

# CHABAD LUBAVITCH OF CHAUTAUQUA

23 Vincent Avenue Chautauqua, NY 14722 T: (716) 357 - 3467 W: [www.cocweb.org](http://www.cocweb.org) E: [rabbi@cocweb.org](mailto:rabbi@cocweb.org)

## Everyday Ethics – Week 5 – 2021

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1. It was taught: R. Joshua said: There are four acts for which the offender is exempt from the judgments of Man but liable to the judgments of Heaven. They are these: To break down a fence in front of a neighbor's animal [so that it gets out and does damage]; to bend over a neighbor's standing corn in front of a fire; to hire false witnesses to give evidence; and to know of evidence in favor of another and not to testify on his behalf. (Talmud, Baba Kama 55b)
  - a. **RASHI:** He is of the opinion that [merely] 'causing' damage is not liable.
2. **MISHNAH.** A LADDER MUST BE KEPT AWAY FROM A PIGEON COTE FOUR CUBITS SO THAT A WEASEL SHOULD NOT BE ABLE TO SPRING [FROM THE LADDER ON TO THE COTE].
3. **GEMARA:** ... But here he is merely [indirectly] 'causing' [damage]?  
Said R. Tobi bar Mattanah: This is equivalent to saying that it is prohibited to cause damage indirectly, [even where the damage, if caused, need not be paid for]. (Talmud, Baba Basra 22b-23a)
4. Rabbah further said: In the case of a man throwing a utensil from the top of the roof while there were underneath mattresses and cushions which were meanwhile removed by another person, or even if he [who had thrown it] removed them himself, there is exemption; the reason being that at the time of the throwing [of the utensil] his agency had been void of any harmful effect.
  - a. **TOSAFOT:** Rav Alfasi explained that this ruling is [only] according to Rabbah who is the opinion that one is exempt for 'damage done indirectly'. But Rav Yitzchak maintains that this ruling is in accordance with all opinions as this is a case of "cause of damage". (Talmud, Baba Kama 26b)
5. ...Rabbah further stated: If one destroyed by fire the bond of a creditor he would be exempt, because he can say to him, 'It was only a mere piece of paper of yours that I have burnt.'...
6. R. Dimi b. Hanina said that [regarding this ruling] of Rabbah there was a difference of opinion between R. Simeon and our [other] Rabbis. According to R. Simeon who held that an object whose absence would 'cause' an outlay of money is reckoned in law as money there would be liability, but according to the Rabbis who said that an object whose absence would 'cause' an outlay of money is not reckoned in law as money there would be no liability.
7. ... Amemar said that the authority who is prepared to adjudicate liability in an action for 'damage done indirectly' would similarly here adjudge damages to the amount recoverable on a valid bill. But the one who does not adjudicate liability in an action for 'damage done indirectly' would here adjudge damages only to the extent of the value of the mere paper. (Talmud, Baba Kama 98a-b)
8. Resh Lakish showed a denar to R. Eleazar who told him that it was good. He said to him: You see that I rely upon you. He replied: Suppose you do rely on me, what of it? Do you think that if it is found bad I would have to exchange it [for a good one]? Did not you yourself state that it was [only] R. Meir who adjudicates liability in an action for 'damage done indirectly', which apparently means that it was only R. Meir who maintained so whereas we did not hold in accordance with his view?  
But he said to him: No; R. Meir maintained so and we hold with him. (Talmud, Tractate Bava Kama 100a)
9. 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.
10. 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.
11. ...a person who burns promissory notes belonging to a colleague is liable to pay the entire debt that was mentioned in the promissory notes. Although the promissory notes themselves are not of financial worth, by burning them one causes his colleague a financial loss. (Maimonides Laws of Chovel U'Mazik 7:7, 9)
12. There are those who are of the opinion that this case (16) is called "G'rama" – "cause", and cause of damage is exempt. (Rama, Shulchan Aruch C.M. 386:5)
  - a. This is the opinion of many legal authorities, and this seems as the principal ruling. (ibid, Shach 18)
13. 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.

14. **Gramei** – ['damage done indirectly'] - Actions that serve as more direct causes of damage.  
**Grama** – ['causing' damage] - The damage is caused by another force. The person merely makes it possible for the damage to occur.
15. Thus, an unpaid watchman takes an oath in all instances. A borrower makes restitution in all instances except when an animal dies performing the labor for which it was borrowed, as will be explained. And a paid watchman and a renter make restitution when the article is lost or stolen, and take an oath when it is destroyed by forces beyond their control - e.g., it was injured, taken captive, died, attacked by beasts, lost in a ship that sank at sea, seized by armed thieves - or lost in any other major matter over which the watchman has no control. (1:2)
16. ...If, however, he was negligent, he is required to make restitution. For everyone who is negligent is considered to be one who damages property, and there is no difference between the laws applying to a person who damages landed property and one who damages movable property.
17. This is a true judgment, as those who understand will see, and this is the appropriate way to rule. Similarly, my teachers issued the following rulings with regard to a person who entrusts his vine to a sharecropper or to a watchman and stipulates that he dig, prune or dust it from his own resources. If the watchman is negligent and does not perform the required task, he is liable as if he destroyed it with his hands. Similarly, he is liable in all instances where he causes a loss through his actions. (2:3)
18. If a shepherd had the opportunity of saving an animal that was preyed upon or taken captive by calling to other shepherds or bringing staves, and he did not call to other shepherds or bring staves to save the animal, he is liable. This applies to both an unpaid watchman and a paid watchman. The difference is that an unpaid watchman should call to other watchman and bring staves without charge. If he cannot find any available for free, he is not liable. A paid watchman, by contrast, is obligated to hire other shepherds and staves until the value of the animal(s) in order to save them. Afterwards, he should collect their hire from the owner. If he does not do so and had the opportunity to hire others and did not avail himself of it, he is considered to be negligent and is liable to make restitution. (3:6) (Maimonides, Hilchot Sechirut)
19. A guardian is liable for 'causing damage'. [The very concept of guardianship is accepting responsibility to watch an item and protect it from harm.] The proof is from the above quoted law. Negligence is not a direct damage. It is just allowing the damage to happen. Nonetheless, this indirect damage is exactly what the guardian accepted responsibility for. For this reason, a guardian is generally liable for indirect damages (Maharit 2, C.M. Responsa 110)
20. When a person causes damage to a colleague's property that is not evident to the eye, he is not liable to make financial restitution according to Scriptural Law. For the object has not changed, nor has its form become altered. Nevertheless, our Sages ruled that he is liable according to Rabbinic Law, for he reduced the value of the article. They required him to pay the amount by which its value was reduced.
21. What is implied? If a person causes food belonging to a colleague to be rendered ritually impure ...causing the entire quantity to be forbidden, or the like - the amount of the loss is evaluated, and the person who caused the loss is required to pay the entire damages from the finest property in his possession, as is the law regarding anyone who causes damages.
22. This ruling was a penalty prescribed by our Sages so that none of the ravagers will go and render a colleague's produce impure and then excuse himself, saying: "I am not liable."
23. For this reason, if the person who caused damage that is not noticeable dies, the penalty is not expropriated from his estate. For our Sages enforced this penalty only upon the person who transgressed and caused the damage, but not on his heirs, who did not cause any damage.
24. Similarly, a person who inadvertently causes damage that is not noticeable, or as a result of forces beyond his control, is not liable, for our Sages imposed this penalty only upon a person who intentionally causes damage. (Ibid, Chovel Umazik, 7:1-3)
25. And the youths grew up, and Esau was a man who understood hunting, a man of the field, whereas Jacob was an innocent man, dwelling in tents. (Genesis 25:27)  
**RASHI:** *who understood hunting:* [He knew how] to trap and to deceive his father with his mouth and ask him, "Father, how do we tithe salt and straw?" His father thereby thought that he was scrupulous in his observance of the commandments. (Tanchuma, Toledoth 8).

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