



Volume 10. Issue 5

Injuring Those That Can't Pay.

The *Mishnah* (8:4) lists people who are “bad” to have involved in a physical injury. The reason is that one is liable for any damage causes to these people, but these people are exempt if they inflict damage. The first group includes the minor, deaf-mute or imbecile. Since they are not *bnei da'at* (of intellectual capacity) they are not held responsible for their actions. The second group is the *eved* and a wife. The *Bartenura* explains since they do not have their own property, they are unable to pay compensation. The *Mishnah* however explains that if the *eved* is freed or the wife is divorced, then they are obligated to pay the compensation.

One question raised is that a wife does technically have her own property – the property that she brought into the marriage. Recall that they fall under two categories. *Nichsei melog* – usufruct property that remains the property of the wife, but the husband is allowed to get benefit from it and is not responsible for fluctuations in its value. *Nichsei tzon u'barzel* – property that is included as part of the dowry and the husband able to use it as he pleases. If he however dies first or divorces her, the full original value of the property must be returned. This being the case, what prevents the wife from paying compensation?

The *Bartenura* explains that this property cannot simply be sold during the marriage since the husband has a lien on the property. The *Tifferet Yisrael* however explains that if she has *nichsei melog*, then she can sell it “*b'tovat hana'ah*”. In other words, even though during the marriage the husband can use property, if she is divorced or the husband dies then the property returns to her. Note that if she dies first, then the husband inherits this property. Her “rights” in this arrangement has a value and can be sold to a third party. This is referred to as *tovat hana'ah*. The *Rosh* agrees with

this position, but extends it even further to *nichsei tzon u'barzel*; she would be required to sell her rights in them if necessary.

The *Tifferet Yisrael* however explains that if she had no other property but only her *ketubah*, then she would not be required to sell her rights to her *ketubah*. The reason is that a *ketubah* is effectively a debt. Now while debts can be sold, the original lender is able to forgo the debt. Since the wife in all likelihood would be happy to forgo the *ketubah* once her rights are sold, it is not a viable option.¹

The *Tosfot Yom Tov* however argues that even if the wife had *nichsei melog* she would be unable to pay the damages. He equates considers *nichsei melog* and *nichsei tzon u'barzel* like a loan and the same rationale that applied to *ketubah* above applies to them.

The *Tosfot R' Akiva Eiger* finds the *Tosfot Yom Tov*'s position difficult. He explains that there are two understandings why a lender can subsequently forgo the loan after he sells it. Either that in truth, on a biblical level one cannot sell a loan; the capacity to do so was a rabbinic institution. Alternatively, it is that while the sale is effective it cannot include the lien on the person (as apposed to property). *R' Akiva Eiger* explains that neither of these reasons apply to *nichsei melog*. In truth, a wife is able to sell *nichsei melog* even during the marriage. The subsequent decree of *takanat usha* however made him considered like the first purchaser (in the event that she died) preventing her from selling it. Her rights (as described above) however can certainly be sold. The concept of forgoing that applied in loans does not apply here. Consequently the case in the *Mishnah* must be referring to where the wife concerned had not *nichsei melog*.²

Yisrael Yitzchak Bankier

¹ The novelty therefore of the *Rosh* cited above is that even though *nichsei tzon u'barzel* might appear like a loan, he treats them like *nichsei melog* in this case.

² *R' Akiva Eiger* asserts that no proof can be brought from the *Rambam*'s and *Rif*'s absence of stating this detail when bring the ruling of our *Mishnah*.

R' Akiva Eiger notes that *Rashi* appears to maintain that even in the case where she has *nichsei melog* the wife would be exempt. He cites the *Yam Shel Shlomo* that points out that the position appears to contradict the *Gemara*. The *Yam Shel Shlomo* suggests that *Rashi* understand that in practice she would not be able to sell the rights as they would have little value and be difficult to sell.

Revision Questions

בבא קמא ז' ד' ט' ג'

- If witnesses testify that a person stole an ox and then he admits he consequently slaughtered that ox what is he liable? (ז' ד')
- What is the law if a person stole an ox from his business partner then sold it? (ז' ה')
- What is the law if a person stole an ox and then shot it? (ז' ה')
- When is the thief not liable if the animal died as he was removing it from the owner's property? What other cases are similar to this one? (ז' ה')
- Where can sheep be raised in Israel? (ז' ו')
- Which animals cannot be bred in *Yerushalaim* and why? (ז' ו')
- What are the five components of compensation one must pay if he injures another person and explain each of them? (ז' א')
- What other component of damage (aside from those mentioned in the previous question) is a person liable to pay if he caused the damage but not liable if his animal caused the damage? (ז' ב')
- Is a child obligated to pay compensation if he hits his parent and does not cause a wound? (ז' ג')
- What component of compensation does *R' Yehuda* maintain is not applicable for injuries caused to *avadim*? (ז' ג')
- Explain why for the following people "*pegiatan ra*": (ז' ח')
 - *Cheresh, shoteh ve'katan*.
 - Women.
- Why is a person who hits another person on *Shabbat* and causes a wound exempt from all forms of compensation? (ז' ה')
- Give the final ruling in the case where *R' Akiva* initially ruled that a man was obligated to pay compensation for the embarrassment caused when he uncovered a woman's hair in public, yet it was witnessed later that she readily uncovered her own hair in public. (ז' ח')
- Is there anything left for a person to do after they pay compensation for an injury they caused? (ז' ח')
- Is a person obligated to pay compensation if he was told by the victim to sever his hand? (ז' ח')
- What must a thief give the original owner if he stole:
 - Wood and crafted utensils?
 - A pregnant cow which subsequently gave birth?
 - A young calf which he subsequently raised? (ז' ט')
 - Wine which subsequently went sour?
 - *Trumah* which subsequently became *tameh*?
 - *Chametz* that was in the thief's possession during *Pesach*? (ז' ב')
- What is a craftsman obligated to pay if he was given raw materials to make a utensil, and he did so then broke it? (ז' ט')

Local Shiurim

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
 Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
Beit Ha'Roeh
 Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
 9:00am
Kollel Magen Avraham
 Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendar/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
 In US dial: 718 906 6400
 Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
17 th March ז' ניסן	18 th March ז"א ניסן	19 th March ח' ניסן	20 th March ט' ניסן	21 st March י' ניסן	22 nd March י"א ניסן	23 rd March י"ב ניסן
Bava Kama 9:4-5	Bava Kama 9:6-7	Bava Kama 9:8-9	Bava Kama 9:10-11	Bava Kama 9:12-10:1	Bava Kama 10:2-3	Bava Kama 10:4-5

