

CHABAD LUBAVITCH OF CHAUTAUQUA

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Everyday Talmudic Ethics – Week 6 – 2020

1. **MISHNA:** With regard to one who was transporting a barrel from one place to another and he broke it, whether he was an unpaid bailee or a paid bailee, if he takes an oath that he was not negligent he is exempt from payment. Rabbi Eliezer says: Both this one, [an unpaid bailee,] and that one, [a paid bailee,] must take an oath to exempt themselves from payment, but I wonder whether both this one and that one can take an oath. [RASHI: this is the *halakha* that I heard from my teachers, but I do not understand their ruling.]
2. **GEMARA:** The Sages taught: With regard to one who was transporting a barrel for another person from one place to another and he broke it, whether he was an unpaid bailee or a paid bailee, if he takes an oath that he was not negligent, he is exempt from payment. This is the statement of Rabbi Meir. Rabbi Yehuda says: An unpaid bailee takes an oath and does not pay, but a paid bailee pays. Rabbi Eliezer says: This one and that one take an oath, and I wonder whether both this one and that one can take an oath.
3. ...And Rabbi Hiyya bar Abba says that Rabbi Yohanan says: This oath is a decree of the Sages. The reason for this oath is that if you do not say so, you will have no person who will be willing to transport a barrel for another from one place to another, due to the fear that it might break and he will have to pay.
4. How exactly does he take an oath? Rava said that the phrasing is: I take an oath that I broke it unintentionally...
5. Granted, an unpaid bailee takes an oath that he was not negligent with regard to the barrel, but why does a paid bailee take an oath? Even if he was not negligent, he is still required to pay.
And even with regard to an unpaid bailee, this works out well if the barrel was broken on an inclined plane, but if it broke not on an inclined plane but under different circumstances, how can he take an oath that he was not negligent with it?
And even on an inclined plane, this works out well where there is no evidence. But where there is evidence, let him bring evidence and be exempt. As it is taught in a *baraita*: Isi ben Yehuda says, with regard to the verse: “And it died or was hurt or driven away without an eyewitness, an oath of the Lord shall be between them” (Exodus 22:9–10), that one can infer from here that if there is an eyewitness, let him bring evidence and be exempt.
6. ...Rav Hiyya bar Yosef issued a decree in the city of Sikhra, where he was the presiding Sage: With regard to those who carry loads on a pole [*be'agra*] and the item breaks, they must pay half. What is the reason? Such a pole is used to carry loads that are too much for one individual to carry and too little for two. Consequently, this breakage is close to an accident and equally close to negligence, and therefore they compromise with a payment of half liability.
7. If he carried it with a *digla*, a wooden tool designed for double loads, he pays in full, as the use of such a tool indicates that he was carrying a load beyond the capacity of a single individual to bear and therefore acted negligently.
8. Rabba bar bar Hanan: Certain porters broke his barrel of wine after he had hired them to transport the barrels. He took their cloaks as payment for the lost wine. They came and told Rav. Rav said to Rabba bar bar Hanan: Give them their cloaks. Rabba bar bar Hanan said to him: Is this the *halakha*? Rav said to him: Yes, as it is written: “That you may walk in the way of good men” (Proverbs 2:20). Rabba bar bar Hanan

gave them their cloaks. The porters said to Rav: We are poor people and we toiled all day and we are hungry and we have nothing. Rav said to Rabba bar bar Hanan: Go and give them their wages. Rabba bar bar Hanan said to him: Is this the *halakha*? Rav said to him: Yes, as it is written: “And keep the paths of the righteous” (Proverbs 2:20). (Talmud, Tractate Bava Metzia 82b-83a)

9. When a person is hired to transfer a jug from place to place for a wage, and the jug is broken, according to Scriptural Law, he should be required to pay. For this is not a major factor that is beyond the porter's control; breaking an article is equivalent to its being stolen or lost, for which he is liable. Nevertheless, our Sages ordained that the porter should be liable merely to take an oath that he was not negligent in caring for it. For if he were required to make financial restitution, no person would ever carry a jug for a colleague. Therefore, the Sages ordained that the breaking of a jug is equivalent to the death or the injury of an animal.
10. With regard to this matter, our Sages also ordained that if two people were carrying a jug with shafts, and it was broken, they should pay half the damages. For since this burden is very great for one person, but light for two people, it can be considered both similar and dissimilar to a loss due to factors beyond one's control. Therefore, if there are witnesses who testify that they were not negligent, they should pay half the damages. If the jug was broken in a place where witnesses are not ordinarily present, the porters must take an oath that they did not break it through negligence. Afterwards, they are required to pay half the damages. For each one of should not have attempted to transport anything more than a burden that he could transport on his own.
11. From this, one can derive that when a person transports a large jug that a porter would not ordinarily transport, he is considered to be negligent. If it breaks in his hands, he must make full restitution. (Maimonides, Hilchot Sechirut 3:2)

<i>Light for 2, Heavy for 1</i>	X 2	X 1	<i>Reason:</i>
Maimonides	50 %	100 %	<i>Heavy = Negligence</i>
Rashi, Rashba...	0 %	50 %	<i>Heavy = Negligence</i>
Ra'avad	50 %	0 %	<i>Light = Negligence</i>

12. **MISHNA:** If one gave items to craftsmen to fix and they damaged them, the craftsmen are liable to pay for the damage. For example, if one gave a chest, a box, or a cabinet to a carpenter to fix, and he damaged it, he is liable to pay. And a builder who committed to demolish a wall and while demolishing it he broke the stones, or who damaged them, is liable to pay. If he was demolishing on this side of the wall, and the wall fell from another side and caused damage, he is exempt from liability. But if a stone fell and caused damage due to the force of the blow, he is liable. (Talmud, Tractate Bava Kama 98b)
13. There is no difference whether a person injures a colleague with his hand, injures him by throwing a stone or shooting an arrow, opens a current of water on a person or on utensils and damages him or them, or spits or sneezes and causes damage with his spittle or mucus while it is being propelled by his power. All of these are considered derivatives of damage that a person causes, and he is liable for all of them, as if he had caused the damage with his hands...
14. When a blacksmith who was beating with a hammer on an anvil causes a spark to fly from beneath the hammer, and the spark causes damage, the blacksmith is liable. It is as if he threw a stone or an arrow. Similarly, if a builder who is contracted to tear down a wall cracks the stones or causes other damage, he is liable.
15. If he is tearing down one side of a wall, and the stones on the other side fall, he is not liable.
 - a. [i.e., not the result of his blows, but because they were supported by the other wall, and now that it has been torn down, there is nothing to support them]

If they fall because of his blows, he is liable. For this is considered like shooting arrows and causing damage. (Maimonides, Hilchot Chovel Umazik 6:10-11)

b. An [unpaid] person is only liable for damage if he carries an element of blame, even if not negligent (*oness k'ein aveidah*). A paid worker carries additional liability so long as he could have prevented the loss (*oness k'ein geneivah*). Even a paid worker, though, is not liable for damage beyond his control. (Tosafos, Bava Kama 27b, s.v. U'Shmuel. C.M. 306:4; 378:11).

16. Whenever a person causes property belonging to a colleague to be damaged - even though he himself is not the one who ultimately causes the damage - since he is the primary cause, he is liable to make financial recompense from the finest property in his possession, like others who cause damage.

What is implied? A person throws a utensil that he owns from a roof onto pillows and blankets, and another person comes and removes the pillows from the ground, causing the utensil to hit the ground and break. The person who removes the pillows is liable to pay the entire sum of the damages, as if he broke the utensil with his own hands. For it was the removal of the pillows and the coverings that caused the utensil to break. The same applies in all analogous situations. (Maimonides, Hilchot Chovel Umazik 7:7)

17. When a person sets a dog belonging to a colleague on a [third] individual, he is not held liable by mortal courts*; the laws of heaven, however, obligate him to pay**. (ibid, Hilchot Nizkai Mamon 2:19)

*This reflects a fundamental principle in the laws of damages. Grama, being an indirect cause, does not generate liability.

**I.e., he has a moral and ethical obligation to pay for the damages. See Bava Kama 55b, which gives several instances of grama and states that the person who indirectly caused the damage has a moral obligation to compensate for it.

18. *Gramei* – Actions that serve as more direct causes of damage.

Grama – The damage is caused by another force. The person merely makes it possible for the damage to occur.

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