



Volume 4. Issue 1

FIRE!

Seder Nezikin begins with *Masechet Baba Kama*. The first *Mishnah* enumerates the four primary categories of civil damagers - the ox, the pit, the *mav'eh*¹ and the fire. These torts provide the basis for the vast remainder of the *Masechet*.

The third *Mishnah* of the second *perek* describes a case in which a dog takes a freshly cooked piece of cake which still has hot coals attached to it. The dog lays it on a haystack, which subsequently ignites. This case raises a fundamental question in the *Gemara* – what is the nature of damage caused by fire?

According to *Reish Lakish*, fire is considered one's property. *R' Yochanan* argues with this view, maintaining that the actual flame within a fire is not substantive and therefore cannot be owned. He holds that fire is comparable to one shooting arrows. That is, the individual who ignited the fire is thought to be continually lighting fire, as it were, just like the arrow has behind it the constant metaphysical force of the shooter. *Reish Lakish* rejects this opinion, arguing that fire moves on its own.

Rashi offers a practical difference between the two views. According to *Reish Lakish*, if coal that is not owned by the lighter is used, he would not be liable for the damage of the fire, as it is not his property. Contrarily, *R' Yochanan* would hold that he is liable because the lighter gave the fire its force. This interpretation of *Reish Lakish* is questioned by the *Tosafot* (s.v. *eisho mi'shum mamono*), who hold that even if one did not 'own' the fire, he would still be liable for kindling it.

There is a famous question asked on *R' Yochanan's* approach. The *Nimukei Yosef*² asserts that if fire is considered to be continually lit by the igniter, how can we light *Shabbat* candles close to *Shabbat*? It would be as though one is actually engaging in lighting the fire on *Shabbat*! He answers that the continued existence of the

flame, and similarly the trajectory and impact of the arrow, are traced back to their point of initiation, which is the very point in time that the liability arises.

The *Ohr Sameach* questions this answer, noting that according to this conception of *R' Yochanan's* opinion, *Tisha Be'av* should really be commemorated on the ninth day of *Av*, for the first arrows were launched by our enemies on the ninth of *Av*. The ensuing destruction on the tenth of *Av*, albeit the day on which the brunt of the damage occurred, was merely an extension of that original act. However, in *Taanit* (29a), *R' Yochanan* says that had he have lived in the generation of the destruction, he would have instituted the day of mourning on the tenth of *Av*.

R' Tzvi Pesach Frank answers that the *Nimukei Yosef's* response only pertained to the time at which liability arose, not to the time at which the object (in our *Mishnah's* case the haystack) was burned. It would be absurd to suggest that the haystack was already consumed from the time the coal was placed on it – it obviously took time to burn.

Similarly, there are two angles from which we can understand *Tisha/Asara Be'av*. On one hand, we could perceive the day to be more focused on revenge and a commemoration of what our enemies did to us. This would justify choosing the ninth of *Av* as a day of mourning. Alternatively, it may be considered a day solely of mourning, on which we lament the destruction of our Holy Temple – for it was on this day, the tenth of *Av*, that the *Beit Hamikdash* was actually razed.

Therefore, when *R' Yochanan* says that "*Tisha*" *Be'av* should have been instituted on the tenth of *Av*, he is not undermining his position with regard to *Eish*.³ Rather, he is adopting a stance concerning the mourning in *Av* that is completely independent of the "arrows" shot by our enemies and accordingly unrelated to the *din* of *eish*.

Jeremy Herz

¹ Some say this is a human who personally injures another – *adam hamazik*. Others say this is *shein* – when an ox eats from another's property.

² *Rif* 10b

³ According to the *Nimukei Yosef's* understanding of *R' Yochanan*.

Revision Questions

קידושין די: י"א-י"ד

- What is the law, relating to *yichus*, regarding a case where a man returns from abroad saying:
 - “This is my wife that I married while away and these are her children”?
 - “I married while away and my wife died, and these are the children from that relationship”? (די: י"א)
- Does *yichud* apply where there is:
 - Two *תקם* and one woman?
 - Two women and one man? (Include the exception.)
 - A mother and son? (די: י"ב)
- What profession should a single man refrain from being engaged in? (די: י"ג)
- According to *R' Yehuda* a majority of which professionals are *resha'im*? Are *ksheirim*? Are *tzadikim*? (די: י"ד)

סליק סדר נשים

בבא קמא א' א-ב' ו'

- What are the four *avot nezikim* and how are they different from each other? (א' א')
- What are the three criteria of objects that one is liable if he damaged them? (א' ב')
- In which two domains is one exempt from damage caused by his property? (א' ב')
- How is compensation determined and where? (א' ג')
- What are the two criteria placed on witnesses to obligate one to compensate for damages? (א' ג')
- What does the *Mishnah* mean by the following phrase: “וההנוק והמזיק בתשלומין”? (א' ג')
- What are the five *Tamin*? (א' ד')
- What are the five *Mu'adin*? (א' ד')
- Can a lion ever be considered a tame animal? (א' ד')
- What are the two differences between a *tam* and a *mu'ad*? (א' ד')
- Define the class of damages called *Regel*? (א' ב')
- Provide two cases of *regel* where the owner is liable only half-damages? (א' ב')
- Define the class of damages call *Shen*? (א' ב')
- If an animal consumed something in public domain, what liability is placed on the owner? (א' ב')
- What liability is placed on the owner of a dog that jumped from a rooftop and broke an object upon landing? (א' ב')
- When does an animal make a transition from being a *tam* to a *mu'ad*? (Include both opinions) (א' ב')
- In which domain do the *Chacham* and *R' Tarfon* disagree regarding the liability placed on the owner of a animal that gores another? Explain the debate. (א' ב')
- Can a human being ever be defined as a *tam*? (א' ב')
- What liability is place on a person that damages in his sleep? (א' ב')

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Sunday -Thursday
Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat
10 minutes before mincha
Mizrachi Shul

Audio Shiurim on-line!

- 613.org/mishnah.html
- www.shemayisrael.com/mishna/

www.mishnahyomit.com

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
27 th May י"ז סיון	28 th May י"ח סיון	29 th May י"ט סיון	30 th May כ" סיון	31 st May כ"א סיון	1 st June כ"ב סיון	2 nd June כ"ג סיון
Bava Kama 3:1-2	Bava Kama 3:3-4	Bava Kama 3:5-6	Bava Kama 3:7-8	Bava Kama 3:9-10	Bava Kama 3:11-4:1	Bava Kama 4:2-3

