



Sparks

The *Mishnah* (6:6) discusses a case where a spark flew out from under a hammer and caused damage. The *Mishnah* rules that the person is responsible for any damage caused. We need to understand why.

The *Tosfot Yom Tov* cites the *Rambam* (*Hilchot Chovel* 6:11) who explains that he is responsible like one that shoots an arrow or throws a stone. In other words, it is considered as if the person caused the damage directly and is responsible whether or not he intended to cause any damage.¹

The *Tosfot* (60a, s.v. *Rav Ashi*) however explains that the damage caused in this *Mishnah* falls under that category of *Eish* (fire). They reason that it makes sense is because *Eish* is the topic of the *Mishnayot* in this *perek*. The *Tosfot* stress that the case must be that the blow of the person alone would not have been enough to cause damage. Rather it needed the addition of a regular wind to fan the flames, for it to be considered *Eish*.

The *Gemara* (*Bava Batra* 26a) however discusses a case where, as a result of one beating and shaking out flax, some small fibers flew out and injured someone else. The *Gemara* explains that in that case the person is not liable. The *Gemara* asks how this is different to shooting an arrow where one is liable. The *Gemara* answers that the fibers could only cause damage as a result of the wind.

The *Gemara* later asks that if that is the case, why is the person liable for the damage caused in our *Mishnah*. It would seem that the question posed by the

Gemara supports that *Tosfot's* understanding that in our *Mishnah*, the damage caused was assisted by wind, much like *Eish*.

The *Gemara* answers that in this case he is happy – *nicha lei* – for the sparks to be carried away at a distance. How do we understand the answer of the *Gemara* of *nicha lei*?

The *Ritva* (*Bava Batra* 26a), citing the *Ri*, explains that because he does not want the sparks to land nearby, he would strike it with force. With that force, the sparks will go to a location that can be carried away by a normal wind. Consequently, it is comparable to a case where one that left fire or a knife in a location that can be carried away by a normal wind and cause damage. In other words, *nicha lei* on its own is not a requirement for the person to be responsible for the damage, but rather it changes the physical parameters of the case so that it can be considered *Eish*.

The *Chazon Ish* (*Bava Kama* 2:4, s.v. *ve'ikar*) explains that a spark on its own is like a smoldering coal, that will extinguish on its own. It is harmless without any wood or fuel. He explains that the *Tosfot's* understanding of the importance of striking it with force is because despite the fact that has not yet created any fire, it is clear by the blacksmiths actions that it is considered dangerous from his intent to make the sparks not fall near him, and can therefore be considered *Eish*.

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¹ By comparing the case in our *Mishnah* to an arrow or stone that was thrown by someone, it would seem that damage is caused on impact. Perhaps this understanding would work better with the *Aruch's* understanding of the term *getz* used in the *Mishnah* (cited by the *Tifferet Yisrael*). He explains

that the *Mishnah* is referring to a piece of metal, the chipped off because of the hammer's blow, and not a spark as has been assumed in this article.

Revision Questions

בבא קמא ה' - ה' - 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? (ז': ה')
- What is the law regarding the previous case if thieves removed the animal? (ח': ה')
- 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? (ח': ב')
- 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? (ח': ב')
- In the case of *shen*, how is full damage calculated? (ח': ב')
- 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? (ט': ה')
- What is the law regarding one that handed a flame to minor, and this child went and caused fire damage? (ט': ה')
- If one person brought kindling and another brought a flame and the resulting fire caused damage who is liable? (ט': ה')
- Regarding the previous question, in what two circumstances will neither be liable? (ט': ה')
- Provide the three cases where if the fire spreads beyond barriers the fire starter is not liable. (י': ה')
- 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': ה')
- When does *R' Yehuda* maintain that a shop owner who left candles outside his shop, and a loaded camel caught fire and spread as a result of the camel's movement, is not liable for damages? (י': ה')
- What is the definition of a *ganav*? (יא': ה')
- When is a *ganav* obligated to pay four times what he stole? (יא': ה')
- When is a *ganav* obligated to pay five times what he stole? (יא': ה')
- If someone stole from a *ganav* is he required to pay back double the value of what he stole? (יא': ז')
- Is a person obligated to pay four or five times the value if: (יא': ז', ב')

 - 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? (יא': ז', ב', ד')
- 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': ה')

 - 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': ה')
- What is the law if a person stole an ox from his business partner then sold it? (יד': ה')
- What is the law if a person stole an ox and then shot it? (יד': ה')

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Next Week's Mishnayot...

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | שבת קודש |
|-----------------------|-----------------------|----------------------|------------------------|------------------------|------------------------|------------------------|
| 1 September כ"ח אב | 2 September כ"ט אב | 3 September ל' אב | 4 September א' אלול | 5 September ב' אלול | 6 September ג' אלול | 7 September ד' אלול |
| Bava Kama 7:6-7 | Bava Kama 8:1-2 | Bava Kama 8:3-4 | Bava Kama 8:5-6 | Bava Kama 8:7-9:1 | Bava Kama 9:2-3 | Bava Kama 9:4-5 |

