

- When do men precede women and when do women precede men? (ג' ז')
- When does a *mamzer* precede a *kohen*? (ג' ח')

הדרן עלך סדר נזיקין

נחל נובע  
על סדר נזיקין



Articles  
and  
Revision Questions  
on  
Mishnayot

- What animal do the following people bring if they inadvertently transgress a sin whose deliberate transgression is punishable with *karet* and whose inadvertent transgression obligates one to bring a *chatat*: (ב' ר')
    - An individual?
    - A “*nasi*”?
    - A *kohen mashi'ach*?
    - *Beit din*?
  - Regarding the previous question what if the transgression was one:
    - Involving *avodah zara*? (ב' ר')
    - Obligating one to bring an *asham talui*?
    - Obligating one to bring an *asham vadai*?
    - Involving accidentally entering the *Beit Ha'Mikdash* in a state of impurity? (ב' ר')
  - What is the law if a *kohen mashi'ach* committed a sin obligating him to bring a *par* but then was removed from his position? (ג' א')
  - Regarding the previous question, does it make a difference if he was removed from his position prior to committing the sin? (ג' ב')
  - Regarding the previous two questions, what is the law regarding a “*nasi*”? (ג' א-ב')
  - Explain the debate regarding a “*nasi*” who sinned prior to his election. (ג' ג')
  - To who does the *Mishnah* refer when using the term “*nasi*”? (ג' ג')
  - What is a *kohen mashi'ach*? (ג' ד')
  - What is a *kohen ha'merubah begadim*? (ג' ד')
  - What is the difference between these two *kohanim*? (ג' ד')
  - With respect to laws of *aveilut* what are two differences between a *kohen gadol* and a regular *kohen*? (ג' ה')
  - Complete the following rules: (ג' ו')
- כל התדיר \_\_\_\_\_  
 וכל \_\_\_\_\_ קודם את חבירו
- To what case are the above rules applied? (ג' ו')

- When is *Beit Din* obligated to bring a *par he'lem davar shel tzibur*? (א: ג')
- What are some reasons regarding the people that sat on the *Beit Din* that ruled incorrectly, that would not qualify them to bring a *par*? (א: ד')
- Regarding a faulty ruling by *Beit Din*, when: (א: ד')
  - Does *Beit Din* bring a *par*?
  - Is everyone obligated to bring a *chataf*?
  - Everyone unable to bring a *korban*?
- What is the difference if *Beit Din* ruled incorrectly permitting *avodah zara*? (א: ה')
- What are the three opinions regarding how many sacrifices must be brought if a majority of the tribes acted in accordance with the mistaken ruling of *Beit Din*? (א: ה')
- According to who would this law even apply to a single tribe? (א: ה')
- When is a *kohen mashi'ach* obligated to bring a *par*? (א: ב')
- If a *kohen mashi'ach* acted in accordance with a mistaken ruling when can he be included in the communal sacrifice and when must he bring his own? (ב: ב')
- Complete the following rule: (ב: ג')
 

אין חייבין אלא על \_\_\_\_\_ עם \_\_\_\_\_
- For which particular transgression is the *par he'lem davar shel tzibur* brought? (ב: ג')
- What other sacrifice applies to similar transgressions as a *par he'lem davar shel tzibur* and what are these transgressions? (ב: ד')
- Which transgressions, if inadvertently transgressed, are the subject of debate as to whether a “*nasi*” is obligated to bring a *korban*? (ב: ה')

לעילוי נשמת

יחזקאל זעליג בן ישראל ע"ה

- According to *R' Yehoshua ben Levi*: (י:ב)
  - What does the heavenly voice announce on a daily basis and from where does it originate?
  - Who is truly free?
  - What happens to one that is constantly engaged in *Torah*?
- From where does the *Tana* learn that even if one learns one letter of *Torah* from another does he need to treat him with *kavod*? (י:ג)
- What is “the way of *Torah*”? (י:ד)
- What should be in excess of one’s learning? (י:ד)
- What two reasons are given for why one should not desire the “table of Kings”? (י:ד)
- Through how many qualities is Kingship acquired? (י:ה)
- Through how many qualities is *Torah* acquired? (Can you list them?) (י:ה)
- What is an effect if one says something in the name of the person who originally said it? (י:ו)
- What reason is give for why *Torah* is “great”? (י:ז)
- According to *R' Shimon ben Menasya* what seven things are fitting for *tzadikim* and who had all seven? (י:ח)
- What was *R' Yosi ben Kisma*’s response when he was offered a large some of money to relocate? (י:ט)
- What are the five *kinyanim* that *HaKadosh Baruch Hu* has the world? (י:י)
- For what purpose was everything created? (י:יא)

## Horayot

- If one acted according to the mistaken ruling of *Beit Din*, what is the general rule regarding when he is obligated to bring a *korban chatat* and when he is exempt? (יא:א)
- What are the two opinions regarding a person who acted according to a mistaken ruling of *Beit Din* but was unaware that *Beit Din* actually retracted that ruling? (יב:א)

- What is the difference between a debate that is and is not for the sake of Heaven and what examples are brought for each? (ה': י"ז)
- What is the promise of one that guides the masses on the straight and narrow and who is brought as an example? (ה': י"ח)
- What is the promise of one that causes the masses to sin and who is brought as an example? (ה': י"ח)
- What three attributes characterises: (ה': י"ט)
  - A student of *Aharon*?
  - A student of *Bilam*?
- Complete the following statement of *Yehuda ben Teima*: (ה': כ')

\_\_\_\_\_ קל \_\_\_\_\_  
 \_\_\_\_\_ וגיבור \_\_\_\_\_  
 לעשות רצון אביך שבשמים"

- According to *Yehuda ben Teima* a person with which character trait is “to *Gehinom*”? Is “to *Gan Eden*”? (ה': כ"ט)
- What is expected at, or characterises the following ages: 5, 10, 13, 15, 18, 20, 30, 40, 50, 60, 70, 80, 90, 100? (ה': כ"א)
- Complete the statement of *ben Bag Bag*: (ה': כ"ב)
 

\_\_\_\_\_ , \_\_\_\_\_ בה והפך בה \_\_\_\_\_ ,  
 \_\_\_\_\_ ובה \_\_\_\_\_ , \_\_\_\_\_ בה, ומנה לא \_\_\_\_\_  
 שאין לך מדה טובה הימנה"
- Who stated the following: "לפום צרה אגרא" (ה': כ"ג)
- According to *R' Meir*, regarding one that engages in *Torah*: (ו': א')
  - What does he merit?
  - What does it “cloth” him in?
  - What four things does it enable him to be?
  - What four things do people benefit from him?
  - What three things are given to him?
  - What is revealed to him?
  - In comparison to things in nature, what does he become?
  - What three traits characterise him?

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- What calamities are a result of the following public sins:
  - Some people stop separating *ma'asrot*?
  - Everyone stops separating *ma'asrot*?
  - People stop separating *challah*?
  - *Chayavei kritut* or *mitah bidei shamayim*?
  - Trading with *shmittah* produce?
  - Corruption in the courts and *halacha*? (ד' ח'י)
  - *Chilul Hashem*?
  - The three cardinal sins? (ה' ט'י)
- At what four times is there an increase in *dever* and why? (ה' ט'י)
- Considering the four traits of man, what is considered that trait of: (ה' י'י)
  - An average person?
  - An *am ha'aretz*?
  - A *Chasid*?
  - A *Rasha*?
- Which of the above traits do some consider the trait of a person from *Sdom*? (ה' י'י)
- What are the four different character traits regarding anger and appeasement and the *Tana's* assessment of each? (ה' י'יא)
- What are assessed in the same manner as the previous question? (ה' י'יב)
- What are the four types of people that:
  - Give *tz'daka*? (ה' י'יג)
  - “Go” to the *Beit Midrash*? (ה' י'יד)
- Describe the meaning of these types of people that sit before *Chachamim*: (ה' י'טו)
  - *Sofeg*?
  - *Mashpech*?
  - *Mashmeret*?
  - *Nafah*?
- What is the definition of “eternal love” and what case is brought as an example? (ה' י'טז)

- According to *R' Ya'akov* what two things are better than the entire *Olam HaBah*? (ד'י:י"ז)
- According to *R' Ya'akov* what is better than the entire *Olam HaZeh*? (ד'י:י"ז)
- According to *R' Shimon ben Elazar* what are the four times when one should not confront/see his friend? (ד'י:י"ח)
- What *pasuk* is central to the *Mishnah* in the name of *Shmuel Ha'Katan*? (ד'י:י"ט)
- To what does *Elisha ben Avuya* compare one that learns when he is young? (ד'י:כ')
- To what does *R' Yosi bar Yehuda ish Kfar HaBavli* compare learning from an elderly sage? (ד'י:כ')
- Who argues with *R' Yosi bar Yehuda* and what is his rationale? (ד'י:כ')
- According to *R' Eliezer* what three things remove a person from the world? (ד'י:כ"א)
- What eight “roles” of *HaKadosh Baruch Hu* should one be conscious of and inform others about? (ד'י:כ"ב)
- What five events occurred and will occur against our will? (ד'י:כ"ב)
- Why was the world created with ten utterances? (ה'י:א')
- Why were there ten generation from: (ה'י:ב')
- *Adam to Noach*?
- *Noach to Avraham*?
- Who bore ten trials? (Two people.) (ה'י:ג-ד')
- What four things numbered ten as *Yisrael* was taken out of *Mitzrayim*? (ה'י:ד')
- What were the ten miracles in the *Beit Ha'Mikdash*? (ה'י:ה')
- What ten things were created on *erev Shabbat bein ha'shmashot*? (ה'י:ו')
- What seven traits are found in a *Chacham*? (ה'י:ז')

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- Who does *R' Tzadok* cite when warning against using *Torah* for self aggrandisement? (ד':ה')
- Complete the following statement of *R' Yosi*: (ד':ו')  
 כל המכבד את התורה \_\_\_\_\_  
 וכל המחלל את התורה \_\_\_\_\_
- From which three things does *R' Yishmael* say that a person who avoids strict judgement is saved from? (ד':ז')
- What three qualities does *R' Yishmael* attribute to an overconfident judge? (ד':ח')
- What two warnings do *R' Yishmael* provide a judge? (ד':ח')
- What does *R' Yonatan* say regarding on who fixes time for learning despite being in poverty? (ד':ט')
- What four things does *R' Meir* say regarding learning? (ד':י')
- What does *R' Eliezer be Ya'akov* say is the result of performing one *mitzvah*? Transgressing one sin? (ד':יא')
- According to *R' Yochanan HaSandler* what is the result of a gathering that is *le'shem shamayim*? (ד':י"א')
- How does *R' Eliezer ben Shamu'a* say that one should treat: (ד':י"ב')
  - The honour of his students?
  - The honour of his friends?
  - The awe of his *Rebbi*?
- According to *R' Yehuda* why should one be careful with his learning? (ד':י"ג')
- According to *R' Shimon bar Yochai* what are the three crowns and what (other) crown rises above them all? (ד':י"ג')
- What does *R' Nehorai* say when *Torah* learning is not found in one's locale? (ד':י"ד')
- Complete the following statement of *R' Yanai*: (ד':ט"ו')  
 אין בידינו לא \_\_\_\_\_ ואף לא \_\_\_\_\_
- Complete the following statement of *R' Matya ben Charash*: (ד':ט"ו')  
 הוי \_\_\_\_\_ כל אדם  
 והוי \_\_\_\_\_ לאריות ואל תהי \_\_\_\_\_ לשועלים
- To what does *R' Ya'akov* compare this world? (ד':ט"ז')



- Complete the following statement of *R' Tarfon*: (ב' : ט"ו)  
 היום \_\_\_\_\_, והמלאכה \_\_\_\_\_, והפועלים \_\_\_\_\_,  
 והשכר \_\_\_\_\_, ובעל הבית \_\_\_\_\_
- What else did *R' Tarfon* say regarding work? (ב' : ט"ו)
- What three things does *R' Tarfon* say regarding the reward for learning? (ב' : ט"ו)
- According to *Akavya ben Mehalalel* if one looks at what three things will he not sin? (ג' : א')
- Why does *Channinah segan Ha'Kohanim* say that one should pray for the welfare of the government? (ג' : ב')
- What does *Chananya ben Tardyon* say regarding two people that sit and do not converse in words of *Torah*? (ג' : ב')
- What does he say regarding those that do? (ג' : ב')
- What does *R' Shimon* say regarding three people eating together and do not share in words of *Torah*? (ג' : ג')
- What does he say regarding those that do? (ג' : ג')
- According to *R' Chananya ben Chachinai* what three people are “*mitchayev b'nafsho*”? (ג' : ד')
- What does *R' Nechunya ben Hakana* say regarding one that accepts upon himself the “yoke of *Torah*”? (ג' : ה')
- According to *R' Chalaftah ish Kfar Chananya*, when how many people learn does the *Shechina* preside amongst them? (ג' : ו')
- Complete the following statement of *R' Elazar ish Bartuta*: (ג' : ז')  
 תן לו משלו \_\_\_\_\_
- What does *R' Shimon* say regarding one who interrupts his learning to comment on the beauty of a tree? (ג' : ז')
- Why does *R' Levitas ish Yavneh* say that one should be very humble? (ד' : ד')
- What does *R' Yochanan ben Bruka* say will happen to one that desecrates the name of *Hashem* in secret? (ד' : ד')
- According to *R' Yishmael* what will happen to one who learns: (ד' : ה')
  - For the purpose of learning and teaching?
  - For the purpose of learning and “doing”?

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- What did *Hillel* say regarding: (ב' ה')
  - A *boor*?
  - An *am ha'aretz*?
  - A *bayshan*?
  - A *kapdan*?
  - One who increases in business?
- What did *Hillel* say when he saw a skull floating in the water? (ב' ו')
- Complete the following statements? (ב' ז')
  - מרבה בשר מרבה \_\_\_\_\_, מרבה נכסים מרבה \_\_\_\_\_ ;
  - מרבה עבדים מרבה \_\_\_\_\_, מרבה שפחות מרבה \_\_\_\_\_ ;
  - מרבה נשים מרבה \_\_\_\_\_ . מרבה תורה מרבה \_\_\_\_\_ ,
  - מרבה ישיבה מרבה \_\_\_\_\_ .
  - קנה שם טוב, קנה \_\_\_\_\_ ;
  - קנה דברי תורה, קנה \_\_\_\_\_ .
- Complete the following statement of *R' Yochanan ben Zakkai*: (ב' ח')
  - אם למדת תורה הרבה \_\_\_\_\_ , \_\_\_\_\_
- Who were the five student of *R' Yochanan ben Zakkai* and how did he describe each of them? (ה' ח')
- What did each of them think is the “straight path” to which one should attach themselves and with who did *R' Yochanan ben Zakkai* agree? (ה' ט')
- What did each of them think is the “evil path” which one should avoid and with who did *R' Yochanan ben Zakkai* agree? (ה' ט')
- What were the “three” statements of *R' Eliezer ben Hurkanus*? (ב' י')
- According to *R' Yehoshua* what three things “remove a person from the world”? (ב' י"א)
- What are the three statements of *R' Yosi*? (ב' י"ב)
- What three things did *R' Shimon* say regarding *tefillah*? (ב' י"ג)
- What three things did *R' Elazar* say regarding learning? (ב' י"ד)

- According to *Hillel* what four traits characterise a “student of *Aharon*”? (א': י"ב)
- What is different about the thirteenth *Mishnah*? (א': י"ג)
- What did *Hillel* say regarding one who: (א': י"ג)
  - Pursues honour?
  - Stops learning?
  - Does not learn?
  - Makes personal use of “*keter Torah*”?
- Complete the following statement made by *Hillel*: (א': י"ד)
 

אם אין אני לי \_\_\_ ? וכשאני לעצמי \_\_\_ ?  
 \_\_\_\_\_ אימתי?
- Complete the following statement made by *Shammai*: (א': ט"ו)
 

עשה תורתך \_\_\_\_, אומר מעט \_\_\_\_,  
 והוי מקבל את כל אדם \_\_\_\_\_
- What three things did *Rabban Gamliel* teach? (א': ט"ז)
- What three things did *Rabban Shimon ben Gamliel* teach regarding speech? (א': י"ז)
- According to *Rabban Shimon ben Gamliel*, on what three things is the world sustained? (א': י"ח)
- According to *Rebbi*, what is the straight path in which one should lead his life? (ב': א')
- If one focuses on which three things will he be saved from sin? (ב': א')
- According to *Rabban Gamliel* the son of *Rebbi Yehuda HaNasi* with what should *Torah* be combined? What is the result if one does not do so? (ב': ב')
- What guidance does he give to one who will be involved in communal affairs? (ב': ב')
- What warning does he give to one who will be involved in affairs with the government? (ב': ג')
- Complete the following statement: (ב': ד')
 

עשה רצונו כרצונך, \_\_\_\_\_  
 בטל רצונך מפני רצונו, \_\_\_\_\_
- What five statements did *Hillel* make beginning with אַל? (ב': ד')

## Editors Forward

With much gratitude to *HaKadosh Baruch Hu*, I am able to present the fourth volume of *Nachal Nove'ah*.

When the question of what one should do if they wish to be pious (a *Chassid*) is asked, three response a given in the *Gemara* (*Bava Kama* 30a). *Rav Yehuda* answers that one should fulfil the laws of damages (*Nezikin*). A simple understanding might be that piety is achieved not through spiritual worship or perfection as one might think, but rather through the honest and true dealings with one's neighbours in the very mundane day-to-day matters.

Perhaps one can suggest a deeper understanding. *Parashat Shoftim* begins: “Judges and policemen you shall place at all your gates... and you shall judge the nation with righteous judgment.” The *Kedushat Levi* explains that *HaKadosh Baruch Hu* constantly wishes to judges us with mercy. For Him to do so however, we are required to act in a manner to initiate it. How? We must act with mercy, judge others favourably and try to frame their actions in a positive light. The “placement” of merciful “judges and policemen” at the heavenly “gates”, depend on us “judging the nation with righteous judgment”. Based on this we can suggest that one who learns the order of *Nezikin*, thereby gleaning the tools to judge others in a positive manner will indeed be acting piously as he awakens heavenly mercy for us all.

As always I must thank those that took time and energy to write the articles that make up this *sefer*. In particular in this volume, I must thank *Yehuda Gottlieb* for actively taking charge in organising, editing, printing and delivering the weekly publication during my absence. May *HaKadosh Baruch Hu* grant continued success and growth in learning for him and his family. Finally, as with everything, this would not have been possible without the tireless support of my wife.

Yisrael-Yitzchak Bankier

- What is the *shiur* of *yayin nesech* needed to make a mixture of *yayin nesech* and another liquid *assur*? (ה' ח:י)
- Name five items that are *assur bekol shehu*? (ה' ט:י)
- How would *R' Shimon Ben Gamliel* permit the use of *yayin nessech* that fell into a *bor*? (ה' י:י)
- What are the three methods of *kashering keilim* purchased from a *goi* and when do they apply? (ה' י"ב)
- How does one *kasher* a skewer? (ה' י"ב)
- How does one *kasher* a knife? (ה' י"ב)

## Avot

- Describe the *mesorah* chain from *Moshe* to the *Anshei Knesset Ha'Gedolah*? (א' א)
- What three things did the *Anshei Knesset Ha'Gedolah* teach? (א' א)
- *Shimon Ha'Tzaddik* taught that the world stands on which three things? (א' ב)
- According to *Antignos Ish Soco*, what is the proper method to serve *Hashem*? (Include both points.) (א' ג)
- What three statements did *Yosi ben Yo'ezer* make with respect to dealings with *Chachamim*? (א' ד)
- What three things did *Yosi ben Yochanan* teach? (א' ה)
- What three things did *Yehoshua ben Perachya* teach regarding important relationships? (א' ו)
- What did *Nitai Ha'Arbeli* teach and how does it relate to the previous question? (א' ז)
- What did *Yehuda ben Tabai* teach regarding court cases and the debating parties? (א' ח)
- What did *Shimon ben Shetach* teach regarding interrogating witnesses? (א' ט)
- What three things did *Shema'ya* teach regarding work? (א' י)
- What did *Avtalyon* teach regarding speech? (א' י"א)

- What activities may one do with a baker who is in a state of *tum'ah*? (ד: ט:)
- If a *nochri* is standing beside a *bor*, in what situation would the wine contained there be *assur*? (ד: ט:)
- What are the four occurrences that occurred to wine in a *bor* which *R' Shimon* permitted? (ד: ט:)
- If one makes *tahor* wine and leaves it in the *nochri's* possession what are the attributes of the house and city in which this wine is placed, to ensure it is permitted? (ד: י"א)
- What was the *ma'aseh* that occurred in *Beit She'an* with the someone who was *metaher* the wine of a *nochri*? (ד: י"ב)
- If one was hired to produce *yayin nesech* what is the status of his salary? (ה: א:)
- In what situation would the income received from hiring out a donkey be forbidden? (ה: א:)
- How much *yayin nesech* must fall on dates and figs to make them *assur*? (ה: ב:)
- Explain the *machloket* between *Tana Kama* and *R' Shimon ben Gamliel* regarding a *nochri* who is transporting jars of wine without a Jew being present. (ה: ג:)
- If one leaves his jug of wine with a *nochri* in his store and is not present at all times is that wine *mutar*? (ה: ד:)
- If one was eating with a *nochri* at a table, in what instance would the wine that is placed on the *dulbaki* (side table): (ה: ה:)
  - *Assur*?
  - *Mutar*?
- If a troop of *goyim* enter a city at a time of peace which barrels of wine are forbidden? (ה: ו:)
- Is a Jewish professional allowed to collect his *sechar* from barrels of *yayin nesech*? (ה: ז:)
- If one is pouring *yayin nesech* from *kli* to *kli* what is the status of the *kli*: (ה: ח:)
  - being poured out?
  - being poured into?

## Introduction

The order of *נויקין* begins with the first three tractates starting with the word 'בבא' in their names. They are *בבא מציעא*, *בבא קמא* and *בבא בתרא*. The word 'בבא' is Aramaic for the Hebrew word 'שער' which means gate. In his introduction to *נויקין*, *Rabbi Yom Tov Lippman Heller* (1574-1644) author of *תוספות יום טוב*, explains that the reason *חז"ל* used the word gate and that in later times as well, authors would divide their works into 'שערים'-gates, is because the *תורה שבכתב* (Written Torah), is a closed book without the *תורה שבעל פה* (Oral Law) to explain it. It is only the *תורה שבעל פה* embodied in the *משנה*, which opens up these closed gates and allows us to understand what the *תורה שבכתב* is really saying. How fitting therefore is the usage of the term 'בבא'-gate.

*נויקין* also contains the very popular *מסכת* called 'אבות'-Ethics of Our Fathers. The *Mishnah* (1:4) states as follows:

יוסי בן יועזר איש צרידה אומר, יהי ביתך בית ועד לחכמים; והוי מתאבק בעפר רגליהם, ושותה בצמא את דבריהם.

Let your house be a meeting place for the sages; cover yourselves in dust with the dust of their feet and drink their words with thirst.

**Rabbi Ovadia** from *Bartinero Italy* (1445-1530) in his commentary on the *משנה* gives two explanations for the expression 'dust of their feet.' It is either because the *תנא* exhorts us to closely follow the sages, emulating their ways to the point that we will be covered by the dust created by their footsteps as we follow closely behind them or because in those days it was customary for the teachers to sit on benches and the students on the dusty ground at their feet.

But it is strange that the *תנא* uses the expression 'מתאבק' which has the root 'אבק' (dust), and then says 'בעפר', which has the root 'עפר' another expression for dust. Why did the *תנא* not use the same word 'אבק' for dust and say 'והוי מתאבק באבק רגליהם'?

The Lubavitcher Rebbe (1902-1994) explains that the term ‘אבק’ is used to describe dust that is non-productive whereas the term ‘עפר’ is used to describe dust that can yield produce. The תנא is describing the humility and reverence with which we are to approach the words of חז"ל. Our limited capacity symbolized by the non-productive dust ‘אבק’ is dwarfed by the productive capacity of the dust of our Sages ‘עפר’ which, even at their feet, yields life giving nourishment.

However, by drinking with thirst the words of חז"ל in the משנה and ‘covering ourselves’ so to speak in *their* dust, our eyes and hearts will be privy to the hitherto closed chambers, as we open and walk through the gates of Hashem’s תורה. As the תוספות יום טוב concludes (ibid) quoting תהלים (118:20) ‘זה השער ליה צדיקים’ - “this is the gateway to Hashem, the righteous will come through it.’

### Reb Leor Broh

- If someone had the wall of their house adjoining that of an idol worshipper and it fell, how should it be rebuilt? (ג: רי)
- Explain the opinion of R’ Akiva with regard to the *tum’ah* of *avodah zara*. (ג: רי)
- The *Mishnah* discusses three scenarios which can arise with an item used for *Avodah Zara*. What are the scenarios and what are the three possible outcomes? (ג: רז)
- Explain the *machloket* between *Tana Kama* and R’ *Shimon* with regard to an *Asheira* tree. (ג: רז)
- If one crossed under an *Asheira* tree that hung over public property would he be *tamei* or *tahor*? (ג: רח)
- What benefit does one get from planting vegetables in the shade of an *Asheira* tree in the winter according to R’ *Yosi*? (ג: רח)
- What must be done to a new oven if it was heated up with wood from on *Asheira* tree? (ג: ט)
- Explain the *machloket* between R’ *Eliezer* and *Chachamim* regarding *pidyon* for *avodah zara*. (ג: ט)
- Is one able to nullify an *Asheira* tree? How? (ג: י)
- According to R’ *Yishmael* if one found two rocks beside a *Markulis* are they *mutar*? (ד: א)
- When do the *Chachamim* make rocks found by a *Markulis* *assur*? (ד: א)
- What type of items, if found on an *avodah zara* are always forbidden? (ד: ב)
- In what situation may one benefit from the garden or bath-house of an *avodah zara*? (ד: ג)
- What is the difference between a Jew and non-Jew with regards to nullifying an *avodah zara*? (ד: ד)
- Explain the *machloket* between *Rebbi* and *Chachamim* regarding selling or pledging an idol. (ד: ה)
- Is an *avodah zara* left in a time of war *mutar* or *assur*? (ד: ו)
- From when does wine become *yayin nesech*? (ד: ז)
- What activities may one do with a *nochri* in a winepress? (ד: ט)

- Explain the debate regarding renting and selling fields and houses to *goyim* in: (א:יח)
  - *Chutz La'aretz*.
  - *Eretz Yisrael*.
- Why is one unable to rent out a *merchatz* to a *goi*? (א:ט)
- What two things may one not do for a *nochri* baby? (א:בי)
- What type of *refuah* may one receive from a *goi*? (ב:בי)
- List four items belonging to *goyim* that are *issurei hana'ah*? (ב:גי)
- Explain the opinion of *R' Akiva* regarding meat used for *avodah zarah*. (ב:גי)
- List three differences between *R' Meir* and the *Chachamim* regarding items that belonging to *goyim* that are *issurei hana'ah*? (ב:ד)
- According to *R' Yehoshua* what is the reason that cheese belonging to *goyim* is not permitted? (ב:ה)
- List four items belonging to *goyim* that are *assur* but they are not *issurei hana'ah*? (ב:ו)
- List five items belonging to *goyim* that are permissible to eat? (ב:ז)
- From which type of *chagavim* must one take *trumah*? (ב:ח)
- Explain the opinions of *R' Meir*, *Chachamim* and *R' Shimon Ben Gamliel* regarding *tzelamim*? (ג:א)
- What individual pieces of a *tzelem* are *mutar* and which are *assur*? (ג:ב)
- What *keilim* must be destroyed according to: (ג:ג)
  - *Tana Kama*
  - *R' Shimon Ben Gamliel*
  - *R' Yosi*
- What question was posed to *R' Gamliel* by *Proklos Ben Plosphos*? (ג:ד)
- What was *R' Gamliel's* first answer to this question? (ג:ד)
- What was *R' Gamliel's* second response? (ג:ד)
- Explain the debate regarding if mountains and valleys used for *avodah zara* are *mutar*. (ג:ה)
- According to *R' Yosi* why is an *Asheira* tree *pasul*? (ג:ה)

## Bava Kama

### Fire!

Bava Kama (1:1)

Jeremy Herz

*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*<sup>1</sup> 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 then 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 *Tosfot* (s.v.

<sup>1</sup> 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.

*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*<sup>2</sup> 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 B'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 B'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

- What did *R' Yehoshua* and *R' Yehuda ben Beteira* present regarding the previous case and how did *Rabban Shimon ben Gamliel* respond? (יג: ח)
- What three laws did *R' Yosi ben Yo'ezer ish Tzreida* present? (יד: ח)
- What was the ruling given after they found bones in the *dir eitzim*? (יה: ח)
- Explain the debate regarding how they constructed the *heichal* in the *Beit Ha'Mikdash*. (יז: ח)
- What are the various opinions regarding the task of *Eliyahu Ha'Navi*? (יח: ח)

## Avodah Zara

- When is one prohibited from trading with *goi'im*? (יא: א)
- What else is prohibited at that time? (יא: א)
- What is *R' Yehuda's* opinion? (יא: א)
- On what point does *R' Yishmael* argue? (יב: א)
- Which “festival” is debated between *R' Meir* and the *Chachamim*? (יג: א)
- When is one allowed to enter a city of idol worship during their festival? (יד: א)
- List some items that may not be sold to an *akum* at any time during the year? (יה: א)
- Regarding the previous question, what is the general rule regarding all other items? (יה: א)
- What are the three opinions regarding which (farm) animals can be sold to an *akum*? (יז: א)
- What other animals may not be sold? (יח: א)
- Which joint-construction venture may one not partake in with an *akum*? (יח: א)
- What specific types of jewellery are mentioned by the *Mishnah* as those forbidden to make for *avodah zara*? (יח: א)

<sup>2</sup> *Rif* 10b



- What is a *kalal shel chatat* and what did R' Yehoshua and R' Yakim testify regarding if it is place on top of a *sheretz*? (י:יח)
- Who disagrees with the previous law? (י:יח)
- If someone accepted two terms of *nezirut* what, *bedi'eved* could be the minimum length of his *nezirut*? (י:יח)
- Explain the debate regarding what is done with the offspring of a *shlamim* offering. (What case did R' Papyas bring as support?) (י:יח)
- What did R' Yehoshua and R' Papyas testify regarding *Aruchot shel Nachtomim*? (י:יח)
- What other case was debated in a similar manner? (י:יח)
- How late did R' Yehoshua and R' Papyas maintain that *Beit Din* could declare a year a leap year and how did they differ from the *Chachamim*? (י:יח)
- What other innovation did they present regarding the law in the previous question? (י:יח)
- About what two items did *Menachem ben Signai* testify in opposition to the *Chachamim*, one of which *tameh* and the other *tahor*? (י:יח)
- About which four things did R' Nechunya ben Gudgedah testify? (י:יח)
- How does R' Yehoshua ben Beteira rule regarding the earlier debate (5:1) between *Beit Shammai* and *Beit Hillel* concerning the blood of a *neveilah*? (י:יח)
- Regarding what does R' Shimon ben Beteira rule:  
"נגע טמא בקצתו טמא כולו"  
and how does R' Akiva expand this rule? (י:יח)
- Which one of R' Nechunya's laws (7:9), do R' Yehuda ben Beteira and R' Yehuda HaKohen also bring and what do they add? (י:יח)
- Regarding the case that R' Yosi HaKohen and R' Zecharya ben haKatzav presented, why did the family in *Ashkelon* distance themselves from one of their members and how did the *Chachamim* respond? (י:יח)
- What is an *almanat issa*? (י:יח)

Holy Temple – for it was on this day, the tenth of Av, that the *Beit Ha'Mikdash* was actually razed.

Therefore, when R' Yochanan says that “*Tisha*” *B'Av* should have been instituted on the tenth of Av, he is not undermining his position with regard to *eish*.<sup>3</sup> 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*.

<sup>3</sup> According to the *Nimukei Yosef's* understanding of R' Yochanan.

## Tam – Not So Simple

Bava Kama (3:8)

Yisrael-Yitzchak Bankier

In this *masechet* we learn about the difference between a *tam* and a *mu'ad* in the class of damage *keren* (unusual damage caused by one's animal or property, e.g., goring). In the first few instances of such damage, the animal is defined as a *tam* and the owner is liable to pay half the damage caused. If the animal has been established as an animal that regularly causes such damage then the owner is liable to pay full compensation (see 2:4).

One *Mishnah* (3:8) discussed how compensation is determined if two animals each inflict such damage on each other. At first glance this *Mishnah* appears to be a simple exercise in mathematics. Indeed *Tosfot* (*Bava Kama* 33a s.v. *shnei*) question the need for this *Mishnah* at all. One line however in the *Mishnah* is debated by the *Rishonim* (as noted by *Kehati*):

If damage caused by the *mu'ad* is in excess of the damage caused by the *tam*, the owner of the *mu'ad* will pay full compensation of the excess. If damage caused by the *tam* is in excess of the damage caused by the *mu'ad*, the owner of the *tam* will pay half compensation of the excess.

How do we understand the above *Mishnah*? According to the *Rambam* (*Nizkei Mamon* 9:14) the first step is to determine the liability of each of the parties. Half the damage caused by the *tam* is compared to the damage caused by the *mu'ad*. The excess is then paid by the owner. Using the *Rosh's* example if the *tam* caused \$40 damage and the *mu'ad* caused \$50 damage, the owner of the *mu'ad* would be liable \$30 (the damage his animal caused minus half the damage caused by the *tam*). This is consistent with the liabilities placed on the owner of a *tam* and the owner of a *mu'ad*. What is being compared here is the liabilities of each of the parties. This would also be how *Tosfot* understands the *Mishnah* as such a presentation contains no novel ideas.

- What are the three cases that *R' Shimon* listed that *Beit Shammai* is more lenient than *Beit Hillel*? (ה' ג')
- What are the two cases that *R' Eliezer* listed that *Beit Shammai* is more lenient than *Beit Hillel*? (ה' ד')
- What is the law concerning a case where two brothers marry two sisters and they both die without any children with respect to *Yibum* and *Chalitzah*? What is *R' Eliezer's* opinion? (ה' ה')
- What were the four *dinim* that were debated between the *Chachamim* and *Akavya ben Mehalalel*? (ה' ו')
- According to *R' Yehuda* on which *Tana* did they place a *nidui* and why? (ה' ז')
- What did *Akavya ben Mehalalel* request of his son before he died? (ה' ח')
- What did his son request and what was the response? (ה' ט')
- Which animal did *R' Yehuda ben Bava* testify committed a capital offence and was punished with stoning? (ו' א')
- What were the other four laws that *R' Yehuda ben Bava* presented? (ו' ב')
- Explain the debate regarding whether a limb from a corpse can be a source of *tum'ah*. (ו' ג')
- According to *R' Eliezer* what is a greater source of *tum'ah*, a live person or a corpse? (Explain) (ו' ד')
- What are the three opinions (*R' Eliezer*, *R' Yehoshua* and *R' Nechunya*) regarding *kezayit basar min ha'chai* and *etzem ke'seorah min ha'chai* and explain the rationale behind each of those opinions? (ו' ה')
- Explain the debate regarding a *petter chamor* that is lost. (ו' ו')
- What did *R' Tzadok* testify regarding:
  - *Tzir* from *chagavim te'emeim* and how did it differ from the *mishnah rishona*? (ו' ז')
  - A body of water where the *zochalin* is more than the *notfim* and why is this law important? (ו' ח')
  - *Zochalin* that pass over the "aleh" of a nut? (Explain) (ו' ט')

- When do *Beit Shammai* and *Beit Hillel* agree that a barrel containing olives undergoing pickling need not be punctured? (ד'י:יג)
- If a person immerses in a *mikvah* covered in oil, what is the difference between if the oil was *tameh* before or after it was applied? (Include both opinions.) (ד'י:יג)
- What is a *get yashan* and explain the debate regarding whether it can be used? (ד'י:יג)
- When do *Beit Shammai* and *Beit Hillel* agree that a man that is *meyached* with his ex-wife in a *pundeki* need not give her another *get*? (ד'י:יג)
- Explain the debate between *Beit Shammai* and *Beit Hillel* regarding *tzarot ervah* and what are three implication of this debate. (ד'י:יח)
- Explain the debate between *Beit Shammai* and *Beit Hillel* regarding the power of a *ma'amar* and what case is brought as an implication of this debate. (ד'י:יט)
- What are the two opinions regarding the limit to how long a man can make a *neder* regarding his wife and *tashmish mita*? (ד'י:יז)
- Explain the debate between *Beit Shammai* and *Beit Hillel* regarding:
  - Putting *tzitzit* on linen clothing.
  - Untithed fruit placed in a basket set aside for *Shabbat*. (ד'י:יז)
  - A person that accepted and completed many terms of *nezirut* outside Israel and then moved to Israel.
  - Two contradicting sets of witnesses who testify regarding the number of terms of *nezirut* a person accepted. (ד'י:יא)
- Regarding which case do *Beit Shammai* and *Beit Hillel* argue whether a person's body can join two *ohalim*? (ד'י:יב)
- What are the six case that *R' Yehuda* listed that *Beit Shammai* is more lenient than *Beit Hillel*? (ד'י:יא)
- What are the six cases that *R' Yosi* listed that *Beit Shammai* is more lenient than *Beit Hillel*? (ד'י:יב)

*Rashi* (see *Rosh* 3:13) however reveals the new point in the *Mishnah*. He understands that in the above case, the full damage caused by each of the animals is first compared. Therefore using the above example, the owner of the *mu'ad* would be liable \$10. Halving the liability placed on the owner of the *tam* is only brought into effect when considering the excess damage caused by the *tam*. Even though this understanding fits the simple wording of the *Mishnah*, it appears to contradict the liability placed on the owner of a *tam*. Why are we considering more than half the damage caused by the *tam*?

The *Rosh* understands that *Rashi* believes that since the animals attacked each other simultaneous, the only damage viewed with an eye for compensation is that damage done by one in the excess of the other. It appears that *Rashi* understands that in such a “sparring contest” we take wound for wound and right it off. Why?

Perhaps we can explain these two understanding by returning to the first *Mishnah*. The closing statement is that the common factor amongst the four primary classes of damage is that “they have the potential to cause damage and the owner is responsible for guarding them [from damaging]”. The *Rif* also inserts an extra parameter - “they are your property”. *Rashi* agrees with this insertion (see *Rashba* 2a) while the *Tosfot* is against it (3b s.v. *u'mamoncha*, 4a s.v. *adam*).

What does it matter whether “they are your property” is added to the *Mishnah*. Rav Moshe Taragin explains, assuming that the owner's negligence makes him liable for damage caused, the debate is whether some form of legal ownership is required for that obligation. Offering a slightly different understanding, one way to look at it is that as soon as the animal is no longer guarded, the owner is being negligent and therefore the owner is liable for anything the animal does. The obligation begins before damage is even caused. Alternatively an oxen running wild does

not create the obligation; neglect alone is not necessarily enough. It is only after the damage is done that we trace it back to the financial owner of this wild animal to collect compensation.

Returning to our original case, we may suggest that those (*Rambam, Tosfot*) that first half the damage caused and then work out the difference may understand that neglect alone is enough (*Tosfot*) and the owner is obligated from the outset for anything the animal did. In contrast those that compare the damage in full and only determine compensation (or half compensation) based on the difference in actual damage (*Rashi, Rosh*) may understand that compensation is only determined once the damage is caused and traced back to the owner (*Rashi*). In this case the “damage” is the difference in actual damage caused.

- The minimum measure of *reishit ha'gez*? (ג' ג')
- *Chatzalot* and *tum'ah ve'taharah*?
- Which type of netting can *mekabel tum'ah*? (ד' ג')
- Regarding which part of the *kelah* do they argue? What is a *kelah*? (ה' ג')
- Explain the opinion of the *Chachamim* that hold sometimes a *shevuyah* can eat *trumah* and sometimes she cannot. (ו' ג')
- What are the four *sfeikot* where *R' Yehoshua* is *metameh* and the *Chachamim* are *metaharin*? (ז' ג')
- What are the three things that *R' Tzadok* is *metameh* and the *Chachamim* are *metaharin*? (ח' ג')
- What are the four things that *Rabban Gamliel* is *metameh* and the *Chachamim* are *metaharin*? (ט' ג')
- Which three laws does *Rabban Gamliel* rule stringently like *Beit Shammai*? (י' ג')
- What are *Rabban Gamliel's* three *kulot*? (יא' ג')
- Which three things does *R' Elazar ben Azarya* permit, yet the *Chachamim* forbid? (יב' ג')
- How many laws listed does *Beit Hillel* rule more stringently than *Beit Shammai*? (יג')
- What are the opinions of *Beit Shammai* and *Beit Hillel* regarding:
  - An egg that was laid on *Yom Tov*? (יד' א') For what other items that are “born” on *Yom Tov* does everyone agree is *mutar*? Is *assur*? (יד' ב')
  - The minimum measure of *se'or* and *chametz* that are *assur* on *Pesach*? (יד' א')
  - Slaughtering a *chaya* or *ohf* on *Yom Tov*? (יד' ב')
  - *Hefker*? (יד' ג')
- If a sheaf is left in the field, next to which four things does *Beit Shammai* maintain that it is not *shichecha*? (יד' ד')
- Which two laws applying to *ma'aser sheni*, does *Beit Shammai* maintain do not apply to *kerem reva'i*? (יד' ה')
- Who maintains that *peret* and *olelot* do not apply to *kerem reva'i*? (יד' ו')

- Can a woman write her own *get*? (ב'י: ג')
- If a *tum'ah* needle is found inside a slaughtered *korban* what is the status of the meat and the knife used for slaughter? (ב'י: ג')
- Can *Shichecha* also apply to standing wheat? (ב'י: ד')
- About what three things did *R' Yishmael* testify? (ב'י: ד')
- When is one exempt for “hunting” a snake on *Shabbat*? (ב'י: ה')
- What three things were debated between *R' Yishmael* and *R' Akiva*? (ב'י: ו')
- Regarding the three things that were said before *R' Akiva*: (ב'י: ז')
  - What can a woman go out into *reshut ha'rabim* wearing?
  - What invalidates a person from acting as a witness?
  - Regarding which *safek tum'ah* is the ruling that it is *tahor*?
  - Which of the cases were said in the name of *R' Yishmael* and which in the name of *R' Yehoshua*?
- Which of the *halachot* that *R' Akiva* presented were accepted by the *Chachamim* and how many were rejected? (ב'י: ח')
- What attributes does a son usually inherit from his father? (ב'י: ט')
- According to *R' Akiva* which five things took twelve months? (ב'י: י')
- Explain the debate between *R' Dosa ben Harkinas* and the *Chachamim* about whether/how two half *kezetim* of a corpse can combine to be a source of *tum'ah*. (ב'י: יא')
- How does *R' Meir* expand the debate between *R' Dosa ben Harkinas* and the *Chachamim*? (ב'י: יב')
- What are the opinions of *R' Dosa ben Harkinas* and *Chachamim* regarding:
  - Pieces of food combining to become a source of *tum'ah*?
  - Redeeming *ma'aser sheni* with and *asimon*? (What is an *asimon*?)
  - Purifying hands that have become *tameh* for handling *mei chatat*? (ב'י: יג')
  - The status of *kenivat yarak trumah*?

## Guarding a *Mu'ad*

Bava Kama (4:9)

Yisrael-Yitzchak Bankier

The previous article introduced the two subcategories of the class of damage *keren – tam* and *mu'ad* – and looked at a finer point in *tam*. In this article we will take a closer look at *mu'ad* which will help us to understand *nezikim* (damages) in general.

The last *Mishnah* in the fourth *perek* cites a debate regarding the level of protection required for a *shor mu'ad*. Once that level is provided, if under exceptional circumstance the animal escapes and causes damage, the owner is not liable. *R' Yehuda* maintains that a basic level of protection is required while *R' Meir* maintains that a high level of protection is required (for example the use of iron chains and fencing that can withstand even abnormal winds).

*R' Eliezer* enters the debate remarking that “there is no [sufficient] protection [for a *shor mu'ad*] other than the [slaughter] knife.” What is implied by this statement?

Some *Rishonim* believe that *R' Eliezer* introduces a third opinion (*Rif, Tosfot Rid, Bartenura*). No level of protection is sufficient for such a creature and the owner is always liable for any damage caused.

This is at least how the *Gemara* first understood *R' Eliezer* (*Bava Kama* 46a). There *Rava* cited a *pasuk* as the source for this position that no level of protection is enough (“*ve'lo yishmerenu*”). *Abaye* questioned this understanding as there is a linguistic similarity when the *Torah* discusses the class of damage *bor* (pit) (“*ve'lo yechasenu*”); provided that the owner covers the pit he is not liable for any damage caused. Instead *Abaye* explains that *R' Eliezer*'s position is rooted in the broader prohibition of housing dangerous objects, for example, a rabid dog or a faulty

ladder (“*ve’lo tasim damim be’veitecha*”). How do we understand the *Gemara’s* conclusion?

*R’ Atlas* (on *Chiddushei HaRa’avad*), when explaining the *Rif*, explains that when *R’ Eliezer* obligates the owner despite having provided a high level of protection it is not because he considers him negligent. Instead it is because he has transgressed the biblical prohibition of housing this dangerous creature. He explains that the exemption after having provided sufficient protection is only if the owner acted in accordance to what the *Torah* commanded him.<sup>4</sup>

Other *Rishonim* have a completely different understanding (*Tosfot, Ra’avad*). They understand that *R’ Eliezer* agrees with *R’ Meir* that a high level of protection is sufficient. Instead he is introducing a new component – this biblical prohibition. In other words, if the owner provided a high level of protection and the animal nonetheless somehow causes damage, the owner is indeed not liable. Nevertheless he has still transgressed this biblical prohibition of housing this animal.

This second opinion introduces a fundamental new understanding to damages. Ordinarily one thinks that guilt is a function of financial liability of the owner towards the damaged party – what have I done to you? What am I liable? It is a man-to-man issue. Yet there is another component beyond that. It is about the owner himself and by extension his relationship with his Creator. What type of objects is he willing to bring into his home.

This second factor is very important to remember as we study about damages, as we study these *Mishnayot*. It is not just about determining the boundaries of financial liability. There is a second avenue that is also being travelled. We also assess and determine the world in which we choose to live.

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<sup>4</sup> The *Tosfot HaRid* explains slightly differently that the monetary obligation is a *knas*, a fine, for having transgressed a *Torah* prohibition.

- What are the two requirements for a *Beit Din* to overrule a decision of another *Beit Din*? (ז:א)
- What is unique about the debates in *Mishnayot* 7-11? (ז:א)
- What is the debate regarding how *rova atzamot* is calculated and for what law is it important? (ז:א)
- What are the four opinions regarding the treatment of *karshinei trumah*? (ח:א)
- What is the debate regarding exchanging *ma’aser sheni* money? (ט:א)
- Can one transfer the *kedushah* from *ma’aser sheni* fruit and money onto money? (ט:א)
- List all the opinions in the debate regarding exchanging *ma’aser sheni* money in *Yerushalaim*. (י:א)
- What are the two debates between *Beit Shammai, Beit Hillel* and *Shammai* regarding chairs? (יא:א)
- What is common about the last three *Mishnayot* in the first *perek*? (יב:א)
- To what circumstances did *Beit Hillel* restrict the ability for a woman to remarry if she returns from overseas and claims that her husband passed away? (יב:א)
- How did *Beit Shammai* convince *Beit Hillel* that when a woman is able to remarry based on her own testimony alone, that she can also collect her *ketubah*? (יג:א)
- How does a person become a “half-slave half-free”? (יד:א)
- Explain the debate regarding how such a person is treated. (יד:א)
- What does it mean that a *kli cheres* is *matzil*? (יד:א)
- Explain the debate regarding the scope of this law. (יד:א)
- What did *R’ Channinah Segan Ha’Kohanim* testify that *kodshim* that became *tameh* by contact with *ve’lad ha’tumah* could be burnt with? (טו:א)
- Regarding the previous question, what does *R’ Akiva* add? (טו:א)
- What did *R’ Channinah* testify about, regarding the hides of *korbanot*? (טו:א)

- If a *shomer chinam* swore that the ox he was guarding was lost but in truth the *shomer* ate the ox, what compensation is he required to pay if: (ג: ח)
  - Witnesses came and testified that he slaughtered and ate the ox?
  - He admitted he lied prior to any witnesses testifying that he lied?
- What is the law if a *shomer* swore that the ox was stolen, and witnesses came and said that the *shomer* stole, slaughtered and sold the ox? (ד: ח)
- Regarding the previous question, what is the law if the *shomer* saw the witnesses approaching and quickly admitted that he stole the ox? (ד: ח)
- What is the law if a *sho'el* made a *shevuah* stating that the animal he was guarding was lost but in truth it had died? (ה: ח)
- Regarding the previous question, what if the *sho'el* made a *shevuah* denying ever having borrowed the ox? (ו: ח)
- What are the two general rules brought at the end of the *masechet*? (ז: ח)

## Eduyot

- What are the three debates between *Shammai* and *Hillel* brought in the beginning of the *masechet*? (ג-א: א)
- What is different about how we rule in these three cases? (ג-א: א)
- In the final case, what is strange about the way *Hillel* presents his case? (ג: א)
- What is special about the conclusion in the third case? (ג: א)
- Why does the *Mishnah* mention the opinions of *Shammai* and *Hillel* if the *Halacha* does not follow their opinions? (ד: א)
- Why does the *Mishnah* mention a minority opinion if the *Halacha* follows the majority? Provide two answers. (ז-ה: א)

## He Told You to do What?

**Bava Kama (6:4)**  
**Yehuda Gottlieb**

In the sixth *perek* of *Bava Kama* we learn that if one sent a fire in the hands of a mentally competent person and he caused fire damage, the agent is *chayav* (liable). The person who told him to do it however, is not *chayav* at all.

We have learnt previously that a *shaliach* (messenger) takes the place of the person who sent him (*shlucho shel adam kamoto*). Consequently it would seem that one who sends a person to light a fire should be *chayav*. Why in this case is the person being sent *chayav*, and yet the sender is completely *patur*? This is because there is another general rule by *shlichut* – there is no agency for a matter of transgression (*ein shaliach ledavar aveirah*).

The *Gemara* in *Kiddushin* 42b explains the logic behind this principle. The *Gemara* there refers to our case (of transferring a fire) when questioning whether a *shaliach* really takes the place of the sender. The *Gemara* answers that our case is different citing the qualifying rule stated above - *ein shaliach le'davar aveirah*. We say to the agent, “If you must choose between the words of the Master (i.e. G-d, who commands you not to sin) and the words of the disciple (the sender) whose words shall you obey?” (*Divrei ha'rav ve'divrei ha'talmid – divrei mi shomim?*)

The *Meiri* explains the logic as follows. One who instructs another to sin does not expect the person being sent to defy G-d's instructions and obey his. He is merely instructing him for no real purpose. It never enters his mind that the person would disobey G-d and do an *aveirah* just because someone told him to. Therefore, if the agent did the deed, only he would be liable for it, not the sender.

*Rashi* states that the fact that the agent had done the *aveirah* on behalf of someone else is meaningless – as he should be listening to his Master (G-d). Therefore there is a deficiency in the act of appointing the *shaliach* – which makes the whole *shlichut* invalid.

The *Sma* (182:2) however explains the logic of the Master-student analogy as follows. He states that a person can send someone to do an *aveirah* on his behalf. However, when the agent stands for punishment, he will blame the sender for telling him to do the act. At this point the sender is able to argue that he thought the agent would not fulfil his words because he has to listen to his Master and not to the disciple. Therefore, the agent is viewed as if he acted on his own, and the sender bears no legal responsibility for the transgression.

There is an interesting practical difference between the opinions of *Rashi* and *Sma*. The *Rama* rules that if the agent was a *Yisrael mumar* (a Jew who denies belief in G-d) then there is such a thing as a *shaliach leDavar Aveirah*, and the person who sent this *mumar* to the *aveirah* would be *chayav*. This rule fares well according to the opinion of the *Sma* – as the sender can no longer say that he thought the agent would not listen to his orders – because the agent is a *mumar* and therefore has denied belief in his Master! This *mumar* will only act according to the words of the “disciple” (the sender); by his own erroneous beliefs he feels that these are the only orders he has to follow. Therefore the fact the sender thought he would not act is not a viable defense and he would be liable.

However, according to the opinion of *Rashi* – this ruling is problematic. *Rashi* states that the agent should be listening to the Master. This is the case whether the agent is a believing Jew or a *mumar* – as he considers what should be, as opposed to what is. Therefore, in the case that a *mumar* does an *aveirah* under instruction, *Rashi* would say that there is no *shaliach* for an *aveirah* and therefore the agent would be liable.

- What other case is similar to the one in the previous question? (י: יג)
- In what way are the *Shevuot* in the seventh *perek* fundamentally different from those in the sixth *perek*? (י: יג)
- Explain the case that requires a *Shevuat Mishnah* involving:
  - A *sachir*. (י: יג)
  - A *nigzal*. (י: יג)
  - A *nechbal*. (י: יג)
  - “A person that is not trusted in making a *shevuah*”. (י: יג)
  - A store account. (י: יג)
- On which of the above cases does *R’ Yehuda* argue and why?
- On which of the above cases does *Ben Nanas* argue and why?
- Who makes a *shevuah* in a dispute between a shopkeeper and purchaser whether: (י: יג)
  - The shopkeeper gave the purchaser his item yet it was definitely paid for?
  - The purchaser paid yet the item was definitely handed over?
- On which case does *R’ Yehuda* argue and why? (י: יג)
- What other case brought is similar? In that case how does *R’ Yehuda* argue? (י: יג)
- In which five cases is a woman required to make a *shevuah* in order to collect her *ketubah*? (י: יג)
- In which five cases can one obligate another to make a *shevuah* without a definite claim? (י: יג)
- What are the four different types of guardians? (י: יג)
- For each of the guardians, when do they make a *shevuah* exempting themselves from paying compensation? (י: יג)
- Is a *shomer chinam* obligated to bring a *korban* if he made a *shevuah* stating that the animal he was guarding was lost but in truth it had died? (י: יג)



- Regarding which case involving a person's ox killing something would the owner's denial qualify as a *shevuat pikadon* and in which case would it not? (ה':ה')
- Complete the following rule: (ה':ה')  
" כל המשלם על פי עצמו \_\_\_\_\_ ושאינו משלם על פי עצמו \_\_\_\_\_ "
- What is a *shevuat dayanim* and when does it apply? (ו':א')
- Regarding what case would one not be obligated to make a *shevuat dayanim* as it is considered *meishiv aveidah*? (ו':א')
- What is the law regarding a case where he admitted to owing another money, yet the next day said: (ו':ב')
  - "I gave it to you"? When is the law different?
  - "I never owed you anything"?
- If one person said the other owed him a gold object and the person admitted he owed him a silver one, regarding which object would he be obligated to make a *shevuah* and regarding which object would he be exempt? (ו':ג')
- Complete the following rule and explain: (ה':ג')  
"הנכסים \_\_\_\_\_ זוקקין \_\_\_\_\_  
את הנכסים \_\_\_\_\_ לשבע עליהן"
- A claim made by which three people would not obligate the other party with a *shevuah*? (ו':ד')
- Who do we never obligate to make a *shevuah*? What other efforts are made on behalf of this person? (ו':ד')
- To what items does a *shevuat dayanim* not apply? (ו':ה')
- Which two fines do not apply to these items? (ו':ה')
- How do these items differ in the laws of *shomrim*? (ו':ה')
- About which of the items does *R' Shimon* argue? (ו':ה')
- Complete the following rule of the *Chachamim* and explain: (ו':ו')  
כל המחבר לקרקע \_\_\_\_\_
- How does *R' Meir* disagree with this principle? (ו':ו')
- Complete the following rule and explain with examples: (ו':ו')  
אין נשבעין אלא על דבר \_\_\_\_\_
- Who makes a *shevuah* (first) if a *pikadon* was lost and its value disputed and in what case is the lender exempt from making a *shevuah*? (ו':ז')

## Full Compensation for Assault

Bava Kama (8:7)

Yisrael-Yitzchak Bankier

We have been learning about the five different components of compensation one must pay in the event he physically injures another person: *nezek* (physical damage), *tza'ar* (pain), *ripui* (medical costs), *shevet* (lost labour opportunity) and *boshet* (shame). Following a discussion about calculating *boshet* the *Mishnah* teaches as follows (8:7):

Even though he pays him, he is not forgiven until [the offender] asks [the victim for forgiveness]...

A number of points need clarification. Firstly, what is not forgiven? If the offender has paid all components of compensation to the victim in full, why is there anything left for him to do? We do not find a requirement to ask for forgiveness after a person has paid compensation for damage caused to another person's property. Is the full responsibility of the offender not just a function of the liability?

The *Gemara* brings a *Beraitah* that presents this concept with different wording:

All fixed payments [described in the *Mishnayot*] are for *boshet* but for *tza'ar* even if he brings all [the sacrifices] in the world, he will not be forgiven until he asks the victim for forgiveness...

What is the *tza'ar* that is referred to in the *Beraitah*? If it is literally the component of compensation referred to as *tza'ar* then why did we learn that there are means of calculating its monetary value if it is dependant on receiving forgiveness from the victim?

*Rashi* explains that *tza'ar* referred to in the *Beraitah* is not the physical *tza'ar* that resulted from the injury. Instead he explains that it is the *tza'ar* that resulted from worrying about the *boshet*. In other words, once the offender has paid the five components of

compensation he has nearly completed everything necessary. There is one component of damage that has not been covered with monetary compensation and that is the enduring emotional strain and fear of embarrassment. In order for compensation to be complete, he must ask the victim for forgiveness.<sup>5</sup>

The *Rambam* (*Chovel U'Mazik* 5:9) however only refers to the five components of compensation cited above. Furthermore he explains that even though full compensation is paid, as apposed to when a person pays compensation for damaging his friend's property, atonement (for the entire incident) depends on whether he receives forgiveness from the victim.<sup>6</sup> Why?

To answer this we shall look at how the *Ra'avad* understood the above *Beraitah*:

The explanation is that *boshet* is like a sickness in that the person goes pale, his limbs are weak, and his heart is concerned.

We said [that we can assess] how much one would be willing to be paid to endure such a "sickness." However the fact that [the offender] wanted to cause pain to another, Heaven will not forgive him until he appeases the victim...

This explanation of the *Ra'avad* relates to the point we raised two article above. In other words, with respect to the liability that the offender has to the victim, it can be fully satisfied with monetary compensation. However the fact that this offender engaged in such a crime, wanted to cause pain to another, demonstrates a deeper problem in the offender himself. For this Heaven will not forgive him, even though the monetary component is fully satisfied, unless he asks for forgiveness from the victim; unless he attempts to remedy the personal flaw.

<sup>5</sup> The *Tur* (*Choshen Mishpat* 412) rules according to *Rashi* that forgiveness for the pain resulting from the *boshet* is required for full atonement.

<sup>6</sup> The *Shulchan Aruch* (*Choshen Mishpat* 412) rules according to the *Rambam*.

- Regarding the previous question, what would be the law if the testimony concerned that incident on *Shabbat*? (ד': ז')
- Complete this general rule regarding when one is *chayav* for a *shevuat edut*: (ד': ח')
- " \_\_\_\_\_ על \_\_\_\_\_ שאין חייבין אלא על \_\_\_\_\_"
- What case was brought in that same *Mishnah* as an example of what this rule excludes? (ד': ה')
- Can a *shevuat edut* apply to cases that one may witness in the future? (ד': ט')
- Would it be considered a *shevuat edut* if the witnesses were adjured amongst a mass of people? (ד': י')
- Is it a considered a *shevuat edut* if:
  - The "witnesses" knew *ed mi'pi ed*? (ד': י"א)
  - One of the witness was an invalid witness? (ד': י"א)
  - The witnesses were adjured by the servant of the claimant? (ד': י"ב)
- What three expressions are listed for adjuring witnesses? (ד': י"ג)
- What are the three debates between *R' Meir* and the *Chachamim* related to the previous question? (ד': י"ג)
- To what is a *shevuat pikadon* more similar: *shevuat edut* or *shevuat bitui*? (ה': א')
- What sacrifice must one bring for a *shevuat pikadon*? (ה': א')
- In which case of *shegaga* is one still obligated to bring this *korban*? (ה': א')
- Explain how one makes a *shevuat pikadon*. (ה': ב')
- When is one obligated to bring one *korban* and when is obligated to bring many if he made *shevuat pikadon* regarding collaterals belonging to different people? (Include all three opinions) (ה': ג')
- What other case brought is similar to the one in the previous question? (ה': ג')
- Explain the debate regarding a *shevuat pikadon* in a case of *ones*. (ה': ד')

- Explain *R' Yehuda ben Beteira's* opinion regarding the previous question and the *Chachamim's* counter argument. (ג: יג)
- What is the punishment for one that transgresses a *shevuat bitui*? (ג: יג)
- What is the difference between one that transgresses a *shevuat bitui* and a *shevuat shav*? (ג: יג)
- What is a *shevuat shav*? Include three different types. (ג: יח)
- Provide a case where a person makes two similar *shevuot* and the first is defined as a *shevuat bitui* and the second is defined as a *shevuat shav*. (ג: ט)
- Can a *shevuat bitui* be made outside of *beit din*? (ג: י)
- How can someone make a *shevuat shav* by only saying one word? (ג: יא)
- Does a *shevuat edut* apply outside of *beit din*? (ג: יא)
- When does *R' Meir* differ with the *Chachamim* regarding the previous question? (ג: יא)
- How does the scope of one who can make a *shevuat edut* differ from one who can make a *shevuat bitui*? (ג: יא)
- Describe a case involving *shegaga* in a *shevuat edut* where the person would still be obligated to bring a *korban*. (ג: יב)
- When is someone obligated to bring multiple *korbanot* for multiple *shevuot edut* about the same testimony, and when are they only obligated to bring one? Explain why. (ג: יב)
- If two witnesses each make a *shevuat edut*, when are both *chayav* and when is only one *chayav*? (ג: יב)
- Does the same law hold for two sets of witnesses? (ג: יב)
- When is someone obligated to bring multiple *korbanot* for a *shevuat edut* regarding multiple things, and when is he obligated to only bring one. (ג: יב)
- Is one *chayav* if he made a *shevuat edut* regarding *tashlumei kefel*? Why? (ג: יב)
- What other case that occurred on *Yom Kippur* shares a similar law to the previous question? (ג: יב)

## Bava Metzia

### Ownership Disputes

Bava Metzia (1:1)

Shmoiki Berkowitz

The first *Mishnah* of *Masechet Bava Metzia* presents a case concerning two people who enter *Beit Din* holding onto a *tallit*, each claiming sole ownership. The *Halacha* requires that they must each make an oath regarding the ownership before receiving half the *tallit* (i.e. the *tallit* is sold and the money is divided).

*Tosfot* (2a) discuss the different methods used by *Beit Din* when resolving ownership disputes. When one party is in possession of the disputed article and the other party seeks to reclaim the article, *Halacha* follows the *Chachamim* whereby the burden of proof, in the form of witness testimonies, is placed on the party seeking to reclaim the article. *Halacha* presumes that the party in possession of the article as the owner of the article. This may be the origin of the legal maxim “possession is nine-tenths of the law”.

When neither party has physical possession of the disputed article, the *Halacha* mandates that whoever first obtains possession of the article can claim the article as theirs, and the other party must provide proof of ownership. Since ownership was not determined and there is no presumption of ownership for either party, in the event that the article is stolen by the other party, the roles are reversed and the party that had possession must now provide witnesses to prove their right of absolute ownership. The *Rosh* adds that since neither party has a presumption of ownership, *Beit Din* does not intervene to determine proprietorship and is not in a position to question the party that is in possession of the article.

When both parties have possession of the disputed article, and as a result, each has a presumption of ownership, two situations are

possible. Since both parties approach the *Beit Din* with possession of the article, *Beit Din* has a duty to intervene to determine proprietorship and prevent one party from stealing the article from the other (*Rosh*).

The first scenario is where it is impossible that both parties can have concurrent ownership of the article. *Tosfot* explain that this case is where two parties entrusted a third party different sums of money and each claim to have deposited the larger sum. The differential between the two amounts is deemed to be the article of dispute and the third party is considered to be holding the money for both parties, thereby establishing a presumption of ownership for both parties. The money cannot be divided between the parties since it belongs to one of the parties, and one party will have received half the money unlawfully. Rather, the money is retained in the possession of the third party ‘until *Mashiach* arrives’; the money is withheld indefinitely until evidence is presented to resolve the dispute.

The second scenario is where it is possible that both parties may have shared ownership. Since both parties have an equal presumption of ownership and it is possible to establish that both may have acquired the article at the same time, the article is divided equally between the parties.

*Tosfot* maintain that the case of our *Mishnah* falls into this latter category. They explain that each party may have raised the abandoned *tallit* at the same time to claim ownership unaware of the presence of the other. While this may be an unlikely scenario, it is enough to satisfy that neither party is necessarily lying.

One question remains. The *Gemara* on 5b asks why the *Mishnah* imposes an oath on each of the parties if the *Halacha* requires merely to divide the article of dispute. *R' Yochanan* answers that the oath is a rabbinically enforced deterrent to prevent people from simply grabbing onto an article in someone else's possession and approaching *Beit Din* claiming ownership.

- What *korban* atones for one that entered the *Mikdash* in a state of impurity deliberately? (א: וי)
- What does the *seir ha'mishtaleach* atone for? (א: וי)
- With respect to which *aveirah* is there a difference between the *korban* for *kohanim* and the rest of *Yisrael* and what are the respective *korbanot*? (א: וי)
- Complete the following expression and explain: (ב: אי)
 

\_\_\_\_\_ שיהן \_\_\_\_\_ ידיעות הטומאה
- Where exactly has someone entered (in a state of *tum'ah*) if they are obligated to bring a *korban oleh ve'yored*? (ב: בי)
- Explain the process by which the *azarah* could be extended. (ב: בי)
- When would someone who got *tameh* while in the *azarah* be required to bring a *korban oleh ve'yored*? (ב: גי)
- What is the case regarding *niddah* that is similar to the discussion in the previous *Mishnah*? (ב: די)
- Regarding which form of *helem* is the subject of the debate whether the person would bring a *korban oleh ve'yored*? (ב: הי)
- Complete the following expression and explain: (ג: אי)
 

\_\_\_\_\_ שבויעות \_\_\_\_\_ שיהן
- What is the law if someone made a *shevuah* not to eat, and:
  - They ate and drank? (ג: אי)
  - They ate three different type of bread? (ג: בי)
- Regarding the previous question, when would the law be different? (ג: א-ב)
- What other case is brought that shares a similar law to the previous two questions? (ג: ג)
- If a person made a *shevuah* not to eat, and he ate, when would he not be *chayav*? (ג: די)
- Explain the debate regarding a person who made a *shevuah* not to eat, then ate *neveilot* and *tereifot*. (ג: די)
- The *Mishnah* explains that *shevuot* apply to four extra categories – what are they? Explain. (ג: הי)
- If a man made a *shevuah* to fulfill the *mitzvah* of *tefillin* and missed a day is he obligated to bring a *korban*? (ג: וי)

- What is the law if it was determined that a person could receive a full amount, but once the lashes begun, it was clear the person could not bare the full amount? (א"י: ג)
- If someone was to receive two sets of lashes, how was the evaluation of how much the person could bare determined? (Provide both scenarios.) (א"י: ג)
- Describe how the person was prepared for lashes? (א"י: ג)
- Describe the whip that was used for lashes? (ב"י: ג)
- How long was the whip? (ג"י: ג)
- Where was the offender struck? (ג"י: ג)
- What else occurred during lashes? (ד"י: ג)
- What is the law if the offender died during lashes? (ד"י: ג)
- When would the striker be sent to *galut*? (ד"י: ג)
- What is the law regarding *chayavei krittut* that receive lashes? (ה"י: ג)
- What does *R' Shimon* learn from the *p'sukim* relating to *karet*? (ה"י: ג)
- What does *R' Chananya ben Akashya* say and the end of the *masechet*? (ו"י: ג)

## Shevuot

- Which three areas of *halacha* are “*shtayim she'hein arba*”? Explain. (א: א)
- When is someone obligated to bring a *korban oleh ve'yored* for a *shevuah*? (ב: א)
- For the other cases, what is *mechaper*? (ג-ב: א)
- What are the two opinions for what is a *mechaper* for a person that did not have *yediyah* at all? (ד: א)
- What is *R' Meir's* opinion with respect to the function of the *se'irim*? (ד: א)
- Describe the debate around the opinion of *R' Shimon*? (ד: א)
- How does *R' Shimon ben Yehuda* differ in his understanding of *R' Shimon*? (ה: א)

## Returning a Lost Object based on *Simanim*

Bava Metzia (2:5)

Yisrael-Yitzchak Bankier

When the *Torah* discusses returning lost objects it states as follows:

You must do the same to a donkey, a garment (*simla*), or anything else that your brother loses and you find. You must not ignore it.

The *Mishnah* (2:5) asks:

The *simla* was [already] included, so why was it singled out? To compare all things to it, teaching that just as a garment is distinguished in that it has identifying marks (*simanim*) and it has claimants, so too any [lost object] that has identifying marks and has claimant must be announced (in order to find the owner).

From the above *Mishnah* it would seem that *Torah* is teaching us that we must return the object to person that provides the relevant *simanim*.

However this is the exact question of the *Gemara* (*Bava Metzia* 27a) – is the reliance on *simanim* biblical or rabbinic?<sup>7</sup>

The *Ramban* asks, if *simanim* were rabbinic then why would anyone ever be required to return a lost object? The *Ramban* and *Ritva* explain that the question of *simanim* does not apply to unusual or rare *simanim* (“*simanim muvhakin*”) for they clearly work on a biblical level.<sup>8</sup> The *Rashba* and *Ran* add that such

<sup>7</sup> The *Gemara* explains that the practical difference would be whether one can return a *get* based on *simanim*. If *simanim* is rabbinic, then they have the power to introduce this enactment in monetary laws, however for prohibitory laws (*issurim*) they could not.

<sup>8</sup> See the *Kesef Mishnah* (*Gezeilah Ve'Aveida* 13:3) that brings a similar distinction between *simanim muvhakin* and *simanim muvhakin be'yoter* when explaining an apparent contradiction in the *Rambam* in *Hilchot Gezeilah Ve'Aveida* and *Hilchot Gittin*.

detailed *simanim* are equivalent to witness testimony and a *pasuk* is not required to support it. The question of the *Gemara* rather applies to regular *simanim*.

A number of attempts at answering this question are made, yet the matter is left unresolved. When our *Mishnah* is cited as a potential proof that *simanim* are biblical, it is rejected. The *Gemara* explains that the focus of the *Mishnah* may be that when an object has claimants the object must be returned; i.e. the owners have not given up hope at finding the object (*me'ya'esh*). The point about *simanim* may have only been included “incidentally”. What does this suggestion mean?

*Rashi* explains that the “incidental” inclusion could have been to associate the rabbinic decree with the *pasuk*. Alternatively the *Tosfot* explain that even if *simanim* alone are rabbinic it is important for the other biblical criteria stated in the *Mishnah* – *yi'ush*. In others words, if an item has *simanim* it is indicative that the owner will not have given up hope.

Perhaps with this understanding we can explain in greater detail a *Gemara* from *Eirubin* (54b). There the *Gemara* states: “*Rav Chisda* says, the *Torah* is only acquired (*kone*) through *simanim*”. *Rashi* explains that this refers to the abbreviated symbols that are used in order to aid in committing learning to memory. The *Maharsha* explains that these *simanim* are vital to ensure a true *kinyan banefesh* so that *Torah* will not be forgotten.

Perhaps we can offer another insight. If one learns *Torah* to the level that he can at provide *simanim* then this is at least indicative that there is no *yi'ush* – he has not given up hope. If however he learns and revises his *Torah* with intensity such that he can provide *simanim muvhakin*, then he has witness testimony that he has a *kinyan* on *Torah* – it is undoubtedly his.

- At what point is one considered inside the *arei miklat*? (ב'י: ג')
- Explain the debate regarding a *go'el ha'dam* that finds the *rotzeach* outside the *arei miklat*. (ב'י: ג')
- What is the law regarding one that kills accidentally within the *arei miklat*? (י: ג')
- Would the *rotzeach* need to pay rent in the *ir miklat*? (ח'י: ב')
- Explain the debate regarding the *rotzeach* once he returns home. (ח'י: ב')
- For which offences does one receive lashes relating to:
  - Forbidden relationships (12)? For which relationship does one receive two sets of lashes? (א: ג')
  - The *Beit Ha'Mikdash* (8)? (ב'י-ג'י: ג')
  - Fruit of *Eretz Yisrael* (4)? (ב'י-ג'י: ג')
  - One's body (4)? (ה'י: ג')
- When is one who breaks a bone of a *korban pesach* not liable for lashes? (ג'י: ג')
- Explain the debate regarding lashes and *shilu'ach ha'ken*. (ד'י: ג')
- Explain the debate regarding the prohibition of tattooing. (ו'י: ג')
- If a *nazir* drinks wine for the entire day, when would he receive multiple sets of lashes? (ז'י: ג')
- What other two prohibitions that apply to a *nazir* share the same law? (ח'י: ג')
- When is one liable for multiple sets of lashes for wearing *shatnez*? (ח'י: ג')
- For what single action can one be liable for eight sets of lashes? (ט'י: ג')
- Describe the debate regarding the previous question. (ט'י: ג')
- How many lashes constitutes a “set” of lashes? (י'י: ג')
- According to *R' Yehuda* where was the extra blow administered? (י'י: ג')
- What is the limitation given when determining how many lashes a person can receive? (יא'י: ג')

- In what case could the accused be executed as well as the *eidim zomemin*? (א: ט')
- What two laws are learnt from: "יעל פי שנים עדים" (א: ט')
- If a person found guilty of a capital offence escaped: (א: י')
  - If he later returned to the original *beit din*, would his case be reopened?
  - When can he be executed in another *beit din*?
- When was a *beit din* described as a *chavlanit*? (Provide both opinions.) (א: י')
- What is the debate between R' Tarfon, R' Akiva and Rabban Shimon ben Gamliel, regarding this issue? (א: י')
- For what offence is one sent to *galut*? (א: ב')
- Provide the general rule relating to how that offence was perpetrated in order that he is sent to *galut*? (א: ב')
- Explain the debate between Rebbi and the *Chachamim* regarding one who commits this offence while chopping wood. (א: ב')
- When does R' Eliezer ben Ya'akov say that one is not sent to *galut* for throwing a stone into "*reshut ha'rabim*"? (ב: ב')
- In what case is one sent to *galut* for accidentally killing a person on his own property and what is the source of this law? (ב: ב')
- What three exceptions does Abba Shaul raise? (ב: ב')
- Does a father go to *galut* on account of his son? (ב: ג')
- What are the three opinions regarding a *sonah* and *galut*? (ב: ג')
- Where would someone go, when sent to "*galut*"? (ב: ד')
- What two things were done to enable a person to reach "*galut*" safely? (ב: ה')
- Who else would run to the *arei miklat*? (ב: ו')
- When could the *rotze'ach* return from the *arei miklat*? What custom arose as a result? (ב: ו')
- In what two cases would the *rotze'ach* never return from the *arei miklat*? (ב: ז')
- When could the *rotze'ach* step out of the *arei miklat*? (ב: ז')

## Returning Lost Objects – or Not

Bava Metzia (3:8)

Yisrael-Yitzchak Bankier

With the start of the second *perek*, we began learning about *hashavat aveidah* – returning a lost object. The *Mishnayot* discuss when a object is considered ownerless and may be kept, when a object must be taken and efforts made to identify the owner and when a object must be left and not touched. The *Mishnayot* also discuss what are considered identifying marks of a lost object and the obligations placed on the person who found the object while he is trying to locate its owner.

The eighth *Mishnah* mentions an interesting exemption (2:8):

If he finds a bag, box or anything that he usually would not carry, he leaves it there.

The *Gemara* explains that, by way of example, this refers to a *zaken* for who it would be beneath his honour to retrieve such an object and is therefore allowed to leave it there.<sup>9</sup> The measure provided is if it were his own object, would he leave the object due to the potential slight on his *kavod*.

Who is this "*zaken*"? Why do we have such a novel exemption from a *Torah mitzvah* for the sake of "honour"?

The *Ritva* (*Shavuot* 30b) explains that this is referring to an elderly *chacham* who has more than just his own personal honour at stake; there is also *kavod ha'Torah*. He explains therefore if it was only a elderly respectable or wealthy gentleman, then the *mitzvah* of *hashavat aveidah* takes preference.<sup>10</sup>

<sup>9</sup> The *Gemara* (30a) explains that this exemption is learnt from the word in *pasuk* "*v'hitalamta*". The *Gemara* understands that even though ordinarily it is forbidden to ignore or pass by a lost object, there are indeed some situations where one is permitted to do so. That case is the one referred to is where it is beneath the honour of the *zaken* to retrieve such an object.

<sup>10</sup> This is also the opinion of the *Ramban*.

The *Rambam* (*Gezeilah ve'Aveidah* 11:13) however rules that this exemption also applies to an elderly respectable gentlemen (“*zaken mechubad*”).<sup>11</sup> The *Shulchan Aruch* (263:3) uses the same language implying that by *hashavat aveidah* we have a unique exemption that applies if fulfilling the *mitzvah* conflicts with the personal *kavod*.

Is one nevertheless allowed to forgo his own *kavod* and return the lost object? The *Rambam* (11:17) rules that “someone who walks in the straight and good way should act beyond the strict law and nevertheless return the object...” In other words, even though the *Torah* does not demand the *zaken* to return the object, it is nevertheless a good and proper course to take.

The *Rosh* however writes that once the *Torah* exempts one from the *mitzvah* he is prohibited from degrading *kavod ha'Torah*. If he wants to act beyond the letter of the law, he must still leave the object and may volunteer to compensate his friend for the money he lost.

The *Beit Yosef* explains that *Rambam* may nevertheless feel that returning the object, even though it is beneath him, is not a slight on *kavod ha'Torah*. Quite the reverse! *Kavod shamayim* is indeed increased in that the person wants to assist his friend despite its appearing beneath him.

But what if *kavod ha'Torah* is not at stake? The *Aruch HaShulchan* explains that in such a case everyone would agree that the personal *kavod* may certainly be set aside.

When addressing the question of whether one can nonetheless return the lost object the *Rama* writes that “some argue that it is nonetheless forbidden to return [the object] since it is beneath his

<sup>11</sup> This is also the opinion of the *Nimukei Yosef* (*Bava Metzia* 19b in the *Rif*)

- From what point is a woman considered an *eshet ish*? (י"א: ו')
- What is exceptional about *zomemei bat kohen*? (י"א: ו')

## Makkot

- What are *eidim zomemin*?
- In which two cases do *eidim zomemin* not receive reciprocal punishment and what punishment do they receive? (י"א: ו')
- How are *eidim zomemin* punished if they testified that: (י"א: ו')
  - A man gave his wife her *ketubah*?
  - A person owed \$100 to be paid at the end of the month, when in fact the loan was due in ten years time?
- Explain the debate regarding how *eidim zomemin* are punished if they testified about:
  - A loan. (י"א: ב')
  - That a person was obligated to be punished with lashes. (י"א: ג')
- Complete the following phrase and explain: (י"א: ג')
 

”\_\_\_\_\_ ואין משלשלין \_\_\_\_\_ משלשלין”
- How do witnesses become *eidim zomemin*? (י"א: ד')
- Explain the debate regarding a case where witnesses testify and make a pair *eidim zomemin* and then another pair of witnesses come and testify about the case and are consequently also made *eidim zomemin*. (י"א: ה')
- When are *eidim zomemin* to a capital case not executed? (י"א: ו')
- What are the three opinions regarding what is learnt from the following *pasuk*: (י"א: ו')
 

”על פי שנים עדים או שלשה עדים יומת המת”
- What else is learnt from the above *pasuk*? (י"א: ח')
- Regarding the previous question, when does *R' Yosi* maintain this rule applies? (י"א: ח')
- Regarding the previous question, when does *Rebbi* maintain this rule applies? (י"א: ח')



- For which offence committed by a *kohen* do his “brothers” deal with him? Explain. (ר: ט)
- Explain the debate regarding the punishment for a non-*kohen* that serves in the *Beit Ha’Mikdash*. (ר: ט)
- Complete the phrase: “\_\_\_\_\_ \_\_\_\_\_ להם” (א: י)
- For which three offences does one lose their *chelek*? (א: י)
- Which offences do *R’ Akiva* and *Abba Sha’ul* add? (א: י)
- Which three kings and four individuals lost their *chelek*? (ב: י)
- Which three groups of people lost their *chelek* and which three groups are a subject of debate? (ג: י)
- Regarding the previous question, with respect to what detail does *R’ Nechemya* argue? (ג: י)
- What are the requirements for a city to be judged as an *ir ha’nidachat*? (ד: י)
- What is the difference between the way the possessions of the righteous and wicked are treated in an *ir ha’nidachat*? (ד: י)
- What happens to the *hekdesh*, *trumah*, *ma’aser sheni* and *kitvei kodesh* of an *ir ha’nidachat*? (ד: י)
- What seven crimes are punished with *chenek*? (א: י)
- In what two ways is cursing a parent harsher than striking a parent? (א: י)
- In which three locations would the *batei dinim* debate with the *zaken mamre*? (ב: י)
- After returning from that final location to his home town, at what point would a *zaken mamre* be liable for a capital punishment? (ב: י)
- For holding to which specific class of laws does one become a *zaken mamre*? (ג: י)
- What are the two opinions regarding when they would execute the *zaken mamre*? (ד: י)
- When is a *navi* that lies liable for a capital punishment and when is his punishment “*bidei shamayim*”? (ד: י)
- Is one liable for a capital punishment if he presents a prophecy in the name of a form of idol worship, yet the content is consistent with *halacha*? (ר: י)

*kavod...*”. From a simple reading, the *Rama* does not appear to differentiate between personal *kavod* and *kavod ha’Torah*.<sup>12</sup>

One could suggest that perhaps the *Rama* rules that one may even be prohibited to forgo his personal *kavod*. Why?

The *Tosfot*, when explaining when *kavod ha’bri’ut* does or does not override *mitzvot* cites the case in *Gemara Brachot*. There the *Gemara* explains that if one finds himself wearing *kilayim* in the market place he must remove his clothing there and then because he is considered as actively transgressing the prohibition. The *Tosfot* explains if was not considered as actively transgressing the prohibition then *kavod ha’bri’ut* would override the *mitzvah*. He explains, citing *Yevamot*, that “there is nothing more repulsive to *Hashem* than one walking naked in the market place”.

We can perhaps glean from this *Tosfot* that the *Rama* may hold that there are some situations, some matters of honour that are not subject to desires of the person. There are basic matters of self respect, as a human being, one cannot forgo.

<sup>12</sup> The *Be’er Heitev* does associate the *Rama* with the *Rosh* and ties it *kavod ha’Torah*.

## Introduction to *Ona'ah*

Rabbi Natan Rickman

It seems to be an unwritten understanding that in the world of commerce, war is waged between the buyer and seller. The seller will name a price and it is the obligation of the buyer to try and lower the price ensuring that he gets the best price possible. How does the *Halacha* view such a relationship and price setting?

The fourth *perek* of *Gemara Bava Metzia* discusses the limits of this relationship - this is known as “*ona'ah*” (fraud). Both a buyer and seller are able to claim that the price that has been paid does not represent the quality and/or quantity of goods received. The *Gemara* in *Kidushin* discusses that even a *Beit Din* is liable to this *din*. When the *Beit Din* is obligated to divide an estate it must ensure that the valuation of the property is true to the market price.

Is there are limit to the claim and what is the effect if the there was indeed fraud? *Chazal* set the limits at a sixth either above or below the market price. Furthermore, *Chazal* gave the purchaser a time limit within which to claim *ona'ah*, that being the time in which he could take the product to a third party for evaluation. If the buyer was over charged exactly a sixth and protested within this period then the seller has transgressed this prohibition. There is a debate (50b) regarding how to deal with this overcharged amount. *Rebbi* believes that the sale is fraudulent and that it should become null and void. However *Rebbi Natan* disagrees and learns that the sale does stand, however the amount overcharged (the sixth) must be returned. Both *Rebbi* and *Rebbi Natan* understand that the overcharging of a product is prohibited, though it could be that the point of disagreement is that if the seller does cheat the buyer, would the buyer remove his interest in purchasing the goods or just that the buyer is interested in recouping the loss.

- What other case is treated in a similar manner? (י: ח)
- For which three crimes can one kill a person trying to perpetrate them? (יז: ח)
- Which three crimes are listed in the *Mishnah*, that one might think share the same law as stated in the previous question, but do not? (יז: ח)
- Aside from a person having a relationship with “*isha u'bitah*” what other crime is punishable with *sreifa*? (יא: ט)
- What falls under the category of “*isha u'bitah*”? (יא: ט)
- Which two crimes are punishable with *hereg*? (יא: ט)
- If someone pushed another into the water and they drowned, when are they not charged with murder? (יא: ט)
- Which murder case is the subject of debate between the *Tana Kama* and *R' Nechemya*? (יא: ט)
- If one strikes another and the person dies, assuming he was warned, what two component are critical to charge the person with murder? (יב: ט)
- Explain the murder case where *R' Yehuda* argues. (יב: ט)
- What is law if one of two people committed murder and one of the people is righteous? (יג: ט)
- In general, what does *beit din* do if people found of guilty capital punishments, each carry different punishments, get mixed together? (יג: ט)
- Regarding the previous question, which specific cases are debated between the *Chachamim* and *R' Shimon*? (יג: ט)
- How is a person punished if *beit din* ruled he must receive two different capital punishments? (יד: ט)
- Regarding the previous question, in what case does *R' Yosi* argue? (יד: ט)
- What does *beit din* do to a repeat offender that has already received lashes? (To which sins is the *Mishnah* referring?) (יה: ט)
- Regarding the previous question, who else is treated in this manner? (יה: ט)
- For which three crimes do “*kana'in pog'in bo*”? (יז: ט)

- What is the definition of a *megadef* that is punishable with *skilah*? (יח: יג)
- What is the complexity involved with trying a *megadef* and how was it dealt with? (יח: יג)
- What are the four principle forms of worship and why is it important? (יג: יג)
- Is kissing an idol punishable with stoning? (יג: יג)
- Explain the capital offence of “handing a child to *molech*”. (יג: יג)
- What is a *ba'al ov*? What is a *yid'oni*? (יג: יג)
- When is engaging in one of the above, a capital offence? (יג: יג)
- What transgression on *Shabbat* is a capital offence? (יח: יג)
- When is cursing a parent a capital offence? (יח: יג)
- What are the requirements for having a relationship with a *na'arah me'orasah* to be punishable with *skilah*? (יט: יג)
- What is a *meisit* and how does it differ from other capital offences? (יג: יג)
- What is the definition of a *mechashef*? (יא: יג)
- At what age can one qualify to be a *ben sorer u'moreh*? (יא: יח)
- What is the source for the law in the previous question? (יא: יח)
- What must the child do to become a *ben sorer u'moreh*? (יב: יח)
- If the child does so, when is he still not a *ben sorer u'moreh*? (יב: יח)
- Explain the debate regarding how the child must acquire the object to perform the act in order to become a *ben sorer u'moreh*. (יג: יח)
- What are four requirements placed on the parents for the son to be a *ben sorer u'moreh*? (יד: יח)
- How was a child warned prior to becoming a *ben sorer u'moreh*? (יד: יח)
- How many judges are required for a case of *ben sorer u'moreh*? (יד: יח)
- Explain the rationale of punishing a *ben sorer u'moreh*? (יח: יח)

However, *Chazal* did understand that too narrow a parameter was also not feasible; as stated the amount set was a sixth. If the buyer was over charged by less than a sixth then the sale is valid as we assume that in general people forgo that difference in price.

Conversely if the seller overcharged more than a sixth and the buyer complained within the above stated time-limit, the sale is null and void and either side is able to cancel the purchase.

To conclude, *Chazal* understood that there is a need within the economic world for people to vary prices and try to make a profit. However what must not be forgotten is that within the aggressive and competitive world of commerce the Revelation of G-d is no less than that in the *Beit Midrash*.

## Taking Interest in Taking Interest

Bava Metzia (5)  
Yisrael-Yitzchak Bankier

The fifth *perek* deals with the prohibition of usury or taking interest on a loan. Interest is commonly understood as the charge paid for the right to use another person's money. Why is taking interest prohibited? The question is further strengthened as both parties indeed agree to the terms of the loan. Why is this not tantamount to any other rental deal where one party pays another for the use of their property.

The *Sefer HaChinnuch* (68) writes that it is the subtle destructive nature of interest that is at the core of the prohibition:

At the root of the precept lies the reason that the good, benevolent G-d desires the settled communal existence of His people that He chose. For this reason He commanded to remove a stumbling-block from their path, so that one should not swallow up the life-force of another without the other realising it, until he finds his house empty and bereft of every good.

Indeed *Chazal* explain that the *Torah* calls interest *neshech* as it is similar to a snake's bite ("*nashach*") which at first appears small and insignificant until poison causes swelling and eventually overtakes the person.

Rav Hirsh (*Vayikra* 25:36) has difficulty with viewing interest as being ethically wrong. Firstly if that were the case, there would not be an equal prohibition for both the lender and the borrower. Secondly, the exceptions learnt in the *Mishnayot*, where one can charge interest would not be justified.

Rav Hirsh therefore has a completely different understanding of this prohibition. He points out that ordinarily, if our money was truly ours, then there is nothing unethical about taking interest. Had the lender not lent the money, it could be used as fruitful capital. The interest would have been seen as compensation.

- Could the witnesses contribute any further to the case? (ד:ה)
- Could the "students" contribute to the deliberations? (ד:ה)
- What would cause the case to delay and what would the judges do during this time? (ה:ה)
- Explain in detail how the deliberation would proceed if only a majority of one judge ruled guilty in a capital case. (ה:ה)
- When taking a person out for stoning: (א:ו)
  - Where was the location of the site? (ב:ו)
  - What would happen if someone discovered a way to find favour for the guilty party?
  - What would the person leading him announce?
- What would they request from the criminal prior to stoning? (ב:ו)
- What are the two opinions regarding the difference between the stoning of a man and woman? (ג:ו)
- Explain the stoning process. (ד:ו)
- Describe what a "hanging" is and when it is applied. (ד:ו)
- According to *R' Meir*, how does *Hashem* respond to such punishments and what does he learn from it? (ה:ו)
- When does one not transgress "*lo talin*" when delaying the burial? (ה:ו)
- Where was one given a death penalty buried? (ו:ו)
- What would people say to the judges after execution and why? (ו:ו)
- What are the four capital punishments? (א:ז)
- What are the two opinions regarding their order of severity? (א:ז)
- Describe *sreifa*? (ב:ז)
- What are the two opinions regarding *hereg*? (ג:ז)
- Describe *chenek*? (ג:ז)
- List the sixteen offences that are punishable with *skilah*? (ד:ז)
- Explain the debate regarding one who has a relationship with their mother. (ד:ז)
- For which offence does an animal also receive *skilah* and why? (ד:ז)

- List eight differences between monetary and capital cases? (ד:א')
- What is different about the way *beit din* answer a question regarding issues of purity and impurity as apposed to ruling in a capital case? (ד:ב')
- Which people are valid as witnesses for monetary cases but not for capital cases? (ד:ב')
- How was the building housing the *Sanhedrin* structured? (ד:ג')
- Other than the judges and parties to the case, who else was present and what were they doing? (ד:ג')
- In a *sanhedrin katana*, explain how they would replace a judge. (ד:ד')
- What is the *pasuk* brought from *Bereshit* that is used to demonstrate to the witnesses of a capital case, the seriousness of the case and how it differs from a monetary cases? (ד:ה')
- List three reasons why Man was initially created alone? (ד:ה')
- What two *p'sukim* are brought to encourage the witness to a capital offence to testify? (ד:ה')
- What are the seven *chakiroth*? (ה:א')
- How many *chakiroth* does *R' Yosi* require and what are they? (ה:א')
- What other questions were asked of the witnesses? (ה:א')
- What other questions were asked of witnesses in a case of idol worship? (ה:א')
- How many *bedikot* were performed? (ה:ב')
- What is the difference between *chakiroth* and *bedikot*? (ה:ב')
- If one witness said the incident occurred on the second of the month and the other witness said it occurred on the third, are they invalid as witnesses? (ה:ג')
- What flexibility is given where the witnesses conflict regarding the time of the incident? (Provide both opinions) (ה:ג')
- What would occur immediately after the witnesses were interrogated? (ה:ד')

Instead this prohibition is “a great act of acknowledgement of recognising G-d as the L-rd and Owner of our moveable property, just as *Shmitat Karka* and *Yovel* are, regarding His mastery and Right of disposal of our landed property”. He continues, “G-d has the real right of disposal of [the money in our possession] and He has made it our duty to place some of “His” property that happens to be in our hands into the hand of our brother, not only to provide the necessities for his life, but also for the upkeep and continuation of his business”. Accordingly this prohibition serves as a reminder for the lender as to who is the true owner of his possessions.

Interestingly the *Ramban* (*Devarim* 23:20) also draws a parallel between not charging interest and *shmittah*. He however directs the focus back to the borrower explaining that this prohibition is motivated in encouraging acts of *chesed* amongst *Am Yisrael*.

Finally the *Kli Yakar* explains the importance of this prohibition for the lender from a different angle. He explains that at the heart of most business dealings is an element of risk and uncertainty. One can never really be sure of the full success of his venture. Consequently one is compelled to enhance his *bitachon*, trust, in *HaKadosh Baruch Hu*. Charging interest however is different. When one lends money on interest, the returns are guaranteed. Consequently there is a very real danger that one's sense of *bitachon* will be weakened if not removed all together.

We have therefore seen a number of reason for the prohibition of taking interest. Some related to protecting the borrower, while others focused on the impact that such endeavours have on the lender himself.

## Sho'el Be'Ba'alim

Bava Metzia (7:8)

Yehuda Gottlieb

There are four types of *shomrim* (guards) the *shomer chinam* (free), *sho'el* (borrower), *nosei sechar* (hired) and *socher* (renter).....the *sho'el* pays for everything.

*Bava Metzia* 7:8

This *Mishnah* comes to give us an introduction and background to the cases that can occur when transferring other people's movable property. A person who has someone else's moveable property in his possession must fall under one of the above four categories.

A *sho'el* is someone who borrows an object from his friend. The *Mishnah* states that a *sho'el* is responsible if he loses the object or if it was stolen. In fact, the *Torah* obligates him to pay even for accidents (*ones*) because it is under his full responsibility having borrowed it at no cost. The *Sefer HaChinnuch* (60) writes that he is like a person who borrows money, where, if it was taken from him by force, he cannot get out of the loan by claiming an accident.

However, there is a specific case where the *Torah* tells us that a borrower can be *patur* from *onsim*. This is a case where he borrows something and the owner worked with him (see *Shmot* 22:14). In fact the owner does not even have to be there at the time of the accident or breakage. As long as he was with him at the time of *she'eilah* – the borrower is *patur*.

The *Gemara* (*Bava Metzia* 96a) asks why the exemption of the owner being there depends upon the owner being with the *sho'el* at the time of *she'eilah*. Perhaps it should depend upon him being with the *sho'el* at the time of the accident, because it is at that moment when the *sho'el* would normally become obligated to pay for the *ones*. For example, if one borrowed an animal and the

- What are the two opinions regarding how the judges are selected for a financial dispute? (א: ג)
- What two rights does *R' Meir* afford to parties of a financial dispute within the trial? (א: ג)
- Can the parties accept to have an invalid judge? What is the debate regarding this issue? (ב: ג)
- What other case brought in the *Mishnah* is debated in a similar manner to the previous question? (ב: ג)
- Which four people are invalid witnesses? (ג: ג)
- What qualifier does *R' Yehuda* place on the answer to previous question? (ג: ג)
- List the relatives that cannot act as witnesses? (ד: ג)
- Regarding the previous question, what is the difference between the opinion of *R' Akiva* and the *Mishnah Rishona*? (ד: ג)
- Are “ex-relatives” able to testify? In which case does *R' Yehuda* disagree? (ד: ג)
- What are the definitions of a close friend and enemy that cannot be witnesses? (ה: ג)
- Does everyone agree with the law brought in the previous question? (ה: ג)
- Describe how the witnesses are examined? (ו: ג)
- What is the verdict if: (ו: ג)
  - Two judges rule guilty and one rules innocent?
  - Two judges rule innocent and one rules guilty?
  - Two judges rule guilty and one does not know?
- Who would supply the verdict? (ז: ג)
- What is the source that prohibits a judge, after the case, from revealing that he held a dissenting opinion but was overruled? (ז: ג)
- Can one bring evidence after a case is closed? (ח: ג)
- Explain the two cases that are debated relating to the previous question and the case where everyone agrees. (ח: ג)
- What is the source for the requirement of *drisha ve'chakira* in both monetary and capital cases? (ט: ג)

- How many judges does *R' Yishmael* require for a case involving lashes? (ב' א)
- What are the two opinions regarding the number of judges required for *ibur shannah*? (ב' א)
- What are the two opinions regarding the number of judges required for *arifat eglah*? (ג' א)
- What is special about the judges that *R' Yehuda* requires for the redemption of *erachin*? How many judges does he require? (ג' א)
- How many judges are required for capital cases? (ד' א)
- Do capital cases also apply to animals? Who disagrees and when? (ד' א)
- List seven cases where a *beit din* of seventy-one is required? (ה' א)
- What are the sources for the sizes of a large and small *sanhedrin*? (ו' א)
- How large must a city be in order to have its own small *sanhedrin*? (ו' א)
- Can a *kohen gadol* be called to trial? Can he be a witness? (ב' א)
- What are the two opinions regarding the extent to which a *kohen gadol* can engage in *levayat ha'met*? (ב' א)
- If a *kohen gadol* is a mourner, how do the masses console him? (ב' א)
- With respect to legal issues, in what ways is a king different to a *kohen gadol*? (ב' א)
- Explain the debate regarding whether a king can leave the palace to bury a relative. (ג' א)
- How many wives can a king have? How many horses? How much money? (ג' א)
- What would the king take with him everywhere? (ד' א)
- What three items belonging to a king is one not allowed to use? (ה' א)
- In what three situations is one not allowed to see the king? (ה' א)

owner worked with him at the time of the borrowing, perhaps one should only be *patur* if the owner was there at the time of death. The *Gemara* concludes that the time of *she'eilah* is more important, because it is at that time that the *sho'el* becomes obligated to feed the animal.

The *Chinuch* writes that the reason the borrower is *patur* is since the owner is there while the borrower begins using the object, he should watch his own property. However since the *Torah* did not want to detail how long constitutes the owner actually being there – they say that as long as the owner was there at the start of the transaction, the borrower is *patur*.

The *Ohr Ha'Chaim* (*Shmot* 22:14) asks a very interesting question involving the law mentioned above. What will happen when *Hashem*, the “owner”, asks us to return the object that we have ‘borrowed’ – i.e. the soul. Our souls are able to be broken (by not fulfilling certain *mitzvot*), and stolen (by following impure sources). At the end of our lives, the “owner” will ask us to return His object in the same state as he had lent it out – a whole and pure soul.

We all know that *Hashem* is with us at all times. He nurtures, feeds and protects us throughout our lives. He is in fact watching over our souls at all times. Therefore, the *Ohr Ha'Chaim* wonders whether this *din* of “the owner being with the object” applies even in *Olam Haba*. Are we able to now claim that we would be *patur* from damages to the soul because the owner was with us the whole time?

The *Ohr Ha'Chaim* explains why this claim is false. There is a concept that any *tenai* (condition) that is made in a monetary case is upheld. The *Gemara* in *Bava Metzia* (94a) states that the owner of collateral can stipulate that the holder of the collateral can be held liable as a *shoel* (*chayav* for *onsin*) rather than the usual *shomer chinam*. Any stipulation or condition that is agreed to by both parties will be upheld in a monetary case. That is the case we

are dealing with here. *Hakodesh Baruch Hu* lends us our souls under the condition that we follow in His ways, and accept responsibility if we do not. We agreed to those conditions before we accepted the *neshama*; therefore we cannot turn around in *olam haba* and make a claim that we should be *patur* because the owner was with us at all times.

- If a loan document was badly damaged, what must a person do in order for *beit din* to draw up a replacement document and how is such a document termed? (י: יג)
- What are the two opinions about what should be done if a person partially pays off a loan? (י: יג)
- What is the limitation placed on an inherited olive press and when does this limitation apply? (יג: י)
- What is the law regarding documents where the name of the borrower is shared by a number of people in that town? (יג: י)
- What is a solution offered to the case in the previous question? (יג: י)
- What is the law regarding a case where, on his death bed, the father tells his son that one of the loan documents in his collection has already been paid? (יג: י)
- Regarding the previous case, what if there were two documents in the collection applying to a single borrower? (יג: י)
- At the foreclosure of a loan, when can the debt be collected from the guarantor? (יג: י)
- What case is brought that is similar to the previous case and what is the law regarding that case? (יג: י)
- In which three cases is a debt collected from *nechasim bnei chorin*? (יח: י)
- Which area of *Torah* should one learn if he wishes to “acquire wisdom”? (יח: י)

### Sanhedrin

- Provide three areas in law where everyone agrees that a *beit din* of three judges is required. (יח: יא)
- Explain the debate between *R' Meir* and the *Chachamim* regarding the number of judges required for a case of *motzi shem ra*. (יח: יא)



- Regarding the previous two questions, what other case is similar? (ט: ג')
- What is the law regarding brothers that are supported by the inheritance where one brother: (ט: ד')
- Receives a significant promotion?
- Become ill and used significant finance to heal?
- What are *shushvinot* and why is it important to the case in the previous question? (ט: ד')
- If a wedding is broken off, when are the *sivlonot* returned and when are they not? (ט: ה')
- What is a *matanat shchiv mera*? (ט: ו')
- If the *shchiv mera* recovers, when can he renege on the *matana*? (ט: ו')
- What are the three opinions regarding the formulation of a *matanat shchiv mera*? (ט: ו')
- What case is discussed where there would be a dispute and how is it resolved if a house collapsed on:
  - A man and his father? (ט: ח')
  - A man and his wife? (ט: ט')
  - A man and his mother? (ט: י')
- What is the difference between a *get pashut* and a *get mekushar* regarding:
  - The location of the signatures? (י: א')
  - The number of witnesses? (י: ב')
- What is the law if two different sums of money were written in a loan document? (Include two different cases.) (י: ב')
- Can a *get* be written in the absence of the wife? (י: ג')
- What other two cases share a similar law to the previous question? (י: ג')
- Regarding a share-cropping agreement, who finances the writing of the contract? (י: ד')
- What does *Rabban Shimon ben Gamliel* argue regarding settlement documents produced by *beit din*? (י: ד')
- What is the case in the *Mishnah* that involves a debate regarding an *asmachta*? (י: ה')

## More on Borrowing

### Yisrael-Yitzchak Bankier

We have learnt that a *sho'el*, a borrower, has a higher level of responsibility than all other *shomrim* (guardians). The *sho'el* is responsible for compensating the owner if the object is lost, stolen or destroyed in nearly all circumstances; even if it was an unavoidable accident beyond his control (*onsin*). The previous article discussed one exception, where if the lender was employed by the borrower at the time the article was borrowed, then the borrower is not responsible for any damage it endures. There is however one other exception. Even though normally the borrower is responsible if the object is destroyed no matter the cause, if it is destroyed during normal use by the borrower, he is not liable (*Bava Metzia* 96b). We shall analyse why.

The *Ramban* (s.v. *ha de'amrinan*) explains that indeed a *sho'el* is liable for all *onsin*. The exemption here however is due to the negligence on the part of the lender for providing an object that cannot withstand its desired use.

The *Rashba* also explains the exemption comes from the lender. He however explains that it is not negligence but rather that the lender forgoes such damage. He explains that when someone lends another an object, he expects that the object will be subject to wear-and-tear under its normal use. If, for example, the lent animal dies under normal use, it is part of this wear-and-tear the lender accepted.

When the *Rambam* (*She'eilah U'Pikadon* 1:1) however mentions this exemption he makes no reference to the need for an exemption on the part of the lender. HaRav Lichtenstein explains that the *Rambam* understands that the reason why the *sho'el* is not liable is because that situation falls outside the boundaries of a *sho'el's* responsibility. (According to this understanding, the

exemption is comparable to the exemption enjoyed by a paid-guardian in the case where the animal dies naturally.)

HaRav Lichtenstein explains that these different approaches are indicative of the different understandings of the overall responsibility of a *sho'el*.

The *Rashba* (*Bava Metzia* 36:) explains that the high level of responsibility is because since in this arrangement the borrower is the only one enjoying any benefit, the *Torah* made it as if it is his. In other words it is as if he has a full acquisition of the object and therefore bears full responsibility. According to this view, we can appreciate the opinions of the *Ramban* and *Rashba*; there is a need for an explicit exemption on account of the lender to explain why the lender is exempt if it is destroyed under normal use.

HaRav Lichtenstein explains that there is another way to understand the *sho'el*. In cases of *onsin*, the *shomer* cannot be considered negligent in his duty as a guardian. There is certainly no guilt on the *shomer's* part. Nonetheless a *sho'el* is liable. He explains that such concepts are found in the world of insurance policies. When an insurance company pays a claim, it is not because it was responsible for the loss, but rather because of the contract agreed to at the signing of the policy. Similarly a *sho'el*, when he borrows an item, the *Torah* places on him responsibilities beyond the expectation of a normal guardian. According to this view we can appreciate the opinion of the *Rambam* above. There is no need for an explicit exemption. Instead the exemption of destruction under normal use is simply because it is outside the scope of the “policy” which the *Torah* set out.

- How many portions did the daughters of *Tzlofchad* receive? (ג: ח)
- From what inheritance does the *bechor* not take a double portion? (ד: ח)
- Regarding the previous question, what other special law applies to that inheritance? (ד: ח)
- Can someone exclude a son from his inheritance? (ה: ח)
- In what manner can one give more of his inheritance to one child over another? (ה: ח)
- What is the discussion regarding a person who gave away all his possessions to another, even though he had children that would have inherited it? (ה: ח)
- Is a person believed if he says “this is my son”? “This is my brother”? (ו: ח)
- Regarding the second case in the previous question, provide two practical ramifications of this law? (ו: ח)
- Explain the debate regarding how one can ensure that his possessions are transferred to his son after he dies. (ז: ח)
- Regarding the previous question, what are the practical ramifications of such an approach? (ז: ח)
- Why is it harsher if a young girl is an heir amongst only sisters as apposed to being amongst brothers? (ח: ח)
- How is the inheritance managed if the deceased leaves sons and daughters and the inheritance is: (ט: ט)
  - Large?
  - Small?
- Regarding the previous question what if one of the children was a *tumtum*? (ט: ט)
- What other case is raised in the *Mishnah* where a child being a *tumtum* has similar implications? (ט: ט)
- What is the law regarding a case where there are both adult and minor heirs, and the adult brothers develop and increase the value of the inheritance? (י: ט)
- When is the law in the previous case different? (י: ט)

- What is debated regarding the purchase of land to build a “house”? (ד:ו)
- What restrictions are placed on one that owns a well in the property of another person? (ה:ו)
- What other case is similar to the one in the previous question? (ו:ו)
- When do these restriction not apply in this case? (ו:ו)
- What is the law regarding a case where a public pathway is running through person’s field, and he allocates a another pathway on the side of his field as a replacement? (ו:ו)
- How wide is: (ו:ו)
  - A private path?
  - A public path?
  - A “king’s way”? What else is the same width?
- How large is a grave site? (Include both opinions) (ח:ו)
- What is excluded when a person sells another a *beit kur* of “soil”? And when is it included? (א:ו)
- How is the *beit kur* measured? (ב:ו)
- What is the law if the actual land is smaller or larger? (ב:ו)
- How is the law different if the seller said:
  - “Approximately a *beit kur*”? (ב:ו)
  - “A *beit kur* between these markers”? (ג:ו)
- According to *Ben Nanas* what is the law if the seller used both the terms “measured” and “approximately” when selling the *beit kur*? (ג:ו)
- Regarding a case where a person sells half a field: (ד:ו)
  - On what basis is the division determined?
  - On whose property is the dividing fence built?
- How wide is a *charitz*? A *ben charitz*? (ד:ו)
- Which three cases are: (א:ח)
  - *Nochlin u’manchilin*?
  - *Nochlin ve’lo manchilin*?
  - *Lo nochlin u’manchlin*?
- List the order of people that inherit? (ב:ח)

## Limits on Taking Security

Bava Metzia (9:13)

Allon Ledder

A lender is generally entitled to take security for a loan. However the *Mishnah* (9:13) contains a number of *d’Oraita* limits to a lender’s ability to exact security from a debtor. The common thread running through these limits is that they demonstrate the *Torah’s* concern for people that are particularly vulnerable.

The *Gemara* (*Megillah* 31a) quotes *R’ Yochanan* who states that wherever you find the greatness of *Hashem*, there you find His humility. *R’ Yochanan* provides three quotes by way of example – from the *Torah*, the *Nevi’im* and the *Ketuvim*. Each quote contains a reference to *Hashem’s* greatness which is immediately juxtaposed with *Hashem’s* concern for the most lowly and vulnerable members of society – the orphan, the widow, the stranger, the contrite and the lowly of spirit. This concern for the vulnerable is clearly seen in our *Mishnah* where the focus is on protecting the vulnerable, particularly when they are most at risk.

First, the *Mishnah* quotes the *pasuk* that prohibits the creditor or the agent of the *Bet Din* from entering the debtor’s home to obtain security. To protect the dignity of the debtor, the creditor must wait outside for the debtor to bring the security to them. This law only applies when the loan is already due and the debtor is in default. This is typically when the debtor is most vulnerable and in need of protection. As a further protection for a poor debtor, the *Torah* requires the creditor to return the security when the debtor needs it. This protection does not apply to the debtor’s heirs (if the debtor dies) because they are not in a similar vulnerable situation.

The *Mishnah* then quotes the *pasuk* that prohibits taking any security from a widow at the time that she is in default. As a particularly vulnerable member of society, the *Torah* affords even greater protection to widows. The *Sefer HaChinnuch* (*Mitzvah* 591) explains that a reason for this *mitzvah* is that *Hashem* wants us to acquire the quality of pity so He commanded us to take pity on the widow, whose heart is broken and is anxiety stricken. According to *Sma*, the law extends to a divorcee because she has no husband to watch over her and she is out of her father's jurisdiction.

The final *pasuk* that the *Mishnah* quotes prohibits taking as security items used to prepare food. Here again, the *Torah* provides extra protection for a vulnerable debtor. If the creditor takes two objects that are both required for the same act of food preparation the creditor will receive a double punishment. Some commentators include in this prohibition items that are used by the debtor to earn their livelihood (*Tur, Choshen Mishpat* 97:17).

We see that the *Torah* places a three fold limit on the creditor's right to take security – some items may never be taken as security, some items may be taken but must be returned to a poor debtor when they need them and security may never be taken from a widow. The *Torah's* focus is to protect the vulnerable from excessive financial hardship and to safeguard their dignity.

The principle of *lifnim meshurat ha'din* states that it is fitting for a person not to base their deeds on the strict letter of the law but rather to act leniently beyond the requirements of the law. In many cases, the *Rabbanim* passed various *takanot* to prevent people from exercising their rights to the detriment of others. In some cases, including those discussed above, the *Torah* itself sets limits on the ability of a person to exercise their rights if it would be to the detriment of other particularly vulnerable persons.

- If someone purchased honeycomb from a beehive, how much can he take? (ה' ג')
- What is debated regarding the sale of two trees? (ה' ד')
- List the three differences according to the *Tana Kama* between whether a person purchase two or three trees in another person's field? (ה' ד')
- In what situation can the sale of a part of an animal include more than the stated part? (ה' ה')
- Regarding the sale of wheat, when can the seller cancel the deal? When can the buyer cancel the deal? When can either cancel the deal? (List one example for each.) (ה' ו')
- In what two ways are large amounts of fruit acquired? (ה' ז')
- In what two methods is flax purchased? (ה' ז')
- During the sale of wine, at what point is the sale finished even in the face of fluctuating prices (and what is the case that the *Mishnah* describes)? (ה' ח')
- What is a *sarsur* and when is he responsible? (ה' ח')
- What is the debate regarding a case where a person sent his son with money, to a shop to purchase a oil? In what case is there agreement? (ה' ט')
- What obligations are placed on a shopkeeper based on the following *pasuk* (ה' י'):  
 "מאזני צדק אבני צדק איפת צדק והין צדק יהיה לכם"  
 (ויקרא י"ט: ל"ו)
- Regarding the previous question, when does *Rabban Shimon ben Gamliel* maintain that these obligations do not apply? (ה' י"א)
- If a seller measured perfectly, what percentage must he add for dry goods? For liquids? (ה' י"א)
- Can a buyer claim *mekach ta'ut* if he purchased fruit, and using them, was not able to grow fruit? (ה' י"א)
- If someone purchased figs, what percentage of wormy figs is acceptable? (ה' י"ב)
- In what case is the purchase of wine that subsequently became vinegar considered a *mekach ta'ut*? (ה' י"ג)

- List some of the restrictions placed on the construction or modification of windows or entrances to a house? (ג: יג)
- When do these restrictions not apply? (ג: יג)
- What are the two opinions regarding whether one can dig under the public domain? (ג: יח)
- What components are not part of the sale of a house? (Only list those things listed in the first *Mishnah*.) (ד: יא)
- Considering that a *bor* is not included in the sale of a house, what is debated regarding such a case? (ד: יב)
- What is the debate regarding the sale of a *bor* on a property? (ד: יב)
- When is an oven included in the sale of a house? (ד: יג)
- What is included in a the sale of a *chatzer*: (ד: יד)
  - Always?
  - Sometimes? (When?)
  - Never?
- What is and is not included in the sale of an olive press? (ד: יה)
- What is never included in the sale of a *merchatz* no matter the stipulation? (ד: יו)
- What is and is not included in the sale of:
  - A city? (ד: יז)
  - A field? (ד: יח)
- In what special case is everything that is in the field transferred to the other party? (ד: יט)
- What are two cases are similar to the previous question? (ד: יט)
- What is and is not included in the sale of:
  - A boat?
  - A wagon? (ה: יא)
- According to *R' Yehuda* when does the sale of a yoke include the ox that pulls it? (ה: יא)
- What are the three opinions regarding whether the sale of a donkey includes its equipment? (ה: יב)
- What has someone purchased if the rubbish comes with it? (ה: יג)

Perhaps *R' Yochanan's* observation can be understood as follows. The reason why *Hashem's* greatness is juxtaposed with His humility is because it is this very humility and this concern for the lowly and vulnerable that is actually a manifestation of His greatness. This is well worth bearing in mind when we deal with those that are less fortunate than us as we seek to fulfil the *mitzvah* of emulating *Hashem* and walking in His ways (*Sefer HaChinnuch mitzvah* 611).

## Bava Batra

### Torah Education

#### Bava Batra (2:3) Yisrael-Yitzchak Bankier

Properties that open onto a shared area (a courtyard - *chatzer*) are ripe grounds for disputes. One case is where the activities of one occupant disturbs another. The *Mishnah* (2:3) discusses activities about which other occupants can rightly object:

... [If] a stall is opened in a *chatzer*, [the other occupants] can object and say, “We cannot sleep from the noise of the people coming and going.” If someone however makes utensils in their property he must go out and sell them in the market. However [the other occupants] cannot object that they cannot sleep from the sound of the hammer, the sound of the mill, or the sound of the children.

The *Gemara* (21a) asks what is meant by the “sound of the children”. Its initial assumption that it refers to children coming into the *chatzer* to enter a shop located there is problematic as the *Mishnah* itself prevents opening a shop in the *chatzer*. *Rava* explains that the sound of the children refers to the sound of the children coming to learn *Torah* in a school or *cheder* “after the decree of *Yehoshua ben Gamla*”. The *Gemara* continues stating that were it not for his decree, the *Torah* may have been forgotten from *Yisrael*.

What is the decree of *Yehoshua ben Gamla*? The *Gemara* explains that initially, parents educated their children. However, an orphan would be left uneducated. Recognising this problem, they first instituted schools in *Yerushalaim* – “*ki mitzion tei'tze Torah*”. Yet once again, those who could not travel to *Yerushalaim* missed out. So they instituted that their would be schools in each province. Since these schools were not in every

- In what situation can one plant a tree in his property very close to his friend's field? (ב"י: י"ב)
- How deep can a person dig in his field in order to destroy the root's of his neighbour's tree that have entered his field? (Include two cases.) (ב"י: י"ב)
- Is one allowed to cut the branches of his neighbour's tree that hang over into his field? (Include three cases.) (ב"י: י"ג)
- If a person's tree hangs over into the public domain, to what height is it trimmed? (ב"י: י"ד)
- For which things is a *chazakah* three years “*mi'yom le'yom*” and for which things it three years “*ve'einah mi'yom le'yom*”? (ג'י: א')
- What are the two opinions regarding a three-year *chazakah* that is not “*mi'yom le'yom*”? (ג'י: א')
- What are the three “lands” for *chazakah* and why is this important? (ג'י: ב')
- What else is required for a *chazakah* other than occupancy? (ג'י: ג')
- Which four people (that are not related to the person claiming the property back) cannot claim a *chazakah*? (ג'י: ג')
- Which relatives cannot claim a *chazakah*? (ג'י: ג')
- What three ways are provided for one to be *machzik* on *nichsei ha'ger*? (ג'י: ג')
- If a set of witnesses testified that a person was *machzik* a field one year, two others testified regarding the next and two more regarding a third year, and they are all found to be false witnesses, how are they all punished? (ג'י: ד')
- What else must one do to claim a *chazakah* if he uses the field to grow chickens? (ג'י: ה')
- With the placement of which ladder can one claim a *chazakah* and why? (ג'י: ו')
- If someone is already a party to a shared *chatzer* and purchases another property that backs on to that *chatzer*, can he build a doorway from that new property onto the *chatzer*? (ג'י: ז')

- What must one do if he wishes to dig a hole near the hole of his neighbour? (ב' א:)
- What other three things must be distanced from the fence at that same distance? (ב' א:)
- What are the restrictions placed on the installation of an oven? (ב' ב:)
- Can the residents of a shared courtyard prevent another from: (ב' ג:)
- Opening a shop?
- Producing pottery?
- Opening a *cheder*?
- Are there any restrictions when building a wall near a neighbour's window? (ב' ד:)
- What other case brought in the *Mishnah* has a similar ruling? (ב' ד:)
- How far must one distance his ladder from his neighbour's dovecote? (ב' ה:)
- Is there a restriction on the construction of a dovecote in one's property? What is *R' Yehuda*'s opinion? (ב' ה:)
- How does one determine the ownership of a stray *gozal*? (Include both scenarios.) (ב' ו:)
- Is there a limit on where trees can be planted outside a city? (ב' ז:)
- Which trees have a greater restriction? (ב' ז:)
- Is the city required to pay the owners of the trees when clearing them from the outskirts of the city? (ב' ז:)
- What are the restrictions on building a threshing floor? (ב' ח:)
- What are the restrictions on the location of a cemetery? (ב' ט:)
- To which side of the city must a tannery be built? (Include both opinions.) (ב' ט:)
- If one wishes to plant leeks, what must he be careful that he does not plant it near? (ב' י:)
- If someone wants to plant a tree, how far must he distance it from his neighbour's hole? (ב' י"א:)
- What are the two opinions regarding a case where one dug a hole and his neighbour planted a tree near by? (ב' י"א:)

city, students would only join at the ages of sixteen or seventeen. This had the problem that if the *Rebbe* tried to discipline, the students would just leave. *Yehoshua ben Gamla* therefore enacted that every city must have a school and children would begin learning there at the ages of six and seven.

The question one may ask is why did *Rava* state explicitly that the *Mishnah*'s reference to the sound of children refers to *cheders* "after the decree of *R' Yehoshua ben Gamla*". What did the decree change?

A simple understanding is that since the decree enforced the availability of schooling everywhere, any complaint about noise was overruled.

Another understanding is the decree reframed our understanding of educating another's children. After the decree it became a *mitzvah*. Once categorised as a *mitzvah* the other occupants could not object. This is perhaps the understanding of the *Tiferet Yisrael* who explains that just as one cannot complain about this *cheder* "it is also the law regarding any matters pertaining to a *mitzvah*."

The *Bartenura* however, when explaining why one cannot object, explains that "it is because [of the concept] 'magnify *Torah* and make it glorious' (*yagdil torah veyadir*)". No mention is made however of the *takanah*. Why? Perhaps one can suggest another fundamental understanding of what *R' Yehoshua ben Gamla* introduced. The common denominator of the first two understandings is that the other occupants may complain, but their complaints are overruled. Perhaps one can suggest that what *R' Yehoshua ben Gamla* revealed is the absolute essential importance of giving every child a *Torah* education – of *yagdil Torah ve'yadir*. The sound generated by the students or by one that is endeavouring to fulfil this is not defined even as noise. There is no complaint. *Yagdil Torah ve'yadir!*

## Kinyan Chazakah

### Bava Batra (4:4)

#### Yisrael-Yitzchak Bankier

The term *chazakah* has different meaning depending on the *halachic* context in which it is used. In the fourth *perek* this term predominately refers to the possession (or presumption of possession) of land. For example, we learnt that if someone claims he purchased land and has occupied it for a three year period (without protest) he no longer needs to supply documentary proof of ownership. The fourth *Mishnah* however discusses another form of *chazakah* which refers to one of the methods of *kinyan* (acquisition). Probing a debate in the *Rishonim* surrounding this *Mishnah* will help us better understand this form of *kinyan*.

The *Mishnah* states as follows:

When do we say that [a person must occupy the property for three years]? This is when he is trying to *machzik* [in face of protest]. However if he is receiving a gift, or brothers are dividing inheritance or [one is attempting to acquire] the property of a [deceased] convert, he can [either] lock, build a fence or make a small breach and he has [acquired it immediately] through a *chazakah*.

The *Mishnah* provides three different examples of how one can acquire land with a *chazakah* – “locking” or building or breaching a fence. What is meant by “locking”?

The *Rashbam* maintains that this refers to the installation of a lock. In a similar vein the *Bartenura* maintains this refers to the construction of a door. Merely locking the door is insufficient; a physical change to the property is required. The *Tosfot* however argue that the *Mishnah* is understood literally and a *chazakah* is performed by the simple act of locking the door. What is behind this debate?

- If the neighbour accepts, can the original owner pay him the removal costs and demand the stones? (׳ה: ׳י)
- What other case brought has the same ruling as the previous two questions? (׳ה: ׳י)
- Can one use the public domain when engaged in construction? (׳ה: ׳י)
- What are the three opinions regarding the ownership of vegetables that grow out of a steep incline in between two properties? (׳ו: ׳י)

## Bava Batra

- Explain how a fence is to be constructed when dividing a property that had joint ownership. (׳א: ׳א)
- How do they determine which material should be used for the fence work? (׳א: ׳א)
- Regarding which property is one not able to force his partner to construct a fence? (׳ב: ׳א)
- According to *R' Yosi*, if one neighbour constructed a fence, what would the other neighbour have done such that we can now obligate him to share in the construction cost? (׳ג: ׳א)
- What is the maximum height of the fence that members of a shared-courtyard are obligated to contribute to the construction cost? (׳ד: ׳א)
- What other feature of a courtyard is debated as to whether the cost can be placed on all members? (׳ה: ׳א)
- What qualifies a person to be a citizen of a city? (׳ה: ׳א)
- How large must a shared courtyard be before it can be subdivided? (׳ו: ׳א)
- How large must a shared field be before it can be subdivided? (׳ו: ׳א)
- How large must a shared garden be before it can be subdivided? (׳ו: ׳א)
- What item can never be divided? (׳ו: ׳א)



- If someone rents a field for seven years, when is the *shmittah* years included and when is it not included? (ט: י')
- When should a contract worker be paid if he was employed for a: (ט: י"א)
  - Day?
  - Night?
  - Year?
- What are the two *p'sukim* that are the basis for the requirement to pay wages on time? (ט: י"ב)
- Other than wages, to what two other payments do these *p'sukim* apply? (ט: י"ב)
- What are the two circumstances when one does not transgress the prohibition despite delaying the payment? (ט: י"ב)
- When can a worker make a *shevuah* and collect his wages? (ט: י"ב)
- To whom does only one of the *p'sukim* apply? (ט: י"ב)
- How must a lender go about retrieving a collateral? (ט: י"ג)
- What would he have transgressed if he forced his way into the borrower's house to retrieve it? (ט: י"ג)
- From who is one not allowed to take a collateral? (ט: י"ג)
- What objects are not allowed to be taken as a collateral? (ט: י"ג)
- What is done with the rubble from a collapsed building with two owners, one of which lived on the second floor? (י: י"א)
- Regarding the dwelling arrangement described in the previous question what is the law if the second floor collapses? (י: י"ב)
- What is the law if the building collapses and the ground floor owner does not want to rebuild? (Include both opinions.) (י: י"ג)
- What other case is similar to the one just described? (י: י"ד)
- If a tree in a private property collapses into the public domain, when is the owner liable for the damage it causes? (י: י"ד)
- If someone's fence collapses into another's property, can he tell his neighbour to keep the stones instead of removing them? (י: י"ה)

Rav Moshe Taragin explains that this debate reflects the two different ways to understand how a *chazakah* forms a *kinyan* in contrast to the use of money or a contract.

One way is to view a *chazakah* in much the same way as *meshicha* (draw an object towards oneself) or *hagbahah* (raising an object) affects a *kinyan* for movable items. There, ownership is asserted by one taking physical control over the object. When it comes to land, *chazakah* as a demonstration of one exerting his physical control is a slightly more complex task when compared to movable objects. Accordingly, this demonstration requires the person to affect a physical change to the property. The *Rashbam* therefore requires the actual installation of a lock as apposed to a momentary act.

Alternatively, one may understand that a *chazakah* on land (as apposed to the *kinyanim* that apply to moveable objects) is merely an attempt to publicly declare status of the field. As such the *Tosfot* maintain that a symbolic act that demonstrates ownership would suffice. Consequently the simple act of locking the door to the property would effect a *chazakah*.

Therefore a debate about our *Mishnah* has revealed two ways for us to understand a *kinyan chazakah*. The *kinyan* is either formed through a demonstration of control by affecting a physical change to the property or it is a symbolic act the demonstrates ownership.

## House and Land

### Rabbi Ben-Zion Hain

After inspecting a house a few weeks ago, I received a text message on my mobile phone from the real estate agent last week stating that “all the furniture would be offered to the successful purchaser to buy”. Although this seems logical, it would have been equally as logical for the purchaser to assume that all of the furniture is already included in the sale price. The *Mishnayot* discuss this very issue.

It is clear that when two people are engaged in a monetary transaction where a contract is involved, they are both free to include any and all conditions related to the sale. For example, “I will sell the house but not the contents” or “I will sell the field but we will divide the grain you harvest” etc. However, the *Mishnayot* in the fourth and fifth chapter of *Baba Batra* deal with a case when only a general statement, without a detailed contract, is made with regards to the sale.

Another question that comes up a number of times in these *mishnayot* is what happens if the person selling does keep certain parts of a field or other property; does the seller need to purchase a path from the buyer in order to gain access to his property or does this access path “go without saying”?

*Rabbi Akiva* holds that the seller does indeed have to purchase an access path while the *Chachamim* hold that the seller does not. The reason for this *machloket* is whether or not the person selling does so with an “*ayin yafa*” or not. If the seller acts with an *ayin yafa* then it means that the seller broadens and expands the rights of the buyer to the point where a general statement will include all possibilities – e.g. the house, the land and the contents. However, if the seller acts in the opposite manner, with an *ayin ra’ah*, then

- What is the law regarding when a tenant can remove an occupant if they did not initially fix a rental period if: (ח' ר')
- The property is in the city?
- The property is in a village?
- Regarding the previous question, is it different if it was a commercial property? (ח' ר')
- What must a landlord provide for his tenant? (ח' ר')
- When is the advent of a leap year advantageous to the tenant and when is it to the benefit of the landlord? (ח' ר')
- What responsibility is placed on the landlord if the house collapses during the rental period? (ח' ט')
- What does it mean if someone is “*mekabel*” a field from another person? (ט' א')
- What dictates the terms of such an arrangement? (ט' א')
- If the nature of a field changes, when can a *choker* renegotiate the terms? (ט' ב')
- What is the law if an *aris* sits back and does not engage in any field work? (ט' ג')
- Can a *choker* refuse to weed the field? (ט' ד')
- What is the debate regarding an *aris*, where the field is producing a poor yield? (ט' ה')
- When can a *choker* reduce the produce that he must pay the field owner if the field was devastated by locust? (ט' ו')
- Regarding the previous question, according to *R' Yehuda*, who cannot renegotiate the terms despite the devastation? (ט' ז')
- What is the law regarding a *choker* who produced prime quality produce? (ט' ח')
- If a person rents a field, can he deviate from the agreed use? (ט' ט')
- What is one not allowed plant in a field if it was rented for a “small number of years”? (ט' י')
- Regarding the previous question, what is a “small number of years”? (ט' יא')

- What are the two opinions about what constitutes *ones* for an attack by wolves? An attack by dogs? (ט:י)
- If an animal in the hands of a *shomer* dies, when is it considered *ones*? (י:י)
- If an animal, in the hands of a *shomer*, falls off a cliff when is it not considered *ones*? (י:י)
- Can a *shomer* stipulate with the owner to change the level of responsibility? (י:י)
- What are the three cases of an invalid condition, and what is the law if one makes these conditions? (א"י:י)
- What is the exceptional case where a *sho'el* is exempt if the borrowed animal dies and what is the source of this law? (א:ח)
- What is the law if a person borrowed an animal from someone and also rented this animal (for a different time) and the animal died and: (ב:ח)
  - Neither know when the animal died?
  - The lender claims it died during the time it was borrowed, and the renter claims it died during the time it was rented?
- Regarding the previous question, in what cases do we say the renter is *chayav* and when do we say he is *patur*? (ב:ח)
- If an animal was sent to the borrower by means of a *shaliach*, and it dies in transit, when is the borrower *chayav* and when is he *patur*? (ג:ח)
- What complication is raised in a case where a *kinyan chalipin* is performed exchanging a cow for a donkey and what is the law? (ד:ח)
- What is the law regarding a dispute between a buyer and a seller regarding which field was sold? (ד:ח)
- What is the law if *Reuven* sold *Shimon* his olive trees for him to cut down and use as wood, yet *Shimon* delayed and the trees grew olives and now each party wishes to claim ownership? (ה:ח)
- What other case is similar to the one in the previous question? (ה:ח)

it means that the seller limits the boundaries of a general sale to include only the bare minimum – only the house but nothing more.

The *Chachamim* hold that a seller will always act with an *ayin ra'ah* and therefore if a well was not included in the sale of a field, then neither will an access path be included in the sale. Therefore, the *Chachamim* hold that an access path need not be purchased as it never left the ownership of the seller in the first place. *Rabbi Akiva*, on the other hand, believes that a seller acts with an *ayin yafa* so even when retaining possession of the well, the access path was sold and therefore must be re-purchased.

It is this same *machloket* that explains the difference between buying or selling and between giving something as a present that is brought in last *Mishnah* in chapter four. It is possible to argue whether or not a seller is acting with an *ayin yafa* or *ra'ah*. However, it is very difficult to say that when a person gives a present, they are acting with anything but an *ayin yafa* – why else are they giving the present. It is for that reason that there is no *machloket* regarding presents as everyone holds that a present is given with an *ayin yafa* and therefore the maximum amount is included in the present.

## Just Measures – Approaching Rosh Hashanah

Bava Batra (5:10-11)  
Yisrael-Yitzchak Bankier

The two *Mishnayot* (5:10-11) we learnt *erev Rosh Hashanah* discuss the importance of using accurate measuring instruments when selling a product to another by measure. More precisely, the first *Mishnah* sets out the frequency in which a seller must clean their measuring instruments to remove any built up residue that would cause inaccuracy to the detriment of the buyer. Do these *Mishnayot* have any relevance to the imminent *Yom Tov*? Is there a reason why these *Mishnayot* “so happen” to precede *Rosh Hashanah*? Is there something contained in them that can help us focus on that awesome day?

*Kehati*'s introduction to these *Mishnayot* cites *Rashi*'s commentary on the following *pasuk* (*Vayikra* 19:36) as the source for its ruling:

Just balances, just weights, a just *ephah* and a just *hin* you shall have: I am the L-rd your G-d who took you out of the land of Egypt

*Rashi* explains that *ephah* and *hin*, refer to instruments that measure the volume of dry products and liquids products respectively.

Interestingly, the *pasuk* that is the source for our *Mishnah* closes with a reference to *Hashem* taking us out of *Egypt*. Granted that the event holds central importance, what relevance does it have to the obligation to have just measures?

*Rava* (*Bava Metzia* 61b) asks this very question and responds that *Ha Kadosh Baruch* is telling us that He, who differentiated between a “drop” that was first born and one that is not, will punish those that cover their weights in salt (a process which distorts its true weight). Aside from strengthening this harsh

- What type of guardian is a craftsman that was supplied with material by the customer? When does this change? (י: י)
- What type of guardian are people the guard each others items on alternating days? (י: י)
- Explain the debate regarding the type of guardian that one who is holding a collateral of a loan is considered. (י: י)
- What does *Abba Sha'ul* allow to be done with a collateral belonging to a poor person? (י: י)
- What is the law regarding a paid removalist that breaks the item while moving it? (י: י)
- What is the law regarding a case where an employer hires a labourer for a days work but did not formalise a workplace agreement? (י: י)
- What did *R' Yochanan ben Matya* find problematic with the agreement his son made with his workers and who argued that it was fine? (י: י)
- Which employees may take food (by biblical right) irrespective of the local custom regarding feeding workers? (י: י)
- What limitation does *R' Yosi bar Yehuda* place on the law referred to in the previous question? (י: י)
- Regarding the previous questions, can the employee be selective with the food he takes? (י: י)
- What limitation did the *Chachamim* place on this right for the benefit of the employer? (י: י)
- Explain the debate regarding whether the employee can consume food of a value that is greater than his salary. (י: י)
- Can an employee forgo the “right of food consumption” for money? (י: י)
- How is this right affected in a field of *neta revai*? (י: י)
- What is different about a guards “right of food consumption”? (י: י)
- What are the four type of guardians and explain the differences between them? (י: י)

- At the current price of the produce? (ה' ז')
- What is the exception to the first case in the previous question? (ה' ז')
- What is different about purchasing manure? (ה' ז')
- Can one stipulate in a permissible purchase where he will collect the product later, that if the price drops he will pay the lower price? (ה' ז')
- What does *R' Yehuda* maintain regarding one who does not make this stipulation and the price falls? (ה' ז')
- To whom can one lend *chittin be'chittin* and why? (ה' ח')
- Why is it ordinarily prohibited? (ה' ט')
- What is the other general exception? (ה' ט')
- When is it problematic to say to a friend “help me with my work and I will help you with yours”? (List two cases) (ה' י')
- According to *Rabban Gamliel* can one send a thank you present to someone who lent them money? (ה' י')
- According to *R' Yehuda* how can words amount to interest? (ה' י')
- Which parties to a loan with interest have transgressed a biblical prohibition? (ה' י"א)
- For what type of work is one who was commissioned to do work and changes his mind, responsible to finance a replacement? (ה' י"א)
- What is the rule regarding changing the conditions of a workplace agreement? (ה' י"ב)
- If a rented animal dies is the person who rented it responsible and what is the exception? (ה' י"ג)
- In what case is the renter of an ox and plough obligated to pay if the plough broke? (ה' י"ד)
- When is the renter obligated to pay if the ox slipped while involved in threshing legumes? (ה' י"ד)
- If someone rented an animal to transport a product of a particular weight, can he use the animal to transport a different product of the same weight? (ה' י"ה)

warning to observe this *Mitzvah*, is there a deeper connection to the reference of the smiting of the first born?

The *Torat Kohanim* uses harsher terms:

[*Hashem* took us out of *Egypt*] on the condition that we keep the *mitzvah* of [just] measures. Anyone that admits to the *mitzvah* of measures, admits to *Yetziyat Mitzrayim*. Anyone that denies the *mitzvah* of measures, it is as if he denies *Yetziyat Mitzrayim*

Why is there such “weight” given to this *mitzvah*?

The *Torah Temimah* explains the answer is found in the *Midrash* that discusses the plague of the first born. What was the definition of the “first born”? The *Midrash* explains that it was the first born child of the father and not the mother. In other words, if an Egyptian woman secretly had an affair with ten different men and bore ten children each of them the first born of these men, during the plague all these children would be struck by the plague. This was a secret matter, hidden from the eyes of the public, yet known to *HaKadosh Baruch Hu*. Likewise, explains the *Torah Temimah*, the distortion of measures is matter secret to the transgressor. The *pasuk* is reminding us that it is nevertheless also known to *HaKadosh Baruch Hu*.<sup>13</sup> Anyone who thinks otherwise is grouped with those that deny *Yetziyat Mitzrayim*.

*Erev Rosh Hashanah*, on the eve of the day of judgement, just prior to the beginning of Ten Days of Repentance the *Mishnayot* are telling us to clean up. Recognise that there is not only work to do on areas that are open and revealed, but also those areas that are buried deep down know only to you... and *HaKadosh Baruch Hu*!

<sup>13</sup> See *Gemara Bava Metzia* 61b that lists other *mitzvot* that are also linked to *Yetziyat Mitzrayim* in a similar manner. The way the *Gemara* describes them is that these are also *mitzvot* whose transgression can be masked from the outside world.

## Inheritance

### Bava Batra (8:5)

#### Yisrael-Yitzchak Bankier

The *Torah* (*Bamidbar* 27: 8-11) sets out strict guidelines regarding the rightful heirs. We also learn about the hierarchical system that determines who inherits the deceased's property in the absence of those initial heirs (8:2).

This system is described in the *Torah* as “*chukat mishpat*” (a statute judgement) such that one is not allowed to divert from this system. One example of this is that which we learnt (8:5) that even if one said, “my son will not inherit with his brothers” it is meaningless and has no effect.<sup>14</sup>

One might understand these laws as the *Torah* dictating how a deceased person's property is to be transferred or divided. The *Sefer HaChinnuch* (400) however explains that:

...the rights of the heir are attached to the property of the one who leaves it to him, and as the power of the one who leaves the legacy is removed from the property, upon his death, the rights of the heir take effect over it immediately paralleling [nature's lifecycle in which young replace the old].

It appears that there is no break; no settlement period. Rather the heirs have a connection to property. When a person passes away, their own right disappears; one cannot take their worldly possessions with them. Consequently the transition is immediate.

There is one exception where a person may alter some components of the inheritance. We learnt (8:5) that *R' Yochanan ben Bruka* maintains that the *Torah* also gave one the ability (in his lifetime) to select a single person as the sole heir from a pool

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<sup>14</sup> For those interested in the validity or possible options regarding modern wills, please consult your local *Halachic* authority.

- Can a wine seller water down his wine? (ד' י"א: א)
- Can a grain seller sell grain from multiple sources as one unit? (ד' י"ב: ב)
- What marketing tactic does *R' Yehuda* prohibit? (ד' י"ב: ב)
- Can one fix up an old product and sell it as new? (ד' י"ב: ב)
- What example does the *Mishnah* provide for *neshech*? (ה' א: א)
- What example does the *Mishnah* provide for *tarbit*? (ה' א: א)
- Can someone rent out an object at a discounted rate to the person who lent him money? (ה' ב: ב)
- What are *marbin al ha'sachar* and *marbin al ha'mecher* and explain why one of the two is permitted while the other is not? (ה' ב: ב)
- What can be problematic about giving a down payment on a property where the full purchase is conditional on completing the payment? (ה' ג: ג)
- Who lent money using a field as collateral and why did the *Chachamim* permit it? (ה' ג: ג)
- Why is it problematic to give a product to a merchant to sell agreeing that they will split the profit if sold above its value or split the losses? (ה' ד: ד)
- How can this problem be avoided? (ה' ד: ד)
- For which items does the problem discussed in the previous question not apply? (ה' ה: ה)
- Based on the previous three questions, what innovation does *R' Shimon ben Gamliel* believe can be employed to avoid this problem? (ה' ה: ה)
- What does the *Mishnah* mean when it says “*mafritz al sadehu*” and is it permitted? (ה' ה: ה)
- What is the nature of a deal where one party gives another “iron sheep” and why is it prohibited? (ה' ו: ו)
- From whom can one charge interest? (ה' ו: ו)
- Can a person purchase produce from another to be collected at a later date:
  - At an agreed price if the price of the produce has not been released?

- If someone entrusted with a collateral, uses it for his own purposes, what are the three opinions regarding how much he must pay back the owner? (גי:י"ב)
- What are the two opinions regarding the point in time after which a person entrusted with an item is considered a *gazlan*? (גי:י"ב)
- Complete the following rule and explain providing examples:  
מעות \_\_\_\_\_ קונות את \_\_\_\_\_, ו \_\_\_\_\_ אינן קונות את \_\_\_\_\_
- If someone is purchasing an item with money, from what point is the deal closed? (ד:י"א)
- What is the *R' Shimon's* opinion regarding the previous question? (ד:י"ב)
- What is said regarding one that cancels a deal after the money has been handed over? (ד:י"ב)
- What is the definition of *ona'ah*? (ד:י"ג)
- What is the time limit as to when *ona'ah* can be claimed? (ד:י"ג)
- What is *R' Tarfon's* opinion regarding the previous two questions? Was it considered more beneficial to the merchants? (ד:י"ג)
- Can *ona'ah* also apply to the purchaser? (ד:י"ד)
- Can a professional trader claim *ona'ah*? (ד:י"ד)
- What is the law if *ona'ah* has been committed? (ד:י"ד)
- What are the three opinions regarding the measure of *ona'ah* also applying to coins? (ד:י"ה)
- What is the time limit on claiming *ona'ah* relating to coins? (ד:י"ה)
- What are the five laws for which the value of a *prutah* is the minimum value? (ד:י"ו)
- What are the five cases where one is obligated to add a "fifth"? (ד:י"ז)
- What are the four things to which *ona'ah* does not apply? (ד:י"ט)
- For what other three laws are these things unique? (ד:י"ט)
- What three things does *R' Yehuda* add to the list? (ד:י"ט)
- Provide two examples of *ona'at devarim*? (ד:י"י)

of rightful heirs. The two examples brought are selecting one son from many sons and selecting one daughter from many daughters.

We have learnt however that in the absence of sons and daughters (and a father) the brothers share the inheritance. One question may be asked, in such a case can one select one brother as the sole heir? Is there any reason to differentiate?

*R' Akiva Eiger (Choshen Mishpat 281)* explains that it depends on how the brothers become the heirs. If they are the heirs directly<sup>15</sup> then the principle should be applicable in the same way as it is regarding sons or daughters. However there is another way to understand how the brothers become heirs. It might be that in the absence of sons and daughters, the deceased's father becomes the heir, even "in the grave". As the father has also passed away, then the deceased's brothers inherit by virtue of them being the heirs to the father's property.<sup>16</sup> In such a case, the person would have no control of the allocation and would not be able to isolate one brother over the other brothers.

The *Rambam (Nachalot 6:2)* writes that same rule applies to selecting one brother from many. Consequently *R' Akiva Eiger* maintains that the *Rambam* must understand that the brothers are direct heirs (the first understanding).

The *Ktzot Ha'Choshen (281:2)* however maintains the *Rambam* can hold that one may isolate one brother yet still hold that the brothers are only heirs via the deceased's father. He argues that the *Rambam* may understand that since the father (who inherits "in the grave") does so only by virtue of the deceased, the deceased maintains the right to channel the inheritance in such a manner.

<sup>15</sup> *Beit Yosef, Choshen Mishpat 253.*

<sup>16</sup> This is the understanding of the *Darkei Moshe (Ibid).*

## The Order of Death

Bava Batra (9:8-10)

Allon Ledder

When a matter comes before a *Beit Din* for a decision, there is often uncertainty as to the facts of the case. The *Beit Din* has to consider the evidence and in some cases there is conflicting evidence. There are detailed *halachot* which govern the admissibility of evidence and the validity of witnesses. Within the parameters of these *halachot* the *Beit Din* attempts to ascertain the facts and it then proceeds to determine the appropriate *psak*.

However, sometimes there is no evidence clarifying the facts. An example would be where a house collapses and two people are killed (the last three *Mishnayot* of *perek* 9). The order of death can be critically important when determining how to apportion the estates. In these circumstances it is often not possible to know who was killed first.

For example, if the two people who are killed are husband and wife and they have no children:

- if the wife was killed first (even if the difference in time was only a moment) the husband will inherit the wife's possessions, and on his death, these possessions will pass to his heirs; or
- if the husband was killed first the wife's property will pass to her family.

These types of issues are not uncommon and they occur in secular law as well. To deal with this issue, the civil law in many countries consider the deaths to have occurred in order of seniority, i.e. the person who is older is assumed to have died first.

- If *Reuven* rented an animal, then lends it to *Shimon* and the animal naturally died, who pays who? (ב': ג')
- What is the law regarding a *gazlan* that said to two people "I stole \$100 from one of you, but I'm not sure who"? (ג': ג')
- What is the law if two people entrusted money with a third party, one \$100 and the other \$200, and each claim they were the one that entrusted \$200? (Include both opinions.) (ד': ג')
- Regarding the previous question, what if it was not money, but two utensils, one worth \$100 and the other worth \$200? (ה': ג')
- Explain the debate regarding what one should do if they were entrusted with fruit and the fruit began to spoil. (ו': ג')
- What should one do if they were entrusted with fruit and it got mixed with he own personal store? (ז': ג')
- Regarding the previous question, what if he was entrusted with wine? (ח': ג')
- If someone entrusted with an object moved it and while moving it, it broke, when is he obligated to pay back the owner? (ט': ג')
- Regarding the previous question, in what situation is he always obligated to pay the owner irrespective of his intentions? (י': ג')
- What are the three examples the *Mishnah* gives where the custodian of a collateral did not provide enough protection for the collateral and is therefore responsible if the item was stolen? (יא': ג')
- When can a money changer entrusted with money, use the money? (יב': ג')
- What is a ramification of the previous law? (יג': ג')
- Regarding the previous questions, what if the money was entrusted with a *ba'al ha'bayit*? (יד': ג')
- Which person is debated whether he has the status of a money-changer or a *ba'al ha'bayit*? (טו': ג')



- For how long is one obligated to try to identify the owner of the lost object he found? (Include both opinions.) (בי: וי)
- When is the object not returned even if the person claiming it provides the identifying marks? (בי: וז)
- What should one do while trying to identify the owner of the lost object if the object itself requires upkeep? (Include both cases.) (בי: וז)
- What should one do while trying to identify the owner of a lost object if he found:
  - A book?
  - Clothing?
  - Glassware? (בי: חז)
- Which objects is one not required to take in order to find its owner? (בי: חז)
- When can one assume that an animal (that he found) is indeed lost? (בי: טז)
- Is there a limit to how many times a person must return an animal that keeps running away from its owner? (בי: טז)
- Can a person claim compensation from the owner of the lost object for the time spent trying to return the object? (בי: טז)
- If a *Kohen* sees a lost object in a cemetery, is he obligated to enter the cemetery to retrieve the object and return it to its owner? (בי: יז)
- Is someone obligated to help his friend unburden his animal if the friend is sitting back and not getting involved? (בי: יז)
- What are the exceptions to that rule? (Include all three opinions) (בי: יז)
- What is the law if someone finds his own lost object and his father's, but can only retrieve one? (בי: י"א)
- What is the law if someone finds his father's lost object and his rebbe's, but can only retrieve one? (בי: י"א)
- If someone is entrusted with a collateral and it was stolen, is he responsible to pay the owner back? (בי: י"א)
- If the *ganav* was found, to whom is the *kefel* paid? (Include both scenarios.) (בי: י"א)

The *Halacha* deals with this uncertainty differently. The general principle is that the possessions are considered to be the property of whoever had them at the time of death. The burden of proof is on the party who wants to challenge that and thereby establish that the possessions should be transferred to the other party. For example, property that is in the wife's possession at the time of her death will be inherited by her family unless the heirs of the husband can prove that the wife was killed first (in which case the property will be inherited by the husband and then passed on to the husband's heirs).

The secular law has decided upon an arbitrary solution to deal with the uncertainty. Yet, the Jewish law approach also does not appear to guarantee the correct result. However, *Chazal* teach us that when there is a properly constituted *Beit Din*, *Hashem* Himself stands amongst the judges (so to speak) and assists them to reach the correct decision (see *Rashi* to *Bereshit* 18:1). In cases where the *Beit Din* is not able to reach the correct decision, *Hashem* may cause events to occur in such a way that the money eventually ends up in the right hands. (For an example of where *Hashem* orchestrates events to cause justice to be done see *Rashi* to *Shmot* 21:13). We must also remember that any residual wrongdoing will be compensated in *Olam Haba*.

We are obligated to engage in *hishtadlut*, to exert ourselves in pursuing justice (*Devarim* 16:20). However at the end of the day, we are subject to human limitations and we can only do what we can humanly do. Beyond that point, we have faith that *Hashem* is controlling the world and that He will ensure that everything turns out for the best. Only *Hashem* knows the answer to the question of who died first and who is entitled to the inheritance.

This is a timely message for this time of year. As we leave the apparent security of our homes of bricks and mortar and move into our flimsy *sukkot*, we realise our human limitations and recognise that the true answer to everything and source of our security is *HaKadosh Baruch Hu*.

## Sanhedrin

### The Court System

#### Sanhedrin (1)

#### Yisrael-Yitzchak Bankier

With the beginning of *masechet Sanhedrin* we get an insight into the distributed and hierarchal court system that was used throughout *Eretz Yisrael*. The following is a brief description of this system with some examples of the cases dealt with in each of the courts. The small courts consisting of either amateur or expert judges, deal with financial or civil law respectively (1:1). For capital cases however a larger *beit din* of twenty-three judges was required (1:4) – also known as *Sanhedri Katan*. These *batei dinim* however were restricted to cities of a particular size, yet still distributed in every such city throughout the country (1:6). Finally a single *Sanhedrin Ha’Gadol*, a *beit din* of seventy-one (or seventy) judges was seated in *Yerushalaim* by the *Beit Ha’Mikdash* and dealt with “high profile” cases or cases having a national impact (1:5).

The *Mishnah* (1:5) also explains that one of the unique tasks of the *Sanhedrin* was to “establish *sanhedrayot* [i.e., *batei dinim* of twenty-three judges] for the tribes”. The *Bartenura* explains that just as *Moshe*, who took the place of the *Sanhedrin Ha’Gadol*, formed these *batei dinim* himself, such a task can only be performed by the *Sanhedrin*.

The *Gemara* cites the source for the requirement of these *batei dinim* (*Devarim* 16:18):

Judges and offices shall you appoint in all your cities which *Hashem* your G-d gives you, for your tribes; and they shall judge the people with righteous judgment.

- If a person saw an (ownerless) object and jumped on top of it, yet another person came and grabbed it, to who does it belong? (א: ד')
- When can a person claim ownership of a stray animal by virtue of it being in his property? (א: ד')
- If an adult child who still lives at home finds an object, is it considered his? (א: ה')
- Consider a woman who is divorced but has not yet received her *ketubah*, if she found an object, to who does it belong? (א: ה')
- What should one do if he found a loan contract? In what case is there a debate? (א: ו')
- What should one do if he found a *get* in the street? (א: ז')
- What five documents listed in the *Mishnah* are returned if they are found? (א: ח')
- In what situation are all documents returned? (א: ח')
- According to *Rabban Shimon ben Gamliel* when are loan contracts returned to the borrower? (א: ח')
- Provide a number of examples of objects if found, can be kept. (א: ב')
- According to *R' Yehuda* what principle does he state regarding which object must be announced (in order to find the original owner)? (א: ב')
- Provide a number of examples of objects if found, one is obligated announce. (א: ב')
- What should one do if he found an object behind a fence? (א: ג')
- Can a person keep an object that he found:
  - Amongst rubble?
  - Tucked into a wall? (א: ג')
  - In a shop? (א: ד')
- Can one keep money that he found in his shopping bag? (א: ד')
- Why was a “*simla*” singled out when the *Torah* discussed the law of returning lost objects? (א: ה')

- If someone stole a field from another and the state seized the property, when do we say that the thief is liable and when is he exempt? (י: טז)
- What other case is brought that is similar to the one in the previous question? (י: טז)
- If someone loaned money from someone in the city, can he return it to him in the desert? (י: טז)
- Is a person obligated to pay if he borrowed money and is unsure whether he paid the person back? What if he is unsure if even borrowed the money? (י: טז)
- If a someone stole an animal and then returned it without the owners knowledge, and then the animal is either stolen or dies, is he responsible? (י: טז)
- Can one purchase fruit from someone who is paid to guard fruit trees? (י: טז)
- Can a launderer keep the thread and fluff left over? (י: טז)
- After a carpenter has finished work, what parts of the “mess” belongs to the him and what belongs his client? When does it all belong to the client? (י: טז)

### Bava Metzia

- What is the law if two people are holding onto a garment and are disputing the full ownership of the garment? (י: טז)
- Regarding the previous question, what if one of the parties claims he has a (half) share in the garment? (י: טז)
- What is the law if a person is riding a horse and another is leading it and each of them claim that the horse is theirs? (י: טז)
- If someone is riding a horse and sees a \$5 note on the ground and tells another person to retrieve it for him, when does the money belong to the rider and when does it belong to the person who retrieved it? (י: טז)

The *Gemara* (*Sanhedrin* 16b) understands that “for all your tribes” expresses the need for judges for each of the “tribes” while “in all your cities” highlights the need for judges in each city.

What is this unique *Sanhedrin* for a “tribe”? Is this a new layer just below the *Sanhedrin Ha’Gadol* in the legal system?

The *Meiri* explains that there is no reference to a new *beit din* but rather the *Mishnah* teaches that any *beit din* of twenty-three must only be formed by the *Sanhedrin Ha’Gadol*. The reference to the *sanhedrayot* for the tribes must be understood loosely as referring to all *batei dinim* of twenty-three.

According to the *Meiri* how then do we understand the *Gemara’s* distinction between the judges for the tribes and the judges for the cities. Quite simply one could explain that there are two *mitzvot*. As the *Meiri* maintains, there is a *mitzvah* to have a *Sanhedri Katan* in every city that is large enough to have one, and for all other smaller cities, there is a *mitzvah* to have a *beit din* of three judges.

While the *Tosfot* agree that a tribal *Sanhedrin* still refers to a regular *Sanhedri Katan*, they however explain that having a *Sanhedrin* for each tribe has a practical ramification. They understand that if one large city contains two different tribes then two *batei dinim* of twenty-three must be established for each tribe. Rav Taragin explains that this is supported by the opinion of *Rav Shimon ben Gamliel* that maintains it is a *mitzvah* to consult a court comprised of judges from one’s own tribe.

The *Ramban* (*Devarim* 16:18) provides the same answer as the *Tosfot* yet then suggests a different explanation. He explains that indeed each tribe had a special *Sanhedri Katan*. While it had the same number of judges as the other *batei dinim* of twenty-three in the tribe’s cities, it served a different function. It would act as a supreme court for the tribe, such that if a city’s *Sanhedri* had a doubt about a case, it would confer with its tribe’s *Sanhedri*.

Another example is if there was a need for a tribe-wide *gezeirah* this *Sanhedri* would be responsible much like the *Sanhedrin Ha'Gadol* that instituted nation-wide enactments.<sup>17</sup> Therefore, according to the *Ramban*, we have another layer within the legal system.

Therefore we have seen different understandings of how tribal association impacts on the legal system and structure. The *Meiri* maintains it has little impact. The *Tosfot* understand that it does not effect the structure yet each tribe would still rule on their own cases. Lastly the *Ramban* maintains it introduced another level to the legal structure.

- If a father makes a *neder* preventing his son from gaining any benefit from his possessions and then dies, when do we say that the son cannot inherit the property? (י: ט)
- Regarding the previous question, what if the son is the only heir? (י: ט)
- If someone steals from a *ger* and falsely swears that he did not steal from him and the *ger* dies with no heirs, to whom does he pay *keren ve'chomesh*? (א"י: ט)
- Regarding the previous question, what is the law if the thief subsequently dies prior to delivering the money and offering the *korban*? (א"י: ט)
- Can the *korban asham* of the thief be offered prior to: (א"י: ט)
  - Returning the stolen item?
  - Paying the *chomesh*?
- When are the heirs of a thief not obligated to pay back the victim if the stolen item has been consumed? (א: י)
- Can one exchange money from the tax collector's chest? (א: י)
- If a *gazlan* stole a garment from a person and left him one in "exchange" can the person keep it? (ב: י)
- When do we say that a person can keep the property that he salvaged from a natural disaster? (ב: י)
- What is the law if *Reuven* claims that particular items in the possession of *Shimon* are his and were stolen, yet *Shimon* claim he purchased them? (ג: י)
- Regarding the previous question, is the law different if he is know to be a thief? (ג: י)
- Consider a case where *Reuven* was carrying a barrel of wine and *Shimon* was carrying a barrel of honey. If the barrel of wine cracked and *Reuven* emptied his own barrel of wine in order to save the honey, what can he claim from *Shimon*? When does this ruling change? (ד: י)
- What other case is brought that is similar to the one in the previous question? (ד: י)

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<sup>17</sup> The *Ramban* refers to a *Mishnah* in *Horayot* (5a) in support for his position. Also see the *Ramban* for more of this *Sanhedri's* unique roles.

public, yet it was witnessed later that she readily uncovered her own hair in public. (י: ח)

- Is there anything left for a person to do after they pay compensation for an injury they caused? (י: ח)
- Is a person obligated to pay compensation if he was told by the victim to sever his hand? (י: 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? (יא: ט)
  - Wine which subsequently went sour?
  - *Trumah* which subsequently became *tameh*?
  - *Chametz* that was in the thief's possession during *Pesach*? (יב: ט)
- What is a craftsman obligated to pay if he was given a raw materials to make a utensil, and he did so then broke it? (יג: ט)
- What is the law if a colour dyer dyed wool in a different colour than which he was instructed? (יד: ט)
- If someone stole an item and swore falsely that he did not steal it, then wishes to do *teshuva* and return the item, can he send the item with another person to deliver it? (טו: ט)
- Regarding the previous case, when do we say that the thief does not need to travel to the victim and return the item? (טז: ט)
- How can the thief be obligated to pay “a fifth of the fifth”? (יז: ט)
- What other case is one also obligated to pay “*keren ve'chomesh*”? (יח: ט)
- Regarding the previous case, when would he be obligated to pay back double? (יט: ט)
- What is the law regarding a case where a son stole from his father and swore falsely that he did not steal from him, and then his father dies? What if the son has no money to pay back? (כ: ט)

## The Gambler

### Sanhedrin (3:3)

#### Yisrael-Yitzchak Bankier

In the third *perek* we discussed people that were invalid to act as witnesses or judges. One of these was the dice player – the gambler. More precisely, *R' Yehuda* explains<sup>18</sup> that this refers to a person whose sole profession is gambling. What exactly is wrong with the gambler? Why does it invalidate him as a witness? What difference does it make if it is his profession?

The first opinion in the *Gemara* (*Sanhedrin* 24b) is *Rami bar Chama* who explains that the gambling agreement is defined as an *asmachta* and an *asmachta* is not binding. This means that each party has laid down their money agreeing to part with it depending on a future event. However since each party does so hoping that the dice will fall in their favour, they are not completely resolved to parting with their money. Therefore when the winner takes the funds it is tantamount to stealing.<sup>19</sup> Accordingly the *Gemara* explains, that anyone that engages in gambling is *pasul*.

*Rav Sheshet* disagrees. He believes that this is not a case of an *asmachta*. *Rashi* explains that a real *asmachta* is when a person obligates himself believing that he will never need to pay. For example see the *Mishnah* we learnt in *Bava Batra* (10:5). Instead *Rav Sheshet* explains that the problem is that he is not involved with *yishuvo shel olam* – benefiting general welfare. Therefore the *Gemara* explains that according to this understanding, as long

<sup>18</sup> Whether he argues against or explains the opinion of the *Chachamim* is subject to debate in the *Gemara*.

<sup>19</sup> Whether it is considered stealing on a biblical or rabbinic level is a debate between *Rashi* and *Ritva* on *Gemara Rosh Hashanah* (21a). This is an involved discussion that goes beyond the scope of this article. Nevertheless the invalidation to testify appears to rabbinic according to all opinions. See the discussion on the that *Gemara*.

as he had another profession he would not be invalid as a witness or a judge. What is the problem in not being involved in *yishuvo shel olam*?

The *Bartenura* elaborates that it is forbidden for one to involve them in activities other than *Torah*, acts of loving kindness or trade or professions that involves *yishuva shel olam*. Consequently, this flaw alone appears to invalidate him.

Alternatively *Rashi* (*Eiruv* 82a) explains that since he is removed from worldly affairs, he does not recognise or understand the pain and efforts exerted by others to earn a living. Consequently this person would not be greatly bothered at his friend's financial loss.

Finally the *Rambam* (*Edut* 10:4) writes that the gambler's lack of involvement in *yishuv olam* implies that he must be benefiting from the winnings. What does this mean? The *Sema* (*Choshen Mishpat* 34:40) explains that the *Rambam* maintains that even though taking the winnings does not constitute stealing, since the money only really transferred hands by means of "playing about", it constitutes "*avak gezel*" (rabbinically problematic theft).<sup>20</sup> Consequently it only invalidates one from testifying if he actually benefits from the winnings because since he is adorning himself with this tainted money, it is suspect that he would be willing to testify falsely. Unlike *Bartenura* and *Rashi* the lack of being involved in worldly affairs does not present an inherent problem. It is only because it would ensure that he must be benefiting from the "dirty" money that invalidates him as a witness. The *Sema* adds that according to this understanding, if this gambler had a significant wealth from which he is supported, then even if he had no other job, he would not be invalid as a witness.

<sup>20</sup> An alternative understanding of the *Rambam* is presented by the *Kesef Mishnah* who maintains that the *Rambam* rules like *Rami bar Chama* that gambling constitutes theft. If so, why is only the professional gambler invalid? See the *Kesef Mishnah* inside for his full explanation.

- What is the law if two witnesses testified that a person stole an ox and two other witnesses testified that he slaughtered that ox and: (יג: יד)
  - Both sets of witnesses are found to be *eidim zomemim* (false witnesses)?
  - One of the first two witnesses is found to be false?
- If witnesses testify that a person stole an ox and then he admits he consequently slaughtered that ox what is he liable? (יד: יד)
- What is the law if a person stole an ox from his business partner then sold it? (יז: יז)
- What is the law if a person stole an ox and then shot it? (יז: יז)
- 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? (יז: יז)
- Where can sheep be raised in Israel? (יז: יז)
- Which animals cannot be bred in *Yerushalaim* and why? (יז: יז)
- What are the five components of compensation one must pay if he injures another person and explain each of them? (יח: יח)
- 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? (יח: יח)
- Is a child obligated to pay compensation if he hits his parent and does not cause a wound? (יח: יח)
- What component of compensation does *R' Yehuda* maintain is not applicable for injuries caused to *avadim*? (יח: יח)
- Explain why for the following people "*pegiatan ra*": (יד: יח)
  - *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? (יח: יח)
- 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

- What is the law regarding one that handed a flame to minor, and this child went and caused fire damage? (י:ד)
- If one person brought kindling and another brought a flame and the resulting fire caused damage who is liable? (י:ד)
- Regarding the previous question, in what two circumstances will neither be liable? (י:ד)
- Provide the three cases where if the fire spreads beyond barriers the fire starter is not liable. (י:ד)
- How is liability calculated if a person lit someone's pile of wheat and there were other items hidden in the pile that were damaged as a result? (Include both opinions) (י:ה)
- Is one liable for a spark generated by the strike of an axe that caused a fire? (י:ו)
- When does R' Yehuda maintain that a shop owner who left candles outside his shop, and flax on a loaded camel caught fire and spread as a result of the camel's movement, is not liable for damages? (י:ו)
- What is the definition of a *ganav*? (י:א)
- When is a *ganav* obligated to pay four times what he stole? (י:א)
- When is a *ganav* obligated to pay five times what he stole? (י:א)
- If someone stole from a *ganav* is he required to pay back double the value of what he stole? (י:א)
- Is a person obligated to pay four or five times the value if: (י:ב, ד)

  - If he stole and sold the ox on *Shabbat*?
  - If he stole and slaughtered the ox on *Shabbat*?
  - If he stole and slaughtered the ox for medicinal purposes?
  - If he stole and slaughtered the ox in the *azarah*?
  - If he stole, sanctified then slaughtered the ox?
  - If he stole and slaughtered the ox from his father, then his father passed away?

- Which of the cases in the previous question is debated? (י:ב, ד)

## Death Row Sanhedrin (6:1) Yisrael-Yitzchak Bankier

For capital cases *beit din's* administer on of four capital punishments. The *Mishnah* (6:1) teaches that once the accused was found guilty of a crime punishable by *skilah* (stoning), they took the criminal to the *beit ha'skilah* (the stoning place). The *Mishnah* teaches us that the *beit ha'skilah* was located outside or at a distance from *beit din*. It continues to explain that this is learnt from the *parasha* of the *mekalel* (the blasphemer), where *Moshe* was instructed to “take out the blasphemer” (*Vayikra* 24:14).

The *Mishnah* appears to be explaining that it is sufficient as long as the *beit ha'skilah* was not located on the same premises as the *beit din*. The *Gemara* (*Sanhedrin* 42b) immediately questions this assumption explaining that a *Beraitah* instructs that the *beit ha'skilah* must be located “outside the three camps”. Let us first explain the question. The reference is to the three camps of the Jewish people in the desert - *machaneh Shechina* (location of the *Mishkan*), *machaneh Leviya* and *machaneh Yisrael*. Once settled in *Eretz Yisrael*, this means outside the city of *Yerushalaim*. *Tosfot* (*Sanhedrin* 42b, s.v. *beit*) explains that as each walled city has the status of *machaneh Yisrael*, “outside the three camps” also implies outside a walled city. Consequently the requirement on the location of the *beit ha'skilah* is much more than just off-premises.

The *Gemara* answers that indeed the *beit ha'skilah* must be located outside the three camps. The *Mishnah's* phrasing addresses if the *beit din* itself left the three camps. In such a case, the *beit ha'skilah* would nonetheless be located at a distance from the *beit din*. It appears then that the *Mishnah* and *Beraitah*

combine to introduce two requirements on the *beit ha'skilah's* location – outside the city and away from *beit din* – both of which derived from the *mekalel*.

Interestingly the *Gemara* continues to provide two reasons for these requirements. Firstly, distance is required so that the *beit din* do not appear to be murders (see *Rashi*). Alternatively, it provided time between passing judgment and execution, creating the opportunity for someone to supply new evidence that could reverse the decision.

The *Tosfot* (s.v. *ki*) question the necessity of this rationale; once the *p'sukim* have stated the requirements there is no need! They explain that the *Mishnah* indeed teaches us that when the *beit ha'skilah* is situated outside the city the *beit ha'skilah* must be off-site. However how far away it must be situated is not addressed. This detail is instead provided by the subsequent rationale. This is one reading of the *sugya*.

When the *Rambam* discusses this law he simply states as follows (*Sanhedrin* 12:3):

The location that *beit din* would execute him was outside *beit din* and far from *beit din*; as it states “take out the blasphemer to outside the camp”. It appears to me that this was far, like six *mil*, as was the distance between the *beit din* of *Moshe Rabbeinu* that was in front of the *ohel moed* and [the end of] *machaneh Yisrael*.

The *Tiferet Yisrael* explains that since the entire encampment of *Am Yisrael* was twelve *mil* wide and the *beit din* was situated by its centre, *Moshe* was required to execute the *mekalel* at a distance of six *mil*. Based on our initial understanding of the *Gemara* the *Rambam* appears odd. Where is the distinction between if the *beit din* was located inside or outside the city? Also, granted that he quoted the *pasuk*, but above we also required the rationale to complete picture! Finally from where does he extract this fixed distance? To understand the *Rambam* we surely need to reread the *Gemara*.

- What is the law regarding a case where an ox gores a cow, and the cow is found dead with a dead calf next to it? (א: ה)
- What other case is comparable to the previous one? (א: ה)
- If a person delivered a package, and it was damaged on the property by the owner's animal who is liable? (ב: ה)
- If *Reuven* brought his ox into *Shimon's* property and it fell in a pit dirtying the water who is liable and what are they liable? (ג: ה)
- Regarding the previous case, explain the debate if *Shimon* allowed *Reuven* to bring his animal onto his property. (ג: ה)
- How is *d'mei vladot* calculated and in which two cases mentioned in the *Mishnah* is it paid? (ד: ה)
- Is the owner liable for any damage caused by his hole, if he dug a hole in his own property, but the opening of the hole was in the public domain? (ה: ה)
- Why does the *Torah* use the language of “*bor*” when referring to this class of damage? (ה: ה)
- How is liability determined if a pit has joint ownership? (ו: ה)
- Is one liable if an animal injured itself as a result of the echo that resonated from the digging of a pit? (ו: ה)
- List the eight halachic categories where the *Torah* referred to an ox, but implied all *behemot*? (ז: ה)
- Is the owner liable if he locked his animal up properly yet it escaped and caused damage? (א: ו)
- What is the law regarding the previous case if thieves removed the animal? (א: ו)
- If a person left his animal outside in the sun, and contained him in that area properly, yet the animal broke out and caused damage (*shen* or *regel*) is the owner liable? (ב: ו)
- In what situation, where an animal ate from the neighbour's garden, is the owner of the animal only liable to pay for what the animal benefited? (ב: ו)
- In the case of *shen*, how is full damage calculated? (ב: ו)
- When do we say that if one's neighbour piled produce in his field and his animals ate from that pile that he is liable? (ג: ו)



- In which two cases would a person be liable if he caused damage but be exempt if his animal caused the same damage, and in which two cases would a person be exempt, but if his animal caused the same damage he would be liable? (גי: י)
- What is the law regarding a case where *Shimon* claims that *Reuven's* ox injured his ox, while *Reuven* claims that *Shimon's* ox's injury was caused when it tripped? (גי: י"א)
- What is the law regarding a case where *Reuven* claimed the *Levi's* ox injured *Shimon's* while *Levi* claimed it was *Reuven's* ox that damaged *Shimon's* ox? What if *Reuven's* ox was a *mu'ad* while *Levi's* was a *tam*? (גי: י"א)
- Explain both opinions regarding how compensation is calculated in a case where a *tam* ox caused damage to four different oxen. (ד: י"א)
- Can an animal be partially *mu'ad*? (ב: י"ב)
- Is one liable if his ox injured an ox belonging to *hekdes*? (ד: י"ג)
- Explain the debate regarding whether a *mu'ad* ox belonging to a *katan* changes its status when the *katan* becomes a *gadol*. (ד: י"ד)
- What is the special law regarding a *shor ha'itzadin*? (ד: י"ד)
- What is the difference if a *shor tam* kills a person and if a *shor mu'ad* kills a person? (ד: י"ה)
- What is the law if an ox kills an *eved*? (ד: י"ה)
- What is the law regarding a case where an ox rubs against a wall causing it to fall and kill a person? (ד: י"ו)
- Explain the debate regarding a case where a *shor ha'midbar* kills someone. (ה: י"ז)
- What is the law regarding a ox that has been sentenced to death yet before it is put-down the owners:
  - Sanctify the animal?
  - Slaughter the animal? (ד: י"ח)
- Do the same distinctions between a *tam* and a *mu'ad* apply if the animal was entrusted to a guardian? (ט: י"ט)
- When referring to a *shor mu'ad*, who maintains: (ט: י"ד)  
אין לו שמירה אלא סכין

The *Gemara* had questioned the *Mishnah's* language that the *beit ha'skilah* had to be “outside” *beit din* by quoting the *Beraitah* that it must be located “outside the three camps”. The *Gemara* then admitted that the *Beraitah* was correct, but the question still remains what does the requirement “outside the three camps”, as demanded by the *pasuk*, mean? We initially understood (like *Tosfot*) that this meant outside any location having the status of *machaneh Yisrael*. Alternatively, the *pasuk* could be providing an objective distance as measured from the centre to outside the three camps in the desert. The practical difference or “*nafka minah*” (to use the language of the *Gemara*) between these two approaches is if (indeed) the *beit din* was located outside the city.

The *Gemara* is therefore not saying that the *Mishnah* and *Beraitah* provide too separate requirements. Instead, the *Gemara* is explaining that while the *Mishnah* agrees with the requirement of being “outside the three camps” had it used that terminology, it could have potentially been misunderstood. From where did the *Mishnah* know this was the correct meaning? Here enters the rationale, which reaffirms that the sole intention of the *pasuk* was to provide distance.

## Ben Sorer U'moreh

Sanhedrin (8:5)

Yehuda Gottlieb

The *Mishnah* (*Sanhedrin* 8:5) states:

A *ben sorer u'moreh* (wayward and rebellious son) is judged based on his end – he should die innocent rather than dieing with guilt.

A *ben sorer u'moreh* is punished in the present in order to prevent him from becoming guilty in the future. How is it possible to punish someone based on what he will do in the future?

The *Gemara* (68b) also challenges this logic asking that if we judge him based on the future, a *katan* (minor), who is too young to be a *ben sorer u'moreh*, should also qualify. How could the *Gemara* even ask this question? We learn at the beginning of the *perek* that a *katan* (minor) is not held liable for his actions.

A similar difficulty is found by *ir hanidachat*<sup>21</sup>, as the *Rambam* writes (*Hilchot Avodat Kochavim* 4:6) that one must destroy all that live in the city, including women and children by the sword. Here too we see that even though a *katan* is not of the age to be held liable for punishment – he is in any event punished along with the rest of the city.

One may differentiate between the case of the *ir hanidachat* and a *ben sorer u'moreh*. The *Rambam* describes the act of going to kill the inhabitants of such a city as engaging in “*milchama*” (war) against the city. The difference may be, that when there are a majority of people committing the sin (as with *Ir Hanidachat*) a minor is able to be punished along with that majority. However, when that minor is an individual (*ben sorer u'moreh*) we should still be unable to give a punishment due to the concept of a minor not being liable for punishment!

<sup>21</sup> A city overrun by idol worshippers (whose *din* is to be destroyed)

- If *Reuven* leaves a bottle in the middle of the street and *Shimon* drives over it, is *Shimon* liable for the damage cause? (א: ג)
- What if the bottle caused damage to *Shimon's* car, is *Reuven* liable for the damage? (א: ג)
- If *Reuven* dropped his bottle of juice and it smashed, and then *Shimon* slipped on the juice, is *Reuven* liable? (Explain both opinions) (א: ג)
- If *Reuven* poured his waste water into the street and *Shimon* slipped on it, is *Reuven* liable? (ב: ג)
- What is the *takanah* instituted regarding those that leave their compost bins in the street? Who broadens this *takana* to apply to anything that can potentially cause damage? (ג: ג)
- What is the law regarding two potters, *Reuven* and *Shimon*, both carrying their wares, with *Reuven* walking in front of *Shimon*, and *Reuven* drops one of his pots and *Shimon* subsequently trips on it causing damage? (ד: ג)
- Regarding a case where *Reuven* is carrying a beam and *Shimon* is carrying a pot, in which three cases do we say that *Reuven* is liable if his beam breaks the pot, and in which two cases do we say that he is not liable? (ה: ג)
- If two people run into each other who is liable? (ו: ג)
- Is one liable if they were chopping wood in their property and a chip flew out into the street and caused damage? (ז: ג)
- How is compensation calculated if two oxen cause damage to one another if: (ח: ג)
  - Both are *tamim*?
  - Both are *mu'adim*?
  - One is a *tam* and the other is a *mu'ad*?
- According to *R' Akiva* when does a *tam* pay full compensation? (ט: ג)
- How is compensation calculated if: (י: ג)
  - A *tam* ox worth \$100 killed an ox worth \$200 dollars, leaving a carcass of no value?
  - A *tam* ox worth \$200 killed an ox worth \$200 dollars, leaving a carcass of no value?

## Bava Kama

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

Another difficulty arises in *Parashat Korach*. The *pasuk* (*Bamidbar* 16:27) describes that even the wives, children and infants were all part of *Korach's eida*. *Rashi* states:

Come and see how severe dispute is, for see now, an earthly court does not punish unless (the one found guilty) had reached maturity (13 years), and the heavenly court does not punish until 20 years, but here even infants were destroyed.

We see from here that there is indeed a concept of holding minors liable for a sin. *Birchas Avraham* explains that we are punishing the minors because of their end – due to the fact that we are worried that they will grow up to be *ba'alei machloket* – so just like *ben sorer u'moreh*, it is better that they are killed while they are innocent rather than growing up and becoming guilty. This still is problematic because at the time they sinned they were minors and should not be liable for their actions!

The *Birchas Avraham* therefore differentiates whether the *din* of the *ben sorer u'moreh* is a punishment for his sin, or whether we are saving the child from dying when he is found guilty (later on in life).<sup>22</sup> This element of saving a person from sinning is also demonstrated in the concept that one may kill someone who is *rodef* to do an *aveirah* before he does it. This concept can be applied to *ben sorer u'moreh* as we already know he has done terrible and wicked acts<sup>23</sup> and has a *chazakah* that he is a *rasha* – therefore we are in fact saving him from being found guilty (albeit at a later stage).

This novel idea is now able to answer how the *Gemara* could ask that a minor be held liable as a *ben sorer u'moreh*. If one was to view *ben sorer u'moreh* as a punishment then there would be a problem, because one can only be liable for punishment when one reaches *gadlut*. However, if we are able to view it as saving the

<sup>22</sup> We find this concept in *Sanhedrin* (73a) where the *Gemara* states that we "save" people's lives. *Rashi* states here that we are talking about saving these people from sin.

<sup>23</sup> See the beginning of *Sanhedrin perek* 8.

minor from being guilty later on in life then it makes no difference whether the person is a *gadol* or not.

Additionally, this view of a *ben sorer u'moreh's* death sentence also makes more sense in light of the wording of the *Mishnah* – “is judged based on his end”. If we see the judgment as a punishment for his actions then looking forward to this minor’s end is irrelevant. It is only if we see the death sentence as *hatzalah*, of saving the youth, that the *Mishnah's* wording seems logical.<sup>24</sup>

## Revision Questions

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<sup>24</sup> In contrast, see *Gemara Sanhedrin perek 8* , *Rambam (Mamrim 7:5)*, *Chinuch* (248) which seem to indicate that the *din* of a *ben sorer u'moreh* is indeed a punishment.

rulings. In short, according to *R' Meir* this relationship makes it as if *Beit Din* were the ones who sinned.

*R' Yehuda's* view is different: Whoever heard of a case where one person has an erroneous notion, the other sins through misconception, and they are liable? Usually the mistaken notion and the mistaken action are both done by the same person – here they are divided. Can these two separate entities be truly judges with such a dichotomy existing? The *Torah* answers positively: We see *Beit-Din* and the nation as one body and judge them together – the tribes bring the sacrifices, the *Beit-Din* handles them.

*R' Shimon's* view is now clear as well. Indeed, we must see them as two separate entities, and therefore they both should be tried separately. The *Beit-Din*, due to the grievous consequences of their actions, must bring a sacrifice of their own, and the tribes too must bring their own sacrifice to atone for the sin they committed.

## What is My Portion?

Sanhedrin (10:1)

Yisrael-Yitzchak Bankier

The tenth *perek* begins<sup>25</sup>:

All *Yisrael* have a share to the World to Come<sup>26</sup>, as it says, “And your nation, they are all righteous, they will inherit the land forever, the branch of my planting, my handiwork in which I delight” (*Yeshayahu* 60:21).

At a cursory glance, this statement could lead to complacency. By virtue of being part of *Yisrael*, one has their share without doing anything. People might then, G-d forbid, only heed to *Hashem's* command or be motivated in spiritual endeavours at the their convenience, as their share appears to be guaranteed. A closer analysis of this statement however leads to the opposite conclusion.

The initial assumption that a guaranteed share implies a utopian result for all is smashed by the *Meiri* (*Sanhedrin* 90a). He writes that indeed both *tzadikim* and *reshaim*<sup>27</sup> have a share, but we forget about the process that a *rasha* undergoes before he can enjoy that share. The *Meiri* explains that first the *rasha* is judged and then punished appropriately, both in terms of severity and duration. Similarly, the *Tosfot* (*Ketubot* 103b, *mezuman*) explain

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<sup>25</sup> The *Gemara* reverses the order of the last two *perakim* (this *perek* being the eleventh). See the *Tosfot Yom Tov* for the rationale of both orderings. Also, the *Chochmat Shlomo* has a version of *Rashi* that explains that this statement is an *Aggadah* and instead the *Mishnah* really begins with, “These are the people that have no share to the world to come.” It was added to ensure that the *perek* begins on a high note.

<sup>26</sup> The meaning of this term is debated by the *Rishonim*, which is however beyond the scope of this article.

<sup>27</sup> The *Meiri* explains that the term “*rasha*” here refers to those whose sins outweigh (not outnumber) their good deeds.

that there are exceptional individuals that avoid this process altogether.

The *Maharsha* highlights a different implication of the above statement. Granted that even those given a capital punishment have a “share”, not all “shares” are equal. He cites another *Gemara* (*Bava Batra* 75a) that states in the future each *tzadik* will be “singed” by the “canopy” of other *tzadikim*. The *Maharsha* there explains that the “canopies” will be constructed in merit of the *mitzvot* performed. It will be recognisable in these “canopies” the excellence in which the *mitzvah* was performed. Now each *tzadik* has a particular *mitzvah* in which they excelled over and above other *tzadikim*. Therefore they will not be embarrassed in the face of other *tzadikim*, but rather “singed” at the recognition of how they could have better performed other *mitzvot*. The natural reaction should be dread for those that have not excelled in any. This is supported as the *Gemara* continues by lamenting “Woe to the [future] shame, woe to the [future] disgrace.”

*R’ Chaim Volozhiner* (*Ruach Chaim*) hits a similar point by being precise in the language in the *Mishnah*. He explains that the *Mishnah* is commonly explained as saying that “All *Yisrael* have a share in the World to Come”. Such a reading would imply that there is a fixed share awaiting each person; one just needs to earn the “entry-pass”. The real translation however is that “All *Yisrael* have a share to the world to come.” The difference is astounding. All of *Yisrael* have the entry-pass; what one finds there however is a direct product of his actions.

What does *R’ Chaim* then derive from the word “*chelek*” (essential to the opinion of the *Maharsha*)? One could perhaps suggest that this “entry-pass” is not a dedicated pass for each individual, but rather each person has a share in this pass – the “*le’olam*”. Who are the “share-holders”? “*Kol Yisrael*” – those that bear the name *Yisrael* – explaining the continuation of the *Mishnah* that enumerates those that lose that title.

## Horayot

### Who is to Blame

Rav Yonatan Rosensweig

In the last *Mishnah* of the first *perek* of *Horayot*, we read of a dispute between three of the great *Tana'im* of the *Mishnah*: *R’ Meir*, *R’ Yehuda* and *R’ Shimon*. The *Gemara* goes into a lengthy explanation of their respective understandings of the *halachot* of *Par He’alem Davar Shel Tzibur*, but investigating these understandings to their absolute conclusions is beyond the scope of this *d’var Torah*. Instead, let us look at one single point of dispute and try to touch upon the deeper meaning of what they are saying.

The *Mishnah* tells us that the three argue regarding who brings the sacrifice in such a case when the *Beit Din* gives an erroneous ruling and the people (majority, at least) follow that ruling. *R’ Meir* holds that the *Beit Din* must bring the sacrifice (supplied by the people); *R’ Yehuda* believes that though this is true – there need to be twelve sacrifices brought in by each of the tribes of Israel and given to the *Beit-Din*; *R’ Shimon* disagrees with both and claims that besides the sacrifice brought by the *Beit-Din* for the sin of the people, the tribes themselves have to bring their own personal sacrifices as well.

How are we to understand these differing views? Let us start with *R’ Meir*. *R’ Meir* believes that *Beit Din* must take responsibility for the sins of the nation. It is true that *Beit Din* is responsible for each individual person within the nation, but the *Torah* is telling us that *Beit Din* also has a second roll as the *Beit Din* of the people as a whole. *Beit Din* and the nation are connected not simply because the people are made up of those individuals the *Beit Din* is responsible for, but rather because the nation forms an entity which enjoys a special relationship with *Beit Din*. As such, the *Beit Din* is responsible for actions the nation does due to its

According to the *Midrash Shmuel* the end of the above quote should be understood as meaning: the exclamation of “woe” called out by one suffering an affliction is a result of their insult to *Torah*, for had they been immersed in *Torah*, they would have endured the affliction in a very different way.

The *Midrash*, in covering the three types of freedom, also highlights the three types of slavery. The external or social (government/exile), personal (afflictions) and the more subtle internal (evil inclination). *Pesach* is closely tied to *Shavuot* and *HaKadosh Baruch Hu* made it clear that the liberation from Egypt was to bring them to *Har Sinai* and accept the *Torah*. During *Zman Cheiruteinu*, a period where we celebrate freedom, we must remember all these forms of slavery both the obvious and subtle, and the means with which we are to liberate ourselves.

One could suggest that there is a difference between the *Maharsha* and *R' Chaim*. We have stated that according to the *R' Chaim* all that is there in the World to Come is product of one's actions; all we have guaranteed is the “*le'olam*” – the entry pass. The *Maharsha* derives his point from the word “*chelek*”. One could suggest that accordingly even a portion is guaranteed, but the quality of that portion is determined by our actions. The “land” can either be nourished and developed or, G-d forbid, sullied and ruined.<sup>28</sup> This is perhaps what is implied by the *Maharal* who explains that when the *pasuk* writes “And your nation, they are all righteous”, it means that the nation, prior even to any *mitzvot* or good deeds have a share as they were created in a pristine condition. One learns that we were given a treasure – do not spoil it!

Therefore while the *Mishnah* provides consolation for those punished for a capital offence, it also serves as a stark reminder of the very real ramification of our actions.

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<sup>28</sup> See *Shmirat HaLashon* (2:2) for a vivid description of this concept.

## Makkot

### Reciprocal Punishment

#### Makkot (1:3)

#### Yisrael-Yitzchak Bankier

*Masechet Makkot* begins with the topic of *eidim zomemin*. The term refers to false witnesses that have been proven so by virtue of others testifying that they could not have been witnesses as they were with them at the time of the claimed incident. In general, they are punished with that which they tried to inflict on the falsely accused – “*ka’asher zamam la’asof*” – be it money, lashes or capital punishment. The first *Mishnah* lists exceptional circumstances where the reciprocal punishment cannot be administered and the false witnesses instead receive lashes. Putting these cases aside, since there may be only one accused and two or more false witnesses one needs to consider how reciprocal punishments are administered. The *Mishnah* (1:3) teaches:

[The *eidim zomemin*] divide a monetary sentence but do not divide lashes. How? If [the false witnesses] testified that their friend was obligated to pay two-hundred *zuz*, they divide it amongst themselves [and, if it was two witnesses, they each pay one-hundred *zuz*]. If however they testified that he was obligated to receive lashes, each of [the false witnesses] receive forty lashes.

The *Gemara* (*Makkot* 5a) presents two opinions for the source of this distinction. *Abaye* explains that a *gezeirah shava* is employed connecting the punishment of lashes with a capital punishment. Just as with a capital punishment, it is impossible to administer half-punishments, and yet the *Torah* still maintains that each of the false witnesses are punished with a complete punishment, the same applies for lashes. The implication being that were it not for the *gezeirah shava*, we would have divided lashes, in the same way that we divide money, so that the collective punishment of

*Chazal* teach us that the *Malach Ha’Mavet* is also synonymous with the *Yetzer Ha’Rah*. The *Meiri* explains that engagement in *Torah* results in a person no longer being subjected to the whims of his bodily desires. Ordinarily a person is driven by instinct and his mind already decided by his cravings. While this may have the appearance of freedom in contrast to a slave, actions are in reality predetermined. *Torah* frees us from that overpowering influence while introducing a gamut of real choices and, with reward and punishment delayed, we are free to choose.

Freedom from government may be readily understood for the explanation of *R’ Chaim Volozhiner* (*Ruach HaChaim*). He explains that Man is born to work (*Sanhedrin* 99b). This is a metaphysical reality. His shoulders must always bare a yoke. We learnt earlier (3:6) “Whoever throws off the yoke of *Torah*, they place upon him the yoke of government and yoke of sustenance.” The reverse is also true, as the *Mishnah* taught, that one who does bare the yoke of *Torah* and in his efforts demonstrates it is such, then other yokes will be removed. With this understanding, *Torah* quite literally liberates one for other worldly burdens.

Freedom from afflictions at first may be a little more difficult to understand. According to the *Midrash Shmuel* this cannot be understood literally, for he notes, the it is clear to all that the righteous too have their fair share of troubles. Instead, he explains that while they may experience these afflictions, they will not be subjugated by them. Their worldly perspective, fashioned by their persistent learning, result in their enduring such experiences with an acceptance and even good countenance.<sup>54</sup> The *Midrash Shmuel* uses this to explain the beginning half of our *Mishnah*. It is usually, read and translated as follows:

*R’ Yehoshua ben Levi* said: every day a heavenly voice calls from *Har Chorev* and announces saying, “Woe to people because of their insult to *Torah*...”

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<sup>54</sup> See the *Midrash Shmuel* for a fuller treatment of this concept and the world perspective of the righteous.



**Freedom**  
**Avot (6:2)**  
**Yisrael-Yitzchak Bankier**

*Rav Yehoshua ben Levi* says... And it says “And the tablets were made by *Hashem*, and the writing was the writing of *Hashem* engraved on the tablets.” (*Shmot* 32:16) Do not read “*charut*” (engraved), but “*cheirut*” (freedom), for man is only free if he is involved in *Torah* study...

*Avot* 6:2

The *Mishnah* teaches that involvement in *Torah* sets a persons free.

While people feel that they have an intuitive understanding of the concept of freedom, the *Midrash* is not satisfied. The *Midrash Raba* (*Metzora* 18:3, *Ki Tisa* 41:7) effectively asks “free from what?” Three opinions are brought<sup>53</sup>: freedom from the *Malach Ha’Mavet*, freedom from exile/government and freedom from afflictions (*issurim*). The *Midrash* and *Gemara* (*Eiruvin* 72a) take some of these understandings quite literally. At *Har Sinai*, it is explained that we were indeed returned to the state of *Adam Ha’Rishon* prior to his sin and quite literally free from the *Malach Ha’Mavet*. The sin that immediately followed, however reverted them back to their original state. Also, the *Gemara* explains, had the *luchot* not been smashed, then no nation would have been able to rule over *Am Yisrael*.

The *Mishnah* however suggests that *Torah* can liberate us even now. Therefore we shall attempt to briefly offer different explanations of the three opinions mentioned in the *Midrash*.

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<sup>53</sup> In different *Midrashim* the opinions are brought in different names and therefore the names have not been included.

the false witnesses is equal to what they attempted to inflict on the falsely accused.

*Rava* however presents a different understanding. He explains that if each of the witnesses only received a share of lashes, then “*ka’asher zamam la’asot*” would not have been fulfilled. The *Gemara* asks, then why do we divide a monetary punishment? *Abaye* responds that “money can combine, lashes cannot combine.” How do we understand this dialogue and how money differs from lashes?

The *Nimukei Yosef* explains that with money we can collect all the money due from each of the witnesses and then present this combined pool to the falsely accused. With lashes however, as each would be administered to separate bodies (the false witnesses) there is no way of combining them. In other words there would be, for example, three instances of thirteen lashes (“partial”-lashes) and not one unit of thirty-nine as demanded by *ka’asher zamam la’asot*.

The *Meiri* however appears to maintain that there is a more fundamental problem, denying the concept of partial-lashes completely – “*ein malkut le’chatza’in*”. The punishment of lashes is not a quantitative culmination of thirty-nine blows, it is one single unit. Were we to administer less (other than by medical direction) it would not be considered lashes. Therefore dividing lashes amongst three false witnesses and trying to combine them would results in three times naught.

The *Beit HaLevi* (*Be’Shalach*) provides the rationale explaining that with money, one-hundred is indeed half of two-hundred. Yet with lashes each blow gets more difficult to bear. One blow is clearly not half of two and three times thirteen blows would not equate to thirty-nine.

A question is still left remaining: if we then give full sets of lashes to false witnesses, in effect they have received multiple times that

which they wished to inflict on the falsely accused. How is *ka'asher zamam la'asot* being fulfilled?

When the *Ritva* explains the distinction between money and lashes he explains that money can combine as it “combines in the hand of the falsely accused”. However with lashes, the falsely accused “does not receive anything” and therefore it cannot combine. What function is the falsely accused playing? In the case of money, as the falsely accused receives something, the money the false witnesses pay is in the style of compensation and can therefore combine. With lashes (as cases of capital punishment also testify) *ka'asher zamam la'asot* takes on a different form. The focus is no longer on the falsely accused but rather on the false witnesses. Now it acts as a punishment; each witness punished in the way they wished to punish the innocent.<sup>29</sup>

Why does the focus shift? Rav Yonatan Rosensweig sharpens this explanation explaining that really there is only one *ka'asher zamam la'asot*. With a monetary payment it is fulfilled (*chal*) in hands of the receiver of the payment – that is how payments work. With lashes however the *ka'asher zamam la'asot* is fulfilled in the body of the receiver of the punishment.

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<sup>29</sup> One could boldly suggest that the inability to divide lashes means that *ka'asher zamam* does not apply and in such cases (1:1) we give the *eidim zomemin* each full lashes. This line would require more thought (see *Rambam, Edut* 18:1 “*loke kol echad mehem kasha'ar mechayvei malkut*”).

remember the experience in great detail many years later. This is not because they have a photographic memory. It is because the experience had an enormous emotional impact on them and is personally important to them. When we learn *Torah*, if we keep in mind that we are learning the wisdom of *Hashem* and if we learn with tremendous *Yir'at Hashem* or *Ahavat Hashem*, then we may find it easier to remember what we learn.

There is a *Midrash* which states that when *Moshe* was on *Har Sinai* he toiled but could not grasp the more complex parts of *Torah*. Eventually, as a reward for his efforts, *Hashem* granted him the wisdom as a gift. *Moshe* put in the effort but in the end his wisdom came from *Hashem*. We have picked up some lessons in how to become a better student. The most important factor in reaching our potential is *Hishtadlut* - we need to put in the effort. However if we want to break through our natural limitations and exceed our potential, *Chazal* recommend that we pray for divine assistance from the source of all wisdom. As it says in *Mishlei* (2:6), “*Hashem* grants wisdom; from His mouth comes knowledge and understanding”. *Hashem* Himself grants wisdom to those whom he loves (*Niddah* 70b).

information too quickly then one's understanding may be too shallow. On the other hand, a student who takes a long time to grasp the lesson needs to expend a lot of effort and needs to think slowly and systematically. Such a student has revised the material repeatedly and they may end up with a better understanding and therefore a greater chance of remembering.

There is a lesson for the scholar too. Even the best category of student is described as "slow to forget". They may have an excellent memory, but they are still human and eventually do forget. We were introduced to *Rabbi Elazar ben Arach* in chapter two of *Pirkei Avot*. The *Mishnah* testifies that in some respects he was the greatest scholar of his generation. Yet he moved to a town that was not a place of *Torah* and after a while forgot his learning (*Shabbat* 147b). His former colleagues had to pray for him in order for his learning to be restored. This teaches us that even the best and brightest student has to constantly do *chazarah*.

Many of the *Mishnayot* in *Pirkei Avot* teach us the correct way to behave; what behaviour should be emulated and what behaviour should be avoided. However our *Mishnah* does not instruct us regarding good and bad *midot*. This is because we are born with natural intellectual capacities that are out of our control. They are a gift from *Hashem*.<sup>52</sup>

Nevertheless, there are techniques that we can use to help us reach our potential. The *Chatam Sofer*, like many *Gedolei Yisrael*, was renowned for an amazing memory. When complimented on his memory, he would humbly state that *Torah* knowledge was so important to him and was acquired with so much effort that it was easier for him to remember. Perhaps the *Chatam Sofer* was touching on the notion that to improve one's memory one needs to engage their emotions when studying. For example, if a person has an intensely emotional or horrific experience they will often

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<sup>52</sup> As an aside, we can learn from this that people who are endowed with intelligence should not feel proud, rather blessed and grateful.

## "Accidental Murder" Makkot (2) Rav Yonatan Rosensweig

The majority of the *Mishnayot* in the second chapter of *Masechet Makkot* deal with the case of accidental murder. I use the term "accidental murder" because that is precisely the term the *Torah* and *Mishnah* use – "*rotze'ach beshogeg*". It is indeed a peculiar term as we are accustomed to the understanding that murder cannot be accidental, and that although one can be indicted with "involuntary manslaughter", he cannot be indicted with "involuntary murder in the first degree". As we will see, this term was chosen for its accurateness rather than its lack of clarity.

We find two very singular points in the *Mishnayot*:

1. The *Mishnah* tells us that the mothers of the *kohanim gedolim* used to send food and clothing to the accidental murderers residing in the *arei miklat*, so that they would not pray for the *kohen gadol*'s demise (which would set them free). It is interesting that the mothers accept this as common practice and that those prayers of the accidental murders are not criticised by the *Gemara*.
2. The *Mishnah* tells us that a *kohen gadol* who was anointed before the killer was sentenced – even though he was not the *kohen gadol* at the time of the killing – is also responsible for this killer's eventual freedom. The reason the *Gemara* brings is that he should have prayed for his acquittal but did not. This, too, seems a bit strange: Why should he have prayed for a murderer's acquittal?

In order to properly understand the answer to these questions it is important to focus on the *halachot* of an accidental killer and paint a picture of these *halachot*. Being an accidental murderer means the following: If you are a *talmid* your rabbi must go with you; if you are a rabbi your yeshiva commutes with you. If you

die before you get there – your bones are taken there to be buried. He who dies there is buried there – nowhere else; anyone who is buried there has his bones removed when the *kohen gadol* dies. He who is exiled does not come out of his city for anything (without risking the chance of being killed by the *goel ha'dam*) – not to testify (even in a capital case), not to save other lives, not even to save the whole of Israel.

When taking a bird's-eye view of these *halachot* – as we just did – I think the picture which is painted is quite clear. The accidental murderer is not just given a punishment – he is being completely transported to another existence. The term “accidental murderer” comes to point out this very issue. It is true that on the one hand we see this as accidental, but on the other hand such a thing could never have happened without some form of carelessness, obtuseness or indifference. When a person engages in an act that could cost other people's lives he must be ten times as careful as he is doing anything else. What would we call a driver who fell asleep at the wheel and killed someone, for example? I think the most fitting term for such a person would be an “accidental murderer”. It happened by accident, but the liability is very much there. He is still considered a murderer.

This is viewed by the *Torah* as an anomaly; someone who commits such a crime is part of another world, of a different society, and has a different set of values. This is why the *arei miklat* are deemed irrelevant if they are housed primarily by murderers, as the murderers no longer feel their anomalous existence. This is also why they are not criticised for their prayers and the *Gemara* even accepts it as fact – what can you expect from one living in a different world? You cannot criticise such people, only pity them, as the mothers of *kohanim gedolim* do. This is also the reason for the fact that the *kohen gadol* must pray for their acquittal – these are not murderers in the absolute extreme sense of the word – they are men who must be pitied, taken care of and helped. That is why the *Torah* builds them cities in the first place. That is why the *kohen gadol* must pray for them.

## Becoming a Better Student

Avot (5:12)

Allon Ledder

The *Mishnah* (5:12) lists four types of students:

- (a) quick to learn but quick to forget;
- (b) slow to learn but slow to forget;
- (c) quick to learn and slow to forget; and
- (d) slow to learn and quick to forget.

Buried in this *Mishnah* are important ideas about learning. We can also extract tips on how to become a better student.

Even the “weakest” student, the one who has difficulty learning and is also quick to forget, is still called a *Talmid*. This teaches us that even if someone does not have a natural ability to learn, as long as they make a sincere effort to toil in *Torah* they are still included in the same category as the best and brightest; they are still considered a *Talmid*. We learn from this the importance of effort, over which we have control (in contrast to natural ability).

The *Mishnah* states that for a student from category (a), the gain is offset by the loss and for a student from category (b) the loss is offset by the gain. This means, according to *Meam Loez*, that if there are two students, one from category (a) and one from category (b), the student in category (b) takes precedence. If there is only enough money to support one student, preference is given to the one who is slow to learn but slow to forget. Since that student has a good memory, they retain what they learn. The student in category (a) catches on quickly but then soon forgets what they learnt. The student in category (b) has to toil harder to grasp concepts. Again, we see the importance of effort.

The *Maharal* on this *Mishnah* states that the relationship is actually causative. The student in category (a) forgets the lesson quickly **because** they grasped it quickly. If one tries to digest the

should also be able to do so in less dire circumstances. Through *all* stages of life we should be recognising the role that *Hashem* is playing in everything that is happening around us, just as *David HaMelech* did, and that for everything that goes on, not just the downfall of enemies, we should equally be recognising, thanking and praising *Hashem* for his part played.

It is this separate existence which causes them to be completely disconnected from the rest of *Am Israel* to the extent that they are even exempt from the laws pertaining to *pikuach nefesh*. These murderers have no understanding of *pikuach nefesh* and cannot take part in it in the larger scheme of things. They become one people with the rest of the nation only when G-d signals their release – with the death of the *kohen gadol*, as decreed in the *Torah*.

## R' Chananya ben Akashya omer...

Makkot (3:16)

Yisrael-Yitzchak Bankier

With the end of *masechet Makkot* we meet the *Mishnah* that is, by now, very well known to all. At the close of learning *Mishnah Yomit* each day, prior to the recital of *kadish d'rabbanan*, someone stands up and says, almost certainly by heart and at a fast pace, the following *Mishnah*:

R' Chananya ben Akashya says: *HaKadosh Baruch Hu* wished to confer merit (*le'zakot*) upon *Yisrael* and therefore gave them an abundance of *Torah* and *mitzvot* as it says: “*Hashem* desires for the sake of [*Yisrael*’s] righteousness, that the *Torah* be expanded and strengthened”.

Why do we say this *Mishnah* and what does it teach us?

The *Rama* (54:3) writes that the recital of *kadish* must always be preceded with some praise (*tehilah*). The *Mishnah Berurah* (54:9) adds that a *kadish d'rabbanan* can also be recited after learning. He however continues, citing the *Magen Avraham*, that this is provided that it follows a subject of *Aggadah*, for this type of *kadish* was instituted to follow *Aggadah* (See *Sotah* 49a). He also explains that this is why the accepted custom is that after learning *Pirkei Avot* or *Bame Madlikin*, we recite either “*Amar R' Elazar amar R' Channinah...*” or our *Mishnah*. For this reason he cautions that our *Mishnah* must be recited after learning *Mishnayot* to enable the recitation of *kadish d'rabbanan*.

Granted that many of us can recite the *Mishnah* by heart, but what is it teaching us? A simple reading seems to suggest that in order to increase the reward, *HaKadosh Baruch Hu* gave us more *mitzvot*. The question that then stands out is, the more *mitzvot* also increases the chances of punishment in their transgression!

The *Rambam* in his commentary on the *Mishnah* explains that one of the fundamentals of faith is that if a person keeps one *mitzvah*

But rather than focusing on whether or not one should actually rejoice in the downfall of one’s enemies, let us focus on a separate, but very interesting point that arises from *Shmuel HaKatan*’s words, and the significance of them being brought specifically by him. After the original *Shemonah Esrei* was compiled by *Shimon KaPekuli*, the bracha of “*VeLamalshinim...*”, a request for the failure of our enemies and the humbling of the wicked, was inserted upon the request of *Rabban Gamliel*. Its authorship is attributed to *Shmuel HaKatan* – the very person who felt it so important to tell us that we should not be rejoicing at the downfall of our foes.

How can we reconcile this seemingly puzzling occurrence, and what does it teach us? *David HaMelech*, known to have praised *Hashem* at every point of his life, says in *Tehillim* (104:35): “Sins will cease from the earth, and the wicked will be no more; bless *Hashem...*” and in a somewhat surprisingly similar vein, the *Gemara* does not even question whether or not *David* is contradicting the verses from *Mishlei*.

What this shows us, and this is possible what *Shmuel HaKatan* was trying to teach us, is that there is a big difference between praising *Hashem* for the downfall of our foes and our salvation from their influence on our lives, and relatively ‘over-rejoicing’ when this does happen. *David* was not questioned for praising *Hashem* in the aforementioned quote from *Tehillim*, because *David* praised *Hashem* at all stages of his life and in every personal context – when he was conceived, when he was born and amongst many others when evil was destroyed from in front of him – he did not save the praising of *Hashem* for times only when he was in some sort of enemy related dilemma. What *Shmuel HaKatan* wants us to realise and understand is not that we should not rejoice in the downfall of our enemies, and not that we should not pray that our antagonists are unable to stand before us and defeat us, but that just as we do thank *Hashem* and celebrate when our prayers are answered and our foes do fail in their attempts, we

## Not Rejoice in the Fall of your Enemies

Avot 4:19  
Mark Steiner

*Shmuel HaKatan* says: ‘Do not be glad when your foe falls, and when he stumbles let your heart not be joyous. Lest *Hashem* see it and be displeasing in His eyes, and He turn is anger from him’ (*Mishlei*, 24:17-18)

Avot 4:19

The *Mishnah* has two clear oddities that require clarification. Firstly, who is *Shmuel HaKatan*, the “Little” *Shmuel*, and how or why did he receive this title; and secondly, and more importantly, why is this brought as a *Mishnah* in *Pirkei Avot* – *Shmuel HaKatan* brings no explanation or thoughts of his own, he is simply quoting a *pasuk* from *Mishlei*.

To briefly touch on the first question, two different thoughts are brought down explaining his unique name. In commenting on this *Mishnah*, *Rashi* explains that the title of *HaKatan* was not really a description of him, but more a way of showing the greatness of *Shmuel HaNavi*; that any other *Shmuel* is small in comparison. Alternatively, *Masechet Sotah* (9:13) in the *Talmud Yerushalmi* cites a story which acts as a basis to explain that the title *HaKatan* in no way describes the way we view *Shmuel HaKatan*, but more about the way he viewed himself, and that what is being described is his meekness, self effacing nature and humility.

Considering that *Shmuel HaKatan* gave no further elucidation to these verses from *Mishlei*, it would seem that he believed that in and of themselves they contain an important lesson that needs no further explanation. This very notion of how to relate to the downfall of our enemies, is discussed in several places throughout the *Gemara*, some which at face value appear to contradict these verses, some which come to their support, and many different important ideas arise from them.

properly with a true intent, purely *lishmah* out of love for *Hashem* then he merits *Olam HaBah*. Due to the great abundance of *mitzvot*, it is quite likely that a person will fulfill at least one *mitzvah* properly.

Alternatively, the *Tiferet Yisrael* explains that this *Mishnah* is understood in the context of the previous one. There we learnt about the reward for keeping the negative *mitzvot* that one would ordinarily be repulsed to transgress - for example, drinking blood. He explains that this *Mishnah* answers the obvious question: if we are repulsed by them anyway, why do we need a *mitzvah* to prohibit it? To this *R' Chananya ben Akashya* explains that *Hashem* wished to increase the reward. The *Maharsha* adds that the term “abundance” refers to precisely this idea. The *Mishnah* addresses why there are more negative commandment (365) than positive ones (248). It answers, to increase the reward for simply abstaining from transgressing them.

The *Sefer HaChinnuch* (16) however provides a different track. He first explains that a person is heavily influenced by his actions. Whatever a person preoccupies himself with during the day, irrespective of his personality, will begin to mould him into the barer of such activities. A person forced into an evil vocation will eventually become wicked himself. Similarly a person who strives with consistency in *Torah* and *mitzvot* will veer to the good. The *Sefer HaChinnuch* explains, the abundance of *Torah* and *mitzvot* was in order that we are completely preoccupied with them to become good and merit *chaye ud*. This has led some to opt for the other meaning of “*le'zakot*” – not “to confer merit”, but “purify”.

Consequently *HaKadosh Baruch Hu*, has heaped us with *mitzvot*; increasing the chance of a pure fulfillment, increasing the reward for passively keeping the negative commandment and finally, providing a positive preoccupation in which we “purify” ourselves. An apt closing to each day’s learning.

## Shevuot

### Eating and Drinking

#### Shevuot (3:1)

#### Yisrael-Yitzchak Bankier

With the beginning of the third *perek*, we start discussing the subject of *Shevuot* (oaths). The first case brought is as follows (3:1):

If someone made a *shevuah* not to eat, and they ate and drank, they are only obligated to [bring] one [*korban*]. If someone made a *shevuah* not to eat and not to drink, then ate and drank, they are obligated to [bring] two [*korbanot*].

The *Bartenura* explains that in the first case, “eating” implies both eating and drinking, therefore if he eats and drinks, it is the same as if he ate multiple times in one instance, and he is therefore only obligated to bring one *korban*. In the second case, since he explicitly stated drinking separately, he is revealing that “eating” refers only to eating and we therefore have two *Shevuot*.

The *Gemara* provides two sources for why drinking is also considered eating. The first is based on logic: when a person invites another to go and “taste”<sup>30</sup> something, they then proceed to eat and drink. The second source is based on *p’sukim* where the term *achilah* (eating) is used to refer to drinking

One may question the rational of the first logic-based source. If people in general say, do you want to go and eat something and then they proceed to eat and drink, it does not necessarily imply that the term “eating” encompasses both. For this reason, a number of *Rishonim* (*Ritva*, *Rashba*) opted for a different version of the text compared to ours. Theirs says, that people invite

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<sup>30</sup> “Taste” is a translation of the term used in the *Gemara* – “*te’imah*”. The *Tosfot* (s.v. “*ta*”) explain that we should not be bothered by this term as they understand that *te’imah*, in the language of the *Gemara*, was used in place of *achila*.

The king of Israel, on the other hand, has two goals. The first is to provide a system of government to order society, critical for a *Torah* society (*Avot* 3:2):

*Rabbi Chananya* the deputy of the high priest says pray for the fortunes of the kingdom because without fear of it men would swallow their fellows alive.

We also see that the king has a responsibility to act in a fashion which is for the welfare of *Torah* (*Rambam*, *Hilchot Melachim* 4:10):

In all that he does, his acts should be for the sake of *Hashem* and his aim and goal should be to uplift the true religion, to fill the world with justice, to crush the power of evildoers and to fight the wars of *Hashem*.

The connection between kingship and *Torah* is clear in two respects: the king must create a climate in which *Torah* can exist and then he must do his utmost to help *Torah* thrive.

Finally the *Rambam* draws the link between *Torah* and a good name:

The crown of a good name will arrive from the *Torah*, that is to say, knowledge of it and the deeds it mandates, for from them will arrive the true good name.

In other words, it appears that a good name, or good reputation, is a concept analogous to *kiddush Hashem* where people see a Jew positively fashioned by *Hashem*’s law. This then explains why the crown of a good name is considered above *Torah*, as it is the outward and public manifestation of all that the *Torah* entails.



*Rabbeinu Yona* reinforces *Rashi*'s logic providing a source:

He who wishes to merit [the crown of *Torah*] will come and merit [it] and this crown is greater than the two [other] crowns as our rabbis said, there are three crowns (*zer*): the crown of the table (*shulchan*) and the crown of the altar and the crown of the lid which is upon the box within which was placed the *Torah*... Inside the screen (within the *Kodesh Ha'kodashim*) is placed the lid and its crown. And the [other] two are placed outside the screen. Here is proof that the *Torah* is more honoured than the table which represents the table of kings and the altar which is the crown of priesthood, that they burn on it every day.

The *Rambam* presents the connection between the three crowns stating: “[The crown of *Torah*] is greater than the two and in it there are the two.” The *Torah* therefore encompasses the other two crowns. However, the reason is not immediately apparent. An answer can be found in the following *p'sukim* (*Vayikra*, 10: 8-11):

And *Hashem* spoke unto *Aharon*, saying: 'Drink no wine nor strong drink, not you, or your sons with you, when you go into the tent of meeting, that you shall not die; it shall be a statute forever throughout your generations. And that you may put difference between the holy and the common, and between the unclean and the clean; and that you may teach the children of Israel all the statutes which the *Hashem* has spoken unto them by the hand of *Moshe*.'

And similarly, in *Devarim* (33: 10)

They shall teach *Yaakov* the ordinances, and Israel the law; they shall put incense before You, and whole burnt-offering upon Your altar.

We see therefore that the priesthood is a part of *Torah* because priests are intended to be the vessel by which others can access *Torah*, whether through worship or learning.

another to go and “taste” something, but then go out to drink. This version of the logic more tightly demonstrates that “eating” also implies drinking.

The *Tosfot* make an attempt to defend our version, stating that had eating not implied drinking, the inviter would have stated both activities explicitly. Nevertheless, they agree that the alternative version is preferred.

The *Ri Mi'lunil* provides a stronger support for our version. He explains that when the *Gemara* writes “they then proceed to eat and drink” the intention is “eat or drink” – either activity exclusively. We therefore see that the term eating can sometimes also imply drinking alone.

One question is left: why does the *Gemara* require both a source based on logic and grounding from *p'sukim*? Surely one would be sufficient! The *Tosfot* cite another *Gemara* where such a strategy is questioned: “Why do we need a *pasuk*? It is logical!” (*Ketubot* 22a)

The *Rashba* explains the *Gemara* wished to first present the *pasuk* as the source. Yet, some may feel that it is inappropriate as we have a principle in *nedarim* (vows) that the interpretation of the terms in a *neder* is determined by their common use and not their use in the *Torah*. Therefore to abate such concerns, the *Gemara* provides a rationale that indeed even looking to the common spoken language would lead to the same conclusion. Similarly, the *Ritva* explains when a person makes a *shevuah* he can choose that it be interpreted based on the language of the *Torah* or common speech. The two sources, the logic and textual, both support that eating implies drinking for both these methods.

The *Tosfot* however provide precisely the opposite explanation. Instead, their starting point is the logic. They explain sometimes when a rationale is provided that is questionable, a *pasuk* is required as reinforcement.

## A Shevuah and A Neder

Rabbi Ben-Zion Hain

One of the most solemn times of the year is on *Erev Yom Kippur* when the *shul* is filled with people and the *Chazzan* begins the *Kol Nidrei* service. During this *tefillah*, we annul all the various forms of oaths and vows that we have made over the past year. However, what is the difference between an oath and a vow? Do not both involve utterances that cause a person keep their word? Why is the content of our *masechet* simply included as part of *Masechet Nedarim* or visa versa?

The *Torah* in *Sefer Bamidbar* (30:3) states: “When a man vows a vow (*neder*) unto Hashem, or swears an oath (*Shevuah*) to bind upon his soul, he shall not break his word; according to all that came out of his mouth, he shall do.”

The *Ramban*, in his commentary on this *pasuk*, addresses the question of the difference between a “*neder*” and a “*shevuah*”. He explains (based on the *Gemara* in *Nedarim* 2b) that the difference between them is found in the relationship of the person making the oath or vow and the subject of the oath or vow.

Whereas a *shevuah* is an *issur gavra*, where a person prohibits himself from a particular action, in the case of a *neder*, a person prohibits an object (*cheftza*) onto himself. For example, when making a *neder* not to have *hana'ah* (benefit) from a piece of bread, the piece of bread is a *davar ha'assur* and is *assur* to you. However, if one makes a *shevuah* not to eat a piece of bread the whole day, the bread itself does not become a *cheftzah shel issur*. Rather, you have imposed on yourself certain restrictions – namely not to eat bread. Therefore, a person is unable to make a *neder* on a *davar she'ein bo mamash* (something which has no substance), e.g. on an action. Therefore, if one were to take a *neder* not to speak, eat or sleep, these would not be valid since

## Crowns

Avot (4:12)

Alex Tsykin

*Rabbi Shimon* says: ‘[There are] three crowns: the crown of *Torah*, the crown of priesthood, and the crown of kingship and the crown of a good name rises higher than them.’

*Avot* 4:12

This *Mishnah* raises a number of questions. How are the three crowns linked? Are the three crowns indeed equal as they appear? Perhaps most pressing, why does the crown of a good name “rise above” the other three?

The three original crowns are not on the same level. On the contrary, all commentators agree that the crown of *Torah* is the highest of the three. *Rashi* explains:

[There are] three crowns and one is not similar to the [other] two because the other two are not given equally to all men; ...it is impossible for a man to be a priest if he is not born of priests and similarly it is impossible to be a king unless he is suitable for kingship [but] the crown of *Torah* is accessible to any who would learn *Torah*... therefore the crown of *Torah* is greater than these two.

Why does *Torah* being accessible to all make it greater than the others? The answer lies in the essence of *Torah*. Acquiring *Torah* requires effort. To acquire kingship and priesthood, one must simply be born into the position. However, while anyone may acquire the crown of *Torah*, few do because of the difficulty involved.

days a week to this end – to fulfill the word of *Hashem*. The Wise will learn from him and likewise work twenty-four hours, seven days a week with great effort to fulfill the word of *Hashem*.

This *Mishnah* is therefore far more than a semantic analysis. It hits the very heart of man's aspirations and causes him to reflect. Why do I want wisdom or wealth? Put more accurately, why have I been given wisdom or wealth? Are these ends in themselves? If seen as such they are either self-defeating or nothing worthy of real praise. These highly rated attributes are to be understood as tools and utilised with humility in our *avodat Hashem*. At the heart of all of man's aspirations must be "that he understands and knows Me."

they do not relate to a *cheftza*. Only a *shevuah* can relate to a person and his actions.

*Kehati*, in his introduction to the first *mishnah* in *Masechet Shevuot*, explains that there are four kinds of oaths dealt with in the *Torah*.

1. Declaratory oaths - e.g. that he will or will not eat<sup>31</sup>;
2. Vain oaths - e.g. swearing that a stone is gold<sup>32</sup>;
3. Oaths of testimony - e.g. witnesses in a monetary matter who were asked by the claimant to testify in court, and swear that they have no knowledge of the matter<sup>33</sup>;
4. Oaths of deposit, e.g., denying on oath being in possession of another person's money or property<sup>34</sup>.

Aside from these four types, where a person swears voluntarily, there are oaths which the court imposes called the "oath of the judges". *Masechet Shevuot* deals with all aspects of these kinds of oath.

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<sup>31</sup> As it is written: "Or if a person swears, pronouncing with his lips to do evil or to do good" (*Vayikra*. 5:4).

<sup>32</sup> As it is written: "You shall not take the Name of the Lord your G-d in vain" (*Shmot*. 20:7)

<sup>33</sup> As it is written: "And if a person sins and hears the voice of adjuration, and is a witness, whether he has seen or known of it, if he does not utter it, he shall bear his iniquity" (*Vayikra* 5:1)

<sup>34</sup> As it is written: "If a person sins and commits a trespass against the Lord, and denies [possessing] his neighbor's deposit, or [having received] a loan, or a robbery, or having wronged his neighbor, or has found that which was lost and denied it or swore falsely..." (*Vayikra* 5:21-22)

**Cursing**  
**Shevuot (4:13)**  
**Yehuda Gottlieb**

The last *Mishnah* in the fourth *perek* of *Shevuot* discusses the variations of language which cause a person to be bound under oath. In this *Mishnah* all these oaths contain the *Shem Hashem* which causes a person to be liable if the oath is transgressed. The *Mishnah* then tangentially describes various cases where one would be liable for cursing using G-d's name. The *Mishnah* states:

One who curses himself and his friend (with the above mentioned names) has transgressed a negative prohibition

What transgression is there in cursing oneself? The *Gemara* (*Shevuot* 36a) states that in this case the prohibition is not for saying *Hashem's* name in vain; rather, one is *chayav* because we are warned in the *pasuk*, (*Devarim* 4:9) "Only be weary and look after your soul". This *pasuk* teaches us that there is a prohibition against causing any harm to our bodies. The novel idea here is that this prohibition of not harming oneself extends even to merely words which one may think do not have substance and may not even be fulfilled.

The *Gemara* continues by stating that one who curses his friend transgresses a different prohibition. The *pasuk* in *Vayikra* (19:14) states "Do not curse a deaf person". This *pasuk* seems to be specifically referring to a deaf person. How does the *Gemara* claim that this is the source for cursing any person?

*Rav Bartenura* states that this is the source of the prohibition of cursing any person by logic of a *kal vachomer*. The *Rav* states, that the subject of the *pasuk* is a deaf person and since he cannot hear you, will be unaffected by your curse. However, the *pasuk* still states that there is a prohibition of cursing such a person. Consequently it is logical that if you curse any other person - who

level it is of poor quality and subject to error.<sup>51</sup> *Ben Zoma* is therefore cautioning us and advising us on the correct path in which to fully realise these ambitions.

The *Bartenura* solves our original question by shifting the focus of the *Mishnah*. *Ben Zoma* is not asking who is a wise person, but rather who should be praised for his wisdom. The *Tosfot Yom Tov* explains citing the following *pasuk*: "...Let not the wise man glory in his wisdom, neither the might man glory in his might, nor the wealthy man in his wealth. But let him that glories glory in this, that he understands and knows Me..." (*Yirmiyahu* 9:22-23). These attributes alone are not to be celebrated. It is only when they are directed towards "that he understands and knows Me" that they are worthy of praise, for that is their purpose. As the *Bartenura* himself explains, when a wise person does not care about his own honour and is willing to learn from those more simple than himself, it is understood that he utilises his wisdom for the sake of heaven and not for personal aggrandizement. The *Zera Yitzchak* elaborates, that we learnt that at the time of birth it is decreed whether a person will be powerful, wise or wealthy. Consequently, it appears pointless for one to celebrate in his G-d given talent. What is not preordained is whether one is a righteous or wicked – one's *yir'at shamayim*. Therefore how one carries themselves with this talents – with humility and *yir'at shamayim* – is subject to his choices and therefore worthy of praise.

The framing of these traits in the context of *avodat Hashem* comes to the fore in a profound comment of the *Ba'al Shem Tov*. When *Ben Zoma* says that a wise person is one that learns from everyone, who is he including? The *Ba'al Shem Tov* explains that a wise person will even learn from the *Yetzer Ha'rah*. The *Yetzer Ha'rah* is commissioned by *HaKadosh Baruch Hu* to present challenges for a person and move a person "off the path". He carries out his task with gusto, working twenty-four hours, seven

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<sup>51</sup> As it states: Why is *Torah* compared to fire? Just a small spark can kindle a large fire, so too can the small sharpen the giants. (*Taanit* 7a).

## Who is Wise?

Avot (4:1)

Yisrael-Yitzchak Bankier

*Ben Zoma* says: Who is wise? He who learns from all men, as it is said, “From all those who have taught me I have learned understanding, for your testimonies are my conversations” (*Tehillim* 119:99)...

Avot 4:1

In the above *Mishnah*, *Ben Zoma* defines for us four individuals, the wise, rich, powerful and honorable. At a cursory glance, the *Mishnah* seems strange. In the spirit of the *Zera Yitzchak's* question, if you want to know if someone is wise have them take an IQ test. In a similar vein, the media have no problem identifying the wealthy amongst us. Is this *Mishnah* a matter of semantics? Are we simply redefining terms? A closer analysis of one of these characters, the Wise, will shed much light on this highly important *Mishnah*.

The *Tiferet Yisrael* explain that *Ben Zoma* here encapsulates the four major endeavors of man – wisdom, wealth, power and honour. The tragedy however, is that many people's efforts to achieve these goal are counterproductive. For example, motivated by ambitions of pleasure, the aspiring Wealthy man will exert so much energy to that goal that he never has time to enjoy the fruits of his labour. Likewise, in wanting to appear intelligent, the aspiring Wise man will avoid heeding advice or learning from those that appear “lower” than the image he wishes to project. This however is detrimental. The *Tiferet Yisrael* explains that wisdom entails two components. The first is receipt of information and knowledge from previous generations. The second is the intellectual processing of that information by means of logic. When one engages in this second component alone without being tested and probed by anyone on any intellectual

can hear and will be affected by your curse – then you should be liable.

The *Rambam* (*Peirush Hamishnayot*) adds an idea based on this *pasuk*. The *Rambam* states that indeed one is liable for cursing his friend. However, there are limitations. If a curse befits that person (i.e. he did an improper action which leads to the curse being stated) - the *mekalel* would not be liable. The *Rambam* brings a *diyuk* from the words of the *pasuk* which states “one may not curse a deaf man”. The *Rambam* understands that this prohibition is only in place when one curses someone who is “deaf” i.e. deficient of a certain negative action which does not deserve a curse.

It seems that the *Rav* and *Rambam* are focused on protecting the subject of the *pasuk* (the “*cheresh*”) from a curse, whether that be extended to any person, or people that are ‘deaf’ (undeserving of a curse). This idea is also supported by the *Sefer HaChinnuch*. The *Chinnuch* writes that it is possible that *Hashem* created in man a “supernatural element” which has the power to act even on things that is beyond its control. Therefore, in warning not to curse people the *pasuk* is protecting the one who is cursed, in case the words that were spoken by the *mekalel* do in fact take effect. This concept is also highlighted by *Chazal* in their advice elsewhere – “*Al tiftach peh l'Satan*” (do not give an opening for the *Yetzer Hora*).

In contrast, *Rav Shimshon Raphael Hirsch* highlights an interesting idea from this *pasuk*. He notices that the word for curse – *k'lalah* is made up of the root – *kelal* (to lighten). When one curses, he wishes to inflict pain upon his fellow. However, at that moment he is unable to carry through with his wishes. Therefore he inflicts a curse upon his fellow which “lightens” his anger. Interestingly, his focus is not necessarily to protect the one who is being cursed. Rather, there is a need to highlight the *chisaron* in the person doing the cursing – to recognise the

negative attributes that lead a person to get to the point of cursing somebody.

Once a person can recognise this point, he is able to put measures in place in order to ensure that he does not become accustomed to vengeance and anger and an eventual degeneration of positive character traits.

prohibition of *ba'al tossif* (adding to *mitzvot*). However, some *mitzvot* - and these are amongst our most critical *mitzvot* - are not limited in any quantitative sense, and may therefore be viewed as laying claim to the totality of our being. These *mitzvot* are obligations of the heart and mind (to love, fear and cling to *Hashem*). Since these *mitzvot* do not require any particular activity, they need not interfere or conflict with any other facet of life, and therefore do not come to negate the value of work or other human pursuits.

### ***Davar Reshut: All for the sake of heaven***

Founded on the ideal of “*be'chol derachecha de'ehu*” – “In all your ways know Him” (*Mishlei* 3:6), a person should orientate his life so to be able to serve G-d through every activity. Whilst stemming from the narrowly defined halachic responsibilities, ultimate totality of *avodat Hashem* grows on the much larger branches of *davar reshut*. *Rambam* (*Shemona Perakim*, 8) made this point when discussing the celebrated statement, “*Hakol bidei shamayim chutz m'yirat Shamayim*” - all is in the hands of heaven except for the very fear of Heaven itself. Following *Rabbeinu Bachya*, he claims that whilst one indeed does only control his *yir'at shamayim*, the term *yir'at shamayim* encompasses the entire range of human activity. Hence, whatever a person does or negates expresses his *yir'at shamayim* or lack thereof.

A person must direct every single one of his deeds solely towards attaining knowledge of G-d. His sitting down, his standing up, and his speech should all be directed towards this goal...Even when he sleeps, if he sleeps with intention of resting his mind and body so that he does not become sick – for he is unable to serve the Lord when he is sick – his sleep shall become a service of G-d. Concerning this, *Chazal* commanded (*Avot* 2:12) “...and let all your actions be directed for the sake of heaven.”... (*Hilchot De'ot* 3:2-3)

The totality of a person's existence must be orientated towards his relationship with G-d, towards *avodat Hashem*.

## For The Sake of Heaven

Avot (2:12)

Ricki Bornstein

Based on an essay by HaRav Aharon Lichtenstein *shlita*

R' Yosi says "...and let all your actions be directed for the sake of heaven."

*Avot* 2:12

Seemingly, even before Adam's punishment, he was placed in the Garden to work, cultivate and develop the world, thus teaching us that constructive labour is an ideal that an ordinary people ought to engage themselves with. This ethic can be understood from both the perspective of the *cheftzah* (an imperfect world that requires improvement through human effort) and that of the *gavra* (expressed through *g'millut chassadim*, helping each other). Whilst both of these views have been stressed by various schools of thought, other contrasts can be drawn beyond the narrow scope of indolence and work: How do we want to spend our lives? How do we want to earn a living? How do we balance professional ambitions with vigilant *Talmud Torah* and a narrow sense of *avodat Hashem* (confined to the four cubits of *Shulchan Aruch*)?

However, even within our analysis of *avodat Hashem*, two categories exist: *davar mitzvah*, that which we have specifically been commanded to perform, and service through *davar reshut*, the broad area of choice within one's life.

### ***Davar Mitzvah: Limited and Unlimited***

Many mitzvot that we are obligated to perform have been clearly delineated: adding to them would be of no substance; in fact may be considered problematic. If one were to eat two *k'zatim* of *matza* instead of one, (according to most authorities) he has achieved naught, whereas if one decided to live in a *sukkah* for two weeks instead of one week, he has transgressed the

## Pogemet Ketubatah

Shevuot (7:7)

Yisrael-Yitzchak Bankier

Just as a "*pogemet ketubatah*" cannot be paid prior to making a *shevuah* [so too] if a single witness testifies that the *ketubah* was paid, [the wife] cannot be paid without making a *shevuah*...

*Shevuot* (7:7)

The *Mishnah* in *Ketubot* (9:7) elaborates:

...[What] is [the case of] *pogemet ketubatah*? If her *ketubah* was worth one-thousand *zuz* and [the husband] said "you have [already] received your *ketubah*" and she responds "I have only received one-hundred", she collects the rest after she makes a *shevuah*...

This *Masechet* discusses many different *shevuot*. The *Gemara* (*Ketubot* 87b) therefore seeks to gain an understanding of this *shevuah* by categorising it. *Rami bar Chama* explains that this is a biblical *shevuah* of *mo'de be'miktzat*. We have learnt, a person who partially admits to a claim made against him is obligated to make a *shevuah* to exempt himself from what he claims he has paid. Here the husband claims he paid her everything and she has partially admitted.

*Rava* raises two problems with this suggestion based on rules that we have learnt in our *masechet*:

1. In all biblical *shevuot*, the person making the *shevuah*, exempts himself from payment. Here, the woman is making a *shevuah* in order to collect money.
2. In general, a woman collects the money of her *ketubah* from land. However we know that one does not make a *shevuah* on *shi'abud karka'ot*.

*Rava* therefore understands that this is a *shevuah d'rabbanan*<sup>35</sup> based on the principle that the payer is usually more scrupulous regarding payment details than the payee. The *Chachamim* allowed the woman to collect, but enforced her to make a *shevuah* first so that she is extra careful in confirming exactly how much she has already received.<sup>36</sup> From our perspective, this opinion makes sense as the sixth *perek* of *Shevuot* deals with biblical *shevuot (dayanim)* while the seventh *perek*, in which *pogemet ketubatah* features, deals with the rabbinic *shevuot-mishnah*.<sup>37</sup>

There are two ways to understand *Rava's* conclusion that the *shevuah* of *pogemet ketubatah* is *d'rabbanan*. Either *Rami bar Chama's* suggestion was completely rejected and this is a brand new *shevuah*. Alternatively, this *shevuah* is a *d'rabbanan* version of *mo'de be'miktzat*.

The *Ritva* understands that this *shevuah* was instituted to set the husband's mind at ease, implying that it is an entirely new institution. This would explain why *Rava* did not just state that *pogemet ketubatah* is rabbinic, but instead also provided a rationale. The *Ritva* brings further support as this is the same reason brought in the *Gemara* for the requirement of her *shevuah* when a single witness testifies that she has already received her

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<sup>35</sup> If it is so clear to us, how could *Rami bar Chama* have assumed otherwise? The *Ritva* asks this question and answers that even *Rami bar Chama* agrees that *pogemet ketubatah* is a rabbinic *shevuah* instituted "*ke'ein d'oraita*". Since this is unclear, *Rava* is not arguing, but rather explaining *Rami bar Chama's* position to avoid a misunderstanding. See the *Ran* and *Hafla'ah* for different explanations that maintain the understanding that *Rami bar Chama* holds that *pogemet ketubatah* is *d'oraita*.

<sup>36</sup> Even though ordinarily a husband can make his wife make a *shevuah* even if she completely denies having received any payment, the *Gemara (Shevuot 41a)* explains that here, she must make a *shevuah* even without the husband demanding that she makes a *shevuah*.

<sup>37</sup> This is not necessarily a strong proof as in our *Mishnah*, *pogemet ketubatah* is used as a point of comparison introducing other *shevuot-mishnah* relating to a *ketubah*. It could be understood that the *Mishnah* is explaining that these other *shevuot* were instituted because of *pogemet ketubatah* which is *d'oraita*.

The third possibility as to why this idea is viewed as so important is that given by *Rabbeinu Yona*:

After he has received people with a happy face, he will distance himself from the personality trait of anger that is surely undesirable and he will conduct himself in a pleasing manner in such a way that people will be pleased with him.

*Rabbeinu Yona* provides the simple reason for this *Mishnah*. While it would initially seem that the motivation he provides is selfish, in reality it is not, for this is the way for people to get along.

If so, the reason for this *Mishnah* is probably threefold, a friendly greeting benefits the souls both of those being greeted and of the greeter and it contributes to the general friendliness of community which is vital for society to function.



However, the *Meiri* also stated that “he will love others” and this is a theme which can be found in *Avot DeRebbi Natan* (13), a commentary on *Tractate Avot*. There it is written:

Receive every person with a happy face: What does this mean? It teaches that if someone were to give his fellow all the good gifts in the world and his face is down turned, the *Torah* treats him as though he did not give anything. But if he receives his fellow with a happy face, even if he gave nothing the *Torah* treats him as though he had given [his fellow] all the good gifts in the world.

While it is not immediately apparent how this is related to the issue of loving others, upon examination the connection is clear. How can the *Torah* treat a person who merely greets others kindly as though he had given them all the gifts in the world? It cannot, for such a thing would be both grossly unjust and completely illogical. However, something here is as though he had given that person all the gifts in the world.

The answer can be found in *Masechet Avot* in another *Mishnah* (2:9):

[*Rabban Yochanan Ben Zakkai*] said to [his five students] go out and see what is the straight way that a man might adhere to it. *Rabbi Eliezer* said a good eye. *Rabbi Yehoshua* said a good friend. *Rabbi Yosi* said a good neighbour. *Rabbi Shimon* said to see future ramifications. *Rabbi Elazar* said a good heart. He said to them I see the words of *Rabbi Elazar Ben Arach* that his words include all of your words.

In other words, a good eye and friendliness, which are both a part of our idea of greeting others with a happy face, can be found as part of a good heart. If so, they form outwards indications of a good heart. However, this does not explain why somebody is rewarded for greeting others with a happy face. The answer can be found in the introduction of the *Sefer HaChinnuch*: “after the deeds are drawn the hearts”. If so, greeting people happily, while possibly a sign of a good heart, can also lead to a good heart. This is the reward spoken of in *Avot DeRabbi Natan* and a second possible reason for the importance placed upon this idea.

*ketubah*; explaining why the two *shevuot* are grouped together in the *Mishnah*.

Alternatively the *Talmid Ha'Rashba* spends time explaining how *pogemet ketubatah* structurally matches the case of *mo'de be'miktzat*. The implication is that *pogemet ketubatah* is a rabbinic version of *mo'de be'miktzat*. Support can be found for this from the continuation of the *Gemara* in *Ketubot*. There it asks whether a *pochetet ketubatah* is also required to make a *shevuah*. The case is where the husband claims he has paid the entire *ketubah* and the wife denies receiving any payment, yet admits that the agreed value of the *ketubah* is less than what is stated. The *Gemara* answers that the woman can collect without making a *shevuah* as she did not admit to receiving anything. This strongly suggest that *pogemet ketubatah* is a rabbinic version of *mo'de be'miktzat*. The *Ritva* however explains that it is clear that she is exempt as the rationale provided by *Rava* also does not apply. The only doubt the *Gemara* had was since it appears similar to *mo'de be'miktzat*, perhaps the *Chachamim* would have included it to simplify matters (“*lo ploog*”).

## Eduyot

### On That Day...

Introduction to Eduyot  
Yisrael-Yitzchak Bankier

Unlike any *masechet* previously studied, *Eduyot* is not dedicated to a particular topic. Instead the *Mishnayot* are tied together by the day on which they were studied. The *Gemara* (*Brachot* 28a) teaches that “*Eduyot* was studied on that day and whenever it states [in a *Tanaic* text] ‘On that day’”. We must therefore learn what happened “on that day”.

The *Gemara* teaches that this was the day that *Rabban Gamliel* was removed from office and *R’ Elazar ben Azarya* was elected to be the *Nasi*. There were significant ramifications in this change of office as it brought with it a change in educational philosophy. *Rabban Gamliel* prevented any student from entering the *Beit Midrash* unless “his inside is like his outside” (*tocho ke’baro*). The *Maharsha* explains that this means that the person studies *Torah* (externally) and also has (internally) the requisite fear of Heaven. Even a guard was stationed at the entrance of the *Beit Midrash* to enforce this criteria. When *R’ Elazar ben Azarya* took office, the guard was removed and everyone was allowed to enter the *Beit Midrash*. The influx of students required the addition of between four-hundred and seven-hundred benches. At the tremendous gathering, people brought with them “testimonies” (*Eduyot*) of traditions relating to *halachot*. This, combined with intensive discourse, enabled the clarification and resolution of all outstanding *halachot*.

What was behind this debate? There is a principle that “Whoever teaches an unworthy student is as if he throws a stone at a *Merkulis*” (*Chulin* 133a). The *Merkulis* was a form of idol-worship that was served by throwing stones at it. Therefore if

## Happy Face

Avot (1:15)  
Alex Tsykin

In our *Mishnah* we are told “*Shammai* said... receive every person with a happy face”. Two questions must be asked. What exactly does this mean? And why was this considered sufficiently important to be mentioned in *Masechet Avot*, which has so few of the *Tanaim*’s teachings, and so few in particular of *Shammai*’s?

I believe the answer to the first question can be found in *Gemara Brachot* (6b):

*R’ Chelbo* said *R’ Huna* said everybody who knows somebody who he regularly greets should do so at the earliest opportunity, as it is written: “Request peace and pursue it” (*Tehillim* 34) and if he was greeted and did not return [the greeting] he is called a thief, as it is said: “It is you that have eaten up the vineyard; the spoil of the poor is in your houses” (*Isaiah* 3:14)

In other words, this *Mishnah* would seem to refer to the friendly greeting of other people.

This however still leaves the question as to why this is considered so important. There are three important possible reasons mentioned in the various commentaries. The first in the explanation of the *Meiri* found in his commentary for *Brachot*:

A man should always be comfortable with others and greet them as quickly as possible and show respect to them and to their occupation as much as he may and in this way he will love others and causes them to complete their obligation of respect for *Torah* and *Mitzvot*.

In other words, the *Meiri* viewed friendliness on the part of a Jew to be a sanctification of G-d’s name in that it would cause other to pay greater respect for *Torah*.

predicated upon the exercise of self-discipline to overcome innate human shortcomings. We overcome these shortcomings, according to the *Gra* through ethical behaviour. In doing so, we certainly need much encouragement and strength because principled conduct of the highest order is not intuitive and consequently may not be taken for granted.

It is presumably no coincidence that the *Ramban*<sup>50</sup>, commenting on the *mitzvah* of “*kedoshim tihyu*”, notes the genesis of that *mitzvah* lies in the reality that strict halachic compliance could have otherwise theoretically been achievable despite one behaving like a “scoundrel”. It is similarly not for nothing that the *Rambam* notes that “even though they (the performance of the *Mishnayot Avot*) would seem to be clear and simple . . . [but] they are not simple for all men” (*Hakdamot L’Peirush HaMishnah, Avot*).

The sensitivity of *Chazal* to human limitation is perhaps an appropriate starting point for an understanding of the message of *Avot*. In other words, a life lived in concert with the principles of *Masechet Avot* necessitates the confrontation of many innate challenges. If confronted successfully as the *Torah* demands, such a life is a mission of the highest order, ensuring not only true fulfillment of both the definition and essence of *Torah*, but the attainment of *Chazal*’s highest praise (*Bava Kama* 30):

*Rav Yehuda* said, one who wishes to be devout... *Rava* says he should fulfill the words of *Masechet Avot*.

someone, in disgust, threw a stone at such an idol, the would in fact be acting in the very opposite way to which they intended. Similarly one who teaches an unworthy student is actually doing damage. The *Ein Yaakov* explains that *R’ Elazar ben Azarya* however felt that this principle only applies if the teacher knows with certainty that the student is not worthy; in all other cases however, the student should be admitted.<sup>38</sup> Furthermore he held strongly by the principle that “one should always be engaged in *Torah* and *Mitzvot*, even not with pure intentions, for through it they will arrive at performance with pure intentions” (*mitoch she’lo lishma ba lishma*).

The *Ben Yehoyada* asks, where were the rest of the sages in this debate? Had they all disagreed with *Rabban Gamliel* then he would never have been able to institute such a policy. It must be that they all agree with *Rabban Gamliel* and then after with *R’ Elazar ben Azarya*. What caused the change in heart? He explains that sages were influenced by the miracle experience by *R’ Elazar ben Azarya*. It is well known that *R’ Elazar ben Azarya* was only eighteen years of age when he was elected. Miraculously, on that day he grew eight rows of white hair in his beard. The *Ben Yehoyada* asks that this appears to be a pointless miracle. If someone is old, that should demand respect even if they do not have a white beard. Conversely, if they are young, a coloured beard would not be a device that garners their respect; here everyone knew how old *R’ Elazar ben Azarya* was. He explains that indeed the miracle was a purposeful sign that related to this very debate. It was indeed important that anyone, even though, *ein tocho ke’baro* be admitted because of *mitoch she’lo lishma ba lishma*. Even though *R’ Elazar ben Azarya*’s inside, his true young age, did not resemble his outside, the miracle nonetheless occurred to aid in garnering the required honour, as eventually his inside will catch-up. Similarly, with learning, even if *ein tocho ke’baro*, he should be admitted, as the *talmid* will eventually

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<sup>50</sup> *Ramban al Ha’Torah: Vayikra* 19

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<sup>38</sup> See *Rambam Talmud Torah* 4:1, and the *Kesef* and *Lechem Mishnah*.

make the transition to learning *lishma* and his “inside” will catch-up.

The *Ben Yehoyada* explains another strange detail in this story. The *Gemara* relates that when *Rabban Gamliel* saw the masses of *talmidim* enter the *beit midrash* he was concerned that maybe his policy resulted in preventing *Torah* from *Am Yisrael*. His mind was set at ease as later he was shown in a dream a white cistern full of ashes. The implication being that even though those now entering appear pristine they were not worthy. The *Gemara* adds that this is not really true, yet *Hashem* wished to set his mind at ease. The *Ben Yehoyada* asks why is “not really true”? Is *Hashem* showing *Rabban Gamliel* a lie just to make him happy? He explains, that there is difference if the cistern was filled with ash (*eifer*) and dust (*afar*). Ash itself will never come to anything. Earth on the other hand may be fashioned into utensils. Really, philosophically, *Rabban Gamliel* was wrong; we do consider *mitoch she’lo lishma ba lishma*. Nonetheless, *Hashem* was showing *Rabban Gamliel* those that entered that day, who he would have rejected, their insides were ashes and would not have made this transition. Nonetheless this is an assessment only *Hashem* can make so – we are not prophets. Therefore *R’ Elazar ben Azarya*’s approach still stands.

In a continuation of this theme in his introduction to *Derech HaChaim*, the *Maharal* defines this critical “path” to *Olam Haba* as the journey paved by the various lessons of *mussar* from *Masechet Avot*. In other words, the ethical constructs of our *Masechet* are absolutely central to the most basic definition and fulfillment of *Torah*.

In a much earlier explanation by *Chazal* of our quoted pasuk in *Mishlei*, the *Midrash* in *Bereshit Rabbah* (9) states as follows:

‘For the commandment is a lamp and *Torah* is light and reproofs of *mussar* are the way of life’ (*Mishlei* 6:23) - go out and see which path leads a person to *Olam Haba*, I say [it is] the path of *yissurim* (“suffering”)

What connection could the *midrash* possibly be referring to in its comparison of a blueprint of ethical standards (*tochechot mussar*) to the experience of suffering (*yissurim*)? Perhaps we can better understand this *Midrash*<sup>49</sup> in light of a separate, but related *Maharal* commentary, wherein he establishes that the linguistic root and very concept of *mussar* is inexorably linked to the notion of *yissurim*.

Specifically, and in a powerful assessment of the nature of man, the *Maharal* explains that man’s natural tendency is not to comply with the highest of ethical standards, because the “suffering” endured through ethical compliance is incompatible with our base inclinations. That hypothesis would of course lead us to the logical conclusion that a true *Torah* framework commands not only compliance with *taryag mitzvot*, but also requires willingness to self-negate extreme human tendencies that are often at direct odds with fulfillment of *middot tovot*.

In similar recognition of the challenges posed by *Torah*’s implicit ethical standards, the *Gra*, comments on another guiding pasuk of *Mishlei* (4:13): “Take fast hold of *mussar*, let her not go, keep her, for she is your life.” Here the *Gra* explains that man’s existence is

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<sup>49</sup> See also *Brachot* 5a

## Introduction to Avot

Avi Gilboa

*Masechet Avot* consists of a collection of aphorisms that provide *Am Yisrael* with an overarching moral or *Mussar* framework. Uniquely, there is no section of the *Shulchan Aruch*, *Rambam* or any other major halachic work that deals with the practical ramifications of our *Masechet*. Indeed, in his commentary on the very first *Mishnah* of *Avot*, *Bartenura* notes that this *Masechet* is structured unlike any other in terms of its non-linkage to explicit *mitzvot*. He also points out that *Avot* consists of moral guidelines similar to those advanced by non-Jewish “wise men”<sup>48</sup> in their ethical works.

According to *Bartenura*, it is with sensitivity towards this potentially undermining context that the *Tana* of our *Mishnah* very deliberately commences the *Masechet* with “*Moshe* received the *Torah* from *Sinai*”, highlighting that these aphorisms were not developed through intuitive reasoning but rather “these too were said at *Sinai*”. In other words, the very ideas encapsulated within the body of *Masechet Avot* were no less communicated at *Har Sinai* than any other revelation of *Matan Torah*.

Drawing on the *pasuk* in *Mishlei* (6:23): “For the commandment is a lamp and *Torah* is light and reproofs of *mussar* are the way of life”, the *Maharal* provides three explanations of the word *Torah*. The word *Torah* can be understood as 1) the teaching of the *Mitzvot*; 2) the teaching of the *ta’amei* (reasons) of the *Torah*; and 3) the teaching of “the ‘path’ that leads one to *Olam Haba*” (*Netiv HaTorah* 1)

<sup>48</sup> See Rav Kook (ג) אורות הקודש who differentiates between normative secular and Torah ethics.

## The Plagues in Egypt

Eduyot (2:10)

Yisrael-Yitzchak Bankier

Indeed it is incredible that an insight regarding a topic with which many feel familiar, can be so enlightening. This topic is none other than the plagues in Egypt.

Charged with the task of negotiating with *Pharo*, *Moshe* is told by *Hashem*:

...See I have made you an “*elohim*” over *Pharo*, and *Aharon* your brother will be your spokesman. (*Shmot* 7:1)

*Rashi* explains that *Moshe*'s task as an “*elohim*” means that he was placed as a “judge and punisher, to punish [*Pharo*] with the plagues and afflictions.”

The *Griz* provides the following explanation. Unlike that which many may have assumed, the purpose of the plagues was not to free *Am Yisrael*. Instead their role was to judge and punish the Egyptians. This was indeed a vital component of the *Brit Bein Ha'Btarim*. Part of the promise to *Avraham* that *Bnei Yisrael* would be redeemed from *Egypt* was “also the nation they will serve, I shall judge” (*Bereshit* 16:14).

One of the *Griz*'s proofs is our *Mishnah* (*Eduyot* 2:10) that explains: “The **judgment** of Egypt occurred over twelve months”. This twelve month period, referring to the time when the plagues occurred, is specifically referred to as the “judgment of Egypt”.

One can therefore understand why in each of the plagues, *Pharo*, his servants and the nation are mentioned separately. Since each of these groups had different accountabilities it is only appropriate that they be judged separately and punished in different manners.

The *Griz* also explains that because each of the plagues acted as punishments, *Moshe* in engaging *Pharo* served another important

role – warning *Pharo*. This is because we have a principle that one cannot be punished without receiving prior warning.

The *Griz* continues to explain that the exception to this explanation is *makat bechorot* – the Plague of the First Born. This plague also served the purpose of liberating *Am Yisrael*. This explains why in *Moshe's* first meeting with *Pharo*, before there was any discussion of plagues, *Moshe* is command to warn *Pharo* with this specific plague: “...but if you refuse to send [*Am Yisrael*] out; behold I shall kill your firstborn son.”

The *Griz* uses this explanation to explain a number of difficulties in the text and *tefillot*. When *Moshe* is debating against his nomination as leader and representative he says, “...who am I that I should go up to *Pharo* **and** to take *Bnei Yisrael* out of Egypt” (*Shmot* 3:11). Here the “and” appear superfluous. This is, of course, unless you understand that *Moshe* was indeed being charged with two missions: taking *Am Yisrael* out of Egypt **and** acting as judge and punisher of the Egyptians.

This also explains a difficulty in *Dayeinu* that we read on *Seder* night. There is reference to the “judgments” having been enough, then later a reference to *makat bechorot*. Ordinarily, one would wonder why the final plague is being singled out. Yet, having understood that the plague served as “judgments” and *makat bechorot* having played the extra role of freeing *Am Yisrael*, we can understand its reference in isolation.

One can also now understand why only *makat bechorot* is mentioned in *Hallel Ha'Gadol* (“*Hodu le'Hashem ki tov...*”). This *Hallel* is focused solely on the actual Exodus. Consequently only the plague that functioned for this purpose is mentioned, to the exclusion of the others that functioned as judgments.

The *Rambam* presents a leniency (*Hilchot Ma'achalot Assurot* 12:5) in the event where a non-Jew inadvertently came into contact with wine belonging to a Jew whereby it is permissible to gain material benefit from the wine, however, remains prohibited to consume. The *Tur* (*Yoreh Deah*, 123) presents the opinion of the *Rashbam* citing *Rashi*, who is more lenient. According to the *Rashbam*, a non-Jew who willingly handles wine belonging to a Jew does not prohibit the wine from gaining any benefit, as he is no longer familiar with the ritual idolatry practices involving wine. In addition, the *Rashbam* maintains that any practices performed in a way which may resemble idolatry are not performed with intention for idolatry.

The *Rama* (*Shulchan Aruch Yoreh Deah* 123:1) cites the leniency of the *Rashbam* and extends it to include wine belonging to a non-Jew. However, the *Rama* imposes a restriction on this leniency, in that one may not willingly seek financial gain from these wines.

A common solution to avoid the prohibition of wine handled by a non-Jew is to use boiled wine, which may be consumed even if handled by a non-Jew (*Shulchan Aruch Yoreh Deah* 123:3). This *halacha* is also written in the *Tur*, and the *Bet Yosef*, in his commentary on the *Tur*, encounters a difficulty with this ruling. As the rabbinic expansion of the scriptural prohibition was introduced to prevent assimilation, there should be no difference whether the wine was boiled. The *Bet Yosef* offers the solution that since boiled wine is uncommon practice, it is not bound by the rabbinic prohibition, which only prohibits wines produced under normal wine-making conditions. The *Taz*, in his commentary on *Shulchan Aruch* refers to the question of the *Bet Yosef* and presents an alternative answer. The *Taz* suggests that since boiled wine is of inferior quality to regular wine, it is not wine appropriate for idolatry practices. The rabbinic prohibition to prevent assimilation was only against wines that are similar to the wines that are scripturally prohibited. In view of the fact that boiled wine would not be used for the purposes of idolatry it is not subject to the rabbinic sanction.

**Which Wine?**  
**Avodah Zara (5)**  
**Shmoiki Berkowitz**

A prominent issue discussed in the final *perek* of *Avodah Zarah* is the scope of the prohibition against gaining benefit from wine that was used for the purposes of idolatry.

The *Rambam* writes (*Ma'achalot Assurot* 11:1) that the prohibition against material benefit (in addition to consumption) from wine used for idolatry is scripturally based and therefore subject to the punishment of lashes. The *Radbaz* cites the *Rambam's* source as a *Gemara* in *Avodah Zarah* (29b) where the prohibition is learnt from a *hekesh* (scriptural juxtaposition). The position of the *Rambam* is reiterated in *Sefer HaMitzvot*, where he counts this prohibition as one of the 613 commandments in the *Torah* (Prohibition 194). The *Ramban*, however, rejects the assertion that a *halacha* derived from a *hekesh* can be regarded as a base commandment. The *Sefer HaChinnuch* (*Mitzvah* 111) comments that apart from the scriptural source, this prohibition serves as a mechanism to prevent exposure and interaction with idolatry and idol worshippers.

Using this scriptural prohibition as a platform, *Chazal* prohibited deriving benefit from all wine belonging to non-Jews and wine belonging to Jews which has been handled by a non-Jew (*Shulchan Aruch Yoreh Deah* 123:1). The *Tur* (*Yoreh Deah* 123) explains that *Chazal* initially prohibited benefit from wine belonging to a non-Jew as a way to negate assimilation, and subsequently extended this prohibition to wine belonging to a Jew that was touched by a non-Jew. Moreover, the rabbinic prohibition carries the same stringencies as the scriptural prohibition.

**Ah... Chumrah!**  
**Eduyot (3:10)**  
**Yisrael-Yitzchak Bankier**

On a basic level, *Eduyot* is a collection of debates and testimonies from around *shas* sharing the fact that were taught “on that day” (see “On That Day...”). Learning at the pace of *Mishnah Yomit*, one identifies groups of *Mishnayot* sharing similar styles and/or participants in the debates. On another level, one must recall that these *Mishnayot* were taught when the *Beit Midrash* was bursting with new *talmidim*. Previously we discussed that it brought with it a new educational philosophy. But despite the technical complexity of the *Mishnayot*, one senses that they also provide *hadracha* (guidance) to the large assembly.

Sometimes the *hadracha* is explicit. For example earlier the *Mishnah* (1:4) asked why we include the opinions of *Shammai* and *Hillel* when we rule like the *Chachamim*. It explains that this teaches us not to stubbornly stick to our opinion, since when the sages identified the truth they annulled the opinions of these great rabbis (*Rambam*) and *Hillel* and *Shammai* similarly followed suit (*Meiri*). The *Rambam* explains that this point is more clear in the *Mishnayot* (1:12-14) where once *Beit Hillel* hears the arguments presented by *Beit Shammai*, explicitly defers. It is possible that more *Hadracha* comes from the following *Mishnah* (3:10).

The *Mishnah* lists three cases where *Rabban Gamliel* rules in accordance with *Beit Shammai*. The final instance is where *Beit Shammai* rules that one may not bake large thick loaves on *Yom Tov* as this is unnecessary exertion. One can only bake small cakes as only they are required for *Yom Tov* itself. *Beit Hillel* on the other hand maintains that a full oven enhances baking and it is therefore permissible.

*Rabban Gamliel* brought support from his father's house, *R' Shimon ben Gamliel HaZaken*, who never baked anything larger than these small cakes on *Yom Tov*. The *Chachamim* responded, "What shall we do with your father's house? For they were stringent on themselves and lenient on Israel to bake small cakes, large loaves and "*chori*" (very large and difficult, coal baked loaves). The straightforward understanding is that the proof was dismissed because despite having acted stringently, in truth he ruled leniently for others.

A few questions arise from this *Mishnah*. We know that *Mishnayot* are necessarily concise. Why does the *Mishnah* include this extra detail in such dramatic language? Furthermore, it seems odd that the *Chachamim* knew that *R' Shimon ben Gamliel HaZaken* really ruled leniently for *Am Yisrael* and not his own son. A precise analysis of the language used in the *Mishnah* may reveal its authors intent.

The *Yerushalmi* (*Beitzah* 2:6) investigates the meaning of the term "*chori*". We already explained that it refers to very large and complex, coal-baked bread. The *Yerushalmi* provides scriptural sources for this understanding. *R' Acha* points to: "*me chori ha'af ha'gadol ha'ze*" (*Devarim* 29:23) – "why this wrathfulness of great anger?" (Artscroll). The commentators on the *Yerushalmi* explains that the implication is that *chori* is something that requires abundant fire. *Rabban Shimon* provides a different source (*Bereshit* 40:16): "*ve'hinei shlosa salei chori al roshi*" – "behold there were three baskets of bread on my head" (referring to the dream of *Pharo's* imprisoned baker) . The *Torah Temimah* explains that the *Chachamim* tried to understand what *chori* were, and concluded that it was large loaves. The provision of the *p'sukim* were not sources or proofs, but rather reminders (*simanim*) for their conclusion.

One could however suggest a different direction. Why did *R' Acha* not select the more direct choice as presented by *Rabban Shimon*? Perhaps, the choice of *p'sukim* was deliberate and not

be burned. The *Mishnah* says that *basar b'chalav* (that is *assur mid'oraisa*) is a *min hanikbarin*. Therefore even if the piece of *basar b'chalav* is burned into ashes, the ashes are *assur*. The *Taz* (94:4) brings in the name of the *Issur V'heter* and the *Rashal* that such a mixture can be flushed down the toilet. However, they add that it should not be given to a dog even if it is not yours and there is seemingly no *hana'ah* by you whatsoever. The *Mishnah Berurah* (*Siman* 448 *Sha'ar Ha'Tzion* 75) explains that one should therefore not throw *basar b'chalav* into the garbage since animals might eat it<sup>45</sup>. Rather one should dispose of it in a way that it will be impossible to get to.

Another issue regarding pets is food that is made from meat and milk. The *Dagul Mervava* cites the *Rambam* (*Ma'achalos Asuros* 9:6) who explains that if you would cook *chailev* (forbidden fats) or *neveilah* with kosher milk or vice-versa, there is no prohibition of **eating** the food because of *Basar B'chalav*<sup>46</sup>. However, there may still be an *issur* of *hana'ah*.

The *Dagul Mervava* brings the *Rambam* who writes that the *issur hana'ah* by *basar b'chalav* is an extension of the *issur achila*. Therefore, if there is no *issur achila* there will not be an *issur hana'ah*. The *Dagul Mervava* says that in a case of *hefsed* (loss of money) one can rely on the *Rambam* and use this type of pet food. However, according to other opinions (*Pri Megadim* and *Chatam Sofer*) this mixture is still subject to the *issur hana'ah* of *basar b'chalav* and would be prohibited<sup>47</sup>.

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<sup>45</sup> The *Magen Avraham* is *meikel* as long as you don't actually feed the dog yourself.

<sup>46</sup> There is still of course the prohibition of eating non-kosher meat or milk.

<sup>47</sup> For a definitive *psak*, please ask your local halachic authority.



**Dog Food**  
**Avodah Zara (5:8-9)**  
**Rabbi Ben-Zion Hain**

Most of the *mishnayot* through the forth and fifth *perek* have been dealing with the laws of *Yayin Nesech* – wine that has been, may have been or will be used for the purposes of idolatry. From what we have learnt, we are all aware that such wine must not be used and as we learnt in the third *Mishnah* of second *perek*<sup>44</sup>, we may not derive any benefit from it what-so-ever.

However, the eight and ninth *mishnayot* of fifth *perek* take this law one step further. Not only is *Yayin Nesech* prohibited but even a small amount (provided it is recognisable on its own – a *davar chashuv*) has the power to prohibit other kosher wine. The example given by *Kehati* is that if one barrel of *Yayin Nesech* is mixed up in one-thousand barrels of kosher wine, then all the wine is prohibited.

In fact, *yayin nesech* is not the only object that has this power. The *mishnah* (5:9) lists a number of other objects that are never *batel* (nullified) and are able to prohibit permissible objects if mixed together. One such example is *basar b'chalav* (meat and milk).

The *Torah* writes that a kid may not be cooked in its mother's milk three times to prohibit three separate acts with regard to mixtures of meat and milk. They may not be eaten together, they may not be cooked together and you may not derive any benefit from them if they are mixed.

The *Pri Megadim* brings the *Mishnah* in *Temurah* (33b) that categorises all *issurei hana'ah* into “*min hanikbarin*” which means it must be buried or “*min hanisrafin*” which means it must

only reveals the meaning of “*chori*”, but the *Chachamim*'s implication when they chose such a specific term. Unlike above where we understood *chori* to be a description (“wrathfulness”), *Unkalus*'s translation of *R' Acha pasuk* presents it as a noun (*te'kof*). Consequently the translation would be, “Why the attack, this great anger?” (*Mosad HaRav Kook* punctuates *Unkalus* in such a manner.) The term *chori* therefore also implies an “attack”.

Returning to our *Mishnah*, the *Chachamim* may have been arguing against *R' Shimon ben Gamliel ha'Zaken*'s philosophy. While the intentions were most certainly noble, by ruling stringently for oneself (and perhaps without explicitly stating to ones family that it is a stringency), and ruling leniently for the masses, the result can and will be “attacks” or future debates regarding *halacha*.

This provides a new understanding of end our *Mishnah*. The *Chachamim* express concern “What can we do with your father's house?”, their approach leads to ambiguity and therefore cannot set a precedent. In truth, he may not have ruled to the masses in this particular case and *Rabban Gamliel* had no reason to be conscious of it. However the result of such a perspective is that we *matir* the small cakes, large loaves and *chori* – even larger bread and the introduction of *machloket*.

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<sup>44</sup> Based on a verse in *Devarim* (32:38).

## Trumah (and Nedarim)

Eduyot (5:2)

Yisrael-Yitzchak Bankier

The fifth *perek* begins with *Tana'im* adding more debates where *Beit Hillel* rules more stringently than *Beit Shammai*. The following case is presented by *R' Yosi* (5:2):

One can take *trumah* from [untithed] olives [to satisfy the requirements of *trumah*] for [the olives as well as] oil, and from grapes for wine – this is the opinion of *Beit Shammai*. *Beit Hillel* says, one cannot take *trumah* in this manner.

The *Melech Shlomo* explains that it appears that they argue on the level of *lechatchila* – i.e. *Beit Shammai* holds that one can even ideally separate *trumah* in this manner. Matters are complicated when we contrast this *Mishnah* with one we learnt some time ago (*Terumot* 1:4):

One cannot separate [*trumah*] from olives for oil or from grapes for wine. If one does: *Beit Shammai* maintains that [part of the separated grapes/olives] is *trumah* for itself [but not the part that was separated for the wine/oil. The result is a mixture of *chulin* and *trumah - meduma*]. *Beit Hillel* maintains that none of it is *trumah*.

Here it appears that everyone agrees that one should not separate *trumah* in this manner. The debate concerns the status *bedi'eved* – after the fact.

The *Tosfot Yom Tov's* initially suggests that our *Mishnah* represents the sole opinion of *R' Yosi*. Consequently, this *Mishnah* can argue on the *Mishnah* in *Terumot* (and he feels this is how the *Rambam* understood the apparent contradiction). After a lengthy analysis the *Melech Shlomo* however concludes that we must understand that the debate in our *Mishnah* is also on the level of *bedi'eved*. The only reason why it is termed in this (misleading) manner, is to fit into the style of the case that preceded it.

*Masechet Avodah Zara* primarily discusses the laws that govern the interaction between the Jewish people and *goyim*, with the main theme being that we must distance ourselves from non-Jews in certain personal, social, religious and economic contexts and circumstances. *Kehati* identifies the source of these laws in *Shmot* (34: 12-17):

Be vigilant lest you seal a covenant with the inhabitants of the land to which you come...and stray after their gods, worship and slaughter to their gods, and he invite you and you eat from the from his slaughter. And you take from their daughters for your sons...

*Kehati* explains that we are limited in various interactions with *goyim* lest we mingle with them and *chas veshalom* be influenced to follow in their ways which may involve *Avodah Zara*. We are also required to remove ourselves so as to prevent us from causing a non-Jew to participate in *Avodah Zara*.

Nowadays, when it is rare in our everyday lives to encounter people bowing down to the sun and various trees in worship and supplication, what practical effect do these laws pertaining to *Avodah Zara* have on us? *Rav Yitzchak Hutner* in his *sefer Pachad Yitzchak* explains that after the *yetzer hara* for *Avodah Zara* was “slaughtered” by the *tefillot* of the *Anshei Knesset Ha'Gedolah*, the Men of the Great Assembly (*Sanhedrin* 102b), “Idolatry now took a new form that represented the willing overthrowing of the Yoke of Heaven”. Modern day idolatry thus consists of actions or thoughts whereby we remove our awareness of *Hashem's* commandments and constant presence in our lives, and instead choose paths of unrestrained urges, lust and greed. An example of this is that *Chazal* teach us that “anyone who becomes angry is like one who practices idolatry”, and this holds true when we submit to any of our primal urges in defiance of the restraint and boundaries required of us by Jewish law. Thus, the message of distancing ourselves from *Avodah Zara* and negative influences, and instead immersing ourselves in the wisdom and love of the *Torah* and *Mitzvot*, is still a very relevant one for us today.

## Modern Day Avodah Zara

Matti Borowski

We recently commenced learning the *Mishnayot* of *Masechet Avodah Zara*, which, as the name of the *Masechet* indicates, deals with a myriad of laws pertaining to non-Jews, idol worship and idol worshipers. *Masechet Avodah Zara* continues teaching us the laws relating to *Avodah Zara* which we began learning in *Masechet Sanhedrin*, and is thus included in *Seder Nezikin*.

The *Rambam*, *Ramban* and various other Jewish thinkers identify the source of *Avodah Zara* originating from a corruption of Divine service. They explain that in early history it was clear to all that *Hashem* was the Creator and Sustainer of the universe. In attempts to pay homage and respect to *Hashem*, people began to display reverence towards His intermediaries, namely the sun, moon and stars, as well as the forces of nature. People then began to believe that these entities possessed powers of their own, and were thus worthy of worship and homage. The end result of the proliferation of this behaviour and fundamentally flawed outlook was the widespread forgetting of *Hashem*, and the evolution of the service of these various entities into *Avodah Zara*.

The most famous of the various enjoinders forbidding us to engage in *Avodah Zara* appears in the *Aseret HaDibrot*, the Ten Commandments, in *Parashat Yitro* (*Shmot* 20:3-5):

You shall not recognise the gods of other in My presence.

You shall not make yourself a carved image nor any likeness of that which is in the heavens above or on the earth below...you shall not prostrate yourself to them nor worship them, for I am Hashem your G-d.

This prohibition thus consists of three elements:

1. It is forbidden to believe in idols;
2. We are not allowed to make or own them; and
3. It is forbidden to worship them.

The above two explanations fit in well with the understanding that the reason why *Beit Hillel* rejects this mode of taking *trumah* is because it constitutes “separating from a product that is unfinished [grapes] for a product that is finished [wine]” which is expressly invalid.<sup>39</sup>

The *Rash* (see *Tosfot Yom Tov*) however cites a *Yerushalmi* where there are two *beraitot* **both** in the name of *R’ Yosi*. In the first all conclude that if *b’dieved trumah* was taken, it need not be separated again - like our *Mishnah*. The second *beraitah* is exactly the same as the one in *Terumot*. The *Rash* explains that the difference is whether the person first asked the *kohen* if he may provide all the *trumah* as grapes. If he did not, then *Beit Hillel* holds that even *b’dieved* it is not *trumah*. If however permission was granted by the *kohen*, then *Beit Hillel* still maintains that he should refrain (in case he does not get permission in the future); nonetheless if he proceeds, then it is *trumah*.

This understanding seems to fit better with the explanation of the *Rambam* (*Trumot* 5:18) that the reason why even *b’dieved* one cannot separate *trumah* in this manner is “a *gezeirah* in case it will result in bothering the *kohen* to crush [the grapes] himself.” In other words, if the *kohen* wanted wine, by separating extra grapes to cover the requirement for wine instead of just providing him with his quota of wine, it could result in the unnecessary exertion of effort and loss (*Bartenura*).

The *Mishnah Rishona* asks a strong *kashya*: since we are suggesting that this law is a rabbinic *gezeirah*, it implies that on a biblical level it is indeed *trumah*. The *Chachamim* however do not

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<sup>39</sup> The source of this law is the *pasuk* (*Bamidbar* 19:27): “This will be considered your *trumah*, and it is exactly like grain from the threshing floor or wine from the vat.”

have the power to dissolve the status of *trumah* from the separated product!

One could perhaps suggest an answer based on an earlier explanation of the *Mishnah Rishona*. He explains that the debate in *Trumot* between *Beit Shammai* and *Beit Hillel* whether separated product is partially *trumah* or not *trumah* at all, relates to their debate in *Masechet Nedarim*. There they argue whether a *neder* (vow) can be partially annulled. *Beit Hillel* maintains that once it is partially annulled the entire *neder* is absolved. The *Mishnah Rishona* explains that *trumah*, *nedarim* and *hekdesh* are the same in that sanctification is brought about through speech.

Perhaps then, here the *Chachamim* are not removing the *trumah* status from the object. Instead they are attacking the very mechanism that was employed to bring it about thereby preventing it from ever becoming *trumah*. The transgression of the rabbinic decree results in a partial absolution of the declaration – the “*neder*”.<sup>40</sup>

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<sup>40</sup> This suggestion clearly requires more development. For example, the *Ran* (73) maintains that the concept “a partial cancellation of a *neder* results in a full cancellation” only applies to the case in which it was brought (where the person that made the *neder* did not know that his father was amongst the group). If however if it was a case where a person made a *neder* to pay the loan and interest, then only the interest component would be absolved, which would possibly be comparable to our case. This format however does not allow for further analysis.

others disagreed on either one or both premises and rejected the *heter* to use the cheese.

In conclusion, some Rabbis believed that the cheese that was made using the rennet from an animal would not violate any prohibitions either *Torah* or Rabbinic. Nowadays, when we are blessed and are able to purchase cheese made by Jews, it would seem good advice to purchase them.

## Avodah Zara

### Say Cheese

Rabbi Natan Rickman

The *Mishnah* in the second *perek* of *Avodah Zara*, discusses an interesting question that was raised by *Rebbi Yishmael* to *Rebbi Yehoshua*: “Why is it that cheese from a non-Jew is forbidden?” The answer given is that for cheese to solidify, one needs to let it stand in the stomach of an animal. This point needs some clarification.

It is common knowledge that the source of the dietary laws in the *Torah* are learnt from the verse, which is repeated three times: “thou shall not cook a kid in its mother milk”. This verse teaches that mixtures of milk and meat are forbidden whether it is to eat, cook or gain any benefit from. However, there is one condition. In order to be classified as a mixture for *Torah* purposed, they must be cooked and not pickled or constitute any other form of mixing.

This question of cheese has been raised by many Rabbis. The problem seems to have been that there were some Jews who were accustomed to eat cheese made by a non-Jew which had been in the stomach of a kosher animal. Therefore was there ever a reason for allowing cheese or not? The *Tosafos* explains that the reason for cheeses to be permitted is that there is either certainly 60 times more milk than the absorbed rennet or minimally it is a doubt if there is less than 60 times more milk, since this is only a Rabbinical prohibition, one can rely on the rule of *safek d'rabbanan le'kulah*. The *Ri MiGash* cited in the *Rambam*, explains that there is always 60 and that the only potential prohibition would be that of “*ma'amid*”(catalyst). The problem of a catalyst would be that the rennet is drawn into the milk, however one basic principle of *ma'amid* is that the catalyst can only move an *issur* and not create an *issur*. *Rabbi Akiva Eiger* and

## Chas Ve'Shalom

### Eduyot (5:6)

Yisrael-Yitzchak Bankier

At the end of the fifth *perek* we learn about a debate between *Akavya ben Mehalalel* and the *Chachamim* regarding whether *mei Sotah*<sup>41</sup> can be administered to a convert or a freed maid-servant; *R' Akavya* argued that it did not apply to these people. The *Chachamim* brought support for their position by bringing a precedent where *Shema'ya* and *Avtalyon* gave *mei Sotah* to a freed maid-servant. *R' Akavya* dismissed this proof with the retort that “*dugma hishkuha*”. The *Mishnah* continues explaining that for this response *Akavya* was excommunicated.

What was the response and why was it received so badly? The common theme amongst the commentators is that he slighted the honour of these great sages – *Shemaya* and *Avtalyon*.

The *Bartenura* explains that *R' Akavya* responded that indeed *Shemaya* and *Avtalyon* acted incorrectly. They did so, because they were “*dugmatah*” – also converts like her. Such a claim is a slight on their honour, both regarding their personal standing and in the accusation of their unjust behaviour.

The *Ra'avad* presents a less harsh explanation explaining that *R' Akavya* construed that it was all a charade (“*dugma*”) and *Shemaya* and *Avtalyon* simply gave her plain water. Such a suggestion is still disrespectful since, were it true, they would have acted wrongly. If she was indeed guilty it could have

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<sup>41</sup> This concept refers to the process under which a married-woman, who had been previously warned not to seclude with a particular man, was caught doing so, but it is not known whether she actually had an affair. Part of the process, if she did not admit to the sin, was the administering of the *Sotah* water, which would have a dire effect if she indeed had an affair. In this debate, *R' Akavya ben Mehalalel* maintained that since the *Torah* introduces the laws of *Sotah* with “*daber el bnei Yisrael*”, it excludes converts and maidservants.

resulted in people dismissing the power of *mei Sotah* having seen it take no effect in this case.

Returning to the *Mishnah*, *R' Yehuda* responds: “*Chas Ve'Shalom!*” He continues explaining that *R' Akavya ben Mehalalel* was never excommunicated for he was a man of the highest stature both in wisdom and fear of heaven. Instead he presented a different incident where the *Chachamim* responded with excommunication.

The *Tosfot Yom Tov* asks, why should *R' Akavya's* stature have any bearing on this incident? Whether or not he was the greatest in the generation, if he acted improperly presumably the *Beit Din* of the time have the right to deal with him accordingly. No one gets special protection in the face of the law! The *Tosfot Yom Tov* present two answers both with different approaches.

The first approach explains that in truth, *R' Akavya* did not do anything wrong. He simply explained that *Shemaya* and *Avtalyon* were putting on this display, using plain water that looked like *mei Sotah*, in order to frighten the maid-servant into admitting her sin. They however never gave her anything to drink. *R' Akavya* perceived that *Shemaya* and *Avtalyon's* approach was much like *Shlomo HaMelech* who famously threatened to slice the disputed child in half in order to reveal the true mother, even though he had no intention of implementing the threat.<sup>42</sup> *R' Yehuda* therefore argued that such a sterling personality like *R' Akavya* would have never erred and slighted these sages owner and consequently was only arguing in the manner just described.

The second approach however explains that *R' Yehuda* agrees that *R' Akavya* degraded *Shemaya* and *Avtalyon*. Nonetheless, *R'*

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<sup>42</sup> The *Tosfot Yom Tov* explains that the *Tana Kama* would have still understood that such conduct is still unwarranted because “*shema yotziyu la'az al mei hamarim*” and therefore such a suggestion would still be a slight on their owner.

*Yehuda* felt it was unfathomable that a *Beit Din* made up of people of a lesser standing could have executed such a devastating edict on him. The *Tosfot Yom Tov* explains that this understanding better suits the text of the *Mishnah*. *R' Yehuda* did not exclaim “*Chas Ve'Shalom* that *Akavya* degraded” (which would have fit better with the first approach) but rather “*Chas Ve'Shalom* that *Akavya* was excommunicated”.<sup>43</sup>

This second approach presents us with a new understanding. Do not be mistaken, the original assumption that there is no special protection for anyone is still maintained. This however does not mean that we always have the ability or right to apply judgment in our earthly courts. Sometimes, the case itself is beyond our ability and is deferred to a “higher” court.

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<sup>43</sup> See the *Tosfot Yom Tov* for the proofs he brings from different *gemarot*.