches about a conversation between Rabbi Akiva and Rabbi Eliezer. Rabbi Eliezer interpreted the verse *ba'al ha-shor naki* “The owner of the ox is clean,” to mean that an owner of a *tam* ox need not pay half the *kofer* payment if his ox killed a person. Rabbi Akiva challenged this lesson. “Why would we need a verse to teach us this?” he asked. A *tam* pays from the value of its body. If it killed, the body of the animal is to be stoned and is considered halachically to be valueless. There would be nothing from which to pay. Rabbi Eliezer defended his point of view twice. In one Baraisa he explained that his lesson was needed for a case when the ox sought to gore another ox and ended up killing a man. Since it was trying to kill an ox, it would not be put to death. We might have thought: since it ultimately killed a man, its owner should pay half *kofer*. The verse taught that it was exempt from any *kofer* payments. In a second Baraisa he defended his view by suggesting that the verse was needed for a case when the owner of the ox told the court that his ox killed and there were no witnesses who saw the ox kill a person. In such a case, the ox would not be stoned. For this case, we needed the verse that the owner was still exempt from paying half of the *kofer*. The Gemara pointed out

that this answer is a weak one. We have a rule that one who admits to a fine need not pay it (*modeh bi-kenas patur*). Isn't a man who admitted that his ox killed in the category of *modeh bi-kenas*? Of course he would not have to pay! The Gemara answered that Rabbi Eliezer was of the opinion that *kufra kapparah*, the *kofer* payment is an atonement and not a monetary fine.

Rav Kahana and Rav Tavyuma had a dispute which Baraisa was taught first. According to Rav Kahana, first Rabbi Eliezer justified his position by explaining that the verse was needed for the case when the ox sought to gore another ox and ended up killing a person. That was a very strong argument. Then Rabbi Eliezer added the idea that the verse was needed for a case when the owner of the ox told the court that his ox had killed. That was a weaker answer for it led to a challenge. Rav Kahana taught the parable that a fisherman first catches large fish, and then he adds small fish to his haul. However, Rav Tavyumi disagreed. He quoted Rava, who taught that a fisherman throws away small fish once he catches big fish. So too, Rabbi Eliezer first suggested the weaker answer—that the verse was needed for a scenario in which the owner of the ox told the court that his ox had killed. That was challenged. He then “caught the bigger fish and discarded the small ones,” by teaching the answer that the verse was needed for the case when the ox was looking to gore another ox and ended up killing a person.

Why did the Gemara teach us these two lessons about fishermen?

The *Bris ha-Levi* taught that the Gemara is teaching about study methodology. When reviewing Gemara, is it wise to review the entire Gemara, original thoughts, questions, answers, and conclusions? Perhaps it is wiser to merely review the summations and conclusions?

The Gemara is teaching that both approaches are legitimate. It all depends on the student. A student who has an expansive memory

is like the fisherman who takes all the fish. He should review the conclusions, the big fish, and the entire lengthy conversations of the Gemara, the small fish, for even from initial thoughts, rejected ideas and questions, laws can be derived. However, if someone is not blessed with an expansive memory, then he should be like the fisherman who throws away the small fish once he catches the big fish. He should merely seek to retain the big fish. He should only review the conclusions of the Gemara when he reviews his learning (*Mesivta*).

Bava Kamma 43

Who Inherits Funds Paid by a Company as Compensation for Death?

There was a *shochet* (ritual slaughterer) in Jerusalem who worked for a South American meat producer. He would fly to Argentina. The company would then fly him to a rural area. He would spend several weeks slaughtering cows. Then he would pack the meat and see it shipped off to Israel. He would then return to Israel. On one of his trips, the plane taking him to the slaughterhouse crashed and he passed away. The family appealed to the company for financial help. The company agreed to the request and sent a check. Then there was a dispute among the heirs. Who was entitled to the funds? Was the *bechor* entitled to a double portion?

The *Minchas Yitzchak* answered that our Gemara teaches about inheritance. The Gemara teaches that property that was never owned during the lifetime of the individual does not get inherited in the normal way. A woman's assets are normally inherited by her husband. However, if an ox killed a woman, the *kofer* payment would not go to her husband. *Kofer* is an obligation created after death. She never owned those funds; the financial obligation was created after death. As a result, instead of her husband inheriting the funds, the funds go

to her children. In light of this concept, the *Minchas Yitzchak* ruled that the compensation paid by the meat company had never been the property of the *shochet*. Therefore the *bechor* was not entitled to a double portion of the money. To determine how to divide the money, the company should be consulted. Did they give the money mostly for the younger orphans? Did they intend that the money be given to the wife? It had never been the money of the *shochet*, and therefore, the normal rules of inheritance do not apply to those funds. The funds were to be distributed as per the intentions and instructions of the company that was gifting them.

The *Achiezer* dealt with a similar issue. A man had died. As a result of his death an insurance company had paid the family a benefit. In his will, he had asked that a percentage of the insurance benefit go to charity. Did the family have to listen to his request? Since the monies were only paid out after his passing, they had never been his during his lifetime and therefore, perhaps, he was unable to give some of them away (*Mesivta*).

Bava Kamma 44

Is a Child Always Exempt from Paying for Damages?

Our Gemara mentions that children are treated well in the laws of damages. If a child damages, he need not pay. If someone injured a child, the damager must pay. If an ox killed a child, the ox would be put to death. Is there always no payment when a child damages? The *Daf Yomi Digest* recorded a fascinating story from the *Chazon Ish* on this subject.

A woman was walking with her son in Bnei Brak. The young boy picked up a pebble and absent-mindedly threw it. The stone broke a window of a store. The store-owner came out and confronted the boy about the damage. The mother agreed to ask a Rav if she had to pay. They went to Rav Avraham Yitzchok Gershonovitz, *zt"l*. He ruled that the mother must pay for the store window. The mother agreed that she would pay.

When she came home she told her husband what had happened that day. The husband was very upset with Rav Gershonovitz.

“The Gemara mentions in *Bava Kamma* several times that when a child causes damage, there is no liability. Children are treated well

in the subject of damages. How could the Rabbi obligate us?” he exclaimed. The husband went to the *Chazon Ish* to complain.

The *Chazon Ish* agreed with the ruling of Rav Gershonovitz. He obligated the mother to pay. He explained that when the Gemara exempted children from damages it was discussing a case in which the child damages and the parents are not around. When a mother is walking with her son she has an obligation to watch her son. If her son got a hold of a stone and damaged with it while walking with her, she was negligent and wrong about her responsibilities. As a result, the mother was liable. She had to pay for the damage that her son caused (*Daf Yomi Digest* quoting *Maaseh Ish*, vol. 3, p. 206).

Bava Kamma 45

Does Every Killing Ox Get Put to Death?

Our Gemara discusses the laws of *shor ha-niskal*, an ox that is put to death for killing a human being. The Gemara discussed the question whether every killing ox is put to death or if some killing oxen are not stoned. If the ox had no owner, such as a wild ox, or an ox of a convert who died without children, the ox is put to death. The *Poskim* discuss whether an ox that has *shemittah* sanctity that killed should to be put to death.

The Torah gave us a mitzvah to eat the produce that grows on its own on trees in the seventh year. If a person has fruits that blossomed during *shemittah* that he exchanged for an animal, that animal would have *shemittah* sanctity. *Shemittah* food is to be eaten and may not be wasted or destroyed. What would happen if a *shemittah* ox killed? Would the court put it to death since it was a killer? Perhaps the court would be unable to put it to death, since killing the ox would be a violation of the mandate not to destroy and waste food that has *shemittah* sanctity.

The *Kol Torah* (*Tishrei* 5764) argued that the ox would be put to death. Since the ox killed, Hashem desired the ox to be annihilated, and as a result, it lost its *shemittah* sanctity and there would be no

prohibition against killing it. Hashem gave a mitzvah to preserve *shemittah* food that has sanctity. Once an ox kills, there is a spiritual poison in the ox. It is not considered food anymore. Hashem does not want it to exist; as a result, killing it would not violate the laws of *shemittah*.

The *Sefer Nefesh Kol Chai* (9:66) taught that if an ox was convicted of killing a person, it is better to stone it to death than to lock it away and deny it food, thus causing it to starve to death. Even though the ox is to be killed, there is still a prohibition of *tza'ar ba'alei chaim*, inflicting pain needlessly on living creatures (see Tosfos on *Sanhedrin* 80a). So, while in regards to *shemittah*, a killer ox is no longer food, in regards to *tza'ar ba'alei chaim* it is still a living creature that Hashem wants us to treat with respect and ensure that it is not needlessly afflicted (*Mesivta*).

Bava Kamma 46

Must an Employer Pursue His Employees to Pay Them?

The *Ahavas Chesed* (9:11) writes a novel law about the following case: An employee finished his job and asked the employer for his pay. The employer did not have the ability to pay him then; he told the man, “Unfortunately, I do not currently have the cash to give you what I owe you.” Later that day the employer received funds and could pay the worker. However, when he got the money the employee was not around to get paid. Must the employer seek out his worker to deliver the wages in the most timely manner? The Chafetz Chaim ruled that the employer need not to go to the employee to pay him. The employer only has to inform the employee that he has the money available to pay him. An employer who does not pay on time violates the law of *bal talin*—do not go to sleep without paying the day laborer. However, once he has informed his employee that he can collect the funds from him, he has fulfilled his obligations. It is incumbent on an employee to come and collect his pay. It is not the obligation of the employer to pursue the employee to deliver to him his paycheck.

The Chafetz Chaim explained that our Gemara is the source for this ruling. In our Gemara, we learned about the source for the

concept of *ha-motzi mei-chavero alav ha-rayah*, “he who is seeking to take property out of his friend’s domain is the one who must bring proof.” It explained that simple logic, *sevara*, is the source for this law: “He who has a pain is the one who goes to the doctor.” The one who is seeking to take out money is the “one who has a pain,” he has to “go to the doctor” and bring proof to his point of view. An unpaid employee is the one who has pain. It is incumbent on him to advocate for himself, press his claims, and to get the funds he is owed. An employer may not deny his employee the funds that are rightfully his. However, once he has informed his employee that the check is available, the employee has to “alleviate his own pain” by going to the employer and collecting.

The Chafetz Chaim also proved this law from the language of the verse. The Torah decries an employer who refuses to pay his worker. It states that the worker might go home and call out in protest to Hashem. Apparently, the employer must allow the worker to collect. It would be terrible if he refused the wages that were owed and the worker protested to Hashem. However, the Torah never stated that the employer must pursue the employee. Once the employer informed the employee that the funds were available, he has fulfilled his obligation; it is then incumbent on the worker to make the effort to come back and collect what he is owed (*Mesivta*).

Bava Kamma 47

May One Spray Fly Poison on Shabbos?

Many halachic authorities discuss the challenge of spraying poison in a room to kill mosquitoes or flies when one is bothered by them on Shabbos. On Shabbos one may not take the life of any living creature (*Shabbos* 73a). Hence, the challenge, if someone has flies bothering him in his room on Shabbos, may he spray a fly poison in the air of the room on Shabbos?

Some authorities tried to prove from our Gemara that it would be permitted to spray poison on Shabbos. Our Gemara recorded the lesson of Rav. Rav taught that even if Reuven brought his fruits into Shimon's courtyard without permission, if Shimon's ox were to eat the fruit and get hurt from the ingestion, Reuven would be exempt from paying for the damage under the laws of *adam*. He could argue *hava leih she-lo tochal*, she (the ox) should never have eaten. This seems to mean that one is responsible when he damages the animal of another person. However, one is not responsible if the animal damaged itself. When an animal damages itself, then the animal is responsible. Rav seems to believe that if one puts food down, the animal damaged itself by consuming the food, and as a result, the owner of the food does not bear any liability. If so, the same should

be true in regards to the laws of Shabbos. A Jew may not take the life of an animal on Shabbos. However, if one sprays poison, the animal ingests the poison and thus kills itself. There should be no liability if the animal takes its own life on Shabbos.

However, other *Poskim* disagreed with this analysis. The *Shut Shevus Yaakov* argued that a rule about monetary law cannot be applied to laws of prohibition. Monetary laws are between man and man. Shabbos is a law between man and God. Perhaps, the claim of *hava leih she-lo tochal* is sufficient to exempt one from paying, but it may not be sufficient to determine that one is not violating Shabbos. He was, however, willing to utilize a different argument to permit putting poison down before flies.

Killing a fly on Shabbos does not resemble the acts of killing living creatures that were done to construct the *Mishkan*. When building the *Mishkan*, creatures were killed to utilize their skins. One who kills a fly has no use for the fly's remains. Thus putting a fly to death would be a *melachah she-einah tzerichah le-gufa*. Therefore, to prevent pain one should be allowed to perform the *melachah she-einah tzerichah le-gufa*. Ultimately, the *Shevus Ya'akov's* conclusion is that poison would be *muktzeh* and one would not be allowed to move it on Shabbos, even if he was doing so to try and stop a source of discomfort.

It is said in the name of the *Chazon Ish* that he would permit a person to spray a fly poison into a room on Shabbos if one had first opened the window to the room. He felt that if the window was open the fly would likely take advantage of the opportunity to leave and when the poison entered the room it would flee. One may chase flies away on Shabbos.

The *Shut Tzitz Eliezer* (9:28) argues that one may not spray a fly poison into a room. He argued that a spray differs from the case of

Rav. In Rav's law, someone put down food, and then an animal came over and ate the food. With a spray one is throwing poison directly onto living creatures. It is likely that some of the poison will drop directly on a fly and kill it. One may not kill a living being by putting a toxic liquid upon it on Shabbos. Since sprays frequently hit the flies directly, he prohibited spraying the poison into the room, even if the window was open (*Mesivta, Me'oros Daf ha-Yomi*).

Bava Kamma 48

Did He Have to Pay When He Caused the Police to Damage?

Rama mi-Fano was asked a question about damages that he resolved based on our Gemara.

There had been a man who owned a store. In it he sold his goods. A friend of his wished to enter the moneylending business. He asked if he could use the store as a place to lend money to Gentiles. He agreed. His friend would sit in the store and lend money to Gentiles. The friend lent the money in the name of the store-owner. The Gentiles thought that they were borrowing from the store-owner. They took the lent money and in return delivered signed IOU documents, which the friend kept in the store.

It happened that the store-owner got involved in a fight. The local nobles informed on him to the authorities. The government came and shut down the store and seized all the items in the store. The friend was devastated to learn that all the IOUs were gone. He felt that a great damage had been caused to him. He went to the store-owner and demanded reimbursement:

“You caused me a loss. Even if it was not direct, it was a *gerama*. While *gerama* is not collected by the human court, you are morally

responsible. Based on *dinei shamayim*, you should pay me the value of all the funds that I will now not receive.”

The store-owner argued back.

“You would not have anything without the favor I did for you. I do not owe you anything.”

The case came before the Rama Mi-Fano. He ruled that the store-owner did not have to pay anything to his friend. The reasoning for his ruling was our Gemara. The Mishnah recorded a dispute between the Sages and Rebbi. What is the law if someone allowed his friend to bring things into his domain but never explicitly accepted to watch those objects? According to the Sages, allowing items means that you are accepting to watch them. Rebbi felt only if the courtyard owner stated explicitly that he would watch the objects would he be obligated to watch them. In the Gemara there was a dispute about the *halachah*. Rav ruled that *halachah* was like the Sages. However, Shmuel ruled that *halachah* was like Rebbi. Rama mi-Fano taught that the rule is *halachah ki-Shmuel be-dini*, the *halachah* follows the opinion of Shmuel in matters of judicial law. Therefore, according to *halachah* one is only responsible for objects if one stated explicitly that he would watch them. Merely allowing someone to bring objects into a courtyard or home does not obligate the courtyard- or home-owner to protect the objects. As a result, the store-owner had never explicitly stated that he would watch the loan documents. He had given permission for his store to be used, but he had never explicitly accepted responsibility for the documents; therefore, he did not have any obligation to pay for the loans that were now uncollectable (*Daf Yomi Digest*).

Bava Kamma 49

Which Parent Gets to Name the Child?

Young couples sometimes have friction when it comes to naming their first child. It can happen that the father would like to give the child one name and the mother wishes to give the child a different name. Who should win out? Who is entitled to pick the name of the child? The *Divrei Yechezkel* suggested that our Gemara provides guidance to the answer.

In our Gemara we learned that the first pregnancy is dangerous to the life of the mother. The Gemara explained that when a woman first becomes pregnant, her monetary value, as reckoned by what she could get on the slave market, goes down, since the pregnancy is a danger to her life. According to the *Divrei Yechezkel* this is the source for the custom that the mother gets to choose the name of the first child. Since she risked her life to bear the child, she is given the naming rights to choose the name of the child.

The *Chelkas Yaakov* was asked about this law. A couple had married. The husband's mother had passed away. He and his wife were blessed with a baby daughter. He wanted to name the girl with his mother's name. His wife protested. Her mother had the same name. Her mother was still alive. She did not want her daughter

to have the same name as her living grandmother. Who was right? The *Chelkas Yaakov* pointed out that we find in the Torah mothers naming their children—consider Leah and Rachel. Furthermore, when someone marries he accepts to follow the usual custom. It is the usual practice in our Ashkenazic communities not to give a name to a child of a living family member. Therefore, he ruled that the wife should be listened to. Another name should be given to the daughter. However, he wrote that if the parents intend to primarily refer to the child with an English name and will only use the Hebrew name in religious settings, there is no reason to protest. Then the father may name the girl with the name of his mother. The wife and grandmother would not be entitled to protest, since the English name is the one used primarily and it is not the same as the name of the living grandmother (*Mesivta, Daf Yomi Digest*).

Bava Kamma 50

The Source for the Practice of *Kapparos*

Our Gemara relates a story which, according to Maharsha, is the source for the Jewish custom of *kapparos*.

The Gemara related that there was a man, Nechunya Chofer Sichin, who would dig wells and then gift them to the community so that pilgrims coming to Yerushalayim for the Shalosh Regalim would have enough to drink. One time his daughter fell into a well. Emissaries ran to the great Rav Chanina ben Dosa and asked him to pray on behalf of the young girl. Rav Chanina did so. After the first hour he said, "She is safe." After the second hour he said, "She is safe." After the third hour he said, "She is out of the pit." They went to check and found that she was out. They asked her, "Who saved you?" She responded: an old man leading a male lamb (a young ram) came by and saved me. Rashi explains that the old man was Avraham Avinu, and the ram he was leading was the ram that he had offered in place of Yitzchak at the time of the *Akeidah*. Maharsha asks: why did Avraham appear with a ram? There were other episodes in Avraham's life and other symbols, so why did he now appear with a ram?

The Maharsha answered that the ram of the *Akeidah* was the perfect symbol for this moment. When Hashem told Avraham to

offer up Yitzchak, it meant that there was a decree in Heaven that Yitzchak was to pass away. Yitzchak was spared. However, since there had been a decree of death, Yitzchak was only spared since the ram was sacrificed in his place. Something had to take his place. Similarly, since Nechunya's daughter had fallen into a place of danger, that indicated that there had been a decree in heaven against her. For the decree not to cause her physical harm, something else had to take her place, just as the ram took Yitzchak's place. Hashem sent Avraham leading a ram in order to hint to this dynamic. This norm is the reason for the practice of *kapparos*. As one begins a new year, there may be decrees against the person. Through taking a chicken and making the *kapparos* declaration, one is appealing to Hashem to have the decree take effect on the chicken and for the person to be spared (*Mesivta*).

Bava Kamma 51

Who Has to Return a Book to the Library?

Rav Chaim Kanievsky was asked the following question: In a large yeshiva there was an extensive library of *sefarim*. The rule of the school was that one could take a *sefer* out of the library to learn from it; however, he had to return it to the library. One boy took a book out of the library. He brought it to the *beis midrash* and was studying from it. Another boy saw the *sefer* and began to read from it. He brought the *sefer* to his seat. Who had the obligation of walking the book back to the library? Is the student who first took the book responsible to bring it back? Perhaps since the second student used it last he is the one who must bring it back?

Our Gemara taught that if one partner used a well and then a second partner came to use the well, if the first partner left the second partner using the well, then the second partner was responsible to cover the well. If the second partner did not cover the well and an animal fell in and was injured, the second partner must pay for all the damages. So, too, since the student who had taken out the book had left his friend using it, the second one has the responsibility to return the book (*Mesivta*).

Do the Wicked Deserve Our Affection?

A classic question that our Gemara addresses is the question about how far the mandate of loving a fellow Jew extends. The Rambam writes, “There is a commandment on each person to love every single Jew as much as he loves himself, as it is written, *ve-ahavta le-re’acha kamocha* [love your neighbor as yourself]. Therefore, you must speak of his praises and care for his property just as you treasure your own wealth and desire respect. One who gains respect at the expense of his friend has no portion in the world to come” (*De’os* 6:3).

The *Hagahos Maimonis* there writes, “One only must show such affection to his friend who fulfills *mitzvos* like himself. However, with a *rasha* who does not accept rebuke, there is a *mitzvah* to hate him, as *Mishlei* (8:13) declared, ‘Fear of Heaven means hating evil.’”

The *Shut Beis She’arim* pointed out our Gemara seems to disprove the view of the *Hagahos Maimonis*. Our Gemara taught that the court, because of the mandate of *ve-ahavta le-re’acha kamocha*, was obligated to find a most pleasant death possible. As a result, one who needed stoning would be first thrown off a two-story building, so that he would die quickly and relatively painlessly. If he was being put to death, then he was a sinner, so why then the need to care for him?

Rav Perlow answered that loving a fellow man has two aspects. We must love our fellow man as an individual. We also must love him for he is a member of the Jewish nation and a human being. If a sinner would be thrown from a roof and his body torn apart it would be *nivul ha-meis* and an insult to the image of God that is imprinted on each human being. For the sake of humanity he has to be killed in the right way. However, as a sinner, on an individual level he does not deserve love, regard, or respect (*Mesivta*).

Bava Kamma 52

Does a Pit-Digger Need Atonement If Someone Fell into His Pit and Died?

Our Mishnah teaches about the laws of a pit. It rules that if someone dug a pit in the public domain and a person fell into it and died, the digger does not have to pay money. However, if an animal were to fall in the pit and die, the one who made the pit would be obligated to pay for the monetary value of the animal that his pit killed. While the digger does not have a monetary obligation when a person dies in his pit, is he morally obligated to perform actions of penance? Does he need a *kapparah*? This question was presented to Rav Yitzchok Zilberstein.

Someone had dug a pit in the public domain. He then surrounded the pit with warning tape. Unfortunately, a mother walked by with her child and was neglectful in allowing the child to walk too close to the pit. The child fell in and died. Did the pit-digger need atonement? It was the mother's fault that she did not watch her son. However, the child died in *his* pit. Did he need to do anything to gain atonement for the loss of the child?

Rav Zilberstein answered that the *Noda bi-Yehudah* dealt with a similar question. The *Noda bi-Yehudah* (*Mahadura Kamma*, *Orach*

Chaim, siman 34) was asked about the following case: A man had come to a store-owner and asked to enter into business with him. He wanted to take some goods from his friend on consignment, bring them to the next town, sell them for a high price, return, pay for the goods, and keep a part of the profits. The store-owner agreed to the offer. The man took the goods. Unfortunately, on his way to the next town he was murdered by bandits. The store-owner approached the *Noda bi-Yehudah* and asked if he needed to do something to gain atonement for having played a role in the death of his friend. Had he never given goods to his friend, the man would never have died. Did he, therefore, need to perform acts of atonement?

The *Noda bi-Yehudah* initially thought that the store-owner did not need to perform any actions of penance. It was not the fault of the store-owner that the neighbor died. The neighbor had initiated the idea of traveling with the goods. The one who initiates is the one who is responsible. He tried to prove this from a Gemara in tractate *Sanhedrin*.

Sanhedrin (95a) records a conversation between Hashem and King David. Hashem told King David, "For how long will sins be in your portion? Through you the city of Nov, that was filled with *kohanim*, was wiped out. Through you Doeg was killed, and through you Shaul and his three sons were killed." The Gemara did not mention that it was through David that Avner, Shaul's former general, was killed. Why did David need atonement for the death of the people of Nov, King Shaul, and Doeg, but not for Avner? Perhaps the answer is that Avner initiated the actions that led to his demise. Avner had approached David. He had sent a missive to David offering an alliance and in return he would turn the Jews to David. He also was motivated for selfish concerns. Perhaps that was why David did not need atonement for the fact that his response to Avner, inviting

him to Chevron, enabled Yoav to kill Avner in Chevron. Perhaps when someone initiates a process that leads to his own demise, only he is responsible.

The *Noda bi-Yehudah* ultimately concluded that atonement is proper. When the one who died initiated that which led to his death, there would not be an obligation to perform acts of penance; however, it is appropriate. Therefore, he ruled that the store-owner should observe a *BeHaB* fast (Monday, Thursday, and Monday), and give some money to the children of the deceased man.

In light of the ruling of the *Noda bi-Yehudah*, Rav Zilberstein ruled that the one who dug the pit should perform actions of penance. He was not at fault for the death of the child. The child had initiated his own demise. The mother should have watched him. However, just as the *Noda bi-Yehudah* ruled atonement and penance is in order due to the fact that he had a role in the death of someone else, the pit-owner had a role in the child's death and should perform an act of penance (*Chashukei Chemed*).

A Resident Put out a Trap to Catch Pigs but It Killed His Friend's Sheep: Must He Pay?

Rav Zilberstein was asked the following question: An agricultural settlement in Israel had residents, each of whom had a field for farming on the outskirts of the town. There was a problem of wild boars. The boars were coming and eating food from the fields. The residents of the *moshav* had a meeting to try and deal with the issue. Then they had another meeting. Eventually they agreed that it was a real problem and that traps should be purchased, put on the outskirts of the fields, and hopefully they would catch the boars and prevent

the continued loss of produce. The town leadership did not hurry to purchase the traps. Weeks went by with continued losses. One farmer decided to take matters into his own hands. He purchased his own traps and put them around his field of cucumbers. The next day when he went out to the field, he saw an animal caught in his trap. It was dead. It was not a boar though. It was one of his neighbor's sheep. The neighbor demanded compensation. Did he have to pay for having caused the death of his neighbor's sheep?

Rav Zilberstein ruled that based on our Gemara he would not have to pay. Our Gemara taught about someone who dug a pit and then covered it with a cover that could withstand oxen but not withstand camels. It taught that if it was a place where there were many camels, he would be considered negligent. He should have assumed camels would come by and weaken the cover. However, if it was a place where camels rarely came, then he would be exempt if a camel came and weakened the cover and then an ox fell in. Since camels were not usually around, he had no obligation to cover his pit with a cover strong enough to withstand the weight of camels. Apparently, a pit-owner is not responsible for the animals that are not usually around. Therefore, as it is not normal for sheep to wander the fields at night since sheep are usually penned in their stable, the farmer who put out the trap was not obligated to be concerned about the possibility of a mishap with such animals that were usually not around. As a result, he did not have to pay anything to the owner of the sheep.

Rav Zilberstein also addressed another scenario. A settlement in Israel put a trap out to catch terrorist infiltrators. A resident's sheep got caught in the trap and died. Did the settlement need to reimburse the sheep owner?

Rav Zilberstein felt that the settlement did not have to pay the sheep owner. They were obligated to put out the trap in order to save lives. Therefore, it would have been the responsibility of the sheep owner to keep his sheep away from the trap (*Chashukei Chemed*).

Bava Kamma 53

Partners in Theft: Who Is Most Responsible?

The following question was brought to Rav Zilberstein. Two men decided to be thieves together. One man drove a truck. He parked his truck outside a building. His friend climbed on the truck, entered a second-floor apartment, stole goods, and then he put the goods onto the truck. The truck driver escaped with the goods. Who was responsible? Was it the person who took the objects? Was it the driver who spirited the items away?

Our Gemara deals with two damagers, an ox (*shor*) that pushes an animal into a pit (*bor*). Both the ox and the pit contributed to the damage. What would the law be in a case of two thieves?

The Rema (*Choshen Mishpat* 348:8) dealt with a similar scenario. He taught that if a thief hid the stolen objects but left the city unable to carry them, and then sent another man to spirit the contraband out of the town, the one who transported the stolen goods out of the town is the one who is responsible to pay. He was the primary thief. Based on this ruling, the *Chavos Yair* (212, quoted in *Pischei Teshuvah* 7) ruled that if there were two thieves and one brought a ladder, and the second climbed the ladder into a second-floor apartment and then threw items of jewelry down and the ladder-holder caught them and

ran away with them, the ladder-holder would be the primary thief and the one who had to pay. Similarly, in our case, the truck driver would be the primary thief and he would be the one who had to pay, for he performed the main act of theft, getting the goods away from their owner.

What would the law be if the truck driver was not around and there was no way to collect from him? The *Chavos Yair* initially thought that the victims could then collect from the thief who climbed into their home. Then he questioned this ruling. The *Shulchan Aruch* (*Choshen Mishpat* 410:37) records a dispute of when two people cause damage to someone, and one of the criminals is not around—can the second criminal be forced to pay for all the damage? Some say that the criminal who is around can be made to pay for all the damage. Others say that the criminal who is around can claim, “My accomplice is also guilty. Why should I pay for him?” The *Chavos Yair* then suggested that the same should be true when two people commit theft. It would be a dispute among the authorities as to whether they are both obligated and if one is not around the money can be collected from the other; or perhaps if one is not around, the money cannot be collected from the other.

The *Pischei Teshuvah* quoted the *Shevus Yaakov*, who distinguished between two who damage and two who steal. When two damage together they are not truly partners. They are gaining nothing from their actions. For such a situation, there are opinions that if one is not around the other is still not liable. However, when two people steal, they are both benefiting. As a result they are partners. If one is not around, the victim can collect from the other.

Thus, in our case, when one drove the truck and the other one climbed into the apartment, according to the Rema and *Chavos Yair* the main thief is the one who drove the truck. If he is not around to

collect from him, according to the *Chavos Yair* we could not force the one who climbed into the apartment to pay. However, according to the *Shevus Yaakov* we could force the thief who climbed into the apartment to pay the full amount of the theft, for as a thief, he and his partner were equally obligated (*Chashukei Chemed*).

Bava Kamma 54

Using a Chipped Cup for *Kiddush*

Bava Kamma is focused on laws of damages. Sometimes the laws of damages shed light on other areas of Jewish law. Our *daf* exemplifies the need to have a broad base of knowledge in order to understand Jewish law.

In tractate *Berachos* (51a) it was taught that a cup used for a blessing, such as *Kiddush*, *havdalah*, or *sheva berachos*, must be “alive.” What is the meaning of a live cup? Tosfos (*Eruvin* 29b s.v. *kedai*) teach that our current Gemara sheds light on that Gemara. Our Gemara discussed the fact that there was a special verse needed to teach that if a utensil breaks in a pit, the digger of the pit need not pay. Asks the Gemara: the Torah speaks of the “dead belonging to him,” in regards to damages in a pit, but utensils never die, so why would we ever think that they are included in the laws of pit damages?

The Gemara answers that the shattering of the vessel is the death of the vessel. Therefore, without a special exclusionary word, we would have included broken utensils in the laws of pit obligations.

Tosfos teach that when the Gemara in *Berachos* taught that the cup for *Kiddush* must be “alive,” it meant that it could not be broken. The *Mishnah Berurah* pointed out that the *Shulchan Aruch*’s language

sounds like he felt that it is only the ideal to use a complete utensil, but that if one ended up using a broken vessel it would be satisfactory to fulfill one's obligation. Therefore, according to Jewish law, when you are honored to recite blessings at a *bris*, or recite the *Kiddush*, you should endeavor to use a pristine cup. If a cup had a stem that broke off, you should not use it. However, if you recited a blessing with a chipped or broken cup, *be-di'eved*, you have fulfilled your obligation (*Mesivta*).

Bava Kamma 55

His Store Alarm Went Off, Neighbors Called Him: Must He Go at Night to Turn it Off?

Rav Zilberstein was asked the following question: A man owned a store. He had an alarm in the store. One day, at the close of a full day of business, he set the alarm and went home. At three in the morning he received a phone call: “Your store alarm suddenly went off. It is not letting us sleep. You better come now and turn it off.” Did the store-owner have to get up at night, return to his store, and turn off the alarm?

Initially, Rav Zilberstein suggested that he did not have to get out of bed and go and turn off the alarm. Our Mishnah taught that if someone had locked his sheep into a pen appropriately and later, at night, the pen opened, he would be exempt from damage that his sheep caused. Tosfos ask: why did the Mishnah mention the case of the door opening at night? Wouldn't it be the same law if the door enclosing the sheep opened by day? Tosfos answer that the Mishnah is teaching that even if the owner was told at night that the door to his sheep opened, he is not obligated to get out of bed and stumble about in the dark night to try and get his sheep back into the pen. However, were he to be told during the day that the enclosure opened,

he would be obligated to pursue the sheep and get them back into the enclosure. Perhaps, therefore, the store-owner was not obligated to get out of bed at night and silence his alarm. According to Tosfos, didn't our Mishnah teach that the sheep owner need not get up at night and stop his sheep from causing damage?

Ultimately Rav Zilberstein rejected this reasoning. In our era, night is like day. We have electric street lights. One who finds out about his damager being out and about at night is not exempt from getting up and stopping the cause of damage. Second, in Tosfos's case, even were he to get up he might not succeed in finding the sheep and preventing it from damaging. However, with the alarm he can be sure that if he gets up and goes to the store, he can silence the alarm. Finally, as a neighbor, one is obligated to show concern and affection. One must treat his neighbor as he would treat himself. It would be unfair for him to sleep at night while the neighbors of his store cannot sleep due to the noise his alarm is causing. Therefore, he was obligated to get up, go to the store, and turn off the alarm (*Chashukei Chemed*).

Bava Kamma 56

Moral Obligations

Our Gemara discusses the concept of moral obligation. There are scenarios where the court would not coerce payment, even though one has a moral obligation to pay. For instance, if a person knocked down a wall and thereby enabled his friend's animal to go out and cause damage, or if he hired false witnesses to testify falsely to help his friend, while the courts could not make him pay for the damage, morally, *be-dinei shamayim*, he should pay. Rav Yitzchok Zilberstein was asked about moral obligation in the following painful case.

A woman made a Bar Mitzvah for her son. She invited guests to come to Yerushalayim for a Shabbos of inspirational learning, heartfelt prayer, and celebration. Her family members and friends from all over Israel came to participate in the celebration. At the end of Shabbos, as family members were on the bus back from the Kotel, a suicide bomber detonated himself. Multiple guests were killed. The mother came to Rav Zilberstein racked with guilt. Was she somewhat morally culpable? Had she never invited the guests, they never would have been in Jerusalem and perhaps they would not have died? Did she need to perform acts of penance?

On first thought, it would seem that she would need to perform acts of penance. The *Noda bi-Yehudah* (*Mahadura Kamma, Orach Chaim, siman 34*) dealt with a situation where someone had given merchandise to his friend to bring to another town and sell there. The emissary was killed along the road. The *Noda bi-Yehudah* concluded that it was correct for the merchandise owner to perform acts of penance. Without him, his friend would not have died; therefore, he needed to gain atonement. Perhaps the same would be the case with the mother of the Bar Mitzvah boy. Her actions brought her relatives to Jerusalem, so perhaps she should perform acts of penance.

Ultimately, Rav Zilberstein rejected this analogy. In the case of the *Noda bi-Yehudah*, the store-owner had a hand in the death of the man who took his goods. However, in times of terror, there is a war with the enemies of the Jews who seek to wipe out all Jews from the land of Israel. Jerusalem is a target, but so is Bnei Brak and Haifa. The woman did not contribute to the death of the martyrs by inviting them. As Jews they were targets. The enemy tries to get us everywhere. They were holy individuals. There was no need for any acts of atonement.

Did a Neighbor Morally Have to Pay for Causing a Fine?

Our Gemara taught that one who indirectly causes damage bears a moral responsibility to pay for the loss. For instance, if someone knocked down an unstable wall, and as a result, a sheep escaped and ate in someone's field, the one who knocked down the wall is morally responsible to pay for the damage the sheep caused. The one who knocked down the wall would not be liable in a human court. He

did not actively make the animal eat. However, his act of knocking down the wall was indirectly the cause of the damage. It was an act of *gerama bi-nezikin*, which must pay *be-dinei shamayim*. Rav Zilberstein was asked about the following case:

Shimon took his garbage to the bin in front of his building. When he opened the bin, he saw that there was no room to place his bag of garbage inside, for it was filled with a cardboard box that Reuven had placed in it. The city prohibited placing recyclables in garbage bins. Shimon took the box out of the bin. He left it next to the bin and placed his bag of garbage in the bin. A few minutes later a city inspector came by. He saw the cardboard box on the street. Looking at the address on the box he saw that it had been addressed to Reuven. He gave Reuven a summons and a fine. Reuven went to Shimon, “You indirectly caused my loss. Without you, the inspector would never have caught me not recycling. Morally, you owe me the money that I must now pay.” Was Shimon liable?

Rav Zilberstein argued that if Shimon’s intent in removing the recyclables had merely been to have a place in the garbage bin for his own trash, he would not even be liable under the laws of Heaven. The *Shut Maharit* (1:95) teaches that moral obligations to pay, because of *dinei shamayim*, only happen when one intends to damage. If one did not intend to damage, and only performed an act of *gerama*, there is no obligation to pay, even morally. The *Chazon Ish* is also of that opinion. Our Gemara taught that one who pushed his friend’s produce to a place where a fire could reach it with an unusual wind would be morally obligated to pay. We would have thought that there wouldn’t even be a moral obligation. The Baraisa was needed to teach us that we do not accept his claim, “I never expected an unusual wind to come and I should have no responsibility for this unusual event.” The *Chazon Ish* taught that the case was when the person who moved

the produce wanted to damage the produce and harm the farmer, but he wasn't sure that the damage would happen. However, if one is not seeking to damage, then there certainly is no obligation, even *be-dinei shamayim*.

If Shimon was angered by the fact that Reuven had placed the cardboard box in the bin and wanted him to get a fine to teach him a lesson not do it again, the law would be different. If he wanted Reuven to get a ticket, then he was intending to damage. Then, even though it was damage through an indirect act, based on the fact that *gerama bi-nezikin* should pay *be-dinei shamayim*, Shimon would be morally obligated to pay the ticket (*Chashukei Chemed*).

Bava Kamma 57

Does a Doctor Need to Interrupt Treating Someone and *Daven Minchah*?

Our Gemara discusses the law of a man who is watching a lost object. The Torah sets out different laws for different watchmen. An unpaid watchman need not pay if the object was pilfered or lost. He only needs to provide a minimal amount of watching. He is only responsible to pay the value of the object to the owner who deposited it with him if he was negligent in his watching. A paid watchman has more responsibility. He must provide a high level of watching. If the object was stolen or lost from his domain, he must pay the depositor. What is the law about someone who finds a lost object and is watching it before he returns it to the owner? Does he have the status of a paid watchman or an unpaid watchman?

Rav Yosef was of the opinion that he had the status of a paid watchman. If the lost object would be stolen from his domain he would have to pay the owner for the object. Rav Yosef taught that he had this status, since he benefited from the watching. There is a law that one involved in a mitzvah is exempt from other *mitzvos*: *ha-osek be-mitzvah patur min ha-mitzvah*. Therefore, if the lost object would need care, and, at that moment, a poor person would come to the

door, while caring for the lost item he would be exempt of giving any money to the poor man. Thus, he is gaining financial benefit through watching the lost object and he has the status of a *shomer sachar* (paid watchman). Rabbah agrees that due to caring for the lost object he might be exempt from giving charity. However, he feels that since the likelihood of a poor man coming at the moment that he is caring for the lost object is so slim, it is not enough to make him a paid watchman.

Rav Zilberstein raised the following question: What is the law if a doctor is in the midst of treating someone who is ill, with a non-life-threatening illness, and he realizes that it is time for the afternoon prayer? Does the doctor need to stop and pray? Perhaps since he is involved in a mitzvah, he is exempt from interrupting one good deed to fulfill another mitzvah?

Rav Zilberstein ruled that he did not have to stop providing care momentarily to *daven*. Treating someone who is ill is fulfilling the mitzvah of returning a lost object, for one is returning someone's health to him. Our Gemara teaches that everyone agrees that while someone is busy with the mitzvah of returning a lost object he is exempt from other mitzvah obligations. Therefore, he need not stop his act of the mitzvah of *hashavas aveidah*, his treating a patient, to fulfill the Rabbinic mitzvah of prayer (*Chashukei Chemed*).

Bava Kamma 58

Who Needed to Pay for Catching A Snake? The People Who Ordered the Exterminator? Or All the Residents in the Neighborhood?

Rav Yitzchok Zilberstein dealt with the following question: Residents in a building discovered that there was a poisonous snake seen in their courtyard. Word about the danger spread. Everyone was terrified to let their kids out and play. There was a widespread fear that the snake would bite a child. Word spread to other buildings. The entire neighborhood quieted down as parents kept their kids indoors. The building manager called the exterminator. The exterminator succeeded in catching the snake. The residents of the building paid him. They then asked: could they demand of the other residents of the neighborhood to help defray the costs of the exterminator? Everyone was scared of the snake. Everyone gained by the removal of the snake. Perhaps, therefore, all were obligated to pay for the removal?

Rav Zilberstein thought initially that *Bava Kamma 58* taught that the neighbors could not be made to pay. Our Gemara stated that if someone chased a lion away from his friend's sheep, his friend does not need to pay him any money. Tosfos explain that all he did was

relieve his friend's fear. One does not deserve payment for alleviating concern. There was no guarantee that the lion would injure him or his flock. The friend was afraid that the lion might come and consume his sheep. However, there was no certainty of that damage. As a result, the owner of the sheep is not obligated to pay for the removal of the stressor. So, too, in our case there was no guarantee that the snake would bite anyone. People were afraid of the snake. While the exterminator removed the fear, the law of *mavriach ari me-nischei chavero*, "one who banishes a lion from the possessions of his friend is not entitled to reimbursement," teaches that removing a fear does not automatically entitle one to money.

However, when Rav Zilberstein discussed this issue with his father-in-law, Rav Elyashiv, *zt"l*, the Rav disagreed with him. Rav Elyashiv distinguished between the cases. Tosfos discuss a person who fears for the future. His sheep are not currently in the jaws of the lion. He fears that the lion might, in the future, attack his sheep. The person who chased the lion away saved him from these future concerns. The one who chased the lion away is not entitled to payment. However in Rav Zilberstein's case, neighbors were not merely worried about future events. They were afraid in the moment. They were panicked. They were not letting their children out of the apartments for fear that the children might be bitten. Catching the snake removed a current panic. They all benefited. Everyone was panicked, therefore they all had to pay. Rav Zilberstein's case was analogous to a psychologist who calms down an anxious person. The anxious individual owes him money for the benefit he received. If a sheep would be in the mouth of a lion and someone would pull it out, he certainly would be entitled to payment. He saved the sheep from a current danger. So too, here, Rav Elyashiv felt that all the residents of the neighborhood felt themselves to be in the jaws of the lion, for

they were panicked by the snake. They all benefited when the snake was removed, and therefore they all should pay a part for that gain (*Chashukei Chemed*).

Is Preventing Possible Loss a Benefit?

Our Gemara discusses the fact that one who benefits from the property of another must pay for the benefit he received. What is considered receiving a benefit? Rav Chaim Berlin dealt with this question in another context.

In a town in Russia there was a pogrom. Christians ran through the town killing Jews and plundering their homes. A righteous Gentile went to his Jewish neighbor and said, “You are about to be killed. Allow me to put my icons in your house windows. When the mob will come running they will think it is a Christian home. You and your property will be spared.” The Jew agreed. He was spared. After the event he came with a query to Rav Berlin.

“My life and property were saved by idolatrous objects. Do I need atonement for what I did? A Jew may not benefit from idols and idolatry!”

Rav Berlin used our Gemara to rule that the Jew did not need to perform an act of penance. Our Gemara introduced the concept of *mavriach ari*, “he who chases away a lion.” It taught that if Reuven saw a lion approaching Shimon’s sheep and he chased the lion away, Shimon does not need to pay him. Generally, one must pay for a benefit he receives. Perhaps, underlying the concept of *mavriach ari* is that saving someone from possible loss is not a benefit. Benefit is adding value to a person, or saving him the need to expend money on his expenses. One who prevented theft or damage to his fellow

has not given his fellow benefit. He merely has helped preserve the status quo. For this reason, the preserver of the status quo is not entitled to compensation.

The Gemara in *Avodah Zarah* 13a seems to shed light on this question. The Gemara quoted a Baraisa there in the name of Rav Nasan, who taught that if the idol-worshippers made a rule that on a particular holiday of theirs, everyone who wears a garland of roses is exempted from taxes, the Jews would be in an impossible situation. If they would wear the garland they would benefit from idols. If they did not wear it, they would be forced to pay a high tax which would be used to fund the idolatry and they would end up being forced to pay for idolatry. Rashi explains that if they would wear the garland they would benefit from idolatry for they would enjoy the smell of the idolatrous roses. Tosfos ask: why didn't Rashi say they would benefit from the idols in that wearing the idolatrous roses would save them from paying added taxes? Tosfos answer that according to Rashi, avoiding paying an onerous tax is not considered receiving a benefit. The tax would be analogous to lion eating sheep. Avoiding the tax is merely *mavriach ari*. It is not a benefit. In light of Rashi's ruling, Rav Berlin ruled that the Jew whose property was spared by the icons in his window had not received benefit from idols. The idols prevented an unfair loss. He therefore did not need to perform any act of penance (*Chashukei Chemed*).

Bava Kamma 59

A Woman Went into Labor in Her Home; A Neighbor Summoned a Midwife Who Helped Deliver the Baby: Do the Parents Need to Pay?

Rav Yitzchok Zilberstein addressed the following question: During the first Gulf War it was hard to travel in Israel due to fear of rockets. A pregnant woman decided to stay home. Her water broke and she went into labor. At the time, there had been a neighbor in the apartment with her. Without asking her, the neighbor ran and called a midwife. The midwife came and helped her deliver the baby. The midwife then asked for payment. The woman did not want to pay. She argued that she had already given birth to ten children and knew how to deliver her children. She claimed she never wanted or agreed to calling for help. Who was right? Did she have to pay?

Our Gemara seems to indicate that the pregnant woman was right. Our Gemara discussed the law of *d'mei vladot*, money for the loss of a pregnancy. If a man throws a rock and it hits a pregnant woman and causes her to miscarry, he must pay the father of the fetus. *Bava Kamma* 49 taught that the amount he must pay is

calculated by considering how much such a pregnant woman would have been worth in the slave market versus how much people would pay for her without a fetus. On our *daf*, Rabbi Yosi taught that the amount of money the husband would have spent on a midwife, that he now saved, is subtracted from the amount the damager must pay. Ben Azzai taught that the amount of money that would have been spent to feed the pregnant woman due to the pregnancy is subtracted from what the damager must pay. Ben Azzai would not subtract from the damage payment the savings of the midwife cost. He feels that the husband could tell the damager: your causing my fetus to be lost did not save me that expense, since my wife knows how to deliver and never would have needed a midwife. This seems to indicate that a wise woman does not need a midwife.

However, Rav Zilberstein ruled that the woman did need to pay the midwife.

The Rosh was asked about the following case: A man had become very ill. People spent money to try and heal him. He then passed away. Could they demand repayment from his property that his orphans inherited? The orphans claimed that their father never asked that money be spent for him and he never wanted anything to be spent on his health.

The Rosh (*kelal* 85 *siman* 2) ruled that the expenses must be paid. He explained that it is the widespread practice, a *minhag*, to spend money to try and heal sick individuals. Relatives who spent money on doctors were acting in accordance with normative practice. As a result, the orphans had to pay their father's relatives for spending money that most people agree should be spent. As a result, Rav Zilberstein ruled that our times differ from the times of

the Gemara. In the days of the Gemara perhaps it was not standard operating procedure to summon a midwife. In our times, almost all women who are in labor utilize a professional to help them deliver. The neighbor who called the midwife was following the normative practice. She was correct to do so. The mother therefore owed the midwife her wages (*Chashukei Chemed*).

Bava Kamma 60

He Left His Loaded Gun in the Classroom; A Child Fired It and Wounded Another Boy: Did the Adult Have to Pay?

A question: A teacher also served as the head of security for a school. He was negligent. He left his loaded gun on his classroom desk and left the room. One of the young children took the gun, played with it, pulled the trigger, and a bullet discharged and wounded another child. Did the owner of the gun have to pay for the damage?

Rav Spitz in his book *Mishpatei ha-Torah* ruled that the teacher did not have to pay. He pointed out that, based on lessons early in the tractate, we might have thought that he would be liable to pay. On *daf* 19 the Gemara taught that if a person leaves a string out and a chicken gets entangled in the string, with which it then causes damage, the owner of the string is liable. He is considered a person who lit a fire and the fire then spread. His leaving the string in a place where it was likely that a chicken would take it and then move it is akin to lighting a fire with a flame large enough that a normal wind would spread it to his neighbor's field. The one who lit the fire should

have anticipated that a normal wind would come. He is therefore responsible for the damage wrought by the wind. One who leaves out a string near chickens was also aware that the fowl would likely get entangled in the string and move it to a place where it would damage. The Gemara also taught that one who placed a stone on a roof, in a location where a normal wind would knock it down to the street, is liable if a normal wind blew the stone down to the street and people were injured. Perhaps leaving a gun in a room full of children is like leaving a string or a stone in the presence of forces that would likely damage with them. The person who left the gun on the desk should be liable for the injury that the gun caused.

Our Gemara, however, is the source for the ruling that the teacher is exempt from paying for damages. Tosfos on our page explain that in the case of the string and the stone, the person who put the string and stone put down a damager. The wind and chicken merely moved the string and stone. If wind would create the damage, there would not have been any liability. For example, if someone gave a coal to a child and the child then fanned the coal into a flame, the owner of the coal would not be liable to pay. He gave an object that was not a damager to a child. The child created the damager. The owner of the coal would not be liable. If someone gave a child matches, and the child struck the matches into flames and then threw them onto a neighbor's pile of papers, the owner of the matches would not be liable. The owner of the matches had not created a damager; therefore, someone else is liable for the damage.

A gun itself is not a damager. A fired bullet can cause damage. The child who pulled the trigger and fired the bullet would be liable for the damage. The teacher was negligent. However, the negligence was not with a *mazzik* (i.e., the teacher was not negligent with a technical

damager). He was careless with materials that could be turned into a damager. He would be exempt under the laws of man, although he would be morally obligated to pay (*Mishpatei ha-Torah*).

Drastic Times Call for Drastic Measures

A Baraisa in our Gemara taught about times of danger: “If there is a plague in the city, a person should not walk in the middle of the street, for the angel of death will be walking in the middle of the street during times of danger. If there is peace in the city, one should not walk along the edges of the street. In times of peace, the angel of death hides in the shadows and creeps along the walls at the street sides.” What is the meaning of these statements?

The *Orach Yescharim* explained this lesson as an ethical instruction. Generally, the correct approach is moderation. The Rambam rules that one should always adopt the middle approach. One should not be overly emotional. One also should not be apathetic and emotionally detached. A happy medium is to be found for emotional involvement and for all attributes and traits. The golden mean is represented as the middle of the road. In times of peace, one should avoid the edges. This means one should avoid extreme behaviors. However, the Baraisa is teaching that desperate times call for desperate measures. In an era of spiritual plague, one cannot try for moderation. When the majority of the nation has left observance, those who would like to remain loyal must go to the edges of the street. They must take on extreme measures of piety and holiness so as to withstand the pressure from the masses. In difficult times, holy zealousness is a virtue (*Peninei ha-Daf, Ve-Shinnantam*).

Bava Kamma 61

May One Steal to Save a Life?

Rav Zilberstein was asked the following question: A poor Israeli Jew decided to travel to the US to collect charity to try and marry off his daughter. He called a travel agent and booked a flight. The agent, who was also an insurance agent, asked him if he would like to purchase travel insurance: "If you get sick in the US you might be stuck with large bills. You will not be able to pay them. With insurance you will be covered. If something happens to you, the insurance company will pay the medical bills." He decided that he did not want to spend the money. He did not purchase the insurance. As he was coming off the plane he suffered a heart attack. He was rushed to the hospital. His son in Israel was informed of the crisis. The young man called the insurance agent. He requested, "We want to buy the travel insurance. Please fill out the form and date it that it was purchased before my father got on the plane." The insurance agent called Rav Zilberstein: Was he allowed to lie? Was he allowed to steal from the insurance company by filing a false report to help the poor man who was sick in New York?

Rav Zilberstein pointed out that in many American locales, the hospitals are obligated to provide care regardless of whether the sick

person can pay. If the hospital was providing care and the poor man was worried about the bill he would receive once he was healed, there would be no grounds to permit filing a false report. One may not steal from an insurance company in order to provide money to a poor man and save him from financial ruin.

What would the law be in a hospital that was threatening to stop care and send the sick person on his way if it did not receive payment? If the only way to save a life is by stealing, may one take funds to save the life of another? Saving a life overrides the laws of Shabbos. Would it override theft?

Our Gemara suggests that King David struggled with this question. When fighting the Philistines, it emerged that the Philistines were hiding in piles of barley that Jewish farmers had collected. David wanted to burn down the piles to save the lives of Jews who were being harassed by the Philistines. He had asked the Sanhedrin: was he permitted to save lives by ruining the property of others?

The Sanhedrin replied that a regular Jew would not be allowed to save himself at the expense of others' property. However, a king was allowed to seize property. Ultimately, King David decided that he did not wish to take advantage of the special rights of a king.

The Rosh was bothered by the discussion. He asked: since every Torah law is suspended to save life with three exceptions—murder, illicit relations, and idolatry—thief should also be suspended to save lives! He suggested that one can certainly destroy property or steal to save a life. King David was only asking about liability. He wanted to know: if he destroyed the barley piles, would he have to pay for them? The answer was that he would have to pay for them if he wasn't the king. However, it was permissible to destroy them if one intended to pay for them.

The *Shulchan Aruch* (*Choshen Mishpat* 359:4) rules that one may steal in order to save a life, provided that the thief intends to repay. Therefore, if the agent would advise the poor man to intend to pay back the loss—even though he did not currently have the means to pay—since he planned to repay it once he would get the funds, he would be allowed to steal to save a life.

Ultimately, Rav Zilberstein ruled that the agent could not lie and steal from the insurance company to save the life of the poor man. The insurance company was relying on the agent's good word. Were the agent to lie it would be a sin that is worse than theft. It would be *chillul Hashem*, a desecration of the Divine name. An ostensibly religious agent who files a false report creates a desecration of the name of God. Desecrating the name of God is even worse than idolatry, murder, and adultery. As a result, the agent could not fulfill the request of the son of the poor man (*Chashukei Chemed*).

Bava Kamma 62

What Is the Law If You Used Someone Else's Price Club Card at the Supermarket?

In *Mishpatei ha-Torah*, Rav Spitz discussed the question about Reuven using Shimon's membership card to receive a discount at a supermarket. Some stores have price clubs. Membership is free. Members receive a card. All their purchases are recorded on their card. They receive discounts and rewards. Reuven did not have a card. He did not want to fill out his personal information to get a card. He saw that the store had great offers for members in their price club. His friend Shimon was a member in the price club. He borrowed Shimon's card. He bought many items at the special discount that was only available to price club members. Simon even received a gift because of all the purchases that Reuven made. He gave Reuven the present. Reuven was afflicted with feelings of guilt. He brought his concerns to Rav Spitz. Had he been wrong in using Shimon's card? Did he owe money to the supermarket? Should he return the gift that he had been given?

Rabbi Spitz ruled that if the supermarket owner truly cared about club membership and truly only wished to sell at the discounted prices only to club members, Reuven would have to return the

difference between the price charged to those who were not price club members and those who were. He would also have to return to the store the gift that was received under false representations.

The source for this ruling was our Gemara.

Our Gemara relates that Rav Ada the son of Rav Avaya taught Rav Ashi that a *gazlan* is a person who forcibly takes someone else's object and does not leave any money for it. A *chamsan* is a person who forcibly takes the object from its owner and leaves money for it. In our case, the buyer is a *chamsan*. He paid for the object, but those monies were delivered against the wishes of the supermarket owner. The store was only willing to offer those reduced prices to buyers who were members of the price club. Since he was not a member of the club, to take the objects and pay the discounted price was an act of *chamas*. As a result, the *chamsan* was obligated to pay the full amount that he owed and to return the ill-gotten gift.

However, there would be a different rule if the store did not really care whether one was a member of the price club. If they would give people cards to use, and they really did not mean that the card could not be used by a non-member, then the buyer would not need to return anything to the store (*Mishpatei ha-Torah*).

Does Fulfilling a Mitzvah Exempt from Damages?

Rav Zilberstein was asked the following question: Someone owned a penthouse apartment. He wished to fulfill the mitzvah of installing a fence, *ma'akah*, on his roof. He wished to install a metal fence. He called a fence-maker. The man came to the roof and realized that there was a plastic cover on the porch right next to the roof. He told the penthouse owner, "If I come and start using my blowtorch on

your roof, sparks might fly off and cause a fire on your neighbor's porch. Please have him remove his plastic. Then I can come and use my tools to install the metal bars that you need." The penthouse owner contacted his neighbor. He told him, "I have to fulfill the mitzvah of *ma'akah*. Please remove your plastic cover so that my mitzvah will not cause you damage." The neighbor agreed to do so. He called the neighbor the next week when he saw that the neighbor still had not removed his plastic. Again the neighbor agreed to remove the plastic. He told the neighbor that he had the metalworker coming on Thursday, and that the plastic had to be away by then. On Thursday the metalworker came again. The plastic still had not been removed. He told the penthouse owner, "I would prefer not to do work that might cause damage. However, it would be a pity to leave. If I leave today I will send you a bill because due to you, I was unable to fulfill any other job. I think I can do the work and not cause damage." The apartment owner told him to do the work but to try and be careful. The metalworker used his blowtorch. A spark flew off and hit the plastic cover of the neighbor's porch. A fire started. Who was liable?

Rav Zilberstein ruled that the metalworker was responsible: *adam mu'ad le-olam*, man is always responsible for the damage that he causes. True, the neighbor should have removed his plastic to enable the other person to fulfill the mitzvah of *ma'akah*. However, even though he did not keep his word and meet his responsibility, no one had a right to damage him and burn down his property.

On *Bava Kamma* 62 the Gemara discussed a situation where a store-owner left a candle outside of his store. A camel laden with flax walked by. The candle lit the flax. A fire spread. The Gemara says the owner of the store was responsible. Rav Yehudah was of the opinion that if it was a Chanukah candle that the store-owner had placed there, he would be exempt, for it was a mitzvah to put the Chanukah

candle outside. The Rosh points out that Rav Yehudah would not exempt all who fulfill *mitzvos* from responsibility when their mitzvah acts cause damage. If someone built a *sukkah* in a public domain and people were injured, he would have to pay for the damage. Even Rav Yehudah only exempted the damage in the case of a Chanukah candle, when the mitzvah mandated the very act that created the damage. One can build a *sukkah* outside of the public domain. The mitzvah did not require an act that would likely cause damage. Then, even Rav Yehudah would agree that there would be liability.

Therefore, in our case the penthouse owner could have locked the roof. He could have put heavy items at the edge of his roof to fulfill the mitzvah of *ma'akah* and prevent people from falling from the roof. The mitzvah did not require that a blowtorch be used on that day at that time. Therefore, while the downstairs neighbor was wrong in not removing his plastic cover as he had promised and as the law required, that alone did not give license to anyone else to damage his property. The metalworker who damaged the plastic bore full responsibility, since *adam mu'ad le-olam* (*Chashukei Chemed*).

Bava Kamma 63

Paying for Raising False Hopes

The Torah distinguishes between two types of thieves. The *gazlan* is a robber who steals in public. The *gannav* is a burglar who breaks into a home at night and steals under the cloak of darkness. The *gazlan* must repay the value of what he stole. The *gannav*, if witnesses unmasked him and he did not first admit to the crime, must pay double the value of what he stole.

Our Gemara teaches that sometimes a watchman can become a *gannav*, and in such a case he would have to pay double. If a watchman is not being paid to watch the object of his friend, and he was therefore a *shomer chinnam*, then he does not need to pay if the object was stolen or lost from under his watch. If the watchman falsely claimed that the object was stolen and he swore to that effect, and witnesses then came and testified that he was using the object himself, then he would have to pay double the value of the object. If the watchman falsely claimed that the object was lost and swore that it was lost and witnesses came and testified that he himself was using the object, he would only have to pay for the value of the object he attempted to steal. What is the reason for this distinction between *to'en ta'anas ganav* and *to'en ta'anas avad*?

Rav Shlomo Zalman Auerbach explained a watchman must pay for falsely raised hopes. Everyone knows that a *gannav* must pay double. When a watchman tells an owner that his object is gone, the owner is understandably disappointed and upset. When he tells him that the object was stolen, the owner has hope. He has faith that the thief will be found and he will eventually get double the value of his object. When that is all dashed, for witnesses testify that the watchman himself has the object, the watchman must compensate the owner for having falsely raised his hopes. He must give him the double payment. When the watchman claimed that the object was lost, the owner had never been led to believe that he would get double. Therefore, when it turns out that the watchman himself was holding onto the object, he would only need to pay the value of that which he sought to steal.

In light of this novel understanding, Rav Zilberstein suggested a *chiddush*. If a man was watching a valuable object and then used it for himself, it is possible that he should compensate the original owner with more money than the value of the object. If he told the owner, “The object got lost, but don’t worry, if you file with the insurance they will give you a ridiculously high compensation. You can tell them it was worth three times its true value and you will get that amount.” If the owner believed him, and he then felt guilty about his fraud and he wanted to make it right, he should compensate the owner of the object by giving him three times the value of the object. He had raised the hopes of the owner with a false claim. As a result, he should compensate the owner for those false hopes. Even though he had claimed that it was lost and not that it was stolen, he should pay more than the value of the object! (*Chashukei Chemed*).

Bava Kamma 64

The Importance of Precision

Our Gemara teaches that a thief will not have to pay the double payment (*kefel*) for a *davar she-eino mesuyam*. The commentaries debate the meaning of this term. Rashi is of the opinion that it refers to an item that does not have a *siman*, a distinctive sign. According to Rashi a burglar must pay double the value of the item that he pilfers if that object had an identifying sign on it. However, if that object was without any such sign, the burglar would not have to pay double for its theft. Tosfos disagreed. Tosfos questioned why a lack of a distinguishing sign should impact the double payment. Tosfos gave two different possibilities for the meaning of *davar she-eino mesuyam*. One suggestion is that it refers to an imprecise claim. If someone said, “You stole everything that was in my home,” there would be no *kefel* obligation. The Torah obligates a burglar to pay double provided that there is a precise claim against him. A vague, amorphous claim would not create any obligation to pay double. The second suggestion that Tosfos offer is that *davar she-eino mesuyam* means that one need not pay double if he stole half of a pomegranate. Half of an item does not have importance. As a result, the Torah did not create a fine for its theft.

A lesson we can derive from this law is the importance of precision. When teaching children, we must communicate clearly and precisely. A parent should not penalize a child if he did not first communicate clearly and precisely to the child what he expected of the child.

Secondly, the Maharsham understood our Gemara to teach that people do not treasure half of an item. People treasure items that have completeness and precision to them. In light of this understanding, Rav Zilberstein had a novel thought. When someone must commit a sin to save his life, the rule is that he is to perform the less weighty sin before performing the more significant crime. If people care less for a half of a pomegranate or an unmarked bar of gold, if one had to steal with the intent to repay in order to save his life, our Gemara is teaching that it would be better to steal unmarked bars of gold before stealing coins and paper currency that have defined values (*Portal Daf ha-Yomi, Chashukei Chemed*).

Bava Kamma 65

He Ate in a Restaurant that Falsely Claimed it Was Supervised by a Leading Agency: Was He Entitled to a Refund?

Rav Spitz was asked the following question: A man walked into a restaurant. He asked if the store was kosher. They proudly pointed to a certificate on the wall from one of the leading *kashrus* agencies. The certificate stated that the food was prepared according to the highest standards of *kashrus*. He stayed in the restaurant. He ordered a meal and ate it. He paid for it, and left a nice tip for the waiter. When the customer left the store he ran into his friend. His friend told him that the restaurant had lost its *hashgachah*. He ran back to the store. He confronted the owner. The owner admitted that they were no longer under supervision. He demanded his money back. He demanded his tip back. The owner insisted that all the food was fully kosher to the highest standards: "I had a fight with the agency about fees. I stopped paying them. All the food was kosher according to the highest standards. I do not owe you anything."

Who was right?

Rav Spitz pointed out that food can be kosher even if it is not supervised. It is possible that the owner served food that was kosher to the highest standard. Even so, the restaurateur had violated the law of *geneivas da'as*. He had created a false impression. He led people

to believe that there was supervision in the store. However, while the customer can claim that he was deceived, he cannot return that which was sold to him. He already ate the food. Therefore, when the owner claims with certainty that the food was kosher to the highest standard, and on the other hand the customer merely has suspicions that perhaps that was not true, and the owner is the one now legitimately holding onto the money, the customer is not entitled to his money back. He has not proven that he was served non-kosher food. He certainly would not be entitled to his tip back. The tip was given to the waiter for his work serving. He did his work. He was not responsible for the fact that the store-owner had put up a sign that he was not entitled to hang up. Therefore, the *Mishpatei ha-Torah* ruled that while *geneivas da'as* was violated, theft of money might not have happened and the customer would not be entitled to get his money back. Only if the owner admitted that he had fed the customer food that was Biblically non-kosher, would the law be different, and the customer would be entitled to a refund (*Mishpatei ha-Torah*).

Bava Kamma 66

An *Esrog* Seller Notices *Esrogim* Are Getting Stolen: Can He Make them *Hefker*?

A man who sold *esrogim* noticed that while he put out a certain number of fruits to sell for use on Sukkos, there were citrons missing from the stand that clearly had not been bought. People were stealing *esrogim*. A stolen *esrog* cannot be used for the mitzvah, since the Torah requires *u-lekachtem lachem*, “And you shall take for yourself.” Our Sages teach that these words imply a mandate of *mi-she-lachem*—the four species must belong to the person waving them for him to get the mitzvah credit for the act. The seller wanted the thieves to fulfill their mitzvah of four species. He wanted to spare them the sin of reciting a blessing in vain. He asked, “Can I declare that those fruits are ownerless, *hefker*?” If he could, the thieves would acquire full ownership of their stolen *esrogim* and they would successfully fulfill the mitzvah of *arba'ah minim* when they would wave their *lulavim* and *esrogim*.

Rav Zilberstein pointed out that there is a legend about the Chafetz Chaim that addressed this very question. It is said that a thief once broke into the home of the Chafetz Chaim, grabbed a precious object, and ran out. The Chafetz Chaim supposedly ran out after him

into the street and called out, “The item is *hefker*,” so that the thief would acquire the item and be spared the sin of theft. An analysis of *Bava Kamma* 66 might lead us to question this story.

Rav Yosef taught that *yeiush* (literally, “despair”) does not enable a thief to gain title to a stolen object. If Reuven stole an object from Shimon and Shimon then gave up hope of ever getting it back, the object would still not yet belong to Reuven, according to Rav Yosef, because *be-issura asa le-yadei*—it came to his hand through an act of prohibited theft. Tosfos claim that this view proves that *yeiush* is not the same as *hefker*. Were despair to mean a renunciation of ownership and create a sense of ownerlessness, why would it matter that Reuven got the object into his hands through an illicit act? Once the object was made ownerless, since Reuven is holding it, he should gain title to it from the ownerless realm. Tosfos therefore conclude that *yeiush* is a process different from *hefker*.

The *Machaneh Efraim* (*Hilchos Hefker, siman 7*) points out that Rashi and Rambam seem to assume that *yeiush* is a form of *hefker*. If so, one might ask the question of Tosfos on Rashi. How could Rav Yosef rule that a thief does not acquire the stolen object when the owner despairs? Once the owner made it *hefker*, by despairing, shouldn’t it belong to the thief, for it is in the domain of the robber? The answer is that according to Rashi and Rambam, *hefker* is a form of *hakna’ah*—transferring ownership. It is like giving a gift or making an object sacred. The Gemara (*Bava Kamma* 69) will teach that if Reuven steals Shimon’s horse, neither Reuven nor Shimon can give it away, dedicate it for Temple use, or make it *hefker*. Reuven can’t because the horse does not belong to him. Shimon can’t because it is not in his domain and control, *eino bi-reshuso*. Perhaps according to Rashi and Rambam the despair of the owner did not enable the thief to acquire the object, for the object was out of the owner’s control

and he could not transfer title to his object at the time. He could not make it *hefker* once it had been stolen from him and it was in the hands of the thief.

In light of these discussions, according to Rashi and Rambam, the *esrog* seller would not be able to make his *esrogim* ownerless after they were already stolen. Once they were stolen from him, they were out of his control (*eino bi-reshuso*), and he could not give away an item which was out of his control. If he would despair about the *esrogim* they also would not be the property of the thieves, for Rav Yosef taught that *yeiush* does not grant the thief title, since the item came into his hands through a sin.

The *Ketzos ha-Choshen* (211:4) quotes the view of the *Bach* (*Teshuvos ha-Bach* 124) who felt that according to Jewish law one could not give away an object that was not in his control, but he could make it *hefker*. The *Bach* felt that *hefker* worked with the methodology of a vow. One who declares an item to be *hefker* is making a vow. One can make a vow on that which is out of his control and domain. The *Ketzos ha-Choshen* rejected this point of view.

In conclusion, the great halachic authorities have an argument whether one can make *hefker* his item that is now in the hands of a thief. According to the *Machaneh Efraim* one cannot make such an item *hefker*. Therefore, according to the *Machaneh Efraim*, the *esrog* seller cannot save the thieves from vain blessings by declaring that the *esrogim* are ownerless. According to the *Bach*, his declaration would take effect. According to the *Bach*, *hefker* begins as a vow. One can make a vow about any item. Therefore, when the Chafetz Chaim declared items *hefker*, they became ownerless, and the thief was spared the sin of having someone else's property (*Chashukei Chemed*).

Bava Kamma 67

Using a Swimming Pool as a *Mikveh* for Men

According to Jewish law, in our times, men do not usually need to immerse in a *mikveh*. A woman who is a *niddah* must immerse in a valid *mikveh*. In ancient times, there was a law that a man who had slight impurity, *tumas keri*, was not to study Torah or recite a blessing unless he immersed in a *mikveh*. The Sages later annulled that law. Today, some men seek to go to the *mikveh* to add holiness to themselves and to keep the law of the past. Especially before Shabbos and Yom Tov, the kabbalists encourage men to immerse in a *mikveh* in order to gain the added sanctity of the special days.

Can a man immerse in a swimming pool for these purposes? A swimming pool is not a kosher *mikveh*, since the water in the pool came through pipes. Water that traveled through city pipes has the status of *mayim she'uvim*, “drawn water,” which is invalid for a *mikveh*. Such water is not pure rainwater or pure well water. For an immersion that is not mandated by law, is city water sufficient?

Our Gemara has a lesson about *mikveh*. In its discussion about an object’s name-changing, the Gemara quoted the Mishnah about a person who attached a board to the ground and then carved a pipe out of it. The Mishnah taught that water that flows through that pipe

into the *mikveh* does not disqualify the *mikveh* as *mayim she'uvin*. The Gemara suggests that the reason for this law is that *mayim she'uvin de-rabbanan*. Rashi explains this to mean that the law disqualifying water drawn in a vessel from use in a *mikveh* is Rabbinic. Biblically, even drawn water can create a *mikveh*. Since drawn water is a Rabbinic stringency, they were lenient when a person would attach a board to the ground and then carve a pipe out of it.

The *Shut Torah Lishmah* and the *Divrei Torah* rule, based on this Rashi, that a man may use a pool of drawn water to remove the impurity created by *keri*. Biblically, such a pool is a kosher *mikveh*. Therefore, it can remove the spiritual damage caused by *keri*. One who immerses in a collection of drawn water can even meditate with all of the *kavvanos* that the Ari prescribed for immersion. Such a pool is a Biblical *mikveh*. One who immerses in it on a Friday afternoon or an eve of Yom Tov draws down a great holy spirit upon himself. The *Divrei Yoel* argued that for the immersion of men on Yom Kippur eve as well, such a pool would be sufficient. *Mayim she'uvin* are satisfactory Biblically, and therefore immersion in them successfully adds holiness to a man (*Mesivta*).

Can *Gabbaim* Refuse to Accept a Torah Scroll that a Gambler Wishes to Donate to the Synagogue?

A wealthy man came to a synagogue with a desire to donate a Torah scroll. The *gabbaim* of the synagogue asked Rav Zilberstein if they were allowed to refuse the donation. The donor was a gambler. He was also known to cheat during his games. They were sure that much of his money was ill-gotten. As a result, the Torah scroll was

the product of stolen funds. Wouldn't reading from the scroll be an example of *mitzvah ha-ba'ah be-aveirah*, a good deed that came about through sin? Could they reject the man's gift?

Rav Zilberstein ruled that if the man were to give the Torah scroll they would be allowed to read from it, and recite blessings upon it. Tosfos teach that even a stolen object might not necessarily be an instance of *mitzvah ha-ba'ah be-aveirah*. If the object was fully the property of the thief, people could use it for a mitzvah. Our Gemara teaches that *yeiush* (despair) by the original owner does not grant the thief title to the property he stole. However, despair coupled with *shinnui reshus*, "a change in domain," would grant ownership. Thus the gambler may have stolen money from the other players. However, they despaired of ever getting the money back. Those dollars were then transferred to the scribe to write the scroll. At that point, the gambler owed his victims the value of what he had taken from them through his cheating, but he no longer had any obligation to give them the actual dollars he had won from them, for on those dollars there was both despair and a transfer of domain (*yeiush* and *shinnui reshus*). The scroll, therefore, was fully the property of the gambler. He could rightfully donate that which was fully his to the synagogue. There was no sin left in the scroll and everyone could read from it, and fulfill *mitzvos* with it. However, if the *gabbaim* wished to refuse the gift they were allowed to do so. As Jews, we have an obligation to try and encourage our brethren to observe all laws. When the synagogue leadership would refuse the gift, they would send a message to the gambler to change his ways. A community is to be lauded when it tries to encourage its members to observe *mitzvos* and keep *halachah* (*Chashukei Chemed*).

Bava Kamma 68

If Someone Poor Stole a Sheep and then Slaughtered it to Feed His Family, Would He Have to Pay Four Times the Value?

Our Gemara teaches why the Torah created the fine of four or five times for someone who stole and then sold or slaughtered a sheep or ox. Rabbi Akiva taught that a burglar who then sells or slaughters is “rooting” his sin or, alternatively, repeating his sin. The Torah, therefore, punished him with an added fine. What would the law be when the act of slaughtering did not seem to be a sin? For example, if a poor man who could not afford to feed his family stole a sheep. He intended to repay the sheep once he would get funds. To feed his children, he then slaughtered the stolen sheep. Would he have to pay four times the value of the sheep? Perhaps he did not repeat his sin. His act of slaughtering the sheep was an act of kindness to his children, not a continuation of theft.

Based on the language of verses, Rav Zilberstein ruled that he would have to pay four times the value of the sheep. *Mishlei* (6:30-31) teaches that sometimes we should have compassion for a thief. He might have stolen due to poverty: לא יבוזו לגנב כי יגנוב למלא נפשו כי

ירעב, “Men do not despise a thief, if he steal to satisfy his soul when he is hungry”; ונמצא ישלם שועתיים כל הון ביתו יתן; “But if he is found, he must restore sevenfold, he must give all the substance of his house.” These verses teach about a thief who was poor and stole in order to eat. Rashi explains why the thief must pay sevenfold if he was found by the court. If he stole an ox and a knife and then slaughtered the cow, he would pay double the value of the knife and five times the value of the cow. Apparently, even though he slaughtered the stolen cow to alleviate his hunger, it is considered a deepening or a repeating of the sin and he must pay the fine for adding to the sin.

Rav Zilberstein pointed out that Rav Vertheimer in his work *Biur Sheimos Nirdafim* explained that there is a difference between the word *tevichah* and *shechitah*. In the Torah, *shechitah* connotes slaughter for God. A *korban* (sacrifice) is *nishchat*. However, *tevichah* connotes slaughter for personal use or for the use of members of the family. The Torah (*Shemos* 21:37) described the penalty of fourfold or fivefold as due to a *tevichah*, since the verse says, *u-tevacho*. The reason for this word choice was to teach a novel insight. One would have thought based on *Bava Kamma* 68 that the penalty of fourfold or fivefold is only triggered by repeating the sin. If a person slaughtered the stolen animal to feed his hungry children, perhaps that would not be considered repeating sin. Hence, the lesson of the verse is that even *tevichah*, slaughter for understandable personal use, is considered furthering the theft, and creates the obligation to pay four or five times the value of what he stole (*Chashukei Chemed*).

Bava Kamma 69

May One Recite *Birkas ha-Ilanos* on a Tree of *Orlah*?

During the days of spring there is a law mandating reciting a blessing on flowering fruit trees. This blessing thanks Hashem for creating a glorious world filled with delightful creations to give people pleasure. For the first three years of a tree's life we may not eat its fruit or receive any benefit from its produce. For the first three years all the produce is *orlah*. May one recite the springtime blessing, *birkas ha-ilanos*, on a tree that only contains blossoms of *orlah*? The blessing thanks Hashem for creating creations to give people pleasure; perhaps, since one may not receive any pleasure from *orlah*, it would be inappropriate to recite this blessing over the *orlah* tree?

The *Teshuvos Rav Pe'alim* ruled that one may recite *birkas ha-ilanos* on a fruit tree filled with *orlah* fruit. Even though we cannot derive benefit from the tree now, in the future its fruit will be permitted. Since in a few years, the produce will give people pleasure, one can honestly thank Hashem for this fruit that was created *leihanos bnei adam*, to give people pleasure.

The *Shut Doveiv Meisharim* argued that our Gemara proved that one may recite the blessing of the trees even on a tree of *orlah*. Our

Gemara quoted a Mishnah about trees. The Mishnah taught that the farmers would leave broken pottery shards around the trees of *orlah* to indicate that just as items do not grow in broken pottery, one cannot derive benefit from a tree of *orlah*. The vines of the fourth year, whose fruit could be eaten in Jerusalem or deconsecrated and eaten outside of Jerusalem, would be marked with clumps of dirt. The message was: just as we benefit from dirt, we may benefit from such a tree. Rabban Shimon ben Gamliel taught that these signs would be put out during the sabbatical year when all trees are *hefker* and everyone can walk through the field. However, during the other years, it would be theft and trespassing for people to walk in the field. If a thief came in, we have a rule: let the thief keep hurting himself. It would be his fault that he was trespassing, and the farmer would have no responsibility to warn him away from the *orlah* or inform him of what was *kerem revai* (vines of the fourth year). If the law would be that one may not recite the fruit blessing on an *orlah* tree, there would be a need, even in years that were not *shemittah*, to warn onlookers which tree was *orlah*, so that people not recite the fruit-tree blessing in vain. If Rabban Shimon ben Gamliel taught that only during *shemittah* would there be a need to identify the *orlah* trees, it is proof that one may recite the *birkas ha-ilanos* on an *orlah* tree, and there would be no need to mark those trees to fulfill the obligation to recite *birkas ha-ilanos*.

The *Chelkas Yaakov* (*Orach Chaim* 56) also suggested that one may recite *birkas ha-ilanos* on trees of *orlah*. His reasoning was that a Jew may benefit from *orlah* fruit to save his own life. Therefore, it is truthful to thank Hashem for this tree that gives us pleasure. In addition, the *Shulchan Aruch* (294:15) rules that a Jew may sell all the fruit that his tree will produce in its first three years to a non-Jew. Since the deal was consummated before the fruits came into existence, it is

not considered deriving benefit from *orlah* fruit. Therefore, when the tree is filled with blossoms, and does not yet have fruit, it is correct to thank Hashem for creating trees that give pleasure to people, for at that moment, one can sell its future produce to a Gentile and derive benefit from the tree.

However, he also quoted Rav Akiva Eiger who doubted whether one may recite *birkas ha-ilanos* on an *orlah* tree. Therefore, the *Chelkas Yaakov* ruled that in the land of Israel one should not recite *birkas ha-ilanos* on an *orlah* tree. Outside of the land of Israel, one may feed another Jew *orlah*, so long as the one eating does not know it is *orlah*. The *Chelkas Yaakov* ruled that one may recite the blessing of *birkas ha-ilanos* on an *orlah* tree outside of Israel: since one can serve its fruit to another Jew, it is appropriate to thank Hashem for creating it to give Jews benefit from it (*Heichalei ha-Torah, Mesivta, Daf Yomi Digest*).

Bava Kamma 70

Is There a Rule of “Destined to Rest” with *Tefillin*?

Our Gemara discussed the law of *kim leih bi-de-rabbah minei*—the greater punishment is enough for him. If a person does one act that carries two penalties, the fact that he is deserving of the more severe punishment exempts him from receiving the lesser punishment. Therefore, if a burglar of a cow were to slaughter the cow on a Shabbos, he would not have to pay the fivefold fine. Slaughtering on Shabbos created a penalty of death. Since the thief’s act created a severe obligation, it did not create the lesser obligation of a fine payment. The Gemara discusses the case of a thief who sold the stolen cow on Shabbos. The Mishnah taught that the thief would have to pay the fivefold fine. A Baraisa taught that if a thief sold the stolen cow on Shabbos, he would be exempt from the fivefold fine. The Gemara resolves the contradiction. The Mishnah was dealing with a normal sale. While Rabbinic law prohibits selling on Shabbos, such a sale would not create a death sentence. However, the Baraisa dealt with a buyer who told the thief, “Throw your stolen cow into my courtyard and when it enters my courtyard my money will be owed to you.” At the moment the cow entered the courtyard there was a Shabbos

violation of carrying from a public to a private domain. At that same moment, the sale was consummated. The Gemara proposes that this Baraisa follows the view of Rabbi Akiva, who said once an object was in the airspace of a courtyard it was considered to have come to rest in the courtyard, in regards to laws of Shabbos. However, according to the Sages, who felt an object only came to rest once it reached the ground, there would be no *kim leih bi-de-rabbah minei* in this situation. Once the cow entered the airspace the sale was complete. However, the desecration of Shabbos happened later when the cow came to a rest on the ground in the yard.

The *Poskim* discuss the question of whether *halachah* would accept the view of Rabbi Akiva in other areas of law. One such area would be the laws of *tefillin*. Ashkenazim rule that one blessing is to be recited prior to laying the hand *tefillin* and a second blessing prior to placing the head *tefillin*. If I speak before I place the head *tefillin* on my head, I would have to recite two blessings on the head *tefillin*.

What is the law if I had my head *tefillin* right above my head and I then spoke? Would we say that it was a break and I had to recite two blessings over the head *tefillin*? Perhaps Rabbi Akiva's idea applies to *tefillin*. Then the law would be that since the *tefillin* were above my head and about to be placed on the head, they were considered placed on my head, just as in regards to *Hilchos Shabbos* the item is considered to have come to rest in the courtyard once it was in the air above the courtyard. If the *tefillin* were considered placed on my head, my words came after the mitzvah was complete and I would not need to recite both blessings for the box of head *tefillin*.

The *Biur Halachah* (*siman* 25) addressed this issue. He quoted the *Eshel Avraham* and *Artzos ha-Chaim* who both taught that the idea of Rabbi Akiva is not applicable to *tefillin*. The mitzvah of *tefillin* is only completed once the box of *tefillin* is tightly set around the top of

the head. Even according to Rabbi Akiva, the law merely teaches that once an object is in the air over the private domain it is considered at rest in the private domain; however, it is not tightly in place.

Rav David Poversky, *zt”l*, added another argument. The law of Rabbi Akiva taught that once an object entered the domain it was considered to have the same status as an object that came to rest within the domain. The object, however, had not actually come to rest. It has the law of being at rest without actually being at rest. I complete the mitzvah of *tefillin* when the box of head *tefillin* is actually at rest on my head. Since I spoke before it came to rest, everyone would agree that I had spoken before the mitzvah was complete. As a result, I would be obligated to recite two blessings for the box of head *tefillin* (*Heichalei ha-Torah*).

Bava Kamma 71

There Was a Car Crash on Shabbos in Israel: Should the Victim Get Reimbursed?

An observant Jew in Israel parked his car on a Friday afternoon. On Shabbos afternoon a secular Jew crashed his car into the parked vehicle. The observant Jew was very upset. He pressed a claim against the secular Jew in a governmental secular court. The secular court convicted the driver and made him pay 5,000 shekel. The religious Jew then felt guilty. It was wrong to pursue a claim in a secular court instead of a *beis din*. Secondly, since his property had been damaged on a Shabbos, the guilty party would not have been liable in a Jewish court. Violating Shabbos carries a death penalty. We have a principle of *kim leih bi-de-rabbah minei*—the fact that he deserved the more severe penalty exempted him from the lesser punishment of paying for the damage. He asked: did he have to return the five thousand shekel to the man who had crashed into his car?

Based on our Gemara, the Rabbis ruled that he did not have to return the money.

Our Gemara discussed a difficult Baraisa. The Baraisa taught that if a burglar stole a calf and slaughtered it on Shabbos, then according to Rabbi Meir, he would have to pay five times the value

of the calf. The Gemara asked: what about the rule of *kim leih bi-de-rabbah minei*? Since the thief's action was deserving of the death penalty, it should not have created a fiscal liability. It answered that the Baraisa was dealing with a case when the thief had someone else slaughter the animal for him. Since he had not violated Shabbos nor committed a capital crime, he was obligated to pay the fine. The Gemara asked: if someone else did the slaughtering, then why should he have any liability? The rule is that one cannot make someone else his representative to sin on his behalf. The Gemara answered that in regards to the penalty of four- and five-fold, there are special words in the verse to teach that even the actions of an agent can create liability for the thief. Then the Gemara asked: how could the representative's actions create liability? Had the thief slaughtered the animal on Shabbos, he would not have to pay a fine. How then could his representative create a stricter liability than what he could create for himself?

It answered that when there is the law of *kim leih bi-de-rabbah minei*, the thief is liable for the lesser penalty. Had the thief slaughtered the calf on Shabbos he would be guilty of violating Shabbos and furthering the theft. Therefore he would be liable both for death and for payment. In actuality, *kim leih bi-de-rabbah minei* means that the thief would get executed and not pay. However, conceptually, the thief would be obligated to pay. This is why if the representative slaughtered on the Sabbath, since the thief is not deserving of death, he is liable for paying the fine.

In light of the lesson of our Gemara, the secular Jew who violated Shabbos and crashed into the vehicle of the observant Jew was conceptually both deserving of death and obligated to pay. Practically, our courts would not make him pay. However, since he was obligated conceptually, had the victim seized money for the damages, the court

would not take the money back. Therefore, now that a secular court awarded him funds that he conceptually deserved to have, he did not need to return them (*Daf Yomi Digest*).

Immersion in a *Mikveh* that Had Been Heated by a Jew on Shabbos

Our Gemara teaches about *ma'aseh Shabbos*. If a Jew violates Shabbos, the product of his Shabbos violation is prohibited. Thus, if a Jew were to cook a piece of chicken on Shabbos, it may not be eaten. The Gemara quoted different Tannaim who argued about the extent of this prohibition. Rabbi Meir was of the opinion that if one cooked on Shabbos, if it was done by mistake (because he forgot the day was Shabbos), both he and others may eat the food on Shabbos. If he cooked deliberately on Shabbos, Rabbi Meir held that the food may not be eaten on Shabbos. Rabbi Yehudah was more exacting. He held that if it was cooked by mistake, he and others may not eat it on Shabbos. However, after Shabbos he may eat it. If he cooked deliberately on Shabbos, he may never eat the food, and others may eat the food after Shabbos. Rabbi Yochanan ha-Sandlar was the most stringent. He taught that if it was cooked by mistake on Shabbos, it may be eaten by others only after Shabbos, while the cook himself may never eat it. If it was cooked deliberately on Shabbos it is prohibited to everyone forever.

The Gemara provides the reasoning for the opinion of Rav Yochanan ha-Sandlar. The verse stated, *u-shemartem es ha-Shabbos ki kodesh hi lachem*, “Keep the Sabbath for it is holy for you.” Shabbos observance was linked to the sacred realm. Just as one may not get benefit from an item which is holy, one may not derive any benefit

from an item created through desecration of Shabbos. *Halachah* follows the view of Rabbi Yehudah and not the view of Rav Yochanan ha-Sandlar.

Rav Moshe Feinstein (*Igros Moshe, Orach Chaim* 1:126) was asked a painful halachic query. In 1933 he lived in Luban in the Soviet Union. The zealously anti-religious communists had shuttered the city's *mikveh*. At great personal risk, Rav Moshe and others succeeded in secretly renovating the bathhouse so that it was a kosher *mikveh*. Unfortunately, the Russians regulated the use of the bathhouse. They would only allow it to be opened on Shabbos. It had a Jewish attendant who was heating the water. The community brought their question to Rav Moshe. Could they use the *mikveh* and immerse in the bathhouse on Shabbos? If they were to immerse in it they would be benefiting from the Shabbos violation of another Jew. On the other hand, there were no other possibilities of immersing in a *mikveh*.

Rav Moshe pointed out that the most stringent opinion about *ma'aseh Shabbos* was Rav Yochanan ha-Sandlar. Our Gemara explained that the logic underlying his view is that Shabbos is like the sacred realm. Just as one may not derive benefit from a consecrated item, one may not derive pleasure from a product of Shabbos violation. In all matters from which one may not derive benefit, there is a rule that a mitzvah act is not considered benefit: *Mitzvos lav leihanos nitnu*—mitzvos were not given for physical enjoyment. According to Rav Yochanan ha-Sandlar the women should be allowed to immerse on Shabbos in waters heated on Shabbos by a Jew. The immersion was a mitzvah act, not a source of pleasure. Rav Moshe then added that Rabbi Yehudah was more lenient than Rav Yochanan ha-Sandlar. He did not have a verse; he felt that *ma'aseh Shabbos* was only a Rabbinic prohibition. He would agree to the leniencies of Rav Yochanan ha-Sandlar. Just as according to Rav Yochanan ha-Sandlar

a mitzvah use would be allowed with an item that was created on Shabbos, Rav Yehudah would also permit such use.

Therefore, Rav Moshe allowed the women to immerse in the bathhouse on the Sabbath, because a mitzvah use is not considered deriving benefit from a product created through a Shabbos violation (*Daf al ha-Daf*).

Bava Kamma 72

Torah Study and Poverty

Rav Pinchas Zabichi discussed a fascinating dispute (*Shut Ateret Paz, chelek alef, kerach gimmel, Choshen Mishpat, siman 16*). A young Torah scholar in Jerusalem agreed orally to a Yissachar-Zevulun style relationship with a neighbor who worked for a living. The neighbor would give him a stipend each month. In return, he would learn Torah. The neighbor would be entitled to receive half the reward for the Torah learning. After a few months the scholar wished to annul the deal. He pointed out that due to the stipend he could live comfortably. He was inspired by statements of our Sages (See *Sotah 49a*) that highly compliment one who learns Torah amidst poverty and deprivation. He wished to live more simply and keep all the credit for the learning for himself. They brought their dispute to the Rabbi.

The Rabbi pointed out that in our Gemara we learn that delightful food is helpful to Torah study. Rav Nachman had been fasting and as a result, when he was asked a question, he did not resolve it as well he would have liked. The next morning he ate meat. As a result, he felt stronger and he reached a more correct conclusion. How do we reconcile our Gemara with the statements of the Sages lauding

Torah study from amidst privation? Rashi explains that our Sages compliment a poor man who ignores his poverty and insists on learning. However, Rav Moshe Feinstein taught that when there is a possibility of comfort and good food, that is even better for the scholar. When a scholar eats nutritious food he has greater strength. He can learn better and accomplish more. Therefore, the Rabbi ruled that the Torah scholar should not annul his deal with the businessman. He should continue to receive a stipend. He would then have more resources. He would then learn better, and the businessman would participate in the reward as well.

Rav Chaim of Volozhin once dealt with a similar issue. A scholar was offered a Yissachar-Zevulun deal with a businessman. The scholar wanted to refuse it. He wished to have less for himself and to learn half a day and to work half a day. Rav Chaim instructed him to accept the partnership. The cause of Heaven is better served with a full day of learning and two people sharing in the reward, than with half of a day of study and only one person receiving reward (*Me'oros Daf ha-Yomi*).

Bava Kamma 73

If He Mistakenly Began His *Shemoneh Esreih* of *Shacharis* with the Words *Ki Sheim Hashem*, Should He Complete the Verse?

Petition is to be linked to redemption. The *Shemoneh Esreih* of *Shacharis* is to be connected to the final blessing after *Shema*, “Blessed are You, Hashem, who redeemed Israel.” The Talmud (*Berachos* 4b) teaches that one who is praying should not interrupt with any statement between reciting “Blessed are You, Hashem, who redeemed Israel” and beginning the silent prayers of the Eighteen Blessings. It asked: how then can one begin the *Amidah* with the words of the verse in Psalms (51:17), ה' שפתי תפתח ופי יגיד תהלתך, “My Lord, open my lips, that my mouth may declare Your praise”? These words seem to be an interruption between the blessing about redemption and the petition of the *Amidah*. The Gemara answered that since the Sages instituted that before the *Amidah* of the morning we are to recite this verse, these words are considered part of the *Amidah*.

At the afternoon prayer we do not have a blessing of redemption that we must ensure is not interrupted before the silent *Amidah*. It is our practice therefore to add another verse before we say the verse of “My Lord, open my lips....” We recite the verse from *Devarim* 32:3,

שפתי תפתח ופי יגיד תהלתך, “When I call out the Name of Hashem, ascribe greatness to our Lord.”

Rav Zilberstein felt that our Gemara would provide insight for the following scenario: A Jew was praying the morning prayer. He took his three steps back and then stepped forward to begin the silent *Amidah*. He forgot it was *Shacharis*. He stated, “כי שם ה'”, “When I call out the Name of Hashem.” He then realized that he was in the morning service and he had just interrupted between redemption and petition. What should he do? Should he complete the verse and say “אקרא ה' גודל לא-לקינו”? Perhaps he should stop and immediately transition to the morning *Amidah* by stating “שפתי תפתח ופי יגיד תהלתך”? The word Hashem that he recited for *ki Sheim Hashem* can now be ascribed to *Hashem sefasai tiftach*.

Rav Zilberstein initially thought that he should continue with the rest of the verse that he began, say “אקרא ה' גודל לא-לקינו”, “I call, ascribe greatness to our Lord,” and then continue with *Hashem sefasai tiftach*. This should be the ruling for several reasons. One, the Talmud in *Ta'anis* (27b) and *Megillah* (22a) teaches that we are not to end a verse in a spot different from where Moshe ended the verse in the Torah. If our individual would not complete “When I call out the Name of Hashem, ascribe greatness to our Lord,” he would be ending a verse in a location where Moshe did not end it. Second, if he will stop the recital of the verse he started, and transition to a different verse, he will have mentioned Hashem’s name in vain. Third, he has already interrupted between redemption and petition. What would be gained by not completing the verse he started? Let him finish the verse and then move on to the standard text of the *Amidah*.

Ultimately, Rav Zilberstein ruled that based on our Gemara he should interrupt what he started and transition to “שפתי תפתח ופי יגיד תהלתך”.

יגיד תהלתך and continue with the rest of the *Amidah*. Our Gemara taught about *toch kedai dibbur*, within a few seconds. It taught that if someone said a sentence and within the amount of time to say two words (those words being *shalom aleichem*) added or changed what he said, the addition or change would take effect. *Halachah* views what is added within the two-word timeframe as having been said simultaneously with the original sentence. Therefore, he would gain a great deal by immediately transitioning to שפתי תפתח ופי יגיד תהלתך. He had said *ki Sheim Hashem*. Transitioning to שפתי תפתח ופי יגיד תהלתך moves the word “Hashem” to the next verse. Now, there are only two words, *ki Sheim*, interrupting redemption from petition. Since a two-word gap is still part of the sentence, halachically, it is as if there has been no break between the sentence of redemption and the first blessing of the *Amidah*.

In terms of the issue of dividing a verse, Rav Zilberstein pointed out that we divide a verse during our Friday night *Kiddush*. We begin with the words, יום הששי ויכלו השמים. This is only a fragment of a verse. The *Shut Chelkas Yaakov* quoted the *Chasam Sofer*, who asked: how can we recite this verse fragment? Is it not a violation of the law not to stop a verse in a spot other than where Moshe stopped? He answered that we begin *Kiddush* with these four words, for the first letters of the words spell out Hashem’s name, י-ה-ו-ה. In addition, our Sages did not want us to recite the entire verse, for on this verse the Midrash interpreted the words *tov me’od*, “very good,” as a reference to death. It would not be a positive omen to begin *Kiddush* with a reference to death. We learn from this that when we do not have a choice, we may interrupt a verse. Therefore, Rav Zilberstein ruled that the person should stop in the middle of the verse he started and continue with שפתי תפתח ופי יגיד תהלתך. Such

actions save him from Hashem's name being mentioned in vain. Based on the ruling of our Gemara, since there was only a two-word interruption, it would not be considered dividing redemption from petition (*Chashukei Chemed*).

Bava Kamma 74

When the Damager Helped, Must He Pay?

An Israeli woman's daughter lost her two kidneys. She needed a kidney transplant. Her mother decided to donate one of her kidneys to her daughter. She went for exams. The right kidney seemed to be a fit for transplantation. The mother hired a private doctor to do the surgery. He opened her up and took out the left kidney. Upon examination, it turned out that the left kidney had a tumor in it. It was malignant. It had not been working. She was surviving exclusively with her right kidney. The doctor's error had saved her life. Had he taken out her right kidney, as had been planned, she would have had only the nonfunctioning kidney. The tumor would have spread and she would have been in grave danger. Thankfully, he had taken the kidney that was cancerous. He had saved her life, for now she was cancer-free and still had a healthy kidney. Did the doctor need to pay for making an "error"? He had cut her open and removed a limb that she had not asked him to remove.

Our *daf* proves that he does not need to pay.

The Gemara related a story about the Tanna Rabban Gamliel. Rabban Gamliel once blinded the eye of his slave Tavi. He was very happy when he realized what he had done. He thought

that now his slave would go free. The *Beis Yitzchak* and Ya'aveitz ask: why was Rabban Gamliel happy? His wounding of his slave was a violation of the prohibition not to wound another person. How could he have been happy that he violated the prohibition of *chavalah*? The *Beis Yitzchak* answered that this Gemara is a proof to the opinion of the *Turei Even* (*Megillah* 28) that if someone permits his friend, and tells him, "You may wound me," if his friend listens and inflicts harm, no sin was violated. Tavi certainly wished to go free. Therefore, he forgave the injury. As a result, Rabban Gamliel knew that he had not sinned and he was happy. In light of this precedent, the doctor can be sure that the woman forgave the injury he inflicted. He saved her life. She certainly forgave the "wrongful" surgery. As a result, he would not have to pay anything.

Rav Zilberstein felt that this principle would not be true if the gain only occurred after an act of harm. Suppose Reuven drove his car recklessly. As a result, he drove into Shimon. Shimon was wounded badly and needed hospitalization. Due to his injuries, two days later Shimon was unable to board a flight he had a ticket for. The flight was blown out of the sky in a terrorist attack. All the passengers died. Could Reuven claim to Shimon, "My actions saved your life and therefore I do not owe you any money"?

Rav Zilberstein felt that in this case Reuven would have to pay for the damages. At the time of the damage, there was only harm, pain, and loss. An obligation was then created. Later, other events occurred that in retrospect turned the act of damage into a blessing. The later blessing would not have the power to remove the original monetary obligation.

This latter case would be analogous to the law in *Shulchan Aruch* (*Orach Chaim* 222:4) about blessings. The Gemara in *Berachos* teaches that for good tidings one recites the blessing of *ha-tov ve-*

ha-meitiv. For tragic news one recites the blessing of *dayan ha-emes*. What would happen if a person was told that his field was flooded with rain? In the near term such news is tragic. The water ruins the crops. However, later, it will be understood that the fact that the field was flooded was a blessing. The flood watered the field and future crops will grow well. Why does the future gain not make the appropriate response a blessing of *ha-tov ve-ha-meitiv*? The answer is that *halachah* deals with the present reality. One cannot know now if a future good will actually materialize. The same is true in regards to loss. If in the current reality there was a true loss, one cannot know if there will be future gain. As a result, an obligation has been created. The eventual gain would not take away the monetary obligation due to the loss. Reuven should pay Shimon for wounding him, even though eventually that act saved Shimon's life (*Chashukei Chemed*).

Bava Kamma 75
(Tisha B'Av 5776)

Mercy in Judgment

Our Gemara teaches about distinctions between two types of monetary obligations. Some monetary obligations are intuitive and logical. If someone damages his friend's property, his obligation to pay for the loss is understandable. The payment of *nezek* is considered *mamona*, an expected monetary obligation. Some monetary obligations are fines. They are not intuitive. The Torah imposed these obligations to punish misbehavior. A burglar who is caught must pay double the value of the item that he stole. The double payment (*kefel*) is a *kenas*. The Mishnah on *Bava Kamma* 74 taught that if a thief admitted that he stole he must pay for the principal; however, he need not pay the double payment. One who admits to culpability for a fine need not pay the fine. Rav taught that if one admitted to the fine obligation, even if witnesses later came and testified that he performed the act that should have created a fine, he would still be exempt from paying for the fine: *modeh bi-kenas ve-achar kach ba'u eidim patur*.

What is the logic underlying this law? Why would Hashem waive the fine obligation when the individual volunteered his guilt to

the court? Shouldn't the individual who admitted to the fine be more culpable for we can be sure he performed the act?

This law is a display of mercy in judgment. Hashem's law is filled with compassion. Therefore, He legislated waiving the punishment when the individual volunteered to the court that he was guilty.

The *Michtav me-Eliyahu* (vol. 3, p. 297) added that the reason for a fine for certain actions was to communicate an educational lesson. The thief is to learn about the severity of the sin from the fact that Hashem added a fine over and above what logic already dictated he should pay. One who volunteers his guilt to the court has internalized the lesson. He realizes that his actions were wrong. He no longer needs to actually pay the fine.

The *Ein Yitzchak* pointed out that this rule was the reason why Hashem sought out Adam after he committed the first sin in history. Right after Adam ate from the Tree of Knowledge, Hashem searched for Adam. He called out, אִיכָה, "Where are you?" The punishment of death for the sin of eating from the Tree of Knowledge was a fine. Hashem was seeking Adam so that Adam would admit his guilt before proof of his culpability would be produced. Had Adam responded to God's call by volunteering an apology, the rule of *modeh bi-kenas ve-achar kach ba'u eidim patur* would have been in effect. Adam would then have been exempted from the punishment of death.

Rav Mordechai Silver of Stitchin pointed out that the book of Lamentations begins with the word *Eichah* to recall Hashem's call to Adam of *ayekkah*; in Hebrew both words are spelled אִיכָה. Hashem called out to Adam after his sin because even after we sin Hashem still loves us. He seeks us out trying to get us to repent, admit, and gain forgiveness. Adam made the error of thinking that after the sin Hashem would be enraged. He therefore hid to avoid encountering the Almighty. This mistake was repeated when the Jews of Israel

sinned and were warned by the prophets. The correct response to sin is to realize that after sinning we have the opportunity to repent. One who repents reaches a higher place than the one who never sinned. The response to sin should be to reach out to the Almighty, apologize immediately, and merit to trigger the principle of *modeh bi-kenas ve-achar kach ba'u eideim patur*. At the end of the scroll of Lamentations the Jewish nation realizes this truth. The book of *Eichah* closes with a plaintive cry: *Hashiveinu Hashem eilechah ve-nashuvah*, “Return us, Hashem, to You and we will return.” We realize that sin does not mean a rupture in our bond with the Almighty. He displays mercy in judgment. We may have sinned, yet we call to Him to help trigger our return, for we will certainly correct the mistake of Adam and instead of hiding from Him, we will run to His warm embrace (*Daf al ha-Daf, Divrei Torah*).

Bava Kamma 76

He Stole *Kaddish*, Must He Pay?

In many communities only one mourner recites the *Kaddish* during services. In some communities, they sell the privilege of reciting the *Kaddish*. There is a rule in *halachah* that if someone steals my mitzvah he must pay me a fine of ten gold coins. A man purchased the right to lead the community in the Kaddish prayer. Another mourner jumped to the front of the synagogue and recited the Kaddish at the end of the service. Did the second mourner owe money to the man who had purchased the right to lead the community in Kaddish? Did he owe him the fine of ten gold coins? The *Chasam Sofer* taught that based on our Gemara, prayer, which is like a sacrifice, differs from other *mitzvos*, and the interloper would not have to pay.

Our Gemara explains the opinion of Rabbi Shimon. The Mishnah quoted Rabbi Shimon as teaching that if someone stole and slaughtered the sacrifice of a person who must replace his offering, he would have to pay the sacrifice donor four or five times the value of the *korban*. The Gemara struggled to understand the law. Rabbi Shimon was of the opinion that an act of slaughter that did not permit the meat to be eaten was not considered an act of slaughter to create the obligation to pay four or five times the principle amount.

A sacrifice slaughtered outside of the Temple may not be eaten. How then could the slaughter of a *korban* create an obligation of the four or five times the value of the original animal? The Gemara answered that the case is when the thief stole the *korban*, then brought it to the Temple, where it was then slaughtered. Asked the Gemara: if it was brought to the Temple and offered, why would the thief have to pay a fine? He had returned the animal to its owner! The Gemara gave several answers. Perhaps our Mishnah was dealing in a case where the animal was slaughtered and then the blood spilled, so the service of the *korban* was never completed. Alternatively, the animal was slaughtered with express intentions for the wrong person, so the service did not fulfill the vow of the *korban* owner. Finally, Rabbi Shimon might have been talking about a sacrifice that received a blemish and was then slaughtered outside the Temple. As a blemished offering, the slaughter outside of the Temple permitted it to be eaten.

The *Chasam Sofer* (*Shut Yoreh De'ah* 345) felt that if the wrong person grabbed the privilege of leading the *Kaddish*, it would be akin to a thief who brings the sacrifice of another person to the Temple. Just as in the case of the sacrifice, the original donor gets the mitzvah credit for the offering, and it is considered as if the animal were returned to him, when someone else grabs the *Kaddish* that is rightfully mine, I get the credit for the mitzvah, and it is as if the prayer were returned to me. The soul of the relative of the one who purchased the *Kaddish* was elevated by the *Kaddish* recited, even if it was a non-relative who actually led the prayer. As a result, the interloper would not have to pay anything, for his actions did not take away a mitzvah from another person.

Tosfos in *Bava Kamma* (91a) discuss a similar scenario. They teach about a man who called up a member of the synagogue to read from the Torah, but someone else jumped up and grabbed the *aliyah*

instead. Would the second person owe money to the first? Rabbenu Tam taught that there was no obligation on the interloper. The one originally called up could have answered *amen* to the blessings of the man who grabbed the *aliyah*. Were he to do so, it would be considered as if he said the blessings. Therefore, if he did not respond *amen*, he caused himself the loss (*Mesivta*).

Bava Kamma 77

Using Cloudy Water for *Netilas Yadayim*

The *Shut Lehoros Nasan* was asked about using cloudy water for the mitzvah of washing hands and removing impurity from hands. In Israel, they used to add minerals to the water. When the water would come out of the sink it would be cloudy and it would not look clear. With time the minerals would settle and the water would become clear. Could such a liquid, prior to its becoming clear, be used for the mitzvah of washing one's hands with water?

Rav Nasan answered that based on our Gemara we can derive that one may use such water. Our Gemara taught that according to Rabbi Shimon, *kol ha-omed lizzarek ke-zaruk dami*, blood of a sacrifice that is about to be sprinkled on the altar is considered sprinkled on the altar. The *Chasam Sofer* taught that if Rabbi Shimon is willing to consider the blood already thrown, even though throwing is an action that has not yet been done, certainly, with an eventual reality that will occur on its own with no action, it is considered to have occurred now. The Israeli water from the faucet, with time, on its own, would become clear. Therefore, even though now it has not yet settled, since it is water that is about to become clear, it is considered water that is already clear. As clear water, it may be used for *netilas*

yadayim. He pointed out that this is not contradicted by the words of Tosfos on our *daf*.

Tosfos teach that even according to Rabbi Shimon, who feels that blood that is about to be thrown is already considered thrown, an animal in its lifetime would not have the status of food even though it is about to be slaughtered. There, the act of slaughter was needed to accomplish two things. It would remove the status of “living thing,” and it would create a new status: “food.” Here, there is no need for two accomplishments. All that is needed is to remove the status of the water being dirty. The water is already called water, and the future eventuality is not needed to give it a new name. Therefore, since on their own, the minerals will settle and the water will become clear, it is already considered clear water, and is suitable for the mitzvah of *netilas yadayim* (*Mesivta*).

Bava Kamma 78

He Stole A Beautiful *Esrog*, Can He Repay With A Simple, Kosher *Esrog*?

A thief must return the stolen object to his victim. He must make the person whole again. Our Gemara has a surprising law. A man made a vow to donate a *korban olah*. He then set aside an ox, which is a very expensive item, as the sacrifice. A thief came and stole the ox. He then lost the ox. Our Gemara teaches that the thief may return a sheep to his victim, even though a sheep is less valuable than an ox. The victim cannot insist, "I need to fulfill my vow in the best manner." A sheep also can be offered as an *olah*. One who promises to bring an *olah* can donate a sheep to fulfill his vow. Therefore, once the thief gave his victim a sheep, he has enabled his victim to fulfill his vow. He is not obligated to give the victim an ox.

What would the law be on Sukkos with an *esrog*? A man purchased a beautiful *esrog*. He wished to fulfill the mitzvah in its most glorious way. A thief stole the *esrog*. He then lost the *esrog*. May he give his victim a simple *esrog*?

Maharam Mintz felt that the law of sacrificial return indicated that a thief can return a simple *esrog* to his victim, even though he had taken a beautiful fruit. Our Gemara teaches that if the thief

has returned the option of fulfilling the mitzvah to the victim, even though it is not as special as what he took, he has fulfilled his obligation.

The *Mishneh la-Melech* (*Ma'aseh ha-Korbanos* 16:7) disagreed with Maharam Mintz. He explained that one cannot sell an animal which has already been dedicated as a *korban*. It can only be used as an offering on the altar. As a result, it does not really have a monetary value. The thief prevented his victim from fulfilling his vow. He must “repay” by enabling fulfillment of the vow. When the thief gave his victim another item with which he could fulfill his vow, he had fulfilled his obligations. A special *esrog* is different. It has monetary value. The one who purchased it can sell it to someone else for the same high price for which he purchased it. Since the bandit took away an item of value, he can only fulfill his obligations to the victim by making him financially whole. He therefore must give him back a beautiful *esrog* or the value of a beautiful *esrog*.

The *Shut Torah Lishmah* (394) dealt with a similar scenario. A person owned an exquisite *sefer Torah*. His friend damaged the *sefer Torah* and ruined it. The damager wanted to give his victim a simple *sefer Torah* as the repayment. He claimed that based on our Gemara a simple Torah should suffice. Just as a thief would not have to enable his victim to get the ideal mitzvah, so too the damager should not need to enable his victim to fulfill the mitzvah of reading from the Torah with the nicest possible scroll.

The *Torah Lishmah* ruled that it would depend on the type of Torah scroll. A scroll owned by an individual can be sold, for certain purposes. As a result, the damager had caused a monetary loss. He would have to replace that loss. Giving a less fancy scroll, which is not worth as much as the scroll that was damaged, would not be acceptable. However, if the *sefer Torah* had been donated

to a synagogue, it could never be sold. A synagogue belongs to all who use it, and therefore, it and its property can never be sold. If the perpetrator damaged the scroll of the synagogue, then he could replace it by providing a simple scroll. Since the damaged scroll could never be sold, it did not have a set value. As a result, he merely removed the option of fulfilling a mitzvah. He need only re-enable mitzvah fulfillment. He would not need to enable the fulfillment of *hiddur mitzvah* (*Mesivta*).

Bava Kamma 79

Raising Sheep in Israel Today

The Sages legislated that one may not raise sheep or goats in the land of Israel in the settled areas where other Jews have planted fields. Such animals frequently eat from the fields of others. They might defoliate the land of Israel. To ensure that the land of Israel stay green and beautiful, and remain built up by the efforts of Jews, and to ensure that one who planted a field not suffer the loss of his field from marauding goats and sheep, the Sages prohibited one to raise these animals in the holy land.

Does this law apply in our days? The Rambam and *Tur* record the law. The *Shulchan Aruch* (*Choshen Mishpat* 409:1) writes that in his day Jews did not own fields in the holy land. As a result, there was no prohibition against other Jews raising sheep and goats. The reason for the prohibition had been to prevent the goats and sheep from damaging the fields of other Jews. Since there were no Jewish-owned fields, there was no need to prevent sheep from being raised in Israel.

The *Kaftor va-Ferach* (10) disagreed with the *Shulchan Aruch*. He argued that the reason for the law was to keep the land beautiful. Even if all the fields were owned by Gentiles it would still be prohibited for a Jew to raise sheep and goats in settled areas in the holy land, for these animals would make the land ugly.

Rav Tzvi Pesach Frank ruled that since the *Shulchan Aruch* taught that this law had become null and void, even though now there are Jewish-owned fields in the holy land, there is no longer a prohibition to raise sheep and goats. Once a prohibition lapses, only new legislation can recreate it. Since our Sages have not re-legislated this *takkanah*, it is not operative.

Rav Ovadia Yosef disagreed with this reasoning. He felt that a lapsed law did not need new legislation to be recreated. Once the reasons for its suspension would pass, it would reappear. Since the land is now filled with Jewish-owned fields, one may not raise goats and sheep in those areas.

The *Tzitz Eliezer* argued that in the agricultural settlements they would be allowed to raise sheep and goats. The state gave land to the settlers. When settlers moved to the land, they knew that some of the land would be used for agriculture and other plots would be used for ranching. The farmers waived their rights of protest. They were only given the chance to farm because their neighbors were given the right to raise animals. Therefore, since the possible victims were certainly *mochel*, members of *kibbutzim* and *moshavot* are allowed to raise sheep and goats. Rav Ovadia Yosef agreed with the logic and ruling of the *Tzitz Eliezer*.

The *Chazon Ish* would tell those who asked him that since *Shulchan Aruch* permits raising sheep in Israel, they may raise sheep in Israel in our days (*Portal Daf ha-Yomi, Ve-Shinnantam*).

Bava Kamma 80

Should One Make a *Shalom Zachor* Party If the Baby Is not in the House?

Our Gemara related a story about three Amoraim: Rav, Shmuel, and Rav Asi. They had come to a home for a party. One version of the story held that it was a party *li-yeshuas ha-ben*, for the salvation of the child. What is the meaning of a party “for the salvation of the child”? Tosfos quote Rabbenu Tam that it is a party to celebrate the birth of the child. Childbirth is dangerous. Labor is frightening. When a child exits the womb safely it is a time to celebrate and thank Hashem. People are to celebrate on the Shabbos after birth to thank Hashem for the miracle of a safe delivery. According to Rabbenu Tam’s understanding of our Gemara, this is the nature of the *shalom zachor* celebration. The *Terumas ha-Deshen* (269) writes that on Shabbos everyone is home. Many can gather. That is why it is a good time to have a party. The custom of a *shalom zachor* party is a gathering to thank Hashem for the miracle of a healthy delivery.

The *Derishah* offered a different rationale for the custom of *shalom zachor*. He taught that the child is in mourning for all the Torah learning that he forgot with birth. People visit with the child to comfort him, as people come to a *shiva* home to comfort the

mourner. Hence, the practice of serving chickpeas and other round beans at a *shalom zachor*. Mourners usually eat chickpeas and lentils. Eating the beans is a reminder of the fact that the child is in mourning for his lost Torah knowledge.

The *Teshuvos ve-Hanhagos* (2:202) argued that these two different reasons would give us a different directions for a time when a baby is still in the hospital on Friday night and is not yet home. According to the rationale of thanking Hashem for the gift of a healthy delivery, even if the child is still in the hospital there is reason to be thankful for the delivery. Let the neighbors gather and give thanks to Hashem. However, if the reason for the *shalom zachor* is to comfort the baby, then there would be no point in having the *shalom zachor* in the home if the child was not in the home. There is no comfort to a mourner to visit his home when he is not there.

What would the practical law be when the child is still in the hospital? Should the parents make the *shalom zachor* party?

The *Teshuvos ve-Hanhagos* concludes that the main reason for the *shalom zachor* party is the nature of Shabbos. All the blessings of the coming week first come into the world in a spiritual form on the Shabbos before the week. The Shabbos before a *bris* has the holiness of the *bris*. The Shabbos before a wedding has the gift of the wedding. The Shabbos before a *yahrtzeit* has the spirit of the *yahrtzeit*. On the Shabbos before the *bris* the special holiness of the *bris* has come down to the father. The neighbors come to the home to celebrate during a *shalom zachor* to bless the father and help anchor the spiritual gift that has come down. Therefore, even if the baby is not home, it is correct to host a *shalom zachor* celebration in the home (*Mesivta*).

Bava Kamma 81

May Israeli Soldiers Who Fell Be Reburied?

Our Gemara teaches about laws that Yehoshua bin Nun and his court instituted in the Land of Israel. One of their enactments related to a deserted Jewish corpse. A deserted corpse had the status of *meis mitzvah* in Jewish law. It is a disgrace for a deceased individual if he is not buried. When there is a deserted corpse, all Jews have the status of his relatives. Everyone must endeavor to bury him as soon as possible. Yehoshua and his court instituted that if the corpse was found in a deserted area he is to be buried where he was found. If he was found in someone's field, the owner of the field cannot protest and insist that the nation should bury the body somewhere else. When Joshua parceled out the Land of Israel he made everyone agree that if a deserted corpse would be found in their land, they would lose that piece of real estate and the corpse would be buried in his spot: *meis mitzvah koneh es mekomo*—a *meis mitzvah* acquires the spot on which it is found.

What is the reason for this law? Rishonim quoted by the *Chazon Ish* (*Bava Kamma* 14:15) suggest two possible reasons for why a deserted corpse need not be moved. First, Yehoshua wanted to make the obligation an easy one. He wanted the deserted corpse to be

buried by the passersby. If the passersby would have to carry the body to a cemetery, they might decide that the strain was too much for them and leave the corpse in the field. To ensure that they bury him it was instituted that they could bury him on location. The second approach was that the law was for the deceased. A deserted corpse might have begun to decay. If the finders were to drag him to another spot for burial the body might come apart and be disgraced further. To try and provide the greatest level of respect to the dead, Yehoshua legislated that the corpse was to be buried where he was found.

The *Chazon Ish* was asked, as the State of Israel was started, about this law. A fallen Jewish soldier has the status of a *meis mitzvah*. During the Israeli War of Independence many Jewish soldiers were killed by Arab attackers. They were usually buried where they fell. After the war ended the *Chazon Ish* was asked if their bodies could be dug up and reburied in proper cemeteries. Perhaps, as *meisi mitzvah*, they had acquired their graves. If this were true, it would be wrong to dig them up and move them elsewhere.

The *Chazon Ish* ruled that they should be dug up and buried in regular cemeteries. He explained that the legislation of Yehoshua ben Nun only applied in days of old. Then, the *beis din* would mark every grave of a *meis mitzvah*. Burying the deserted corpse would not lead to *kohanim* becoming impure. In our days, we cannot be confident of proper marking. If the fallen soldiers were left where they fell, their spots would likely not be properly marked. Leaving them would cause the roads and fields of Israel to be filled with unmarked impurity. Such a reality would present a great hazard to *kohanim*, who may not become *tamei* (ritually impure). The *Chazon Ish* instructed the Israeli army to transfer their fallen in cemeteries where they would be properly respected (*Me'oros Daf ha-Yomi*).

Bava Kamma 82

Reading the Torah at *Minchah* When I Missed the Reading During *Shacharis*

Normally the Torah is to be read during the morning prayers of Monday and Thursday. The *Shut Yehudah Ya'aleh* (*Chelek Aleph, Orach Chaim* 51) was asked about reading the Torah during *Minchah*: “If a group of us cannot make the morning *minyan*, however, we will be back in the town for *Minchah*, may we take out the scroll and read the Torah at *Minchah*?”

The *Yehudah Ya'aleh* answered that he himself once read the Torah at *Minchah*. He had been at a Rabbinic gathering. They did not have a *minyan* at the hotel where they met on Monday morning. At around four in the afternoon they came to a community that had a synagogue and a *minyan* available. Due to the fact that the three Rabbis had not heard the morning Torah reading, between *Ashrei* and the *Amidah* they took out the Torah and read from it. They felt that our Gemara was the source for the ruling.

Our Gemara taught that Ezra instituted that there should be a reading of the Torah on Mondays and Thursdays. The Gemara asked, “Moshe Rabbeinu already instituted reading the Torah on Mondays and Thursdays! The Torah says that the Jews traveled three days

without water. Water is a reference to Torah. Ever since that crisis Jews are to read Torah at least every three days. Therefore, we read on Shabbos, then there is a one-day break with Sunday. On Monday we again read from the Torah. We have a break on Tuesday and Wednesday. To prevent a three day span of no Torah, on Thursday we read again. If so, what did Ezra add?" The Gemara answered that Ezra either instituted that three people get *aliyos* on Mondays and Thursdays, while Moshe had only instituted that one person ascend; or alternatively Ezra instituted that on Mondays and Thursdays there would be ten *pesukim* read and not just three *pesukim*, as had been first instituted by Moshe Rabbenu. In light of the rationale of the law being a need to prevent a three-day span of no Torah reading, it would be appropriate to read at Minchah time, if necessary. We must take care that we not have three days of no Torah reading.

However, the *Yehudah Ya'aleh* pointed out that Rambam writes (*Hilchos Tefillah* 12:1): "Moshe Rabbenu instituted for the Jewish nation that we are to read the Torah on Shabbos, Monday, and Thursday during *Shacharis*." The *Kesef Mishnah* pointed out that the Rambam stated that the law was enacted to read Torah during the morning prayers. It sounds from the Rambam that it would not be correct to read Torah during Minchah during the week. The *Yehudah Ya'aleh* concluded that some texts of the Rambam do not have the word *be-Shacharis*, "in morning prayers." Perhaps that is the more correct version. According to this version of the Rambam, he agrees that the Rabbis instituted Torah be read every three days, and not necessarily only during the morning.

Rav Yosef Dov Soloveitchik, when he would travel from Boston to Yeshiva University, would often miss morning *minyan*. He would have the students take out a *sefer Torah* during Minchah and read the *keri'as ha-Torah* then. He related that this was the

view of his grandfather Rav Chaim Soloveichik. When Rav Chaim would attend Rabbinic conferences and only return home in the late afternoon, he would arrange for a reading of the Torah during Minchah so as to fulfill what our Gemara taught that we are not to pass three days without reading from the Torah. Other *Poskim* felt that this was not necessary.

The Maharshag was of the opinion that Torah reading was a communal obligation. If an individual missed out on the reading, he did not have any obligation to make it up by having a reading at Minchah.

The *Shut Shevet ha-Levi* (4:15) ruled that on an ad hoc basis one may read the Torah at Minchah if he missed out on the reading of *Shacharis*. However, one should not start a new custom. Torah reading was legislated for morning services. It would not be right to create an impression that for several months a year one will read at Minchah. If one is in a situation where for months it will be hard to attend *Shacharis*, you may read during Minchah, yet, you must see to it that several times over those months you make it to the communal *Shacharis* to keep the sense that the reading at Minchah is only temporary due to extenuating circumstances, a *sha'as hadchak*. (*Mesivta, Daf Yomi Digest*).

Men Using the *Mikveh*

Ezra instituted that if there was an emission of seed from a man, he may not study Torah or pray unless he first immerses in a *mikveh*. Tosfos (*Bava Kama* 82b s.v. *asa ihu*) write that we do not accept this according to *halachah*. We follow the view of Rabbi Yehudah ben Beseira, quoted in tractates *Chullin* and *Berachos*, that words of

Torah are not susceptible to impurity. One who has impurity upon him may study Torah. Tosfos ask: how could Rav Yehudah ben Beseira annul a rule legislated by Ezra? We have a rule that a later court cannot overturn the enactments of an earlier court unless it is greater in scholarship and number. Rav Yehudah ben Beseira's court was certainly not greater in scholarship than the court of Ezra.

Tosfos answer that perhaps Ezra had made his law with the proviso that any later court could annul it. Alternatively, perhaps Rav Yehudah ben Beseira did not have the tradition that Ezra had made this law. He argued with this tradition. He felt Ezra had never made such a law; only later courts had, and he argued with them. Finally, a Rabbinic law only takes effect once it spreads and is adopted by the majority of the nation. Perhaps this law of Ezra was never accepted by the majority of Jews. It was a decree most people could not follow. As a result, it never took effect.

The *Orchos Yosher* writes that many authorities are of the opinion that the law of Ezra was only annulled in regards to Torah study. The words of Torah are not susceptible to impurity. However, in regards to prayer, the law still stands. They feel that even today, one may not pray if he had a nocturnal emission prior to immersion in a *mikveh*. The *Pri Megadim* writes that while the immersion of Ezra was annulled, one who has the practice of immersing in a *mikveh* is deserving of a blessing. The Rambam himself writes that it is the practice in Spain and Iraq that a *ba'al ker*i will not pray unless he first bathes his entire body.

In *Shut Min ha-Shamayim* he asked an angel if one may pray without the immersion mandated by Ezra. He was told that prayer is service to Hashem. Just as a *korban* is disqualified by impurity, prayer is sullied when it issues forth from an impure body. If one will challenge this by pointing out that we all carry the death impurity

(*tumas meis*), and yet we pray, there is a distinction. The death impurity is not the product of the weakness of one's mind. It is also an impurity imposed on the person from an external force. *Tumas ker*i emerges from a person's own body. It is therefore more severe and damaging. Ezra instituted his law based on Divine inspiration. This is what causes us to stay in exile. We pray for redemption. Our prayers are rejected for they emerge from impure mouths. If men would regularly immerse in the *mikveh* and remove *tumas ker*i, redemption would come sooner.

The *Ma'or va-Shemesh* (*Parashas Emor*) writes powerfully about the importance of men going to the *mikveh*: "One cannot reach true Divine awe, to study with trembling and exertion, unless he is careful with the immersion of Ezra. If he studies Torah or prays without being careful to immerse to fulfill Ezra's enactment, he will never merit to grasp the essential understandings of Torah and *mitzvos*. If he studies Kabbalah while being impure, the study might make him a heretic. He will ruin Jewish souls who follow him [if he studies Kabbalah while in a state of impurity]. Therefore, those who wish to grasp the essential meaning of Torah and *mitzvos* must be very careful with this immersion. In addition, it is impossible to teach students and impress into their hearts fear of Hashem if one is not careful with this immersion" (*Mesivta*).

Bava Kamma 83

The Importance of Being the Twenty-Second Thousandth Resident

Rav Yitzchok Zilberstein suggested that our Gemara might lead to a lesson about how to choose which community to live in. Our Gemara discussed the Rabbinic law that one may not raise a dog unless the dog is chained and locked up. The Gemara explains that the reason for the enactment is that dogs often bark at people they do not recognize. If I raise an unleashed dog and a Jewish woman who is pregnant walks by, he might bark at her and cause her to lose the child. Rav Dostai of Biri added that Hashem rests His *Shechinah* on a gathering of twenty-two thousand Jews. This is derived from the verse (*Bemidbar* 10:36): *U-ve-nucho yomar shuvah Hashem rivevos alfei Yisrael*, “And when it [the ark] would rest, he would say, ‘Return Hashem to the tens of thousands and thousands of Jews.’” Moshe would pray that Hashem’s presence should come to rest upon tens of thousands, namely twenty thousand, and thousands, namely, another two thousand. When twenty-two thousand Jews gather the Divine presence rests upon them. If there would be 21,999 Jews in a place and one of them was a pregnant woman, Hashem’s *Shechinah* would

come to the group. However, if a dog were to bark and cause the woman to miscarry, this would cause the Divine Presence to leave. Our Gemara is a source for the idea that a gathering of twenty-two thousand Jews has special significance.

The Maharsha explains that in Heaven, Hashem's camp has twenty-two thousand angels. This is mentioned in the verse: *Rechev Elokim ribbosayim alfei*, "The chariot of the Lord is two tens of thousands and two thousands." When twenty-two thousand righteous Jews gather, they draw down the spirit of those twenty-two thousand angels. Hashem then rests upon them.

In light of the lesson of Rav Dostai, Rav Zilberstein suggested that if one had two towns he could move to, one in which there already were twenty-two thousand righteous Jews, and another with only twenty-one thousand nine hundred ninety-nine Jews, he should move to the second town. Through moving to the second town he would complete the requisite number to bring the Divine Presence.

Rav Chaim Kanievsky disagreed with this ruling. He thought that Rav Dostai was not teaching about a particular place. He was teaching about the national population. If the nation as a whole had only 21,999 members, the Divine Presence would not rest upon the Jews. Once the nation had twenty-two thousand members then Hashem's presence would rest on Jews in whatever size groups they gathered.

Rav Zilberstein pointed out that the *Kli Yakar* in his introduction to *Bemidbar* disagrees with Rav Kanievsky. The *Kli Yakar* explained that each tribe was counted at the beginning of the book so as to determine if each tribe had twenty-two thousand members, for the Divine Presence only comes to rest upon a group of twenty-two thousand Jews. In addition, the *Ein Yaakov* on *Yevamos* (63) disagreed with the idea of Rav Kanievsky. The *Ein Yaakov* explained that *adam me-elef matzasi*, one great man can be found out of a thousand

people. If there is a group of twenty-two thousand Jews, there will be twenty-two great men from amidst them. Those twenty-two will correspond to the twenty-two letters of the *alef beis*. Twenty-two holy letter people will bring down the Divine Presence upon them. This too implies that the rule of Rav Dostai was not about the nation as a whole. Rather, it was about a particular location. If there would be twenty-two thousand Jews in one place, that locale would have the Divine Presence. Rav Zilberstein therefore felt that one should move to a place where his presence would complete the number of holy Jews to bring down the *Shechinah* (*Chashukei Chemed*).

Shame

If a person wounds another person deliberately, he must pay five penalties: *nezek*, *tza'ar*, *rippui*, *sheves*, and *boshes* (damage, pain, medical expenses, lost wages, and humiliation). The Torah cares greatly about human dignity. It is very important to try and never cause someone else shame. If one shamed another person, he must pay. Our Sages taught us to treat questions of shaming others with great care.

Rav Zilberstein was asked by a groom if he needed to do anything to mollify his jilted bride. The groom had gotten engaged to a young lady. He then discovered that the woman's father was a very difficult man. The girl was very attached to her father. The groom broke off the engagement. He was now about to get engaged to another woman. He was afraid. Perhaps the complaints of his earlier fiancée would be a source of criticism against him in Heaven. He approached her and asked her to forgive him. She refused. She had been deeply hurt. He

was the second groom to break an engagement with her because of her father. She refused to forgive him. He asked Rav Zilberstein what he should do.

Rav Zilberstein asked Rav Chaim Kanievsky. Rav Chaim Kanievsky recommended that the groom pay the jilted bride the payments for shame (*boshes*). Let them determine how much such a family would demand in order to be humiliated twice in such a manner. They should pay that amount and then go ahead with the new match.

When Rav Zilberstein brought the question to his father-in-law, Rav Elyashiv, the Rav ruled that more must be done. Shame is a grave matter. If the family refuses to forgive even after a significant monetary payment, the groom must send friends to the family of the former bride and beg forgiveness.

There is a responsum of the *Chasam Sofer* which sheds light on the importance of asking forgiveness for shaming a person.

The *Chasam Sofer* (6:36) was asked if the remains of Rav Mordechai Benet could be removed from the town of Lichtenstadt and be reburied in Nikolsburg, where he had served as Rav. Initially he wrote three arguments to permit the transfer: (1) Rav Benet had been sick before he passed away. He had commanded before his passing that he be reburied in Nikolsburg; (2) He had been buried conditionally with the expressed statements that he would be eventually reburied; (3) His parents and ancestors were all buried in Nikolsburg. It is a benefit for a person to be in the company of family and ancestors after death. However, at the end of the responsum, the *Chasam Sofer* suddenly shifted. He wrote, "I thought about it and realized that people might say one may move graves. If the grave of the sage was moved, graves of simple people may certainly be dug up and relocated elsewhere."

The Rav of Gastnin related (see *Tzuf Harim*) that he met Rav Shimon Sofer and he explained why the *Chasam Sofer* changed his mind. The *Chasam Sofer* had been asked the question. He spent the entire night writing the answer permitting the transfer. As the night was ending he fell asleep at his desk. Rav Mordechai Benet then came to him in the dream. He told him, “I had been Rav in Nikolsburg for many years. I had traveled to Lichtenstadt and suddenly passed away. I was therefore buried in Lichtenstadt. I wish to remain in Lichtenstadt. There had once been a court case before me. I ruled that the groom could break the engagement. The jilted bride was deeply hurt. She was from Lichtenstadt. She is buried in Lichtenstadt. I was buried next to her. I deserve to be there as an atonement for having played a role in shaming her. Check the cemetery in Lichtenstadt. You will see that I am buried right next to her.” This was why the *Chasam Sofer* changed his mind.

We can learn from this story that one should be very hesitant before causing shame to a bride by breaking an engagement. Now that it had been done, great efforts should be expended to try and gain forgiveness (*Chashukei Chemed*).

Bava Kamma 84

Entering Danger to Save Others

The *Shut ha-Radbaz* (3:627) was asked: if a Gentile ruler grabbed a group of Jews and told one, “allow me to cut off your hand otherwise I will cut off the head of your friend,” must the Jew allow himself to lose a limb in order save the life of his friend?

He ruled that the Jew did not have to allow the ruler to cut off his hand. Jewish law holds that *chayecha kodmin*—your life comes first. Suppose two Jews are walking in the desert where there is no water around; one has a container of water, but it is only enough for one person. Should he drink it himself, or should he give it to his friend to save the life of his friend? We tell him: *chayecha kodmin*—your life comes first. He is to drink it himself. One is not obligated to die in order to save the life of a friend. So too, one does not need to endanger his life to save the life of his friend. Cutting off a hand is a danger to life. Our Gemara is proof.

Our Gemara brought many sources for the lesson that “an eye for an eye” is not a literal obligation. One who wounds the eye of his friend is not punished with his eye being taken out. The *Tanna de-Bei Chizkiya* suggested that the source for this lesson is the verse. The verse said, “an eye for an eye.” It did not say, “an eye and a life for an

eye.” If the law would be that one who blinds his friend loses an eye, the damager might lose his eye and get sick and die. Then he would have lost both an eye and life for having taken an eye. Therefore, “an eye for an eye” means that the damager must merely pay for the eye that he damaged. Chizkiya felt that loss of a limb can lead to death. We also know that we may desecrate Shabbos to save a limb when a limb is in danger, for loss of limb can mean loss of life. To lose a hand would be to enter danger of life. One need not endanger his life, or give up his life, to save the life of another person.

The Maharam Rekanati (*siman* 470) in his rulings disagreed. He ruled that one must lose a limb to save someone else from death. The *Chasam Sofer* (*Kesubos* 61b) also ruled that one must enter into danger and risk his own life to save someone else from grave danger.

The Radbaz’s ruling has great contemporary relevance. If someone needs a kidney transplant, is there an obligation based on the mitzvah, *lo ta’amod al dam rei’echa*, “do not stand idle by your brother’s blood,” to donate a kidney? According to the Radbaz there is no obligation. According to the Maharam Rekanati one would be obligated to do so. Rav Ovadia Yosef (*Shut Yechaveh Da’as* 3:84) ruled like Maharam Rekanati. He obligated individuals to donate kidneys to save others. Most authorities accept the ruling of the Radbaz. They feel that one is not obligated to enter possible danger to save someone else from certain danger. It would be a mark of piety to enter into danger to save someone else from greater danger. Therefore, one is allowed to choose to donate a kidney to his friend (*Mesivta, Peninei Halachah*).

Bava Kamma 85

Getting a Shot Before Yom Kippur in Order to Fast

Rav Moshe Feinstein was approached by an elderly man with a touching question. The man was no longer robust and healthy. His doctor had forbidden him from fasting on Yom Kippur. The man had a suggestion: “How about if the doctor gives me a shot before Yom Kippur which would enable me to fast. Would I be allowed to get such an injection and then fast?”

Based on our Gemara, Rav Feinstein did not allow the man to get the shot. Our *daf* teaches about medicine. The Torah commands one who damages another to pay for medical expenses: *ve-rappo yerappei*, “And he shall surely heal him.” The Gemara teaches that there is another lesson in this verse: permission was granted to a doctor to heal. Tosfos explain that we might have thought that doctors are only to heal a condition inflicted by man. If the Almighty made man sick, we might have reasoned, man is not to interfere with God’s decision and try to heal his friend. This is why the verse repeated the mandate of healing. A doctor is to heal both human-inflicted situations as well as an illness from God. Rav Moshe derived a powerful lesson from this Tosfos.

Whatever God places on man we are not to interfere with unless the verse explicitly permits us to do so. Without the verse allowing for a doctor to heal, our theology would have dictated that we cannot take medical action to interfere with Heaven's decisions. Now the verse permitted, and mandated, us to utilize medical knowledge to try and defeat disease. Medical behavior is allowed for conquering illness; it was never allowed to enable fasting.

There is no verse encouraging or mandating a person to undergo medical treatments so that he might fast. All medical treatments contain risk. Even getting a shot can have negative health consequences. If God made a person infirm and unable to fast, our theology dictates that we should accept the will of Heaven. We may pray for a change, but we have no right to undergo procedures to enable fasting. Permission was granted to the doctor to heal; it was not granted to him to perform procedures to enable fasting. Rav Feinstein directed the man to accept the judgement of Heaven, eat on Yom Kippur, and preserve his health (*Mesivta, Me'oros Daf ha-Yomi*).

Bava Kamma 86

Respecting a Blind Torah Scholar

The *Shut Ginna Veradim* discussed the mitzvah of honoring sages. The Torah commands us to give Torah scholars regard and honor. The *Ginna Veradim* was asked: “What about a blind scholar?” Is there an obligation to stand up when a blind scholar walks by? The blind scholar cannot see anyone standing for him. Maybe if he is unaware of people standing, it is not even an honor. Alternatively, since others see that he is being honored, perhaps it is still considered a display of regard.

The *Ginna Veradim* concluded from our Gemara that there is an obligation to stand for a blind scholar. Our Gemara discusses the law of *boshes*, shaming others. If someone causes someone else humiliation, the one who shamed his friend must pay. The Gemara asked, “What would the law be if a man was sleeping, someone humiliated him, he was embarrassed and he passed away before he woke up?” Is the payment for humiliation due to the shame the victim feels or is it due to the diminution of the person’s honor? If it is due to the shame that the victim feels, if he died in his sleep, he never felt humiliated and there would be no need to pay anything. However, if the payment is for the fact that others thought less of

him, even if he was embarrassed in his sleep and never became aware of what was done to him, nonetheless others saw his disgrace, and his honor was compromised. He would therefore deserve to get paid for the shaming. The conclusion of the Gemara is that shame payment is for the fact that others thought less of him. One pays for diminishing the honor of a person.

Since shame is based on how others perceive the person, honoring a sage is also a function of ensuring that others honor him. Even if he is blind, we should stand for him. The blind sage is unaware of others standing for him; however, his honor was increased when others stood for him. The mitzvah of honoring a sage is to increase his glory. Standing for him increases the regard others have for him (*Mesivta*).

Bava Kamma 87

When a Child Causes Damage

Our *daf* teaches that dealing with children and damage is difficult. If one injures a child, he must pay. However, when a child causes damage others, there is no liability; neither the child nor his father pays. Is this a license for children to damage the property of others?

The Rambam (*Hilchos Geneivah* 1:10) writes, “It is correct for a court to hit the child who steals, as much as the child can withstand, so as to train the young not to steal. The court should do the same to a child who damages.” The court must coerce the young not to harm others. There is no license to damage. Our *daf* merely teaches a lesson about financial liability if damage unfortunately occurred.

Rav Yehudah Assad (*Shut Yehudah Ya'aleh* 164) raised a powerful question. It is understandable why a child need not pay for his acts of damage. Children do not have responsible intelligence. They are immature. They also do not understand the import of their actions. However, why should the father not have to pay? Just as a farmer must pay for the damage done by his ox, because he should have watched it, the father should have to pay for the damage done by his son, because he should have watched his son.

He answers that that logic would have dictated an obligation of payment by the father. However, there are lessons from the verses of *Vayikra* (24:19, 21) that when a person damages, only the damager needs to pay. Therefore, when a child causes damage, he is an *adam ha-mazzik*. Only the child could have been obligated, for he is the culprit. However, since he is a minor, no obligation is created. Would a parent always be exempt? Consider the following scenario:

A father is a guest with his child at his friend's home. The father boasts about the brilliance of his son. He says to the table, "Would you like to see how capable my little genius is?" The host says, "Yes." The boy is lifted up and put on the table to perform. The little child grabs the expensive china plates from the table and starts to throw them to the floor and break them. The father calls out, "Remember *Bava Kamma* 87! When a child damages, there is no liability. He does not need to pay. And I do not need to pay." Would the father be correct?

In such a scenario, the *Shut Nachalas Eliyahu* (1:70) taught that the father would have to pay for all the damages. This situation would be analogous to a man who led his friend's ox onto his neighbor's wheat pile. The man must pay for the damage the ox caused. Even though the ox was not his, since he placed it on the items that it damaged, the act of eating the wheat is considered his (*Shulchan Aruch, Choshen Mishpat* 394:3). It is a case of *adam ha-mazzik*. One who puts his damaging child on the table has the same status. The damages were predictable. The man who put his child there has the status of *adam ha-mazzik* and is fully liable. The father and child would only be exempt from liability if the child entered the domain of another on his own and caused damage.

The *Hagahos Ashri* (*Bava Kama, Perek ha-Chovel, halachah* 9) is of the opinion that the exemption from payment for a minor's damage is only while the child is young. Once he matures and becomes older,

he must pay for the damage that he caused as a child. Other *Poskim* disagree. They feel that the exemption is absolute.

Even if the child is fully exempt for what he did as a child, the *Terumas ha-Deshen* (*Piskei Mahari* 62) taught that one should repent for the sins one performed as a child. Causing damage to someone else is a sin. Through repayment, one is forgiven by the victim and the sin is expiated. The *Shut Shevus Yaakov* (1:177) taught that the victim should be considerate. If someone who damaged me as a child comes and asks for my forgiveness, I should be satisfied with a partial payment and forgive him (*Me'oros Daf ha-Yomi*).

**What Is a *Mohel* to Do When the
Father of the Baby Insists on No
Religious Acts During the *Bris*?**

Rav Zilberstein was asked by a *mohel* what he should do in a tricky situation. The father had approached the *mohel* and asked him to circumcise his son. However, he insisted that the act be done without any religious behaviors. He did not want a *sandek* to hold the child. He wanted the child to be on a table. He did not want any blessings to be recited before or during the *bris*. He wanted a secular act. If the *mohel* would not agree to these conditions, he threatened to take the child to a doctor and have a circumcision in the hospital. Such an act might not fulfill the mitzvah at all. Perhaps in the hospital a Gentile would perform the circumcision, and there might not be any lifting of the skin (*per'iah*), and as a result, the *milah* would be fully disqualified. The *mohel* asked Rav Zilberstein to guide him. Should he agree to perform such a *bris*? Perhaps he should refuse.

Rav Zilberstein initially thought that he should refuse for two reasons. One, the Mishnah teaches in *Terumos* (1:6) that a naked person or a mute should not separate *terumah*, for he cannot recite the blessing. Apparently, if one cannot recite the blessing before the

mitzvah he should not do the mitzvah without the blessing. Here the *mohel* would have to perform the mitzvah without reciting a blessing. In such a case, maybe it is better not to perform the act at all. Second, such a circumcision is a desecration of the name of Heaven. An act of *bris* performed in a fully secular manner would seemingly be a declaration of lack of faith in Hashem and His *mitzvos*.

However, perhaps the *mohel* should perform the *bris*. The father of the boy is sinful, but how dare the *mohel* deny the child the chance to be correctly circumcised! The boy never sinned. He deserves a kosher *bris*. Our Gemara mentions that a child has an obligation for circumcision. Perhaps the *mohel* has a responsibility to ensure that the child get a kosher *bris* and save him from a hospital circumcision.

Rav Zilberstein pointed out that the laws of excommunication might shed light on this question. The *Shulchan Aruch* (Yoreh De'ah 334:10) teaches that a court, if it sees a need, may put someone in *cherem* and then he would not be allowed to join a *zimmun* of three people for *bentching*, or a *minyan* of ten; his dead would not be buried, nor his sons circumcised. If we say that a *mohel* must be concerned with the obligation of the child, how can the court set up a situation which would prevent the child from getting a kosher *bris*?

Ultimately, Rav Zilberstein ruled that the *mohel* should perform the secular *bris*. In the laws of excommunication, the person was being banned to get him to repent. Ultimately, he would repent and his son would get a kosher *bris*. However, in our case, if the *mohel* would not give the boy a *bris*, he would never get a kosher *bris*. We all are responsible to try and enable our fellow Jew to have a kosher *bris*. Therefore, the *mohel* should agree to the conditions and he should try and whisper the *berachos* when he leans on the table to perform the act, so that he will not be at variance with the directives from Mishnah in *Terumos* (*Chashukei Chemed*).

Bava Kamma 89

Damaging a Sentimental Object

Generally one who damages must repay his victim for the value of the object he ruined. What is the law with an object that only contains sentimental value? Consider a dear, old family photograph. Would there be an obligation to pay for spilling hot tea on the picture? On the one hand, to its owner it is very valuable. On the other hand, he could not sell it to anyone. No one would have paid him money for the photo. Perhaps since no one else would have paid him for his object, the item has no value and there is no need to pay him money for its loss?

The *Nesivos ha-Mishpat* (148:1) proved from our Gemara that there is no need to pay for the loss of an object that only has sentimental value.

His source was the Gemara's discussion about false witnesses.

Eidim zomemim, false witnesses who attempted to cause loss or pain to another, are punished with that loss and pain being imposed on them. Our Gemara discusses witnesses who falsely claimed that a woman was divorced and had received her *kesubah*. In truth, she was still happily married. Their falsehood was proven. They had attempted to cause her to lose her *kesubah*. However, as a married

woman, she was not yet entitled to her *kesubah* payment. The Gemara says that the witnesses would have to pay her a small sum, *tovas hana'ah*.

A married woman can monetize her *kesubah*. She can sell the right to collect her *kesubah* to someone else. That person would be taking a risk. If she would die before her husband, then the *kesubah* would have no value and would not produce any wealth. Therefore, he would only pay a small fraction of the *kesubah*, for the possible right to collect the *kesubah*. It was that small fraction that the witnesses were trying to take from her with their false claim.

Abaye said this proves that if a woman sells her *kesubah*, she gets to keep the *tovas hana'ah*. Had the law been that the *tovas hana'ah* would go to her husband, then certainly the witnesses should not be liable for anything. They could claim, "We caused you no loss. Even if we had not come, and you had sold your *kesubah*, your husband would have gotten that small sum, so we did not cause any loss to you, since you could not get money from your *kesubah*."

These words of Abaye are striking. People are willing to buy a *kesubah* from a married woman because of the chance that they might get to collect it. That chance is worth money. The woman herself, who has a *kesubah*, has this item of value. Owning the *kesubah* provides her with the chance to collect on the debt. If witnesses tried to establish that her *kesubah* was paid, they were seeking to deny her that option. Why would she not be entitled to reimbursement for loss of that which was valuable to her?

The *Nesivos* felt that this proved his novel idea. There is only a need to reimburse for an item that can be sold to others. Since, if *tovas hana'ah* were to go to the husband, were she to sell the *kesubah* she would not keep the money, then the item was not of value to her. Therefore, the same would hold true with an heirloom or a

sentimental object. It cannot be turned into money that the owner will keep. As a result, if it was damaged, there would be no obligation to pay for the damage.

According to the *Nesivos*, if someone has glasses that were manufactured for his eyes, and they could not fit on any other eyes, thus they could not be sold to anyone else, if they were damaged, he would not be entitled to reimbursement. *Halachah* only considers a person to have been damaged when he lost an object that he could monetize and he lost that option. What is only personally valuable does not create a financial obligation (*Heichalei ha-Torah*).

Bava Kamma 90

Slapping a Thief so that He Will Admit

Rav Zilberstein was asked: if we caught a thief and we need to hit him in order to get him to reveal where the stolen goods are hidden, should we try not to hit him in the face? Our Gemara taught about humiliation. It taught that according to the *tanna kamma* (first opinion), one who strikes his friend's ear and shames him must pay a *sela*; according to Rabbi Yehudah, who taught in the name of Rabbi Yosi ha-Gelili, the shamer must pay a hundred *zuz*, which is twenty-five *selaim*. If the damager slapped his friend in the face, it is deeply humiliating and the damager must pay two hundred *zuz*. In light of this law, perhaps when hitting the thief, we should avoid hitting him in the face for that would be deeply humiliating.

Rav Zilberstein asked his father-in-law, Rav Elyashiv. Rav Elyashiv ruled that if a slap in the face will enable the authorities to hit him less often, then they should hit him in the face. Each time one hits another Jew he violates two verses: *lo yosif* and *pen yosif*. A blow that shames deeply is worse than a regular blow; however, if it will enable the court to hit him less often, such a blow is causing fewer sins to be violated. It is best to ensure that the fewest *mitzvos* be violated.

In addition, it is helpful to the thief to get slapped. If the thief is slapped in the face and he is silent, such behavior will atone for his sins. Consider the verse in Lamentations (3:30), *yitten le-makkehu lechi yisba be-cherpah*, “He will give his cheek to the one who hits him, he will be sated with shame.” Commentators derive a powerful lesson from this verse. Generally, when one sins, he should fast a number of days to atone for his misdeed. However, if someone is shamed, hears his disgrace, and chooses to remain quiet, that silence atones for misdeeds. Thus the verse is saying, “Let him give his cheek to the one who hits him.” In other words, let him be silent in the face of a slap across the cheek. Such silence will wipe away the sin. He will no longer need to fast. *Yisba*—he can fill himself to satiation with food, *be-cherpah*—because he has experienced shame and that atoned for the sin. Perhaps this is the meaning of the statement of our Sages in *Pirkei Avos* (1:17), *Ve-lo matzasi la-guf tov mi-shetikah*, “And I did not find anything better to the body than silence.” Fasting is tough on the body. When one sins he should fast to wipe away the misdeed. If he were to suffer humiliation and not respond, that would wipe away the sin. He then would not need to fast. Therefore, silence in the face of shaming is the best for the body. The authorities should slap the thief, for it would enable him to be silent and thereby rid himself of sin (*Chashukei Chemed*).

Bava Kamma 91

Control Your Emotions

If a master knocks out one of the twenty-four major limbs of his slave, the slave goes free. The Baraisa taught that if a master hit his slave's eye and blinded the man, then the slave goes free. However, if the master hit the wall opposite the slave, and the slave can no longer see, the slave does not go free. Initially, the Gemara thought that this meant the court assesses damages. It calculates if the act of damage was likely to produce the resulting damage. If it was likely to produce that harm, then the damager had to pay. If it was unlikely to produce the degree of loss that it did, the damager would be exempt. Since most blows to a wall do not cause blindness, the master was exempt when his blow to the wall caused the slave to lose his sight. The Gemara rejected this interpretation. It explained that perhaps there is no assessment done by the court. However, in this instance the slave would not go free, for the master did not blind him. Man can always control his emotions. The slave allowed himself to get frightened. The Torah frees a slave when his master maims him. It does not free the slave who harms himself. Since he chose not to control his feelings, he himself was the reason for the lost eyesight, and as a result could not go free.

This Gemara teaches us a principle. Jewish law expects people to control their emotions and reactions. Rav Elyashiv issued rulings based on this law.

A man had a business. It was staffed by Gentiles. He would visit each Shabbos to supervise the work. His son worked with him in the business. The son became more observant. He knew he was not to work on Shabbos. He told the father he would no longer come on Saturdays to observe the workers. The father got very upset. He threatened his son. "If you do not come in on Saturdays, I will have a heart attack. You will be at fault." The son approached Rav Zilberstein and asked if this was a situation of *pikkuach nefesh*. Could he go to the factory on Saturdays to save the life of his father? Danger to life overrules Shabbos. Perhaps there was now a danger to his father's life.

Rav Elyashiv ruled that the young man was not to go to the factory on Shabbos. Our Gemara established the principle that a man can always control his emotions. The father could calm himself down. He could teach himself to be happy that his son was observing Shabbos. He was choosing to work himself up. No one else bore any responsibility to calm him. He should calm himself. The son should not violate Shabbos, in any way, to alleviate the misplaced feelings. A person has the ability and responsibility to control his emotions.

Another man had a store of antiques. A customer came in and examined an expensive ancient Chinese vase. The man dropped the vase and it broke. He then ran out of the store. The proprietor tried to chase the damager. He was unable to catch him or record his appearance. The store-owner was livid and despondent. He had just suffered a great loss. He then had a heart attack. His family asked Rav Zilberstein: Were they allowed to submit a claim for disability insurance from the State of Israel's Bituach Le'umi? Bituach Le'umi

covered instances where a person sustained a handicap from his work. Was the heart attack and subsequent handicap considered damage from work?

Rav Elyashiv ruled that they could not submit a claim. Our Gemara teaches that a person can control his emotions. The store proprietor could have controlled his reaction to the sudden loss. He chose to allow the trauma to affect him. The State of Israel never promised to pay for a person's choice to panic. This would not be considered work-related injury. He should have calmed himself down. A person can always control his reaction to events (*Chashukei Chemed*).

Pulling Teeth

Our Gemara teaches that a person may not wound himself. This is derived from the law of a Nazir. A Nazir is a sinner for denying himself a pleasure. Certainly, one who wounds himself is a sinner. Judaism teaches us that we are not the owners of our bodies.

The *Chafetz Chaim* (*Likkutei Amarim*, chapter 13) felt that for this reason, a Jew may not smoke. Smoking damages health. It weakens the heart. It can cause strokes and cancer. The body does not belong to us. We have no right to damage it or abuse it. We may not wound ourselves.

Rav Moshe Feinstein in *Igros Moshe* (*Choshen Mishpat* 2:76) wrote that smoking was not an absolute danger. Most who smoke do not die from it. Only a small minority get cancer from it. About such risks the verse promised, *shomer pesa'im Hashem*, "Hashem protects the fools." Therefore, he felt that one was allowed to smoke. However,

a *ben Torah* should not smoke for it is a possible source of danger. In addition, it is not medically needed. We should not take actions that are mere luxuries and are not needed for nutrition. Other *Poskim* disagreed. The *Shut Shevet ha-Levi* (10:295) felt that it is prohibited to begin smoking. Those who smoke should do all they can to stop. The children of Rav Moshe Feinstein have indicated that their father would have changed his ruling. He wrote his ruling before research demonstrated conclusively the danger in smoking. In light of current findings, Rav Moshe would also ban smoking entirely.

The *Orchos Rabbenu* discussed a painful question. The author felt much pain in his mouth from a tooth. He wished to simply pull out the tooth. Was he allowed to do so? Based on our Gemara that one may not wound himself, perhaps he was not to take out his tooth? He asked Rav Kanievsky, the author of the *Kehillos Yaakov*. Rav Kanievsky ruled that he should eat garlic to alleviate the pain, but that he should not pull out the tooth. One may not wound oneself.

Rav Zilberstein in *Chashukei Chemed* ruled that even if someone is poor and he cannot afford dental treatments, he may not pull out his tooth. Poverty is not a sufficient need to allow for self-mutilation. He should go to a dentist, get treatments, and promise to slowly repay the doctor over time.

It is related about the Rav of Unsdorf that he had terrible tooth pain, and because of tractate *Bava Kamma* refused to pull out his tooth. He pointed out that the Gemara calls wounding an animal a partial killing of the animal: *mah li katla kullah mah li katlah palga* (65a). Just as we may not kill ourselves fully, one may not to kill himself partially. He felt that taking out a tooth would be a partial death and that he would not do. At the end of his life the pain was too much. He did pull out his tooth that was causing him pain. He

then related, “I never knew how pleasurable life in this world could be without tooth pain” (*Mesivta*).

Selling Organs

Reuven was badly in debt. His lenders were pursuing him and giving him no rest. He had no job. No income. A neighbor of his was lame and sick. Both of the neighbor’s kidneys failed. Reuven had a thought. His neighbor needed a kidney transplant. The sooner the better. Perhaps he could sell his kidney to his neighbor. He would donate his kidney. It would be taken from him and transplanted in the sick individual. In return, his neighbor would pay him forty-five thousand shekel. With the monies he would repay his loans. He brought his question to Rav Zilberstein. Was he allowed to sell his kidney?

Rav Zilberstein ruled that he was allowed to do so.

One may not lacerate or wound oneself. Our Gemara teaches that a man is not the owner of his body. He may not wound himself. Just as there is a prohibition of *bal tashchis* forbidding a person from ruining property, one may not damage one’s own body. Need of funds is not a sufficiently great need to justify wounding oneself.

In this instance, though, it would be a mitzvah to donate the kidney. The person who gives his kidney is saving the life of another man. Saving lives overrides all the *mitzvos* of the Torah. *Bal Tashchis* and the prohibition of self-wounding are overridden by the obligation to save a life. One would not be obligated to give a kidney to save his friend. One is not obligated to place himself in danger to save someone else from a greater danger. However, one is allowed

to do so. The man who is giving up his kidney deserves money. His future health might be compromised. In the case in question it was an unmarried man who wished to give up his kidney. Giving up the kidney would make it harder for him to find a wife. To avoid the prohibition of deceitful sale, he would have to warn any woman he dated that he only had one kidney. It would be harder for him to find a spouse as a result. He deserved money for that loss. As a result, he would be allowed in this instance to sell his organ.

Rav Elyashiv mentioned to Rav Zilberstein that if we had a court with the power to create lasting enactments, perhaps they would enact a rule prohibiting sale of human organs. The possibility of selling a human organ can lead to abuse. Unscrupulous dealers might prey on the poor and convince them to sell organs. In truth, the poor should try and work or seek charity before they sell their organs. Maybe a Sanhedrin would legislate to never allow reimbursement for organs to prevent such abuses. We do not have such a court. No such law has been passed in our tradition. Therefore, one may take payment for an organ, and one may engage in such activity if it is needed to save a life (*Chashukei Chemed*).

Bava Kamma 92

Does a Professional Boxer Need to Pay His Friend for the Damage He Caused Him in the Ring?

Our Mishnah taught that if a person told his friend, “Blind my eye,” and the friend did so, the friend must pay. If he said, “Blind my eye on condition that you will be exempt,” and the friend blinded his eye, he would also have to pay. Rishonim have differing explanations for this Mishnah. Rashi, Tosfos, and Rosh (see *Tur, Choshen Mishpat* 421) explain that when the victim said, “On condition that you will be exempt,” he still had not fully and explicitly exempted the damager from liability. If the victim said, “Hit me, and I forgive the debt, you need not pay me at all,” then if the damager hit him, he would be exempt from paying. The Rambam (*Hilchos Chovel u-Mazik* 5:11) disagrees. He feels that a person never forgives damage to his body. Even if he explicitly exempted the damager from liability, he did not mean it. The one who damaged him must pay.

There are instances where everyone would agree that the damager need not pay. There are situations where we can be sure there was heartfelt forgiveness of liability. The victim certainly meant his words

that the aggressor was not liable. In these cases the damager would not have to pay. Professional boxers would be in this category.

The *Shulchan Aruch* (*Choshen Mishpat* 641:5) rules that if two professional wrestlers enter a ring and one knocks the other down and blinds the other, the damager need not pay. Professional wrestlers and boxers are paid. They know entering the ring that there is a likelihood of suffering damage. They each forgive any monetary claims in order to get the other to participate and fight. We can be sure that they were sincere in forgiving any right to press a claim against each other. Even the Rambam would agree that their waivers were real. The Rambam explained that a person who tells a damager, “Hit me and you will not have any obligation,” never meant it. It is unreasonable for a person to invite violence and intend to forgive any claim. However, it is very reasonable for a boxer to forgive his claims against his fellow boxer. If he would not wholeheartedly forgive the claim, his friend would never enter the ring to fight him. He would then never earn money as a boxer. He knew going into the fight that there was a high probability that he would suffer a wound and he forgave the monetary claim. The injured boxer could not press a claim against his friend.

While the boxer would need not pay, there are still Torah prohibitions against hitting a fellow Jew: *lo yosif* and *pen yosif*. One is not the master of his own body. According to many authorities, he does not have the ability to suspend those laws. These *Poskim* feel that both boxers are committing sins by hitting each other, but they would not have to pay each other any money (*Me’oros Daf ha-Yomi* quoting *Aruch ha-Shulchan*).

Bava Kamma 93

The Power of Trust

The Gemara taught that people say, “When I was young I was treated as a mature adult. Now that I have aged I am treated like an immature child.” An example of this popular quote is how Hashem treated the Jews who left Egypt. When we first left Egypt, Hashem Himself surrounded us with His clouds of glory and His pillar of fire. But after we were in the desert for a lengthier time He suggested sending an angel to lead us into Israel.

The Vilna Gaon explained this Gemara based on a parable in the Midrash (*Vayikra Rabbah* 25:5): When a chicken is young, its mother puts its food directly into its mouth. When it gets older, the mother hits it, and sends it out on its own to find food. So it is with Hashem and with the Jewish nation. When we were young, and when the nation first went out into the desert, we had great trust in Hashem. The more trust one has in Hashem, the more He rewards that trust and shows love. Initially in the desert we were blessed with His presence. However, as the nation matured it began to trust its own strength. When a person gets older he starts to believe in and rely on his own abilities. When one relies on himself, he is distancing Hashem’s supervision. When the nation was less trusting of Hashem,

Hashem removed His presence and sought to send an angel to lead us. This is why in the holiest of holies, the holy ark had two cherubs atop it. The Gemara in *Sukkah* (5b) teaches that the cherubs had the faces of babies. The message of the holy ark was that everyone should try to have the trust in Hashem of the young children. Trust in Hashem draws down blessings (*Mesivta*).

The Meshullach Was Negligent and the Donations Were Lost: Must He Pay?

Reuven was hired by a yeshiva to travel to the United States and collect funds for the institution. He went to America and went soliciting door to door. He was negligent with the funds he collected. They were all stolen from him. He came home empty-handed. The teachers were now without funds for their salaries. They sued him. Did Reuven need to pay for his negligence?

Our Gemara taught that the Torah speaks of a watchman who must pay for negligence with the words (*Shemos* 22:9): *ki yitten ish el rei'eihu chamor or shor o seh ve-chol beheimah lishmor*, “When a man will give to his friend a donkey, ox, sheep or any animal to watch.” These words teach, *lishmor ve-lo lechallek le-ani'im*, “To watch but not to distribute among the poor.” One who was given objects to watch and return to their depositor is responsible for negligence. However, one who was given money to distribute to the poor is not liable for negligently losing the funds. Funds of the poor are monies that cannot be demanded. No poor person could demand the money back. The *tzedakah* distributor has the right to decide how much to give to each poor person. Monies that do not have an owner who can demand them do not create obligations upon a watchman.

Our Gemara related a story. A wallet of charity was brought to Pumbedisa to be given to the poor of the town. Rav Yosef gave the wallet to a watchman to guard. The watchman was negligent. The monies were stolen. Rav Yosef made the watchman pay back the money that had been in the wallet. Abaye asked Rav Yosef: “It was money of the poor. *Lishmor ve-lo lechallek le-ani'im*, monies of the poor do not create obligations for repayment from the watchman. Why did you make him pay?” Rav Yosef answered that the poor of Pumbedisa differed from their compatriots in other towns. In Pumbedisa there were established amounts of money each poor person would receive weekly. The charity distributors did not have any discretion to decide who to allocate the funds to and how much to give. As a result, Pumbedisa charity money was *mammon she-yesh lo tov'in*, monies that have demanders. The watchman had to repay the poor people for their money that he negligently lost.

In our case, the employees of the yeshiva are like the poor of Pumbedisa. They expected set salaries. They demanded their monies from the negligent fundraiser. The *Daf al ha-Daf* ruled that in our scenario, the *meshullach* would have to pay for the funds that he lost (*Daf al ha-Daf*).

Bava Kamma 94

If He Stole an Apple, Recited a Blessing, Then Paid for the Apple Before He Took a Bite, Must He Recite Another Blessing?

Our Gemara lists a series of Tannaim who felt that changing an object does not impact its halachic status: *Shinnui bimkomo omed*. One of the Tannaim was Rabbi Eliezer ben Yaakov. He taught that if someone stole a *se'ah* of wheat kernels, ground them into flour, kneaded the flour into a dough, baked the dough, and then sought to separate a piece as *challah*, he could not recite a blessing: *Ein zeh mevarech ella mena'etz*. It would anger Hashem to hear a blessing on this item that had been stolen. From this statement we learn that changing the wheat into flour, then dough, and then baking, did not change its status as a stolen object. We also learn that one may not recite a blessing on a stolen item, for it angers Hashem.

Reuven walked into Yaakov's orchard and stole an apple off the tree. He decided to eat the apple. He recited the blessing of *borei pri ha-etz*. Before he could take a bite Yaakov appeared. He was incensed: "You thief! *Chutzpanyak!* Give me back my apple!" Reuven felt bad.

He pulled ten shekels out of his pocket and handed the money to Yaakov. Yaakov was mollified and walked off. Could Reuven now eat from the apple? Did he need to recite a new blessing? Perhaps his blessing which was recited while the item was stolen was not a blessing and a new blessing is in order?

Rav Zilberstein felt that he would not have to repeat the blessing.

We have a rule about blessings that when in doubt we are to be lenient: *Safek berachos le-hakel*. In our case there are several reasons to be in doubt about the need for a new blessing. First, the *Maseis Moshe* was asked about a person who stole an *esrog*, recited blessings on it, and waved it the first day of the holiday. On Chol Hamoed he felt guilty. He approached the store-owner from whom he stole the *esrog*. He gave him a large amount of money. He begged for forgiveness. The store-owner told him that he was fully forgiven. The *esrog* was his. He wondered to the *Maseis Moshe*: had his initial blessing been in vain? The *Maseis Moshe* ruled that since the owner had forgiven him, retroactively he had owned the *esrog* at the time that he had used it. Jews wish to help each other fulfill *mitzvos*. As a result, his earlier blessings had not been in vain. Here as well, Yaakov certainly wishes to help Reuven fulfill *mitzvos*. Since Reuven paid Yaakov, according to the *Maseis Moshe* (and *Birkei Yosef* agrees with this ruling), retroactively it had been Reuven's, and the blessing was not in vain.

Secondly, the Rambam and Ra'avad argue about the law of our Gemara. The Rambam is of the opinion that a thief may not recite a blessing over a stolen object. The Ra'avad disagrees. The Ra'avad feels that while the thief is angering Hashem, he still is obligated to recite a blessing before using it for a mitzvah or benefiting from it (see *Beis*

Yosef 196). According to the Ra'avad, *be-di'aved*, after the fact, a thief who blessed on a stolen object did recite a proper blessing. Both the Ra'avad and *Maseis Moshe* would rule that Reuven should not recite a new blessing in our case. Since in blessings we are to be lenient, Reuven should probably not recite a blessing; rather he should just eat the apple (*Chashukei Chemed*).

Atonement for a Smoker

Our Gemara teaches that some people have a hard time gaining atonement. Criminals whose sins damaged many people need to do a lot to gain atonement. They might not even know all the victims they harmed. How then can they make people whole? How can they correct their misdeeds?

Shepherds who allowed sheep to graze in the fields of others and tax-collectors who siphoned some of the levies to themselves are among those who have a hard time gaining atonement. The Baraisa taught: if they know which objects were taken from particular people, they should return those stolen items to those victims. For the masses, whom they do not know who they harmed, atonement is harder. They must become communally minded. They should donate to the nation. They should dig wells and cisterns. Many will benefit from them. Hopefully their victims will benefit a bit as well, and in this way they will have provided benefits to those whom they harmed. Rav Zilberstein felt that, in our days, someone who smoked a lot for many years would have the status of a person who damages many people.

A smoker harms himself. He also harms all those who breathe in his smoke second hand. If he smoked a lot, masses were damaged

by his actions. Rav Yaakov Kamenetsky (page 318 in the book *Reb Yaakov*) supposedly said that all of his fellow students at the Slobodka Yeshiva were not drafted into the Russian army, with one exception: The one who encouraged other students to smoke. He felt that encouraging smoking was a great sin, and the Almighty showed His displeasure.

One who smokes damages the health of all around him, for they breathe in his poisonous vapors. He would not know how many people he damaged. Therefore, it would be difficult for him to gain atonement. A man who had smoked for seven years came to Rav Zilberstein. He wanted to know what he should do to try and gain atonement. The Rav told him that he should give money to a hospital that treats victims of smoking. Through helping the community, perhaps some of the individuals he harmed will be helped; then he will hopefully gain forgiveness for his harmful acts (*Chashukei Chemed*).

Bava Kamma 95

Hashem Tears Down the Building to Return the Beam

Our Gemara mentions *takkanas marish*. If a thief stole a beam and then built it into a palace, the Biblical law would have required him to take apart the building and return the beam to the person he stole it from. The stolen item had not been changed. Therefore, Torah law would have legislated that it be returned regardless of the difficulty. The Sages were lenient with the thief. They wished to encourage him to repent. They legislated that he did not have to tear down the building to get the beam back out. All he had to do was pay for the beam. The Kabbalist Rama mi-Fano (*Asarah Ma'amaros*, *Ma'amar Chikkur Din* 4:13) taught that the Almighty treats the realm of evil based on the Biblical law.

The realm of evil, *sitra achra*, seeks to draw nourishment from holy sources. It might swallow a holy soul. It will leech from sacred life and build an entire structure. The Almighty will eventually save the soul. He will not be satisfied with payment or with a return of the soul. He will take apart the entire edifice of evil. This is the meaning of

the verse (*Koheles* 8:9): עת אשר שלט אדם באדם לרע לו, “A time when he made man rule over man to hurt him.” The force of evil steals a man, the righteous soul, to draw nourishment from it. Hashem allows him to rule over a man. The *sitra achra* builds that righteous soul into his structure of evil. Hashem then comes to save the innocent soul. When He saves the holy soul back He tears down the entire building of evil.

The Sages instituted *takkanas marish* to encourage repentance. The evil force of *sitra achra* has no intent of ever repenting. As a result, the Almighty forces him to fulfill the Biblical form of returning a lost object. The entire structure of evil gets dismantled. In the end, the *sitra achra*’s seizure of the soul brought it harm and destruction. Hence the phrase *lara lo*, “to hurt him.” Hashem allows evil to seize holy souls, only to hurt the evil by destroying it fully to return the soul to its rightful spot.

The Chida quoted the Kabbalist Rav Yaakov of Vilna, who utilized the idea of the Rama mi-Fano to explain a story in *Sukkah* 31a. The Gemara relates that there was an old woman whose branches were taken by the slaves of the Jewish governor and used to build the ruler’s *sukkah*. She complained loudly to Rav Nachman. “The *Reish Galusa* and his household are sitting in a stolen *sukkah*!” Rav Nachman ignored her. She cried, “A woman whose ancestor (Avraham Avinu) had three hundred eighteen servants in his household is crying to you, and you ignore her?” Rav Nachman told his students, “This woman is a loudmouth. Based on *takkanas marish* the household of the governor does not have to take apart the structure to return the branches. She is only entitled to money. The *sukkah* is valid.” The Chida asked, why did the woman mention as the greatness of

Avraham the detail that he had three hundred eighteen slaves in his household? There were other features of Avraham's life that indicate how he and his descendents were deserving of respect.

The Chida answered: the Torah mentioned the number of servants in Avraham's household when Avraham went out to liberate his nephew Lot. Four kings had come and defeated five regents. They took Lot captive. Avraham took his three hundred eighteen men to get Lot back. The Ari teaches that the soul of the Amora Rava was with Lot. This is hinted in the verse which described the capture, "And they took Lot and his possessions, [Lot was] the son of the brother of Avraham," – ויקחו את לוט ואת רכושו בן אחי אברהם. The first letters of ויקחו את לוט ואת רכושו בן אחי spell רבא. Nimrod was one of the four kings. He wanted Lot in order to steal the spark of Rava's holy soul. Avraham took three hundred eighteen men and totally obliterated Nimrod's forces. He treated Nimrod the way Hashem treats the *sitra achra*. He did not accept payment. He destroyed the armies of the four kings. He showed them that their victory over Lot spelled their destruction by the hands of Avraham and his men. They who would not repent, would not have *takkanas marish*: אשר שלט אדם באדם לרע לו. The old woman invoked this story to argue that just as Avraham's actions were a rejection of *takkanas marish*, Rav Nachman should also uphold the Biblical standard. The governor's *sukkah* should be taken apart to return her branches to her.

Rav Nachman rejected her entreaty. The Jewish governor and his household were not like Nimrod. They would repent. The Rabbinic enactment was made for them. They were to give the lady money for her branches; however, they did not have to take apart the entire edifice (*Daf al ha-Daf*).

If He Stole a Sheep, Returned It, but When It Was Slaughtered It Had a Hole in the Lung, Must the Thief Pay for the Sheep?

Our Gemara quotes a Mishnah about one who stole an animal. If he stole an animal and the animal aged in his domain, he cannot return it. He must pay the value that the animal had at the time of theft. The Gemara explains that this law is based on the rule *shinnui koneh*, “a change acquires.” He stole a healthy animal. The aged animal has changed from what it was like when he stole it. The thief acquired it and must pay its value.

A man stole a sheep. He felt guilty. He returned the sheep. The owner accepted it back. A few days later he hired a ritual slaughterer and the sheep was *shechted*. When examining the internal organs of the animal, a hole was discovered in the lung. Doctors said with certainty that the hole happened two weeks before, when the sheep had been in the hands of the thief. The veterinarians believed the sheep could have lived with the hole for years. Nonetheless, *halachah* still considered such a hole a *tereifah*. The owner of the sheep demanded of the thief that he pay for the sheep that he stole. The thief claimed, “I returned it to you. I have no further liability.” Who is correct?

Rav Zilberstein initially thought that this would be similar to our Gemara. Just as when a stolen animal ages the thief must pay for the animal, we should say that when the animal got sick and developed a hole, it was a change, and the thief must pay for the sheep. The *Shulchan Aruch* (*Choshen Mishpat* 363:1) rules that if one stole an animal and it aged, or it weakened permanently, such as if it developed an illness that cannot be healed, the thief must pay for the value of the animal, and he cannot return the damaged beast once it

changed while it was in his domain. In our case, the hole in the lung cannot be healed. The animal changed, so the thief should have been unable to claim *harei shelcha lefanecha*, “Behold your object is back.”

Rav Zilberstein ultimately thought that perhaps this case would be different from an animal that ages. When an animal ages, the change is apparent. Everyone can see that it has aged. An animal that developed a hole internally has a change that is not apparent. The *Shulchan Aruch* ruled that if one stole fruits and they all rotted, he would be unable to return them and would have to pay for them. If he stole fruit and some of them rotted, he would be able to return them. The *Chasam Sofer* explained that when only some of the fruits spoiled, the decay is internal and not visible. If the change was not visible, it is *hezzek she-eino nikkar*, damage that is not discernable. As a result, the thief can return the fruits. Perhaps an internal hole is also considered *hezzek she-eino nikkar* and therefore the thief had returned the object that had been stolen and he did not need to pay further now that there was a hole in the lung (*Chashukei Chemed*).

Bava Kamma 96

Delivering *Esrogim* After Sukkos

Our Mishnah taught that if someone stole *chametz* and then returned it after Pesach, he need not compensate the victim of his theft further. *Chametz* that was owned by and in the possession of a Jew during Passover may, according to Rabbinic enactment, never be eaten or enjoyed. Nevertheless, this change in status is not an apparent change to the physical bread. The thief can tell his victim *harei shelcha lefanecha*—behold your item is before you. What about a person who wished to deliver *esrogim* after Sukkos? Could he claim, *harei shelcha lefanecha*?

An *esrog* merchant traveled to a town where there were many fine *esrog* fruits for sale. He purchased a box of beauties. He brought the box to a coach service. He asked the service to quickly bring the box to his town and deliver it to his wife. He was sure that his wife would sell the fruits for a handsome profit. The owner of the wagons gave the box to a driver with many other deliveries to make. The driver forgot about the *esrogim*. He only delivered them two weeks after Sukkos. The merchant was livid. He summoned the coach service to a *din Torah*. He sued for the losses he had incurred. The coach

service owner countered with *Bava Kamma* 96. He argued, “Just as a thief can return useless *chametz*, I can deliver useless *esrogim*. *Harei shelcha lefanecha*, behold your item is before you.”

The *Teshuvos Nachalas Tzvi* (291:21) dealt with this case. He pointed out that *Poskim* argue about a thief of *esrogim*. If a thief stole an *esrog* before Sukkos, could he return it after Sukkos and claim, “I have returned the item”? The *Pri Megadim* initially thought he could, for it is like a thief who returns *chametz* after Pesach. However, he later pointed out that perhaps *chametz* after Pesach is rare, and the Sages do not legislate for rare cases. *Esrogim* after Sukkos might be more frequent. The *Pri Megadim*’s conclusion was that he was unsure how to rule. The *Teshuvos Beis Shmuel* also dealt with this issue. He was sure that the thief could not return the *esrogim*. He points out that *chametz* after Pesach looks normal. To someone who did not know that it was owned by a Jew, it would appear to be kosher and proper. The fact that it was owned by a Jew was damage that was not visible. However, everyone knows that an *esrog* after Sukkos has almost no value. An *esrog* after Sukkos would be in the category of visible damage. If someone stole merchandise during a fair, when there were many buyers for the merchandise, and returned it after the fair when no one was interested in such goods, he would not be able to claim, “behold your item is before you.” The *Beis Shmuel* argued that after the fair, everyone knows that the merchandise is useless. It would be therefore viewed as an item that was discernibly damaged. The *Nachalas Tzvi* then argued that even the *Pri Megadim* would agree that in this case the coach service owner was liable.

The coach service had been hired to deliver the *esrogim* before the holiday. When a worker is hired to perform a particular task, if he neglected to do his job, even if the damage was not visible, he cannot claim *harei shelcha lefanecha*. The Rema ruled that if someone was soaking flax and he hired a worker to take the fibers out of the water

before they got ruined, if the worker changed his mind and decided he did not want to do the job, then the worker has to pay for the damages if there was no time to hire alternate workers and as a result the flax got ruined. Even if the damage was slight, the worker would have to pay. The worker could not claim *harei shelcha lefanecha*. It would not be like someone who stole fruits, who could return them, if only a few of them became rotten. The reason for the difference is that since one hired the worker to take out the flax, and he accepted that responsibility, he is responsible for the damage if he did not do his job. Only with returning stolen objects is there the possibility of claiming *harei shelcha lefanecha*. A paid worker is responsible if he did not do his job. The coach drivers were hired workers.

The coachman had been hired to get the *esrogim* there on time. When he did not do so, he became liable, according to all, for the damage.

In light of this ruling, Rav Zilberstein suggested that if there was a fire, and the fire department was called, but the firemen were negligent, came late, and as a result there was a lot of damage, then the firefighters would be liable. The firemen are hired by the community to respond quickly to a fire. If they do not respond promptly they are liable for the damages. They cannot claim an exemption of *gerama* or other points of exemption.

There is a case of an institution that held its annual dinner. The owner of the institution wanted journals printed to give out at the dinner. The printer was lazy. He delivered the journals after the dinner. He claimed, "You have your journals." Rav Zilberstein ruled that he would have to pay the institution for the damage he caused it. Since he was hired to deliver journals for the dinner, he bore full responsibility for the neglect and lack of performing his job (*Chashukei Chemed*).

Bava Kamma 97

Using Someone Else's Worker

Reuven needed work done in his home to repair his sink. His neighbor Shimon was building an extension to his apartment. Shimon had workers whom he paid each day for their labors. One day Reuven saw that one of Shimon's workers was sitting doing nothing. He asked him what was going on. The worker replied that he was a plumber and there was no plumbing work that day, and he was waiting for the builder to finish his task. Reuven asked the plumber to come into his home and repair the sink. "It will only take an hour or two." The plumber completed the job in an hour. Does Reuven need to pay the plumber? Perhaps the time of the plumber was already compensated for by Shimon and the plumber did not deserve anything more. If Reuven did need to pay, did he owe the money to the plumber or to Shimon? Maybe the fact that Shimon was paying the plumber that day made all the work that the plumber would do the possession of Shimon.

Rav Zilberstein pointed out that our Gemara would shed light on this question.

If a thief uses the ox he stole and then returns it, he does not need to pay a rental fee for having used the ox. This is based on the rule

of *kinyanei gezeilah*, acquisitions created by the act of theft. When a thief takes an item, he has an ownership stake in the item. As a result, if he uses it he need not pay for the use. Land, on the other hand, can never be moved, and therefore an interloper on the land of another person does not have any theft acquisitions in the land.

The Gemara discussed the status of slaves, since slaves are considered like land for some halachic purposes. Rav Daniel bar Rav Ketina taught a lesson in the name of Rav: If a man grabbed his friend's slave and forced him to do labor for him, he would not owe any money to the friend. The Gemara finds this troubling. A slave should have the status as land: *Eved hukash le-karka'os*. The slave was compared to land. Just as a thief has no rights in the land on which he squats, there should be no rights to the thief who grabbed the slave. If it was the slave of another, he should therefore have to pay the owner for using the slave. The Gemara answered that Rav Daniel bar Rav Katina was dealing with a unique scenario. If an owner was using his slave and someone else grabbed the slave and used him, the kidnapper would owe money to the owner. The case of Rav Katina was when the slave was not doing any work at that time. It was a scenario where the grabber benefited while the owner suffered no loss. It was like a man who squats in a courtyard that was not going to be rented out. The courtyard owner suffered no loss. The squatter gained: *Zeh neheneh ve-zeh lo chaser patur*, "If one gained and the other did not lose, the one who gained need not pay." The Gemara then asked: but that law only applies to an empty home! The squatter helped the landlord by keeping the house from being deserted, or by repairing things that only someone living in the space would notice. If there would be no gain for the landlord, the squatter would have to pay because he benefited at someone's loss. However, in the case of the slave, how does the owner benefit from his friend's use of

his slave? It is a loss for the owner when his slave is weakened. The Gemara answered that the owner would not want the slave to learn the ways of sloth and laziness. He would be getting benefit in the fact that his neighbor was keeping his servant busy. It would therefore be analogous to a squatter in a home that was not on the market for rent, and there is no liability.

It emerges from the Gemara that the reason for Rav Daniel bar Rav Katina's ruling was that the slave owner wants to prevent his slave from learning laziness. As a result, he is benefiting a bit from the actions of the one who grabbed the slave. This logic would not be applicable in our case. An employer has no interest in educating his employees. As a result, since Reuven received benefit from the employee, without providing any benefit at all to Shimon, he would have to pay.

Would the plumber have to give the money to Shimon?

Rav Zilberstein felt that he would not. The *halachah* teaches that an employee who finds a lost object gets to keep the object and need not give it to his employer. Here the employee had fulfilled his obligations to Shimon. He found an opportunity to make more money. He could keep that money and he would not have to give it to Shimon. This is like the discussion *Poskim* have about *Kaddish*.

If someone passed away, it is a merit for *Kaddish* to be recited regularly on his behalf. *Poskim* discuss the case of a man who was hired to say *Kaddish* for one person. Then another person approached him and asked him to say *Kaddish* for a different deceased individual. Could he say *Kaddish* and have it count for two souls? Many authorities feel that he may. The *Kaddish* being said for multiple individuals is a merit for them all. Adding another person that he is thinking of does not detract from his initial commitment to say *Kaddish* for the first person. Since he is not harming his initial

employer, he can take an additional job. It is like finding a lost object. The found item belongs to the employee who found it. The new work is the entitlement of the employee, since it did not interfere with his initial obligations.

Rav Zilberstein therefore ruled that if someone hired a cab to deliver a package to the other side of town, the cab driver could pick up passengers headed that way and charge them for the ride. His taking passengers would not interfere with his initial commitment. It was a discovery of new income. He could keep that income (*Chashukei Chemed*).

Bava Kamma 98

He Knocked over a Bottle of Oil Behind a Store Closet: Must He Pay?

A costumer in the store was clumsy. While reaching for a bottle of oil he knocked it over and it fell right behind a heavy closet. The owner of the store was upset. “I cannot get to that bottle. Nor will anyone else push a heavy closet just to get to that bottle. You need to pay me for the loss.” Did the costumer have to pay?

Our Gemara contains a lesson from Rava. If a person pushed his friend’s hand and a coin slipped from the hand into the clear waters of the sea, the pusher did not need to pay. Rava explained that the coin was available. The owner could dive in and retrieve it. If he were to hire a diver to get the coin, the cost of the diving would be an indirect damage. Some Rishonim explain that this is a case of *gerama bi-nezikin*, indirect damage, which is exempt. Others classified it as *garmi bi-nezikin*, indirect yet virtually certain damage, and they explained that Rava would exempt cases of *garmi*. The *Shulchan Aruch* (*Choshen Mishpat* 386:1) ruled that it is a case of *garmi*, and that *garmi* acts performed by a person create liability. According to the *Shulchan Aruch*, our case is also one of *garmi*, and the one who knocked the bottle over should pay for the cost of its

retrieval. However, the Rema ruled that pushing a coin into the clear sea is a *gerama*. It indirectly caused the coin owner to hire a diver. The pusher would have no liability. In terms of a final ruling, one cannot force someone to pay money if he can argue that based on solid halachic grounds he is exempt. The costumer could claim, “I am sure the Rema is right. I caused damage indirectly, and I do not need to pay you.”

Rav Zilberstein pointed out that there is another point of view. The *Igros Moshe* (*Yoreh De'ah* 1: 76) quotes the *Meishiv Davar*. They feel that our Gemara was precise in discussing a coin that was dropped to the sea floor. A coin has value wherever it might be located. It is a coin in the sea just as it is a coin on land. According to the Rema, dropping a coin is *gerama*. However, an object is not always worth the same amount. If someone were to suddenly import a large amount of soap bars, the price of soap would collapse. So too, when an object was thrown to the sea, it is worth less. Now that it is in the sea, it is less valuable. Decreasing the value of an object by means of an action is damage, not indirect damage. Since it was an oil bottle that was pushed into a difficult spot, the value of the bottle was diminished and the damager would have to pay for the damage that he caused (*Chashukei Chemed*).

Bava Kamma 99

Would A *Beis Din* Make the Man Who Invited a Rabbi to a Non-Existent Wedding Have to Pay?

Our Gemara teaches about the law of *garmi*. If someone is asked a question, and he knows the asker will rely on his answer to incur financial risk, he must pay for the damage if he gives a wrong answer and causes a loss of money. The Gemara gives an example of a store-owner with a moneychanger. A store-owner comes to a moneychanger and asks about a coin a customer would like to pay him with. He wants to know if the coin is accepted in places of business. The banker tells him that it is accepted everywhere. The store-owner accepts the coin as payment. However, when the store-owner tries to use the coin, other merchants refuse it. It turns out that the moneychanger had made a mistake and given him faulty counsel. The moneychanger has to pay the store-owner who relied on his word. When one knows that others will rely on his word, if his word causes monetary losses, it is *garmi* damage. *Halachah* rules that a person must pay for damages in cases of *garmi*.

A man was upset with a local Rabbi. To harm him, he told the Rabbi that his son was getting married in a city in Northern Israel on

a particular date, and he asked the Rabbi to come and officiate. On the date of the “wedding,” the Rabbi took a cab from Bnei Brak to Northern Israel. He incurred a cost of several hundred shekel. When he arrived at the hall, he found it empty. He had been deceived. He sued for his losses. Rav Spitz ruled that he was entitled to the money that he had spent. The inviter knew that the Rabbi would believe him and travel to the location. The inviter knew that the Rabbi would normally travel by cab. Telling him to travel and waste time was *gar mi* damage, like the moneychanger who knows his advice will be accepted. The man who sought to annoy the Rabbi was a *gar mi* damager and owed the Rabbi money (*Mishpatei ha-Torah*).

Bava Kamma 100

Is There a Mitzvah of *Bikkur Cholim*?

Our Gemara taught that the verse והזהרתה אתהם את החוקים ואת התורות אשר יעשון, “And you shall inform them of the laws and the instructions, and inform them of the path they should follow and the actions they should do” (*Shemos* 18:20) contains an instruction to visit the sick: *yelchu – zeh bikkur cholim*. According to Rabbenu Yonah (commentary to the end of third chapter of *Berachos*) it is therefore a Biblical mitzvah to visit the sick. The Rambam (*Hilchos Aveil* 14:1) ruled that *bikkur cholim* is a Rabbinic mitzvah, based on the mitzvah of *ve-ahavta le-re’acha kamocha*, “Love your neighbor as yourself.” Apparently, according to the Rambam the mitzvah of the Torah is to love other Jews. The Rabbis legislated the action of visiting a sick person, for that would fulfill the mandate of loving another Jew.

What is the halachic difference if the Torah mandated visiting the sick, or if the Torah mandated caring for other Jews and the Sages instituted the practice of visiting the sick?

Rav Gedalyah Nadel (*Kuntres Acharon* 4:11) explained that only a defined Biblical mitzvah exempts the one who performs it from other obligations. We have a rule *ha-osek be-mitzvah patur min ha-*

mitzvah—one who is involved in one *mitzvah* is exempt from any other *mitzvah*. Eating food is a *mitzvah*, for it protects one's body. Dressing a child is a *mitzvah* of performing kindness. Is a person exempt from fulfilling other *mitzvos* while he eats or dresses his child, based on the rule of *ha-osek be-mitzvah patur min ha-mitzvah*? That is certainly an impossibility. One must perform *mitzvos* even when one is at work or helping the kids.

The reason for this is that eating or dressing a child was never explicitly mandated by the Torah. There are general directives in the Torah to preserve health and to display kindness. Eating and helping the family fulfill those general mandates. Such *mitzvos* cannot exempt the one doing them from other *mitzvah* obligations. Only a *mitzvah* explicitly mandated by the Torah, such as shaking a *lulav*, can trigger the rule of *ha-osek be-mitzvah patur min ha-mitzvah*. Rav Nadel therefore felt that according to Rabbenu Yonah, one who was visiting a sick patient would be exempt from Biblical commandments, based on *ha-osek be-mitzvah patur min ha-mitzvah*. However, according to the Rambam, if one was visiting a sick person and another *mitzvah* opportunity were to present itself, one would be obligated to interrupt the visit. According to the Rambam, visiting the sick would be like eating or working. It is an act that fulfills a Biblical aspirational goal, yet the act itself is not a Biblical *mitzvah* and therefore it could not exempt a person from performing another Biblical *mitzvah*.

The leaders of Israel were always very exacting with the *mitzvah* of visiting the sick. The Rambam writes (*Hilchos Aveil* 14:4): *bikkur cholim mitzvah al ha-kol*, “Visiting the sick is a *mitzvah* incumbent on everyone.” It is related about the great Rabbi Akiva Eiger that when he served as the Rav of Freidland he would visit all the sick of his city each week. When there was an outbreak of cholera in his city he would visit with all the babies each week to make sure that

the community was keeping proper hygiene to prevent the spread of the illness. The Kaiser was informed of his action and awarded him a medal. When he was Rav in Posen he found that he did not have the time to personally visit the sick. He then hired, from his own funds, two individuals to visit all the sick individuals each day and report to him about how each person was doing. Several years later he founded a hospital for the sick. In every town that he would visit, he would insist on seeing their hospital. He would ask about their practices. He would then bring those insights back to Posen and add those practices to what was being done in his institution.

The *Shelah ha-Kadoesh* writes that the mitzvah of *bikkur cholim* reaches the body, soul, and possessions of a person. It reaches the body, for we are each to go ourselves and visit with the sick. It reaches the soul, for we are to pray for the ill individual. It reaches our possessions, for we should donate funds to help the sick person if he needs the support. The book *Leshon Chachamim* (2:25) rules that a person should go alone to visit the sick. When you visit the ill person and are with him in the room, he might feel comfortable with your presence, so is more likely to explain how he is actually feeling. However, if a group go and visit, the sick individual might feel uncomfortable revealing how he is doing to the entire group (*Me'oros Daf ha-Yomi*).

Bava Kamma 101

May One Use Painted Reed Mats for *Sechach*?

A man acquired reed mats that had been woven to be used as *sechach* with the intent to put them atop his *sukkah* as *sechach*. His wife did not like how they looked. He proposed painting them to make them look colorful, festive, and joyous. He asked Rav Shlomo Kluger: “May I paint the mats and still use them for *sechach*?” The Gemara in tractate *Sukkah* teaches that only *pesoles goren va-yekev*, the remnants of the grain silo and vineyard, may be used for *sechach*. Kosher *sechach* is a material that grew in the ground, was detached from the ground, is still in a raw form, and as such is material that can not yet become ritually impure. Would painting the mats ruin them? Would it mean that they were no longer *pesoles goren va-yekev*?

The *Ha-Elef Lecha Shlomo* (*Orach Chaim* 364) permitted the man to paint his mats and still use them for *sechach*. He advanced several arguments for this point of view. One, the reason to possibly disqualify would be based on the concept of *shinnui koneh*, a change causes an acquisition. A thief who steals an object and then changes it might acquire it. Several times in *Bava Kamma* we have learned that the issue of *shinnui* is disputed. There are many who hold that *shinnui*

bimkomo omed, change of object does not change its halachic status. According to those opinions, certainly, the painted mats would be kosher *sechach*.

Second, perhaps even those who feel that change of object does impact the halachic status of an item would agree that the laws of *sechach* would be not be impacted by a *shinnui* to the mat. Change is impactful in laws that are based on externals. A stolen object has a unique status because of what someone did. A person lifted the object out of the house of its owner and tried to acquire it. An external act impacted the item. Such laws are weak. A *shinnui* of the object can cause those laws to fall away. The Gemara mentioned the law of *shinnui* in regards to *esnan*, an animal given as payment to a prostitute. There as well, the animal's disqualification is not because of an intrinsic feature of the beast. It is because of what a person did with the animal. Such laws are weak and a *shinnui* can remove the law. Valid *sechach* is a law that is intrinsic to the item. *Pesoles goren va-yekev* is an intrinsic quality. Some items are remnants of the field and still natural. A change cannot cause an intrinsic status to be lost. Painting the mat did not make the mat able to become impure. As a result, the *sechach* would stay kosher even according to the authorities who are of the opinion that changing a stolen object, or an *esnan*, impact laws of theft and suitability of a sacrifice.

Finally, our Gemara would be another reason to be lenient. Our Gemara proposed that perhaps *chazusa lav milsa*—coloring is not a real matter. Wool that is painted is possibly not be viewed by *halachah* as wool and paint. Rather, the *halachah* views it as wool. The paint is gone. It has been absorbed into the wool and changed the color of the wool. But the only item that is before us is the wool. Since applied paint is viewed as a matter that has vanished and merely transformed the color of another thing, the *sechach* that was

painted would be kosher. There is no law about which color *sechach* should have. The law merely insists that *sechach* be an item that is natural and cannot become *tamei*. Painting the mat would not make the mat able to become *tamei*. *Halachah* views the paint as gone, so the natural *sechach* is all that is there.

Some might argue that the paint would be a *chatzitzah*—a barrier between the *sechach* and the person sitting in the *sukkah*. According to the point of view that *chazusa milsa hi*, color is viewed as an independent item. Rav Kluger rejected that point of view. The Mishnah in *Sukkah* teaches that a colored sheet placed near the *sechach* would not disqualify the *sukkah*. Since the sheet is placed to beautify the *sechach*, it loses its identity to the *sechach* and is not considered a barrier or invalid *sechach*. The man wished to paint his mat to make it pretty. What is added for beauty is not a *chatzitzah*.

In light of the arguments above, Rav Kluger permitted using painted mats as *sechach*.

The *Shut Shevus Yaakov* was asked if a *lulav* painted with green paint to make it look fresh would be kosher for the mitzvah. He too ruled that it would be kosher. First of all, some are of the opinion that *chazusa lav milsa hi*, color is not considered an independent reality. Even those who disagree would not classify such a *lulav* as being a violation of *bal tosif*, the prohibition to add to what Hashem has commanded. If the paint would have its own name perhaps there would be room for a question. However, green paint on the *lulav* just makes the *lulav* called a nice *lulav*. Just as items added for beauty are not an interposition, such a color would not be *bal tosif* and the *lulav* would still be kosher (*Heichalei Torah*).

Bava Kamma 102

May We Hang *Shemittah* Fruits as *Noi Sukkah*?

The *Shut Lehoros Nasan* (3:36) deals with the question of the suitability of *shemittah* fruits to be used as *sukkah* decorations. The Gemara in *Sukkah* teaches that it was the practice to hang fruits in the *sukkah* to beautify it. During the *shemittah* year, may a person hang *shemittah* fruits in the *sukkah*? Our Gemara teaches that there is a mitzvah to eat *shemittah* fruit. Implicit in this mitzvah is a prohibition not to waste or ruin *shemittah* fruit. We may not even derive a benefit from a *shemittah* fruit if that delight comes after the fruit is destroyed. Only benefits experienced simultaneously with the consumption of the fruit may be derived from a *shemittah* fruit. *Noi sukkah* are *muktzeh*. *Sukkah* decorations are not to be eaten or used. Perhaps hanging a *shemittah* fruit in the *sukkah*, which would create a prohibition on eating it for a week, should be prohibited, for the person would be blocking the mitzvah of eating the fruit for a week. Secondly, a fruit in the sun will rot and get ruined. Perhaps hanging *shemittah* fruit should be prohibited, since the sun will ruin the fruit, hanging the fruit in the sun would be considered ruining the holy produce.

The *Lehoros Nasan* permits hanging the *shemittah* fruits as *noi sukkah*.

The Yerushalmi taught that *keniva de-yarka*, lowly pieces of vegetables, of *shemittah* may be put out on the roof. It explained that it dries on its own. The Maharit in his responsa (1:83) proves from this Yerushalmi that the prohibition of ruining *shemittah* produce is limited to situations when someone directly ruins the *shemittah* produce. One may hang *shemittah* produce in a spot where the sun might eventually cause it to get ruined. One would not be allowed to put a pin into the *shemittah* produce, for that would be ruining fruit. Even though he would be ruining a tiny amount, less than a *kezayis*, it would not be allowed. However, if someone could hang the fruit with twine or a bag, hanging it in the sun would not be a violation of any law.

The fact that *sukkah* decorations are prohibited to be eaten for the week of Sukkos also would not be a problem. The Gemara teaches that during *shemittah*, one should pay for the *lulav*, while the *esrog* of *shemittah* should be given as a gift. It is clear from the Gemara that one may use an *esrog* of *shemittah* for the mitzvah of four species during Sukkos. An *esrog* of mitzvah cannot be eaten the day that it is used. It is *muktzeh* for the mitzvah. How then can one use an *esrog* of *shemittah*? By using it for the mitzvah he is causing it to be prohibited for a period of time. Apparently, creating a status of *muktzeh* is not considered by *halachah* to be a violation of the mandate of *le-achlah ve-lo le-hefsed*.

The Chasam Sofer was of the opinion that if a person would come to a *sukkah* hungry without anything else to eat, he would be allowed to eat the fruits that had been hung up as *noi sukkah*. *Noi sukkah* are *muktzeh* because of the desire to avoid *bizzui mitzvah*—disgracing a mitzvah. It is not a disgrace for a mitzvah item to be eaten by a person

who is hungry and has nothing else to eat. Therefore, since there are situations when *noi sukkah* may be eaten, making something *noi sukkah* would certainly not be a violation of the mandate of *le-achlah*, that one should eat *shemittah* fruits and not use them for other purposes.

Finally, when hanging up the *shemittah* fruit as *noi sukkah*, the person can declare that he intends to think of the fruit throughout *bein ha-shemashos* of the first night of Yom Tov and he desires to keep the fruit from becoming *muktzeh*. Such a stipulation would prevent the *noi sukkah* from becoming *muktzeh* at all.

In conclusion, *Lehoros Nasan* ruled that one could hang *shemittah* fruit as *noi sukkah*, but one must be careful not to puncture the fruit with a pin. In addition, he should stipulate that the fruit is not being allowed to become *muktzeh* (*Chashukei Chemed*).

Bava Kamma 103

Travel to Return Theft

A man wracked by guilt once approached Rav Zilberstein with a question. He had a friend who had been working in the home of an elderly Jewish immigrant from France. The elderly man needed help. His friend lived with the old man and tended to his every need. One day, he went with his friend to visit the Frenchman. The friend felt very comfortable in the home of the old man. The old man went down to take a nap. The friend brought him into the kitchen, opened the fridge, took out the orange juice and gave him a cup to drink. He had never gotten permission from the old man for the juice. He left the apartment and did not think anything of it. Years later he learned that one may not take the possessions of someone else without permission. He felt guilty. That cup of juice was an act of theft. When he went to return the value of the drink to the old man he found out that the man had passed away. The immigrant's children lived in France. He asked the Rav, "Must I travel to France to try and return to the children of the deceased the value of the cup of juice that I took?"

Rav Zilberstein ruled that even though the old man would likely not have minded his taking the cup, he was not allowed to take the

drink without permission. His friend had no right to open the fridge and give him the orange juice. However, he did not need to travel to France to return the value of the drink to the heirs of the deceased. Our *daf* teaches that if someone stole and then swore falsely, taking an oath that he did not owe anything to his victim, he would be obligated to go all the way to Medea to return the principal to the victim. The Gemara explains that this is based on a verse *o mikol asher yishava alav la-sheker ve-shillam oso be-rosho va-chamishisav yosef alav la-asher hu lo yitnenu be-yom ashamaso*, “Or anything about which he had sworn falsely, he shall repay its principal and add its fifth to it; he shall give it to its owner on the day he admits his guilt” (Vayikra 5:24). The phrase *la-asher hu lo yitnenu be-yom ashamaso*, “he shall give it to its owner on the day he admits his guilt,” teaches that in a case of a false oath he must give it to its owner. He must go all the way to Medea to give it to the victim.

The Rambam (*Hilchos Gezeilah* 7:9) explains that when a thief steals and swears falsely, the victim despairs. Hearing the oath makes the victim think that he will never get the object back. Rav Yosef Dov Soloveichik explained that such a theft is a deeper sin. It was a more vicious robbery. As a result, the Torah obligates the thief to make great efforts at amends. A regular thief, who did not swear falsely, is not obligated by the Torah to pursue his victim. All he needs to do is admit his crime and make restitution available. He does not need to travel afar and deliver the funds into the hands of his victim to ensure that the victim is made whole.

In the case of the man who felt guilt about the wrongly taken orange juice, he had not sworn falsely. It was theft, but not severe theft. He did not have to travel all the way to France to make restitution. Rav Zilberstein advised that he should have a friend acquire money from him, worth the cup of juice, on behalf of the children of the old

man who are in France. As a benefit, the friend could acquire title to the money for them without informing them. According to Jewish law, it would then be considered that the money had been returned to them. Even though they had not received the money in their hands, there certainly would no longer be any sin left (*Daf Digest, Reshimos Shiurim al Maseches Bava Kamma*).

Bava Kamma 104

A Borrower Ready to Repay Is Entitled to Be Nervous

Our Gemara relates a story: Rabbi Abba had lent money to Rav Yosef bar Chama. Rabbi Abba was old and unable to travel to where Rav Yosef lived to collect his funds back. He told Rav Safra, “You are going to the town of Rav Yosef bar Chama. Go to his household. Get my funds from them. Bring me my money.” Rav Safra went to the home of Rav Yosef and asked for the funds. Rava, the son of Rav Yosef, refused to give the money to him. He argued, “Do you have a note from Rabbi Abba stating that when you get the money, it is as if he got the money?” Rav Safra admitted that he did not have such a document. Rava argued, “If we give you the money and the money gets lost before it arrives at Rabbi Abba, we will still be responsible. We are not obligated to incur the risk of loss by giving you the money. On consideration, even if you would go to Rabbi Abba and return with a note we still would not give you the money. Perhaps by the time you come back to us, Rabbi Abba will have died, and his children will own the debt. They never stated that once the money is in your hands, it is as if it was in theirs. If we would give you the money, perhaps it will get lost on the way back, and we will suffer a

loss, because the kids will come after us and demand that we give them what is theirs.” Rav Safra asked, “So what could Rabbi Abba do to get the household of Rav Yosef to give me the money so that I can bring it to him?” Rava told him, “Rabbi Abba can perform *kinyan agav* on the money and transfer them to you. After we give you the money, you could give us a receipt that you have gotten your money. Then we would not have any risk of loss. You could bring the money to Rabbi Abba and gift the funds back to him.”

Kinyan agav means that when transferring title to land, one can transfer ownership of movables with it, wherever they may be. Rava son of Rav Yosef had proposed that Rabbi Abba transfer a piece of land to Rav Safra and state that with the land the coins in the hands of Rav Yosef would become his. Rava son of Rav Yosef would then give the coins to their owner, Rav Safra. Rav Safra would give the receipt to the borrowers that they had fulfilled their obligations. He would then travel back to Rabbi Abba. If something were to happen to the coins on the road, it would be his money that was lost. Once he would be back with Rabbi Abba, he would give the coins as a gift to his teacher Rabbi Abba.

The *Nimmukei Yosef* is bothered with this lesson. We have a rule in *halachah* that we presume life, *chezkas chaim*. Even when an old man gives a *get* to an emissary to bring to his wife, the emissary may deliver the *get* and assume that the one who sent him is alive. Why then was Rav Yosef’s household allowed to refuse to give Rav Safra the monies for Rabbi Abba? Based on the rules of *chazzakah* there should be a presumption that Rabbi Abba is alive, and the note from him absolving his borrowers from any risk once they gave the funds to Rav Safra should have been sufficient.

The *Nimmukei Yosef* answered that we learn a principle from this Gemara. Rav Yosef and his household were holding onto funds.

They were *muchzakim* in the property. To avoid financial risk they were allowed to insist on protection greater than *chezkas chaim*. One who has money in his hand is entitled to be nervous of any arrangement that might result in financial loss. They were entitled to insist that Rabbi Abba transfer ownership of the coins to Rav Safra through *kinyan agav*. Then they would give the coins to Rav Safra and immediately be freed from financial risk (*Daf al ha-Daf*).

Bava Kamma 105

Someone Stole Two *Aravos* Worth a *Perutah*, Then Returned One: Would the Remaining Willow Be Acceptable to Wave with His *Lulav*?

Our Gemara discusses an interesting scenario. There was a town in which there were many flowers and as a result the price for flowers was low. A man stole two bouquets. The price for two bouquets was one *perutah*. The thief returned one bouquet. What would the law be? Would we say that since what he left in his hand was worth less than a *perutah*, and one does need not to return a stolen item worth less than a *perutah*, therefore he has fulfilled his mitzvah of returning a stolen object? Or, perhaps, since he only returned one bouquet, which itself was worth less than a *perutah*, he has not fulfilled the mitzvah of returning a stolen object?

The Gemara's conclusion is that he has not fulfilled the mitzvah of returning the stolen object. He only returned an item worth less than a *perutah*, while he stole a *perutah* of value. Rav Zilberstein raised the question of how this law would impact the laws of Sukkos.

To fulfill the mitzvah of waving the *lulav* and four species, one must own the items he is shaking: *u-lekachtem lachem – mi-shelachem*. Would a man who stole two *aravos*, when the price for the willows was a *perutah*, and then returned one of them, be able to fulfill his obligation of waving the four species with the remaining *aravah*?

The *Shulchan Aruch* (*Choshen Mishpat* 360:4) writes that if one stole two bunches that were together worth a *perutah* and returned one of the bunches, even though he no longer has a stolen *perutah* in his hand, he has not fulfilled the mitzvah of returning the stolen object. The *Sema* (*se'if katan* 9) quotes the *Rema* who taught that while there was no longer a stolen *perutah* in the hands of the thief, this means that *beis din* would not get involved from the point of view of a monetary claim. If the victim came to court trying to sue to get the second bunch back, *beis din* would not take the case. *Beis din* never takes a case that deals with less than a *perutah*. However, if the court had already begun to deal with the case, for the victim had sued to get both bunches back, if the thief returned one bunch, the court would put pressure on the thief to return the second bunch. Even though what the thief has in his hands is worth less than a *perutah*, the court would seek to encourage him to do the right thing. They want him to fulfill the mitzvah of returning a lost object. Once he would give back the second bunch, he would have given back a *perutah* and fulfilled the mitzvah of returning the stolen value. They would even hit him to coerce him to return the second bunch.

It emerges that when one returned half of the *perutah* that he stole, the other half is still not his. If the court had begun to deal with him when he had a full *perutah* in his hand, it would coerce him to return this second half of a *perutah*. Rav Zilberstein therefore ruled that he could not use that *aravah* for the mitzvah of *lulav*. The four

species must belong to the person who waves them. If the court is pressing him to give the item back, it cannot be said that he owns it (*Chashukei Chemed*).

Fulfilling Half a Mitzvah

The *Nesivos* in his Haggadah rules that if a person cannot eat a full olive-size of bitter herbs on Pesach he need not eat any *maror*. While the Gemara taught that a portion of a requisite amount counts in regards to prohibitions, a small portion does not count in fulfilling a mitzvah. For the mitzvah to be meaningful, one must complete the full requisite amount. One who fulfills only a fraction has not performed any mitzvah at all. Proof to this is our Gemara.

Our Gemara contained a lesson about the mitzvah of returning a stolen object. It taught that if a person stole two bunches that together were worth a *perutah*, then he returned one of the bunches, while he was no longer holding a stolen *perutah*, he had not yet fulfilled the mitzvah of returning the object he stole. Apparently, performing only a fraction of the required amount of a good deed is not considered fulfilling a mitzvah. In light of this ruling, if a person only had a fraction of a *kezayis* of matzah he would not be able to recite the blessing of *על אכילת מצה* on it.

The *Shut Even Yekarah* raised a question about *chametz*. We may not possess *chametz* on Pesach. Some are of the opinion that if one owns less than a *kezayis* of *chametz* over Pesach he has not violated the law. What would the law be if someone had a *kezayis* of *chametz* and he destroyed a small smidgen of it? Would we say that since he was left with an amount less than a *kezayis* he had fulfilled his mitzvah of *tashbisu*. Alternatively, perhaps *tashbisu* would obligate

him to destroy all of the *chametz* he had. He concluded that *tashbisu* is like the mitzvah of returning a stolen object. Just as returning half of a *perutah* and leaving half a *perutah* worth of stolen goods in his hand does not fulfill the mitzvah of returning theft, our man has not fulfilled the mitzvah of *tashbisu*. Therefore, he should destroy the rest of the olive's worth of the *chametz* (*Daf Digest*).

Bava Kamma 106

A Riddle: He Stole an Ox or Sheep and Slaughtered It, But He Was Not Obligated to Pay the Penalty of Fourfold or Fivefold

Based on a novel idea in our Gemara, Rav Yitzchok Zilberstein proposed a riddle. *Bava Kamma* has taught that a burglar who steals an item and is then caught must pay double the value of the item. If the item he stole was a sheep, and he slaughtered it or sold it, once caught, he would have to pay four times the value of the sheep. If he stole an ox or cow and slaughtered or sold it, he would have to pay five times the value of the animal.

Could you think of a scenario where a person stole an ox, slaughtered it, and still would not have to pay the penalty of five times?

Our Gemara records a conversation between Rav Yochanan and Rav Chiya bar Abba. Rav Yochanan taught that if a watchman falsely claimed that the deposit was stolen from him, and then he swore that it was stolen from him, but in truth he had it and he slaughtered it, then he would have to pay the four or five penalty. Rav Chiya challenged this. A Baraisa taught a case when a man confronted a watchman and asked, “Where is my ox?” The watchman said, “It was

stolen.” The depositor then said, “I make you swear that it is stolen.” The watchman replied, “Amen.” If witnesses then came and testified that the watchman ate the ox himself, the guard would need to pay double. Asked Rav Chiya: one can only eat after one slaughters. This Baraisa seems to disprove Rav Yochanan’s lesson. According to Rav Yochanan the watchman should have to pay five times, because he stole and slaughtered. The Gemara answered that according to Rav Yochanan the Baraisa was dealing with a scenario in which the watchman ate the meat without slaughtering it. One only has to pay four or five if it was slaughtered with a kosher *shechitah*. One who steals an ox, allows it to die, and then eats the meat would pay double and not the penalty of five times. The Gemara then asked: why didn’t Rav Yochanan give another answer? He could have suggested that the Baraisa was dealing with a *ben pekuah*. A *ben pekuah* can be eaten without any slaughter at all. The Gemara answered that Rav Yochanan agrees with Rabbi Meir who felt that a *ben pekuah* must be slaughtered before it can be eaten.

What is a *ben pekuah*? If a pregnant animal was slaughtered, the fetus inside is called *ben pekuah*. According to Rabbi Meir it too must be slaughtered. According to the others it need not be slaughtered, for the act of slaughter of its mother worked for it as well. The *halachah* is that a *ben pekuah* that will live and has walked on earth should be slaughtered so that people not confuse it with other animals and think that animals do not need to be slaughtered. However, if the *ben pekuah* is distinctive, such as a *ben pekuah* with a webbed foot, there is no need to slaughter it.

Based on our Gemara, the *Shut Chasam Sofer* (*Yoreh De’ah* 14) has the scenario of our riddle. He ruled that if a person would steal a webbed-footed *ben pekuah* and slaughter it, he would not have to pay four or five. Only an act of slaughter that permits an animal to be

eaten creates the penalty obligation of four or five. Since a webbed-footed *ben pekuah* can be eaten without slaughter, slaughtering it would not be considered *tevichah* to create the four or five obligation.

In light of this theory, Rav Zilberstein argued that if kabbalists would create a sheep through *Sefer Yetzirah*, such an animal would also not create the obligation of four or five. The *Shelah* writes that the children of Yaakov were creating animals through manipulating holy names. Such animals do not need slaughter. Yosef did not know that these were unusual animals. He reported his brothers to his father, for he mistakenly believed that they were simply eating from live animals. Accordingly, if one would steal and slaughter an animal that had been created through *Sefer Yetzirah*, there would be no obligation of paying four or five times. An act of slaughter that is not permitting the animal to be eaten does not create an obligation (*Chashukei Chemed*).

Bava Kamma 107

Obligating an Oath

Our Gemara teaches that a borrower who admits to part of the claim against him must swear that he does not owe the rest. According to Rav Chiya bar Yosef only a borrower must admit to some of the claim. A watchman must swear even if he completely contradicts the person making the claim against him. Why the difference?

Rabbah taught that a watchman is willing to contradict the depositor. He does not feel any sense of gratitude or obligation to the depositor. A borrower is different. The lender did him a favor. A person does not have the brazenness to fully contradict the claim of the person who did him a favor. The borrower who makes a partial admission is rationalizing. He thinks he should deny the claim partially, so that he will gain more time to put together the funds to pay back his loan. He is hoping that once he has enough money, he will repay the loan in full. The Torah obligates him to swear to try and force him to admit to all that he owes.

It emerges from our Gemara that only in certain circumstances would an oath obligation be placed upon a person. The Maharsham (7:84) utilized this principle in a case when a groom and his intended bride bickered.

The couple got engaged. The groom heard rumors that his bride had a health condition. He requested that the woman travel to a town, visit an expert medical professional, and get examined. The bride did not want to go. She claimed that based on modesty it was not right for her to be examined by a male. The groom responded that the doctor was an expert, so it would be done in a professional manner, and he needed her to return with a clean bill of health. The father of the bride claimed that the groom was not really concerned about health. He was sure that the groom was making up his concerns to try and get out of the match. The bride's father demanded that the groom swear that he was sincere and that he truly was worried about the health of his fiancée.

The Maharsham ruled that the groom was correct. He did not have to swear. It would not be right of the court to impose an oath upon him. If we can determine the facts through a medical examination, we would not allow for an oath. Therefore the bride should travel to the doctor and get the exam (*Chashukei Chemed*).

Bava Kamma 108

A Tzaddik in the Moment

Reuven had a problem with recidivism. He would steal. Then he would feel bad. He would repent and return the stolen items. Then he would steal again. He would feel bad. He would repent and return the stolen goods. Then he would steal again. This happened ninety-nine times. He had just repented when someone asked him to serve as a witness for a wedding. The question was brought to Rav Zilberstein: would Reuven be acceptable as a witness? At the moment he was not stealing. However, these moments had been fleeting ninety-nine times already. Perhaps the court had a responsibility to suspect that he would return to sin and they should not accept him as a credible witness?

Our Gemara proves that he would be considered a kosher witness as long as he had not yet stolen again.

Rava had asked: if a watchman claimed that the deposit was stolen, swore there had been a theft, but then witnesses came and testified that it was a lie and he had the object, then the guard repeated the same behaviors, he made a false claim of theft, swore, and witnesses came; would he have to pay double twice? Rava ultimately concluded based on the word והמיישיתו that he would have

to pay double twice. The Rambam (*Hilchos Geneivah* 4:5) rules, “One who claimed theft about the object that he was watching, swore, then witnesses came and testified that the object was in his domain, and he repeated his deeds—claimed theft, swore, and then witnesses came and revealed that it was still in his domain—even if he did this a hundred times, he would be obligated to pay the double penalty for each claim.” The *Maggid Mishnah* quotes others who asked, “Only an oath imposed by a *beis din* can create an obligation of paying a penalty. If a man volunteered an oath, he would never have to pay double because of such an oath. How did the court make him swear the second time? Once he had been proved to have lied with his first oath, he should have been considered a person whose words were suspected. How would the courts ever impose another oath upon him?” The *Maggid Mishnah* answered that it was a case that the court knew he had repented. Since the court knew he was a penitent, they made him swear again. Rav Zilberstein pointed out that the Rambam said the man might have been made to swear a hundred times. Apparently, even though he sinned, repented, and returned to his sin repeatedly, the court would accept his penitence and keep treating him as a credible man. In light of this ruling, the same should hold true in regards to serving as a witness. Since he is a penitent now, even though we strongly suspect that tomorrow he will sin again, *halachah* judges him based on his current standing. If currently he is righteous, he can serve as a witness. If he stood under the *chuppah*, together with another kosher witness, and witnessed the handover of the ring, the couple would be married. *Halachah* accepts a person who is a *tzaddik* this moment, even though it knows he will likely return to sin.

The *Orchos Tzaddikim* writes that if a person repented and then repeated his misdeed, even if he did so many times, he can still

return to Hashem and successfully change his ways. However, when he repents for the second time for the same sin he had performed in the past, his actions of penance should be more demanding and harsh than his initial actions of correction. Presumably, the same should be true about our scenario. His *teshuvah* would be effective. However, each new time he repents for the same sin, he should do more to correct the misdeed than he did in the past.

One might challenge these claims from a statement in *Avos de-Rabbi Nasan* (ch. 39). There we are taught that one who sins and repents often is one of the five who do not gain forgiveness. This would seemingly indicate that one who repeatedly sins, repents, and then returns to the sin does not garner forgiveness. However, the *Binyan Yehoshua* explained the *Avos de-Rabbi Nasan* in light of the words of *Orchos Tzaddikim*. He taught that everyone can always repent. The Tanna was stating that for certain individuals the degree of atoning actions is a challenge. Much has to be done to wipe away the sin. One who sins, repents, and then sins again must do more to gain atonement than someone who failed once. Eventually, what he must do is very difficult. However, he can do it. His repentance would be accepted. He can become a kosher witness, even though his current attempt at change follows many failures (*Chashukei Chemed*).

Bava Kamma 109

The Greatness of *Tzedakah*

Based on the *Sefer Chasidim*, the *Mishnas Avraham* taught that if one did not have enough money to purchase an *esrog*, Hashem would consider it as if he fulfilled the mitzvah of *esrog* if he would give what he had budgeted for the *esrog* to the poor. The verse (*Malachi* 3:16) declared that the Almighty will record and treasure the deeds of those who fear Him and are among *u-le-choshvei Shmo*—those who think of His name. One who wished to fulfill a good deed, but did not have enough means to do so, is displaying how he thinks of Hashem's name and will receive reward for his intentions when he gives what he does have to the poor. The *Mishnas Avraham* felt that our Gemara was the source for this concept. Our Gemara discussed a case when an only child stole from his father, denied he did so, swore falsely, admitted that he lied in his oath, and then his father died. The Gemara taught that to gain atonement for his oath, he had to expend money from his domain. He was obligated to take the amount that he should have given to his father and give it to charity. It was impossible for the thief to fulfill his mitzvah of returning the stolen funds. Yet through giving them to charity, it was considered that he had accomplished the impossible task. This proves that giving to charity will count

as the mitzvah one sought to perform but circumstances made it difficult for him to do so.

Rav Moshe Feinstein (*Igros Moshe, Choshen Mishpat* 1:88) was asked by a penitent if he could garner forgiveness by giving charity. It seems the man had stolen one hundred dollars from someone else. He wished to make a pledge in the synagogue that he would give a hundred dollars to charity. In his mind he would intend to give the money he had stolen to charity. Those who would hear would think that he was giving to charity out of the goodness of his heart. He would be spared embarrassment, but he would still correct his sin. Rav Moshe ruled that such an act would not wipe away his sin. If he knew whom he stole from, he was obligated to return the money to the person he victimized. Only when someone has stolen from many people and does not recall who the victims are is he to donate the funds to communal needs. Even then, the funds should not be given to charity for the poor. They should be given to road repair, or a hospital, for then there is a chance that the victims will benefit. In addition, if someone made a pledge to give to charity, while in his heart he intended to use funds he anyway had to disgorge, *halachah* would not care about what was in his heart: *devarim she-ba-lev einam devarim*, words in the heart are not considered words. He made a promise to give a particular amount to charity, and that amount should be given besides the stolen monies that he must return to the person he stole them from.

Rav Yitzchok Zilberstein recorded an interesting question about charity. A man was not blessed with children. He and his wife hired fertility specialists. The treatments were expensive. The man felt very bad that he had to spend so much money. He made a vow: "If I am blessed with children I will give to charity at least as much as I spent on treatments. If I have a boy I will give one thousand shekel. If I

have a girl I will donate five hundred shekel.” He was blessed with twins. How much should he give to charity?

The Maharsham (5:42) dealt with a similar query. He ruled that the man must pay 1,500 shekel. His proof was a Mishnah in *Temurah* (5:1). The Mishnah taught that if a person declared about his pregnant animal, “If it has a male inside its womb, the child is an *olah*, and if it has a female it is a *shelamim*,” and the animal gave birth to twins, a male and female—one would be an *olah* and the other a *shelamim*. The *Tiferes Yisrael* explained that the donor never thought the animal would have twins. Nevertheless, once twins are born, the male would have the status that he had sought to place upon a male calf, and the female would have the status he had sought to place on the female calf. The same would hold true in our case: he would owe both the vow for the boy and the vow for the girl to charity (*Mesivta, Chashukei Chemed*).

Bava Kamma 110

He Purchased the Honor of *Hagbah* but then Fell Sick: Could He Give the Privilege to Someone Else?

The congregation was auctioning off the honors on Simchas Torah. One man bid for and purchased the right to perform *hagbah*, lifting the Torah. Unfortunately, he then fell ill. He could not stay in the synagogue. He asked, “May I gift the privilege to a friend? May I appoint an emissary to lift the Torah on my behalf?”

The Mahari Bruna (178) dealt with this query. Based on our Gemara he ruled that the buyer may not appoint an emissary to lift the Torah. Our Gemara established that if one cannot do a mitzvah himself he cannot appoint a *shaliach* to do it on his behalf.

The Gemara taught that *kohanim* were divided into *mishmaros*—groups who would serve in the Temple. Normally, a *kohen* would get to work in the Temple during those weeks. However, if a *kohen* had a personal offering, he was allowed to bring it to the Temple and perform the service, even if another group was in charge that week. This is based on the phrase in the verse (*Devarim* 18:6), *u-va be-chol avvas nafsho*, “and he may come as per the wishes of his soul.” When he comes with his own sacrifice, since he could do the

service himself, he could choose which *kohen* within the *mishmar* would serve as his emissary and perform the service of the offering. However, if the *kohen* bringing the sacrifice was an elderly man, there would be a different law. An elderly *kohen* would be able to push himself and work in the Temple, but he would not be able to properly eat the meat of his offering. Since he could do the service himself, if he brought his offering to the Mikdash he could designate which *kohen* should do the acts of *avodah* with his *korban*. Since the elderly *kohen* could not properly eat his offering, he would not be able to appoint another *kohen* to eat for him.

Why can't the elderly priest eat properly? The Gemara explains that a person who does not wish to eat and forces himself to chew and swallow is performing *achilah gassah*, forced feeding. *Halachah* does not consider *achilah gassah* to be an act of eating. The elderly man only had the ability to perform *achilah gassah*. Since he could not appoint an emissary, the meat of his sacrifice would be divided among the members of the *mishmar* and he would not be able to designate which one of them gets to eat the meat. The Mahari Bruna taught that the same law would apply to the man who bought *hagbah*.

The man could not lift the Torah due to his illness, and was like the elderly *kohen* who could not eat the meat of the sacrifice himself. Since he could not do the act himself, he could not appoint an emissary to do the act on his behalf. The privilege of lifting the Torah would revert back to the community, just as the privilege of eating the meat of the sacrifice returned to the *mishmar*.

The *Sheyarei ha-Keneses ha-Gedolah* (*Orach Chaim* 147) seemed to conclude differently from the Mahari Bruna. He was asked about a man who had purchased the honor of carrying the *sefer Torah* around the synagogue, but then felt that the scroll was too heavy; could the man give the honor to a friend? He ruled that he could. Rav

Berachos of the Ben Ish Chai challenged this ruling. If the purchaser could not carry the Torah due to its weight, then he was unable to perform the mitzvah himself. If he could not perform the mitzvah himself, he should not have been able to appoint an emissary, just as in our Gemara when the *kohen* cannot himself fulfill the mitzvah of eating a *korban*, he cannot appoint an emissary to do it on his behalf. The Ben Ish Chai answered that in the case of the Torah, the purchaser could carry a light Torah. The silver ornaments and gold cover had made the scroll too heavy for him to carry. Since he could carry a Torah, he was in the realm of performing this mitzvah and he could appoint a friend to do it for him. In the case of the Mahari Bruna, he could not perform the *hagbah* at all. If he could not perform the good deed, then he could not appoint an emissary to do it for him, and the privilege would return to the community (*Mesivta*).

Bava Kamma 111

He Came Late to Synagogue: Should He Pray *Musaf* with a *Minyan*, and then Pray *Shacharis*?

Normally on Shabbos we pray *Shacharis* and then *Musaf*. Reuven came late to synagogue one Shabbos. By the time he walked in, the congregation was about to begin *Musaf*. He had not prayed *Shacharis* at home. What was he to do? Should he pray *Musaf* with the community? A communal prayer is more powerful than an individual's prayer. Then he would end up praying *Musaf* before he would pray *Shacharis*. Alternatively, perhaps he should pray *Shacharis* and then *Musaf*.

The author of the *Machazeh Avraham* wrote that prayer was instituted to take the place of offerings. *Shacharis* takes the place of the *korban tamid* of the morning. *Minchah* takes the place of the *korban minchah* of the evening. *Musaf* replaces the additional offerings (*musafim*). Our Gemara stated: *Minayin she-lo yehei davar kodem le-tamid shel shachar*, "How do we know that no offering should be performed before the Tamid of the morning?" It answers: *Talmud lomar*, "This was taught by the verse," *ve-arach aleha ha-olah*, "And he shall arrange on it the *olah*," *ve-amar Rava* "*ha-olah*" – *olah*

rishonah, “And Rava said the verse stated, ‘the *olah*’ – to teach that the *olah* [of the morning] is the first offering on the altar.” Therefore, *Shacharis* also must be the first prayer that a Jew recites in the day. This law was derived from a verse; it is therefore a Biblical law. *Shacharis* should be prayed first.

Rav Moshe Feinstein also agreed with this ruling. He pointed out that communal prayer is a merit for the prayer; however, we have never found that communal prayer overrules a Torah prohibition. From our Gemara it sounds as if there is a prohibition to bring an offering before the morning sacrifice. Since the prayers fill the roles of the sacrifices, that means that there is a prohibition to pray *Musaf* before *Shacharis*. The chance to recite *Musaf* with a community would not override the law of not jumping ahead of *Shacharis*.

The *Be’er Yitzchak* disagreed.

He ruled that if a person would not have another chance to pray *Musaf* with a *minyan*, he should pray it with the *minyan* before he recites *Shacharis*. *Shacharis* on Shabbos only contains seven blessings. *Musaf* also contains seven blessings. *Musaf* with a *minyan* is holier than *Shacharis* without a *minyan*, and therefore he felt it should come first (*Mesivta*).

Bava Kamma 112

Is a Suspected Abuser Entitled to Confront His Accusers and Witnesses in Court?

Halachah follows our Gemara, which teaches that a court is usually not allowed to accept testimony against an individual in his absence: *ein mekablim edus she-lo bifnei ba'al din*—we do not accept testimony without the presence of the litigant. A man is entitled to see the witnesses who are ruining him and to challenge them. This is derived from the verse that taught that testimony against the killing ox is delivered before its owner. The *Shut Sho'el u-Meishiv* (1:185) dealt with this law in the context of a teacher who was accused of abusing his students.

In 1853 a rumor spread in a town that a local teacher of children, who had been part of the community for eight years, had sodomized youths, aged four or five, who had been in his class. The boys were now thirteen and older. They were testifying about horrific acts that had been done to them when they were younger. Members of the town were incensed. Some raised a hue and cry. The local Rabbi tried to empanel a court; however no one stepped forward to testify. The teacher swore that he would leave the town. He did. He moved to Lvov. In Lvov he again applied to become a teacher. One of the

members of the town remembered what he had heard about this teacher and protested.

The leadership in Lvov contacted the Rav in the first town. He said that he did not have any proof that would be acceptable in Torah jurisprudence to disqualify the teacher. The protestors were not mollified. They insisted that the man not be allowed to serve as a teacher. Then the author of the *Sho'el u-Meishiv* received a letter.

The letter was signed by three respected individuals. They detailed the testimonies they had heard of two young teens. One was sixteen years old. The other was thirteen. Both described how the teacher would sleep with them in the same bed when they were five years old, and perform horrible acts. Rav Nathanson ruled that because of the letter and the testimony it contained, the teacher was to be barred from teaching children.

The words of children are pure and holy. A teacher against whom there was strong testimony about abominable acts must be kept far away from damaging the purity of the youth. There were those who were upset about the ruling of the *Sho'el u-Meishiv*. They sent him letters of challenge. One of their challenges was the law of our Gemara: "How did you rule based on testimony that was delivered outside of the presence of the accused?" they asked. The accused was never given a chance to confront those who testified against him.

The *Shut Sho'el u-Meishiv* rejected this critique. He taught that when the objective is to save Jews from sin, *le-afrushei me-issura*, even a testimony delivered without the presence of the defendant is to be listened to. Furthermore, it is only those who have a strong *chezkas kashrus*, presumption of virtue, that *halachah* demands that the court not hear testimony against them without their presence. However, here, the teacher did not have a presumption of virtue. There had been strong rumors against him. He clearly was a boorish individual,

who was performing inappropriate actions. The community was not attacking his *chezkas kashrus*. The community merely was removing from him the privilege of serving as a teacher of young children. One who teaches young children is wearing a crown of glory. This teacher was not entitled to such honor. He was a sinner. Therefore, the man was to be barred from educating youths. The testimony delivered outside of his presence was enough to disqualify him from the privilege of educating the young (*Mesivta*).

Bava Kamma 113

Cheating on Regents Exams?

Rav Moshe Feinstein (*Igros Moshe, Choshen Mishpat 2:30*) was asked by a yeshiva student about buying the answers to the questions that New York State had on its Regents exams. Students in high schools in New York are obligated to take Regents exams at the end of the year to demonstrate proficiency in the subjects they studied. The yeshiva student wanted to spend his June immersed in Torah study. He did not want to review for the exam. He found out that on the streets one could purchase a cheat sheet with all the answers to the questions. “For the sake of avoiding *bittul Torah*, may I purchase those answers and then fraudulently fill in the test? It is only the state that is being misled. Why should I care about their mistakenly thinking I know more than I do?” He asked.

Rav Moshe ruled that it was prohibited.

Our Gemara contains the ruling of Shmuel. Shmuel taught that *dina de-malchusa dina*—the law of the land is law. Our religion mandates that we observe the laws of the land. American laws are religiously binding. Since New York State prohibits cheating on its exams, one may not cheat on its tests.

Second, such behavior would be *geneivas da'as*, creating a false impression. One may not deceive others. One may not perpetrate *geneivas da'as* on a Gentile or on a Jew (*Chullin* 94a). Finally, it is actual theft. If one cheated on his Regents exams, he was in truth not entitled to a Regents diploma. When he might go for a job interview and present himself as a high school graduate, he might get a job over another person who truly was a graduate. Employers generally want to hire someone who did his work in school and graduated. If they would hire the yeshiva *bachur* who cheated his way through, based on the records that fraudulently state that he did his work, they would have been deceived and stolen from. The employer never wished to hire those who did not finish their work and received diplomas through crooked means.

The argument that he should cheat to have more time to study Torah is absurd. Study of Torah does not allow for theft and dishonesty. If he wishes to study Torah, let him do all his secular work and have faith that God will help him succeed in Torah acquisition. He has already invested the time by taking the courses. His desire to purchase the answers is not an attempt to have time to study Torah. It is an attempt to indulge his laziness. He does not want to work hard to finish the job, review the information, prepare for the test, and get a good grade. Laziness is never a good trait. It will prevent him from succeeding in learning and in life.

Rav Moshe ruled that it was prohibited to cheat on the Regents exams and that students who attend secular classes should try their hardest to succeed in their studies. It is not considered *bittul Torah* to master subjects (*Heichalei Torah*).

Providing Meals for a Shabbos Flight

Shmuel was a caterer. He would prepare meals and package them. An Israeli airline was one of his main customers. Friday morning, he received an order from the company. They wanted thirty *glatt* kosher meals for the night's flight. They were flying a group to the Far East that night. Although the Jews on the flight would be violating Shabbos, they wished to eat strictly kosher food. The caterer asked Rav Zilberstein, "Should I fill the order?" Perhaps he should avoid participating in activities of Shabbos desecration.

Rav Zilberstein initially felt that he should not agree to provide the food for the trip.

Our Gemara teaches that we may not take money from a tax collector's box for charity. The tax collector is a thief. He takes more than what the King meant to allow him to take when he granted him the concession of collecting taxes because he had advanced a sum to the king. We are not to accept stolen goods as *tzedakah*. The Me'iri has a novel explanation of this law. A thief might wish to give charity to alleviate his guilt. He thinks that the fact that he gives charity atones for his stealing. Our Gemara is teaching that we are not to accept such a gift. We are not to alleviate the guilt of the sinner, for this might encourage him to stick with his sins.

The Ramban (*Devarim* 23:19) gives a similar explanation for the Torah's law of *esnan*, which prohibits offering as a sacrifice an animal that had been paid to a prostitute for her services. Prostitutes think that since they give some of their earnings to the Temple as sacrifices, their actions are forgiven. Hashem does not want such a society. To discourage prostitution, the animals given to a prostitute are permanently disqualified.

In light of these sources, Rav Zilberstein thought that the caterer should not provide the meals. The travelers on the plane were planning to violate Shabbos. They wanted kosher food to alleviate their feelings of guilt. Just as the Torah did not permit sacrifices with *esnan* and our Gemara did not permit accepting stolen coins as charity, the caterer should not contribute to the alleviation of guilt of Sabbath desecration.

On the other hand, perhaps a distinction can be drawn. A sacrifice and *tzedakah* are positive commandments. *Halachah* does not allow us to alleviate the guilt of the sinner by having him use his ill-gotten gains for a mitzvah. However, in our case, if the caterer will not provide the meals, the travelers will perform two sins: they will violate Shabbos and eat *treif*. Maybe the caterer should provide the meals to prevent more sinful behaviors. Rav Zilberstein brought the question to his father-in-law Rav Elyashiv.

Rav Elyashiv ruled that the caterer should not provide the meals. Providing the meals would contribute to a *chillul Hashem*, desecration of the name of God. One should not include himself in any such activity (*Chashukei Chemed*).

Bava Kamma 114

Who Owns the Letter of Solicitation?

Tragedy struck. A young father of ten passed away. The widow was left with enormous difficulties. Some good-hearted individuals volunteered to raise funds for the widow and orphans. They went to one of the greatest Torah giants. They told him of the tragedy and crushing need. He wrote a warm letter of solicitation asking all to donate generously. A fundraising campaign was launched. Money was raised. Years passed. A collector found out that the Torah giant had written the letter of recommendation. He approached the volunteer and asked to buy the letter for a large sum. He collected the notes of Torah giants and he wished to possess the letter. The man approached Rav Zilberstein. Was he allowed to sell the letter and keep the proceeds? Perhaps the proceeds belonged to the widow and orphans? The letter had been written for them and perhaps all profits from it should go to them?

Rav Elyashiv was asked this question. He responded that the letter should have been torn up once the fundraising campaign ended. The letter was given to help in the campaign. Once the volunteers were no longer actively soliciting funds, the letter should have been destroyed. Since it should have been torn up, it was considered *hefker*, ownerless. If the solicitor still had the letter, he had acquired

it from *hefker*. He was entitled to keep it. He was also entitled to sell it and keep the proceeds.

Rav Zilberstein added that our Gemara might be another source to allow him to keep the letter. Our Gemara teaches that with time people despair of objects. If a taxman were to seize my cow and repay me with a cow he had in his domain, I could keep the cow. Even though the cow in his domain was seized from someone else, that victim certainly despaired of getting his cow back. He was *meyayesh*; therefore I was allowed to keep the cow. In light of the precedent of our Gemara, even if the widow was the owner of the letter, once the development campaign ended and the letter was not given to her, she despaired of ever getting it back. It was then acquired by others.

In regards to letters of solicitation, Rav Zilberstein related a story about Rav Yitzchak Elchonon Spektor, the Rav of Kovno. He once wrote a letter of recommendation for a poor man. The man became wealthy and did not need the letter. He lost the letter. Others found it. They saw that written in it was the phrase about the prophet Elisha from his master Elijah the prophet, *yatzak mayim al yadi*, “he poured water over my hand,” meaning that he was a close and devoted disciple. The finders brought the letter back to Rav Yitzchak Elchonon. They did not understand it. They asked, “Elisha was a devoted disciple of Elijah, but this poor man was not your student. Why did you describe him with such a wonderful compliment?” Rav Yitzchak Elchonon told them that the letter belonged to the poor man and that they had to return it to him. He also told them that since the poor man sometimes literally poured water on his hands, he wrote the phrase *yatzak mayim al yadi*. The fact that the Rav of Kovno would write letters of recommendation that were literally accurate but that might lead to a misunderstanding is very novel (*Chashukei Chemed*).

Bava Kamma 115

Experimenting on Animals

Judaism demands that we not needlessly waste. *Bal Tashchis* demands that we be careful with animals and plants and not cause them to die. In addition, the Gemara in *Bava Metzia* established that we may not inflict pain on animals, for that is *tza'ar ba'alei chaim*. The *Shut Shevus Yaakov* (3:71) was asked by a medical researcher about experimenting on animals. The doctor thought he had a cure for an illness. He wasn't sure the drug was safe. He wished to try the drug on an animal to see if it was lethal or perhaps safe to administer to humans. He asked the *Shevus Yaakov*, "Am I allowed to give the drug to the animal? It will make the animal suffer; perhaps it should be prohibited based on *tza'ar ba'alei chaim*? Alternatively, the animal might die; perhaps it should be prohibited based on the law of *bal tashchis*?"

The *Shut Shevus Yaakov* ruled that the health professional was certainly permitted to try the drug out on an animal. Any activity that provides a benefit to a human being is by definition worthwhile and not wasteful. It is not a violation of *bal tashchis*. There is also no law of *tza'ar ba'alei chaim* when the pain is inflicted on the beast to achieve a purpose for people. The Rema writes in *Even ha-Ezer*

(5:14) that any human need permits inflicting pain on animals. For this reason, people may pluck feathers from a live chicken. It is our custom not to do so because it is cruel to take the feather out of the animal and ignore its pain. However, there is no prohibition in plucking feathers out of a living animal if one needs the feathers.

The *Shevus Yaakov* brought support to the principle of the Rema. Our Gemara taught about wine or water that was left uncovered overnight. Such liquids likely have snake poison in them. Tosfos pointed out that the Gemara in *Avodah Zarah* taught that one may give tainted liquids to his own animal, even though the animal will be weakened by drinking the water with snake poison. Tosfos must be referring to an instance of human need. Perhaps the owner of the tainted liquid needs to find a way to discard the liquid. Even though giving the liquid to the animal will weaken the animal and cause it pain, when there is human need there is no prohibition of *tza'ar ba'alei chaim*.

The *Shevus Yaakov* explained that the Rema who taught that it is our practice not to pluck feathers from a living bird would not prohibit trying a drug on an animal. When pulling a feather from a live chicken the person inflicts immediate pain. He sees the animal recoil in discomfort. Ignoring pain creates a cruel personality. Jews should always be compassionate and not develop an uncaring temperament. Hence our practice not to pluck feathers from the breathing chicken. However, when a doctor gives a medicine to the animal, initially the animal does not suffer. If the treatment is lethal, eventually the animal will die. Since the doctor is not confronted with the sight of immediate suffering, even our practice to avoid actions that form uncaring personalities would allow us to give the medicine to the animal (*Mesivta*).

Rabbinic Payments in Installments

Our Gemara introduced the Rabbinic market enactment, *takkanas ha-shuk*. The Sages were concerned that wealthy individuals might withdraw from the market. They might decide not to buy things. They might fear that some of the goods they acquire might be stolen, the victim would come and reclaim his stuff, and they would have to give up the items and then look for the thief who stole the items and sold them. To save themselves the possible hassle they might decide to withdraw from the market and not buy anything. To keep people engaged as buyers, the Sages created the market enactment.

Suppose someone purchased an item innocently. He did not buy from a known thief. It turned out, though, that what he purchased had been stolen. The victim can reclaim his item. However, he first must give the buyer the money he spent to get the item. The buyer then gives the item back to the victim, the victim then seeks and finds the thief and collects the money from him that he laid out to the buyer.

Reuven purchased an expensive camera from Shimon. Levi came and claimed that the camera had been stolen from him. Reuven agreed to give the camera back to Levi, but he demanded that Levi first give him what he had spent, in accordance with the *takkanas ha-shuk*. Levi did not have much money. He argued, “Biblical law allowed me to reclaim my camera without giving any money. The Rabbis enacted *takkanas ha-shuk* to keep people buying. I do not have a lot of money. I can give Reuven a little bit of money each month. Over many years he will get what he spent back.”

Reuven protested, “Why must I give up the item without first getting all that I spent back?”

Who was right?

Rav Elyashiv ruled that whenever the Sages enacted a payment, they were demanding a one-time payment in full. The Sages never created installment plans. The *takkanas ha-shuk* demands a full payment. Since Levi did not have the funds to pay for the full amount, he would not be entitled to get his camera back (*Chashukei Chemed*).

Bava Kamma 116

Damaging an Insured Item

The *Shut Maharsham* (4:7) discussed damage to an insured house. A wealthy man was angry with his friend. He decided to burn down the man's house. He did not want to risk anyone's life. He made sure to perform the arson when the home was empty. He also first checked and confirmed that the homeowner had insurance. Then he burned down the house. When his friend demanded reimbursement from him, he argued that he did not owe anything. "You were fully insured. The insurance company reimbursed you in full. I caused you no loss. I owe you nothing. True, it is frustrating to rebuild, but you angered me and I wanted to teach you a lesson." Was the arsonist exempt from paying?

The Maharsham ruled that based on our Gemara the damager had to pay for the full value of what he burned down. The fact that the homeowner had an insurance policy and that policy covered all the costs was irrelevant. He had caused damage and had to pay for his actions. This can be deduced from our Gemara's lesson about donkeys.

The Mishnah taught that if a river swept away my donkey, valued at one hundred *zuz*, and my friend's donkey, valued at two hundred,

and I jumped in to save the animal of my friend and as a result could not save my animal, my friend would only owe me money for my labors—swimming to the animal and getting it out. My friend would not owe me the value of my donkey. However, if before I went into the water I made a deal with him and stipulated, “I will go in and save your donkey, even though as a result I will lose my donkey, on condition that you pay me the one hundred for my donkey,” then he would owe me money for my efforts as well the one hundred for my donkey. Rav Kahana asked, “What would the law be if the owner of the more expensive donkey had agreed to pay for the less expensive animal, and the owner of the cheaper animal saved the more valuable beast; but then the less expensive animal came out of the river on its own?” Would the owner of the donkey worth two hundred still owe his friend one hundred for his animal?

The Gemara reaches the conclusion that the man whose animal was extricated would still owe his friend the one hundred. It was Hashem’s decision to gift to him the cheap animal by saving it. Hashem’s gift is irrelevant to the obligation. The man with the donkey worth two hundred had promised to give his friend wages for efforts and for his animal. He still owed him that amount.

Similarly, the insurance company payment to the owner of the house is irrelevant to the actions of the damager. It is a payment from another source. The damager must still pay for the house that he burned down.

The *Or Sameach* (*Sechirus* 7:1) also ruled like the Maharsham. He also understood our Gemara to mean that a gift from Hashem is irrelevant to the damager. So too, an insurance payment would be irrelevant to the damager. He would owe the full cost of the house he ruined.

The *Shut Harei Besamim* (*Mahadura Tinyana siman* 245) disagrees with the *Or Sameach* and Maharsham. He ruled that if the owner of the house was reimbursed fully by the insurance company and then he pressed a claim against the arsonist, the damager would not owe anything. There had been no damage; he had all his money back, and as a result, there would be no obligation to pay (*Chashukei Chemed, Daf Digest, Mesivta*).

When Building a Needed New Synagogue Building, Does Every Member Contribute Equally, or Do the Wealthy Pay More?

Our Gemara taught that if bandits attacked a caravan and someone paid them off, he is to be reimbursed from the other travelers according to their wealth. The wealthy should pay more of the ransom than the poor. The bandits were looking for wealth. Those with more wealth benefited more. Therefore, they are to contribute more towards that benefit. However, if the group had an expenditure that was needed to save lives, such as the cost of the guide, the costs are also divided based on people. Each person would pay an equal amount of the cost. Each traveler was equally in danger and equally saved from getting lost in the desert and dying.¹

The *Yam shel Shlomo* on our Gemara taught that communal mitzvah costs are to be shared equally by every member of the community. Each person needs a synagogue. Each person benefits equally from the synagogue. Therefore, every member should

1. The guide fills two roles. He saves the lives of the travelers and he saves their wealth. Therefore, his fee is split. Half of it is paid with an equal portion from each traveler. The other half is paid based on wealth.

pay equally for the costs of a new synagogue building, *mikveh*, or communal teacher.

The Mordechai (*Bava Basra* 478-9) disagreed. He felt that our Gemara contained a principle. Costs to save or preserve lives are divided by the person. However, all other costs are divided by wealth. Therefore, the cost of the new synagogue building should be divided up according to the wealth of the congregants.

There is a contradiction in the Rema about this issue.

In *Choshen Mishpat* (173:3), the Rema ruled that to hire a *chazzan*, build a synagogue, or pay for a teacher to teach children whose parents cannot afford to pay tuition, the costs are divided according to wealth. However, in *Orach Chaim* (53:23), he ruled that when hiring a *chazzan* half the cost should be divided equally among the community members and half according to wealth. This seems to contradict his own words in *Choshen Mishpat* where he ruled that the costs of hiring a *chazzan* are divided according to wealth.

The *Machatzis ha-Shekel* in *Orach Chaim* gave an answer. The basic law is that the costs should be carried based on wealth. However, in some towns there was a longstanding *minhag* to divide the cost—half per person and half according to means. The Rema in *Orach Chaim* was merely teaching that the town's custom should be followed. Where there was no custom the costs should be borne according to wealth.

The *Teshuvos Maharam Padua* (42) recorded that the Rabbis of Prague, including Rav Yom Tov Lipmann Heller, author of *Tosfos Yom Tov*, all agreed that it was the *minhag* for all holy expenses, such as building a synagogue or renting a room in which to pray, to split the costs. Half were per person and the other half were according to wealth. Since this was a longstanding practice it would be wrong to deviate from it or create a new custom in which the costs were divided differently (*Mesivta*).

Bava Kamma 117

Seeing the Rebbe Teach Makes the Student Wiser

Our Gemara tells a striking tale about Rav Kahana. A man came to Rav. He asked if he could direct Gentile tax-collectors to the field of his fellow Jew. Rav told him he was not allowed to do so. The man brazenly told Rav, “I will show them (the field), I will show them.” Rav Kahana killed the brazen man by severing his neck. Rav told Rav Kahana that he had done the right thing. When the nations get their hands on Jewish possessions, it is like an animal caught in a trap; the possessions will never be released. Rav told him that the Greek rulers would consider his actions murder and they might harm him. Rav encouraged Rav Kahana to flee. Rav told him to go to Israel but to accept upon himself not to challenge any rulings of Rav Yochanan for seven years.

Rav Kahana ran away to Israel. He sought out Reish Lakish, the primary student of Rav Yochanan, to introduce himself. Their conversation was filled with penetrating insights. When Reish Lakish realized that a great scholar was going to be in the yeshiva the next day, he told Rav Yochanan, “A lion has come up from Bavel. Rav

Yochanan should prepare tomorrow's lesson well for Rav Kahana will certainly present difficult questions."

The next day they seated Rav Kahana in the first row. Rav Yochanan taught a law. Rav Kahana, remembering his commitment, kept quiet. They moved him a row back. This happened seven times. Eventually, he was placed at the back of the room, behind seven rows. Rav Yochanan commented to Reish Lakish, "Your lion became a fox." Rav Kahana then said, "Let the seven rows be considered seven years." He stood on his feet, asked Rav Yochanan to repeat his first lesson, and then he challenged it with a powerful question. He did this multiple times. He was moved to the front of the room. Rav Yochanan eventually asked for help to see Rav Kahana. Rav Yochanan was old and his eyelids were heavy. They brought silver picks to open the eyes of Rav Yochanan so he could see Rav Kahana.

The Maharsha asked: why did Rav Yochanan desire to see Rav Kahana? Did it really matter what the brilliant student looked like? He answered that a student understands better when he sees his teacher. The verse (*Yeshayahu* 30:20) states, *ve-hayu einecha ro'os es morecha*, "And your eyes shall see your teacher."

Rav Yochanan felt Rav Kahana was his teacher. He wished to see his teacher fulfill the verse *ve-hayu einecha ro'os es morecha*.

Rav Menashe Klein (*Shut Mishneh Halachos* 7:154) was asked by a yeshiva about using cassette tapes to teach Talmud. There was a student who was having a hard time grasping the lessons. Someone suggested recording the Gemara onto an audio cassette and then having the student come to the classroom and listen to the lesson repeatedly. The *Shut Mishneh Halachos* discouraged the proposal.

In *Eruvin* (13b), Rabbi said, "I am sharper than my friends for I saw the back of Rabbi Meir. Had I seen his face I would have been even more accomplished." The Maharsha explains that a student who

sees his teacher becomes sharper, for the teacher communicates a lot with his facial expressions, looks, smiles, or frowns.

The Maharsha teaches from our Gemara that one should always see his instructor. One who listens to a tape does not see his teacher. When a Rabbi teaches a student, the disciple can gaze into his Rebbe's face. The Radbaz wrote in his responsa (3:473) that when a student gazes intently at the face of his teacher, some of the aura and soul of the Rebbe will enter the student. From his teacher he gets more soul. This process is called the secret of soul-impregnation during one's lifetime. It will help him grasp the material. Rav Klein encouraged the yeshiva to hire a tutor for the boy and not sit him down with a faceless recording (*Mesivta*).

Bava Kamma 118

Can a Landlord Back out of a Deal?

Reuven owned an apartment. He was seeking a tenant. Shimon was looking to rent. He found Reuven. They agreed to a ten-month lease. Reuven then heard complaints from neighbors. They had heard that Shimon was about to rent an apartment in their building. They were nervous. Shimon had a child who was out of control. He would assault people. He would make others uncomfortable and scared. The neighbors did not want him around. They harshly criticized Reuven. Reuven wanted good relations with neighbors. He asked Rav Zilberstein, “May I renege on the deal? May I refuse to allow Shimon to move in?”

Our Gemara seems to shed light on this issue. Our Gemara records a dispute between Rav Huna and Rav Yochanan. Suppose a person approached his friend and made a definitive claim, “You owe me one hundred *zuz*,” and the friend responded with a doubtful, “I do not know.” Rav Huna said the friend must pay and Rav Yochanan ruled that the friend does not need to pay. Rav Huna ruled that the friend must pay for a definitive claim trumps doubt. Rav Yochanan ruled that the friend did not need to pay, for the friend is in possession of the funds, *uki mamona be-chezkas marei*,

“Leave the money in the hands of its master.” This means that one who is in possession of funds is presumed the rightful owner of the funds. The claimant only had a demand; he did not bring witnesses or proof. A demand is not sufficiently powerful to take money out of someone else’s hands. *Halachah* is in accordance with the view of Rav Yochanan. Here too, the landlord still has the apartment; based on his possession of the apartment, perhaps he can still reverse himself and refuse Shimon entry.

The Maharsham (6:61 and 7:180) dealt with a question similar to the issue brought to Rav Zilberstein. Levi owned a residence. He said there were no bed bugs in the home. He rented a room to Yehudah. Yehudah paid him rent and he accepted the funds. Before Yehudah moved in, Levi was told that Yehudah’s mattresses, chairs, and couch were infested with bed bugs. He was afraid to let Yehudah move in. He was concerned Yehudah’s objects would infect his apartment and possessions with the insects. He now wished to refuse to allow Yehudah to move in. Yehudah argued that Levi should have made an explicit condition, “I am renting to you the room on condition that you not bring bed bugs in.” Since no stipulation had been made and he had already paid, he was entitled to move in. The Maharsham was asked if Levi could renege on the deal.

The Maharsham ruled that since Levi was in possession of the room, *muchzak be-mamono*, and Yehudah had yet to move in, Levi could refuse to allow Yehudah to move in. If Yehudah had moved in and was in possession of the room, Levi would only be able to break the lease and kick Yehudah out if he had explicitly made a condition that Yehudah not bring in bed bugs. However, since in our case he still had possession of the object, as our Gemara taught, possession

indicates ownership and authority. The burden of proof is on Yehudah to take a room from Levi. Levi can refuse to rent the room once he hears of the bed bugs. He should return the funds to Yehudah, but he does not have to allow Yehudah to move in.

In light of the ruling of the Maharsham, Rav Zilberstein ruled that if Shimon had not yet moved in to the apartment, Reuven could renege because of the complaints of the neighbors and not allow Shimon in. However, if Shimon had already moved in, and now Shimon was the one *muchzak ba-mamon*, then Reuven could not throw him out, since he had not received an explicit commitment that the children were well behaved, and he had not explicitly stipulated that he was renting on condition that Shimon's children be people who neighbors like (*Chashukei Chemed*).

A Lender Who Found Counterfeit Currency

Our Gemara's conclusion teaches that if Reuven claimed to Shimon, "I lent you one hundred *zuz* and you owe that amount to me," and Shimon responded, "I do not know if I ever borrowed from you," Shimon need not pay. Shimon should take a Rabbinic oath declaring that he does not know, and he would be exempt from paying. If Reuven claimed, "I lent you one hundred *zuz* and you owe that amount to me," and Shimon responded, "I remember borrowing that amount from you, but perhaps I paid you back, I do not recall," then Shimon would need to pay the amount back to Reuven.

The *Taz* (*Choshen Mishpat* 75 at the end) discussed the following case: Reuven lent money to Shimon. Shimon paid the money back. When Reuven was going through the cash he had he realized some of the bills were counterfeit. He went to Shimon, "You repaid me

with fakes. You still owe me one hundred *zuz*.” Shimon responded, “I do not recall if I paid with counterfeit currency.” Is this a case of “I do not know if I paid you back”? If it is, then Shimon would need to pay. Or is this considered “I do not know if I ever owed you this obligation”? In that case, Shimon would be exempt from paying.

The *Taz* ruled that such a case would be considered two stories. The first story of the loan and repayment was satisfied. The second claim is the existence of counterfeit coins. On this claim Shimon was saying that he did not know if it ever existed. He should swear that he does not know and then he would not have to pay anything. However, the *Birur Halachah* (*Choshen Mishpat* 1:75) ruled that if the lender is sure that the fake currency was from Shimon and Shimon claims that he does not recall, then Shimon has conceded to the basic claim; he merely does not recall if he paid back, so it is a case of “I agree I borrowed and I do not remember if I paid back,” and Shimon would need to pay (*Mesivta*).

Bava Kamma 119

Stealing and Killing

Our Gemara teaches that stealing is a terrible crime. Taking even a *perutah* is considering like taking away the life of the victim. Commentators explain this based on the words of the Gemara about the Givonim. The Givonim were a tribe of converts who joined the Jewish nation during the days of Joshua. Joshua assigned them to serve the priests and the Tabernacle. When King Shaul killed out the *kohanim* of the city Nov, the Givonim were left without means of support. The verse stated that Shaul killed the Givonim. Our Gemara asks, “But Shaul never killed them?” It answers: since he killed their source of livelihood and as a result they died, Hashem considered Shaul as killing them. So it also is with theft. Perhaps the victim needed that penny to live. When a thief takes away the property of another person he may cause that person to die, just as Shaul caused the Givonim to die.

Rabbenu Yosef of Slutzk pointed out that charity is the opposite of theft. Even a small gift of charity can trigger great blessings. Perhaps the small amount you gave caused the needy individual to have enough to live. Through the gift, you may have enabled his children to live. A small gift of charity creates an enormous amount of good. Even a small act of theft is a terrible horror.

Rav Zilberstein pointed out that while the Gemara stated that taking a penny is like taking a life, it is not literally the same as taking a life. In regards to murder there is the rule of *yehareg ve-al ya'avor*, "Be killed and do not violate." If a Gentile threatened a person and said, "Kill your friend or I will kill you," one must be willing to die and not kill the friend. However, if a Gentile were to say, "Steal from this poor man, or I will kill you," the person would not be obligated to die. Stealing is like killing, but it is not actually killing.

The *Pischei Teshuvah* (*Orach Chaim* 156) derived an important lesson from our Gemara. The *Shulchan Aruch* (*Orach Chaim* 156) teaches that after davening *Shacharis* one should go to the *beis midrash* and have a set amount of time for study. After study, one should go to work. Torah without work will not last. The *Magen Avraham* writes how while at work one must be careful to avoid speaking ill of others. *Lashon hara* is a terrible crime. The *Pischei Teshuvah* argued that based on our Gemara we learn that sometimes a person must say critical statements.

Our Gemara teaches about the severity of theft. Even stealing a *perutah* can be akin to murder. If I know that a customer is a pickpocket who steals from the store, I must warn the store-owner when I see that man entering his shop. Words of critique must be said to save a person from theft. If someone knows a man is morally deficient, if that man approaches a family and offers to marry their daughter, the one who knows about his deficiencies has an obligation to warn the family. If he refuses to volunteer information because he wishes to avoid *lashon hara*, it would be a terrible sin. He would be partially responsible for the horrific pain of the woman who married a man and did not know of his problematic personality. If I know that a man cheats his partners in business and I see him seeking to enter into a deal with a neighbor, I am obligated to warn

the neighbor. Theft can kill. If I did not warn the neighbor because I did not wish to speak *lashon hara*, I am terribly mistaken. *Lashon hara* is negative speech. If someone wishes to share gossip in order to harm the person about whom he speaks, it would be negative speech. However, one who intends to save a potential victim from the pain of pilfering is not engaging in negative speech. His words are protective speech. Saving an innocent man from being duped is like saving a life; it is a great mitzvah! (*Chashukei Chemed, Daf Digest, Pischei Teshuvah*).

