

אוצר מילים ארמיות – פרק הכנס

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מושגים - פרק הכונס

דף נה:

1. תם - מועד

An animal that has not previously damaged - An animal that has previously damaged. There are differences between an animal that has not damaged previously and one who has damaged previously (3 times). For example if a תם gores it pays only half the damage, while a מועד pays full damages.

Another difference between a תם and a מועד will be discussed in the next concept.

2. קרן שן ורגל - שן ורגל מועדין מתחילתן

Goring, eating and trampling - Eating and trampling are considered a *muad* immediately. There are 3 different ways in which an animal might damage, by goring by eating or by trampling.

A major difference between the above cases is that only by goring do we differentiate between a תם and a מועד. Since it is not necessarily natural for an animal to gore, we look at the first few times as an aberration, and we do not hold the owner completely responsible. However, by שן ורגל we see the animal as being a מועד immediately, since it is natural for them to eat and trample.

3. שמירה פחותה

Minimal (standard) guarding.

There are different levels of guarding an animal. Minimal guarding according to ר' יהודה is sufficient (even for a מועד) and according to ר' מאיר it is not.

Our Mishnah clearly states that minimal guarding, such as having a regular closed door, is sufficient. It would, therefore, seem that our Mishnah disagrees with the opinion of ר' מאיר. The Gemarah rejects this assumption by saying that by שן ורגל all agree that minimal guarding is sufficient. Only regarding קרן does ר' מאיר require superior guarding. (See next concept)

4. ארבעה דברים התורה מיעטה בשמירתן

There are 4 things in which the Torah reduced the need to guard.

In 4 types of damage the Torah reduced the responsibility of the owner. They are בור, אש, שן ורגל.

The Gemarah learns this law from pesukim. In all 4 cases the Torah simply requires that a person not be negligent, but does not require superior guarding. However, this excludes קרן where only ר' יהודה would suffice with שמירה פחותה, but ר' מאיר would require superior שמירה and ר' אלעזר would hold the owner responsible even with superior guarding.

5. גרמא בנויקין פטור

Indirectly causing damages is not liable.

If one does not directly damage another but rather only causes the damage, (see next concept) he is not held liable.

This is because the Torah only instructed courts to involve themselves in cases of direct damage. As we will see in the next concept, it is not permissible to cause such damage.

6. פטור בדיני אדם וחייב בדיני שמים

Not liable in the hands (courts) of man, but liable in the hands of Heaven.

There are certain cases where even though the בית דין will not find the one who damages liable, Hashem will still punish the person.

Our גמרא brings 4 cases where this is so. One example is in cases involving גרמא where one indirectly caused damage, such as by opening the door to my neighbor's barn, which allows his animal to escape and damage others. Even though I am not held liable by the courts, (see above concept), Hashem does punish me for causing this damage.

נ.

7. טמון באש פטור

Things hidden damaged by fire are not liable.

If you set fire to your friend's field you are liable to pay for all you burn, but not for things that were covered and hidden from sight. This concept is learned from the fact that the pesukim that talk about fire damages go out of their way to talk only about uncovered things.

Our gemarah uses this concept as one way to explain why 'bending the stalks of your friend' is פטור בדיני אדם. The gemarah explains that we are talking about a case when as a result of 'bending the stalks' I made them hidden. Afterwards someone burnt his field, and, b/c of my actions (hiding the stalks) the one who damaged does not have to pay for the hidden stalks. I, thus, indirectly caused a loss to my friend, and am פטור בדיני אדם וחייב בדיני שמים.

8. היזק שאינו ניכר לאו שמי-ה היזק

Damages that are not seen are not damages.

If someone causes damage to another's property but the damage is not discernable at all, the court does not hold him liable for the damage.

The example of this, brought in our gemarah, is if one would put a load on the פרט חטאת (פרה) of his friend. He would thus invalidate this cow to be used for the פרט אדומה, since the Torah says that the פרט אדומה must never have carried a load. This, obviously, would cause his friend a tremendous loss. Yet, since the 'damage' (the fact that he put a load on the cow) to the cow cannot be seen in any way, he is not obligated to pay. The gemarah uses this as another case of פטור בדיני אדם וחייב בדיני שמים.

9. אין שליח לדבר עבירה: דברי הרב ודברי התלמיד דברי מי שומעין?

You cannot appoint a messenger to do a sin: The words of the master (Hashem) and the words of the pupil (man), who do you listen to?

If one asks another to do a sin for him (for example, to hit another person for him), the messenger alone is held liable. The person who sent the messenger is not held liable, for, we argue, the messenger should listen to Hashem and not to one who tells him to sin.

Our gemarah uses this to explain why I would have thought that if I hired witnesses to testify falsely I would not be **חייב** even **בידי שמים**. My argument would be that the witnesses should not have listened to me, but only to Hashem. (Or, I can claim that they testified falsely b/c they wanted to, not b/c I told them to). The gemarah teaches us that you *are* **חייב בדיני שמים**, (possibly b/c by paying them you gave them a powerful incentive to listen to you).

10. תחילתו בפשיעה וסופו באונס

The beginning was negligence but the end was accidental.

If someone is negligent about guarding his animal, such as only installing a very weak wall to guard it. However, the animal did not break through the weak wall, rather, it dug under it, something you could not control. The animal then went out and damaged. There is a **מחלוקת** whether or not you are responsible for the damage your animal did. One opinion is that you are not liable, since the damage it did had nothing to do with your negligence. The second opinion is that since you were negligent you are responsible for all that happens regardless of whether or not it was a result of your negligence.

This relates to our gemarah in that we try and say that our Mishnah, which holds you liable (according to **רבה**) if your animal breaks through - but not if it dug out, is talking about a weak wall. This would explain why you would be **חייב** if it broke through (since it was a weak wall). However, asks our gemarah, it would not explain why you are not liable if it dug. Since it would then be a case of **תחילתו בפשיעה וסופו באונס** and *would* be liable according to the second opinion mentioned above.

11. המעמיד בהמת חבירו על קמת חבירו חייב

In one stands his fellow's animal on his fellow's standing grain, he is liable.

When one actually leads an animal to damage there is no need to tell me he is liable. The above law is teaching me something else. There are 2 ways to explain:

- a. He did not actually lead the animal, rather, *קמה לה באפה*, he steered it toward the grain by blocking its passage in all other directions. We thus learn that this is sufficient to hold you liable.
- b. He hit the animal with a stick, *הכישה במקל*, to make it move and it went to the grain. We thus learn that hitting it to make it move is tantamount to pulling it and is a *קנין משיכה*. In effect, by hitting the animal he acquired it (*קנין גניבה*) and is now responsible for all it does. (To effect a *קנין גניבה* he must have in mind to steal it by hitting it. If he does not intend to steal it he does not acquire it and would not be liable)

The Gemarah brings this to explain our Mishnah which made a seemingly obvious statement: *לסטים חייבים הוציאוהו לסטים*, if thief's took out the animal they are liable for the damage it causes. Since this statement did not need to be said, our Gemarah explains the Mishnah's statement with one of the 2 above explanations; either *קמה לה באפה* or *הכישה במקל*.

12. שומר שמסר לשומר חייב

If one *shomer* gives (an object he was given to watch) to another *shomer* the first is held accountable for anything that happens to the object.

If I am given something to guard I am held responsible for certain things (not to be negligent) but not responsible for others (such as unavoidable accidents), depending on the level of my guarding (if I am paid). However, if I give the object to another *שומר*, I am now held responsible for everything. The reason for this is provided by *רבא* who explains that owner holds the first *שומר* responsible because he claims that the second *שומר* was negligent. When the second *שומר* claims it was an accident and not negligence, the owner may claim I do not believe your claim, and even if you would swear, I have no obligation to accept your vow. (According to this reasoning, if there were witnesses that saw the animal die by an accident, the *שומר* would not be liable.)

Our Mishnah seems to talk of a similar case, when a *שומר* gave an animal to a shepherd, but it does not hold the *שומר* liable. To solve this contradiction the Gemarah explains that the *שומר* did not give it to any shepherd, but to his apprentice. In such a case the owner should realize that the *שומר* might very well not guard the animal by himself, but might give it to his apprentice, and, therefore, the owner has no right to reject the vow of the shepherd.

13. שומר אבידה כשומר חנם דמי - כשומר שכר דמי

One who is guarding a lost object is considered like a non-paid guard - is considered like a paid guard.

This is an argument if one who guards an object they find, watching for the owner, is considered as if he is paid or not paid. The difference would be that a paid guard is held responsible of גניבה ואבידה while a non-paid guard is not.

The reasons to be considered a paid guard are, either because they do get a benefit of העוסק במצוה (see next concept) or because the Torah obligates them to watch the lost object, requiring them to provide a שמירה מעולה.

14. העוסק במצוה פטור מן המצוה

One who is involved in doing a מצוה is not obligated to do another מצוה.

If one is actively engaged in doing one מצוה they are not obligated to do another מצוות at the same time. This is only if they cannot do both. This is learned from the פסוק ובלכת בדרך which teaches is that one must learn Torah when they are on the road if they are not involved in a מצוה, but if they are involved in a מצוה they are not required to drop the מצוה and learn Torah.

This connects to our גמרא as it is used (by one opinion) to explain why a שומר אבידה is considered a שומר שכר. The reasoning used is, that if while actively involved in taking care of the lost object a poor man would ask for charity, the שומר would not have to give him the charity due to the above rule. This 'benefit' is sufficient to consider him a שומר שכר.

נז.

15. הכל צריכים דעת בעלים חוץ מהשבת אבידה

All need the owners awareness, except for returning a lost object.

If one were to return an object that they stole, or was entrusted to them, they would have to let the owner know that they were returning it. If they did not, they are still liable for it until the owner realizes they returned it. An exception to this rule is one who returned an object they found. With an אבידה it is sufficient to return it to the guarded area of the owner even though you did not inform him. This is because the Torah used a double term regarding returning a lost object השב תשיבם, allowing even this type of returning.

This relates to our גמרא as it is used to explain why the ברייתא said a lost object could be returned to either a בית or to a גינהחורבה. We thought that allowing for it to be returned to a גינהחורבה meant it could be returned even to an unguarded area (for if they are guarded they are essentially the same as the בית) which would prove that the שומר אבידה is a שומר חנם. The Gemarah brings the above concept to say that really even a גינהחורבה must be guarded (for a שומר אבידה is a שומר שכר), and the allowance of a גינהחורבה was only to teach that you may return the object to a place where the owner will not be immediately aware.

16. הטוען טענת גניבה משלם תשלומי כפל

One who claims it was stolen pays double.

If a שומר claims that the object was stolen, when, in fact, he kept it for himself, he would pay כפל upon being caught.

This is a novel idea, which teaches us that even though he never 'stole' the object (because it came into his possession legally as a שומר) since he denied having it, and tried to keep it without paying, he pays כפל. This only applies if they claim it was נגנב, but not any other claim. Therefore, this law would seem to only apply to a שומר חינום, since every other שומר would have to pay if they claimed it was נגנב. (Whether it can apply to a שומר שכר in certain situations will be discussed in the next מושג.)

17. לסטים מזויין גנבוגזלן הוא

Armed robbers are like a גנב or a גזלן.

There is an argument how to classify an armed robber. Some say we should classify him as a גזלן since both are willing to openly confront the victim. Others say we should classify him as a גנב, since he would rather avoid the confrontation if possible, (whereas a true גזלן does not avoid the confrontation.) The practical difference would be if a armed robber pays כפל (as only a גנב pays כפל).

This applies to our גמרא as we bring a statement which said that only a שומר חינום will pay כפל if he claimed נגנב and actually kept it for himself. (See concept #16) The גמרא uses this statement to challenge the one who says that לסטים מזויין are classified as a גנב. Because if this were true, a שומר שכר would also pay כפל if he claimed it was stolen by לסטים מזויין. For claiming it was stolen by armed robbers would absolve them from paying, (as it was unavoidable) and, since he holds the armed robbers are like a גנב, it would come under the law of הטוען טענת גניבה משלם תשלומי כפל.

נז:

18. היה לה שלא תאכל

It should not have eaten.

If A were to leave food in the yard of his friend, B, and the animal of B eats the apples and gets sick. The opinion of Rav is that A is not held responsible since he can claim that B's animal should not have eaten the fruit.

Our Gemarah used this concept to try and explain why Rav might hold that if my animal fell into someone else's garden through an אונס and ate the fruit in the garden, the animal's owner would not be held liable to pay anything (not even what it benefited). The reason would be that the animal's owner could claim that my animal should not have eaten and therefore I am not responsible. The Gemarah rejects this possibility since Rav would never use this concept to

absolve one from paying for someone else's fruit that his animal ate. He only would use it to absolve one from paying if someone else's animal ate his fruits and was damaged.

נח.

19. מבריה ארי מנכסי חבירו

Chasing a lion from my fellow's possessions.

If a lion is chasing my friend's animal and I stop the lion from doing damage, the owner of the animal owes me nothing. See below a.&b. for further explanation.

Our Gemarah used this concept to explain why Rav had to tell us that our Mishnah (which teaches that if my animal fell into another's garden and damaged, I only pay for that which my animal benefited) includes a case of נחבטה where the animal fell on bushes in the garden, and destroyed the bushes as they cushioned the fall. I might have thought that this is a case of מבריה ארי מנכסי חבירו and the animal owner would not have to pay at all. Our Gemarah thus explains that מבריה ארי מנכסי חבירו only applies in the following cases:

a. Where the one chasing the lion did so willingly. In such a case where can assume that he did so with no thought of payback.

b. Where the one chasing the lion did not lose money to save the animal.

Therefore in our Rav's case, the animal owner must pay (what the animal benefited) since there was a loss and the garden owner did not willingly place his bushes to cushion the fall of the animal.

20. "ובער בשדה אחר" מלמד ששמין על גב שדה אחר

"And it consumed in the field of another" this teaches us that we assess the damage in the context of another field.

When appraising damage we do not view the damaged area by itself, seeing how much that produce could have been sold on the open market. Rather we assess how much the damage reduced the price of the entire field. And not only how much it reduced the price of the particular field in which the damage took place, but, rather, we look at 'another field', a bet se'ah. We assess how much this damage would reduce the price of a bet se'ah. The conclusion of the Gemarah is that this only will apply to produce damaged that is still in the growing process. However, produce that has finished growing will be assessed at full market value. The Gemarah brings this to explain the opinion of the תנא קמא in our Mishnah.

נט:

21. אשו משום ממונו/חציו

Fire is classified as his property/his arrows.

Since one pays for damages by starting a fire even if he started the fire in his own domain, Amoraim argue how this type of somewhat indirect damage is to be classified. ריש לקיש compares it to your possessions (such as a bull) that you do not watch and it goes to another's

field and damages. ר' יוחנן compares it to shooting an arrow in your domain into another's domain where it damages. One possible difference between the two would be if the person who damages another person by fire would have to pay only for the damage (as would be the case if his animal damages) or also for pain, embarrassment, etc. (as would be the case if he damaged with an arrow).

We brought this argument to explain why ר' יוחנן says giving a torch to an unintelligent person is not considered direct damage (while giving your bull to an unintelligent person would be considered direct damage). We reasoned that since ר' יוחנן classifies fire as an arrow, it is possible that the case of fire given to an unintelligent person is simply not as direct as shooting an arrow, and therefore ר' יוחנן does not obligate the man to pay.

ט.

22. ליבה ולבתה הרוח - (זורה והרוח מסייעתו)

If he fanned the flames at the same time the wind did the same - (Winnowing with the wind's assistance.)

If one fanned flames and, at the same time, a wind was blowing which also fanned the flames, and, together, they caused the flames to grow and burn a field. (The second case is when winnows on Shabbat with the help of the wind.)

The Gemarah teaches us that if the wind alone was sufficient to cause the fire, he is פטור, for his act was irrelevant. If his act was sufficient and the wind was not he is liable. The case that is examined is when neither he, nor the wind, had sufficient strength to cause the fire alone, but, together, they did. In such a case he is פטור. The Gemarah questions why is this different from the מלאכה on Shabbat of winnowing which is done with the assistance of the wind. We seem to have conflicting ideas as to whether an act which I only accomplish with the assistance of an outside force is considered my act or not. See next concept for one possible answer.

23. מלאכת מחשבת אסרה תורה

Purposeful labor was forbidden by the Torah.

Regarding the prohibition on Shabbat to do work the Torah uses the words מלאכת מחשבת meaning purposeful labor (actually the verse is written regarding the משכן from which we learn the laws of Shabbat). If, therefore, a person did an act but did not accomplish the purpose of that act, he is not חייב מדאורייתא.

Our Gemarah uses this to explain why, is the concept above, one might be חייב for winnowing and yet פטור if the wind helped him cause a fire. The reasoning would be that since his intent was to use the wind to help him accomplish his task of winnowing, his intent was accomplished. By Shabbat, thus, even partially performed labor is forbidden if the intent was accomplished. However, by damages, we use the rule of גרמא בניזקין פטור to absolve one who only partially fanned the flames, and needed the wind to accomplish the task.

24. כיון שניתנה רשות למזיק אינו מבחין בין צדיקים לרשעים ולא עוד אלא שמתחיל מן הצדיקים תחילה

Once permission is given to the force of destruction it will not distinguish between the righteous and the wicked, and not only that, but it begins with the righteous first.

This idea is learned from the fact that בני ישראל were told not to leave their homes during מכת בכורות.

The Gemarah explains that the righteous will die first so that they will not be pained by having to see others die.

ס:

25. אסור להציל עצמו בממון חבירו

It is forbidden to save yourself with the property of others.

According to most opinions this does not mean that if the only way to save yourself is to take the property of others that you must let yourself die. Rather, it teaches us that if you do save your life by taking the property of others you are required to repay the one you took from.

Additionally, it teaches us that if there is an alternative way to save yourself, then you are not allowed to take the property of others.

The Gemarah uses this concept to explain the pesukim in which דוד needed 'water' from the cistern in בית לחם. Our Gemarah explains that he actually had the above halachik question to ask the Sanhedrin.

26. מלך פורץ לעשות לו דרך ואין מוחין בידו

A king may break (someone else's wall) in order to make a path for himself (and his army) and none may protest.

A king is given the absolute power over the property of others, when appropriate (such as a time of war).

The Gemarah mentions this as the answer given to דוד when he asked about destroying property of others to assist his cause. However, our Gemarah relates that דוד decided against using this power.

סא.

27. כל המוסר עצמו למות על דברי תורה אין אומרים דבר הלכה משמו

Whoever submits himself to death for words of Torah, we do not cite any halachik statement in their name.

One is forbidden to put themselves in danger to preform any mitzvah, even learning Torah. This seems to contradict many well known stories which talk of great Sages who studied Torah at great physical risk. There are many possible answers, among them the following:

a. This only applies when Torah could be learned in a non-threatening way, but does not apply if the only way to learn Torah is through physical danger.

- b. This only applies to regular Jews, but not to great Sages, whose whole life his dedicated solely to Torah, and who rise above the normal physical existence,
- c. Actually, one should sacrifice themselves for Torah, and that which we do not cite halachik statements in their name is actually a praise for them. It is as if we are saying that since they sacrificed themselves for Torah, they themselves become part of the Torah, and their identities are enveloped within the Torah.

The Gemarah uses this to explain why דוד would not 'drink the water', meaning he did not cite their names in his halachik decision.

28. ואלו מפסיקין לפאה הנחל והשלולית ודרך היחיד ודרך הרבים

The following divide a field for Peah, a river (or ravine) a שלולית and a private or public road. If two fields belonging to one person are divided by any of the above a each field would have its own Peah obligation.

Our Gemarah brings this Mishnah in order to ascertain what a שלולית is. For just as a שלולית has significance regarding Peah it also can act as a divider that will absolve one whose fire has spread to another's field (if the fire jumped the שלולית).

סא:

29. הכל לפי הדליקה

Everything is dependant on the (size of) the fire.

This is opinion of ר' שמעון who holds that we cannot give a definitive amount of space which will absolve one whose fire spread to another's field. Rather we must look at the height (or other factors) of the fire and determine what distance is needed.

This opinion argues with other opinions in the Mishnah which stated that if a certain amount of distance separated your and your neighbor's field, you would not be held liable for a fire that spread from your field to theirs.

It is not clear whether ר' שמעון would also argue with the previous Mishnah which categorically absolved one who had a ד אמות wall or a public road separating his field and his fellow's.

30. קם ליה בדרבה מיניה

He stands liable for the penalty greater than it.

If one were to commit and act which brings with it both a death and monetary penalty (such a shooting someone, which tears his shirt and kills him) he would only be tried for the death penalty and not the monetary. We learn this from the פסוק which tells us that one is punished כדי רשעתו according to their one transgression. This rule also applies to death and lashes and is a מחלוקת by lashes and money.

This applies to our Mishnah which taught that if one burned down a field which had an עבד tied in it, since he is liable for the death of the עבד he would not be held liable for the monetary damage to the field.

31. כלים שאין דרכם להטמין בגדיש לא משלם

For things that you do not usually leave in a field you are not obligated.

If one were to directly burn my fellow's field I am held liable for all things that are in the field.

This liability includes things that are covered and hidden in the field as long as they are normally found in the field. However, for things that are covered and hidden in the field, and not usually found in the field, I am not held responsible.

This is the opinion of the חכמים in our Mishnah who absolve one of responsibility when the damager can claim he had no way of knowing these things would be in the field. The concept of טמון באש would not absolve him in this case because he burned the field directly and not by having a fire spread from his own field.

טב.

32. נטירותא דדהבא לא קבילי עלי

Guarding of gold I did not accept upon myself.

If one agreed to guard a bag of money for his friend and was told that it contained silver coins, when, in truth, it contained gold coins. If the *shomer* was negligent and the bag was stolen, he is only held liable to pay the value of silver coins. For he can claim I never agreed to provide the level of security needed for gold coins.

The above, however, only applies if the coins were stolen through his negligence. If, however, the *shomer* himself damaged the coins, he is held liable to pay for the gold coins.

The Gemarah parallels this case to when one was given permission by his neighbor to pile inexpensive barely in his neighbor's field, but, without telling his neighbor, he piled expensive wheat instead. If, through his negligence, the neighbor started a fire in his field which spread and burned the piled wheat of his friend, he would only pay for the value of barely.

33. תקנת נגזל

A statute to protect the victim of theft.

The חכמים enabled one who was a victim of theft to be able to swear on what was stolen, and that would suffice to obligate the thief to pay for what the victim claimed.

Regarding cases when one might pay for damage done by his fire, the Gemarah asks if עשו באשון, could the victim of the fire simply swear what was consumed by the fire and collect?

In addition, the Gemarah asks if we would apply this statute to a מוסר, an informer (for example if one were to tell the tax authority that his fellow did not pay taxes, and thus cause his friend financial loss).

The law of indirectly causing loss.

There is a מחלוקת in the Gemarah if someone is held liable for causing his friend indirect financial loss.

This applies to the case of an informer mentioned above. According to the opinion that one is not held liable for causing indirect loss, a מוסר would never have to pay for the loss he caused.

35. שכן דרך בני אדם להניח בבתים

For it is normal for people to place things in their homes.

One who burns down another's home is held liable for all the contents of the home, and cannot claim that he had no idea the home had anything in it. This is because it is normal to put things in one's home.

The Gemarah quotes this part of our Mishnah to explain why one would be liable for the contents of his friends sack of coins which he threw into the river. Thus the owner of the sack would simply swear how many coins were in the sack and the damager would have to pay. However, this section of the Mishnah also would teach us that we would only believe the owner for things normally put in a sack. But, if he were to claim that there were jewels in the sack, and people normally do not put jewels in sacks, then he could not make such a claim.

36. תלוה וזבין זביניה זביני

If they hung someone up (forced him) and he sold, his sale is a sale.

If someone sells something only because he is threatened, his sale is still valid.

The Gemarah uses this law to question why someone who forces another to sell, even though he pays, is still called a חמסן. The Gemarah answers that the sale is valid only if the seller at the end says he wishes to sell. However, if the seller never expressed his willingness to sell, even if he took the money, the sale is not valid and the buyer is considered a חמסן.

סב:

37. נר חנוכה מצוה להניחה בתוך עשרה

It is a Mitzvah to put the Chanukah candles within 10 *tefachim*.

The Chanukah Menorah should be place within 10 *tefachim* of the ground.

The Gemarah attempts to prove this from the Mishnah which absolved a store owner of damages his Chanukah candles caused to a camel laden with flax in the public domain. The Gemarah reasoned that if he was not obligated to put his candles so close to the ground, he should have placed them higher so as not to damage the passing traffic in the public domain. The Gemarah rejects this proof stating that it is possible that he is allowed to place the candles higher, but since he is performing a Mitzvah the חכמים did not want to trouble him to raise the candles above the traffic.