

Mazik

PART I ADAM HAMAZIK

Rav Aryeh Finkel, Dayan at the Bais Havaad

A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

THE PROHIBITION OF CAUSING DAMAGE:

There are several potential misuses of other people's property that the Torah explicitly forbids. One may not steal, overcharge or underpay, cheat on measurements, and various other related prohibitions, even including charging interest on a loan which the torah considers to be an illegitimate charge.

To damage someone's property is certainly assur. The Shulchan aruch writes this explicitly "one is forbidden to damage the property of his friend."

The Gemara also expresses as much, in the context of grama, indirect causation. In Bava Basra when discussing a case of indirect damage where a potential victim can preemptively block his neighbor from doing something which may harm him, the Gemara says that "this teaches [us] that indirect causation of damage if forbidden." All the more so is it forbidden to actively damage someone's property.

But where does the Torah forbid this? If one is willing to pay for the damage as the Torah prescribes, where do we find that he may not do so on purpose?

FOUR DIFFERENT SOURCES:

The Tur writes "just as it is forbidden to steal etc. so too is it forbidden to damage the property of others." The Bach explains that the Tur intends to address this very question. Lest one think that it is permitted to cause damage so long as one pays for it, the Tur is clarifying that this is not the case. But still, what is the source? The words of the Tur imply that one transgresses the prohibition of *gezel* when damaging property.

Rabbeinu Yona in the beginning of Avos implies this as well. He says that without the oral Torah, virtually all aspects of the written Torah are severely limited in scope. His example is the prohibition of damaging, which is not explicit but is revealed by Chazal to be included in the prohibition of *gezel*.

However, others offer different sources. The Remah in bava basra gives two possible alternatives: One is *V'ahavta L'eraicha Kamocha*, and the other is that of *Lifnei Iver*. Both of these sources indicate that one should not damage his friend. Just as you wouldn't want your property damaged,

you shouldn't do to your friend. Similarly, if the torah forbids one to give bad advice, as is included in the issur of *Lifnei Iver*, surely one cannot damage his property outright.

A fourth possibility is proposed by the Steipler Gaon, in his sefer Kehillas Yaakov. He claims that one violates the Mitzva of hashavas aveidah by damaging someone's property. If the Torah requires us to save people from financial loss, we are surely commanded not to cause them loss.

DEFINING ADAM HAMAZIK:

Now we'll discuss an elemental aspect of *adam hamazik*. *Adam hamazik*, as the name suggests, refers to one who performs an act of *hezek* with his person. Additionally, if one hits with a stick and breaks something, the stick is simply an extension of his hand, and is also *adam hamazik*. Moreover, if someone throws a stone and it damages, that's called *kocho*, his force, and is considered as *gupo*, his person, and is *adam hamazik* as well.

However, the following is a very enlightening source which greatly broadens the description of *adam hamazik*. The principle can be applied to many situations.

The Rosh was asked about one who was riding a horse in a wild manner, and as result, collided with another animal causing damages. The question was whether the careless driver is deemed an *adam hamazik*, or is this a case of *shor hamazik*, since the animal had performed the action. The Rosh ruled to consider it *adam hamazik*. "He damaged with his body since he was riding on the animal and he damaged with the animal's body or its saddle; it is like an animal that damages with its saddle." This ruling is cited in shulchan aruch (CM 378:9).

This teaches an important concept. When the person is riding on an animal, the animal's action is attributed to him. Now, the Rosh doesn't necessarily hold this way when a person is sitting on top of a standing horse, and the horse kicks out and injures someone. In that case, the person has not contributed to the damage. In our case, the rider spurred on the horse and caused it to crash. It was certainly his own negligence that caused the damage. That's when the Rosh says that the animal's action is attributed to the person riding on it.

CAR ACCIDENTS:

It should be noted that the Chazon Ish (bava kamma siman 4:8) is very bothered by this ruling. He questions how an action that is performed by an animal can be attributed to a person. After all, he says, the person is merely a package on the animal's back while the animal did the action. The Chazon Ish is unwilling to connect the action to the rider, despite his negligence. He leaves this issue unresolved.

Apparently intending to resolve this very issue, the sefer Ulam Hamishpat (by Harav Yosef Zundel Hutner, a Rabbi of the Chofetz Chaim), writes that the case was not that the horse performed the action, rather the act of damage was done by the rider and the horse was "ma'aseh eitz b'alma" - "like a piece of wood". Although it isn't clear exactly what role the rider played, he definitely means to somehow resolve the problem raised by the chazon ish by changing the details of the case.

Pischei choshen (nezikin ch. 3:3) on the other hand, cites this halacha without any caveats, and he seems to understand it to be taken literally. In his footnotes, he writes that the ruling of the Rosh can be used as a precedent for classifying damages that arise from car accidents. According to the Rosh, it is classified as adam hamazik because an *adam* was driving it and controlling it.

USING AN ANIMAL TO DAMAGE:

This brings us to yet another, albeit more indirect, application of adam hamazik. The Gemara (Bava kama 56b) says that one who sets his friend's animal upon the grain of his [other] friend, is liable for the damaged grain. There is significant discussion among the Rishonim to identify the doctrine under which this person is liable. Tosafos say that it's categorized as *shein*, as if it was his animal who ate the produce of another. This is a novelty, as the *meforshim* point out, because the animal is not owned by him. Usually, the way an animal's action is associated with a person is by his ownership, which is not the case here. Tosafos cite another opinion – which they reject – classifying it as *aish*, damage through an unleashed force. It's like putting a stone in a place where it is prone to be blown in the wind

and cause damage.

The Rashba however, writes that "even though the animal is not his, since he placed it on the grain, it is as if he fed the animal by hand." This statement is itself subject to a controversy among contemporary acharonim. Many say it's a reference to *aish* like the opinion Tosafos mentioned. Others say the Rashba means *garmi*, direct causation. But there are opinions who say it is actually meant to categorize it as adam hamazik.

THE PARAMETERS OF KOCHO:

We'll end with an interesting *safek* of the Pischei Choshen (nezikin ch. 3 footnote 8), when referring to the halacha of *kocho*, which dictates that any force created by a person is considered his direct action. We find that even air and sound can also be considered *kocho*. If someone blows and causes damage, or cries out loud and causes damage, he is liable. The question that he deals with is about other forms of *kocho*, for example a person's shadow. For example, a person moves his shadow and darkens a light sensor which activates an electric current that goes on to cause damage. Is that considered his action? He remains undecided whether to consider it his action, or perhaps this is merely blocking light, it then gets dark by itself, and would only be a *grama*.

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