

Mazik

PART III NIZKEI AISH: FIRE DAMAGE

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

ARROWS OF FIRE:

The Pasuk says in Parshas Mishpatim (22:5) "If a fire goes out and spreads to thorns, and it consumes stacked grain, standing grain, or a field, restitution must be made by the one who ignited the fire."

The Torah is teaching us that a person is liable for causing damage even though he didn't do it himself. Here, all he did was ignite a fire and it spread by itself until it caused damage. Although he didn't do the actual damage, the Torah holds him responsible.

There is a *machlokes* in the gemara regarding the classification of *nizkai aish*, fire damage. According to Reish Lakish, *aish* is categorized as "*mammon hamazik*", one's property that causes damage, similar to an ox that he owns or a pit that he has dug. This is known as "*isho mishum mammono*", his fire carries liability because it is his property. Rabi Yochanan, however, classifies *aish* as a form of "*adam hamazik*", a personal act of damage, similar to an arrow that he has shot which causes damage. This is known as "*isho mishum chitzov*", his fire carries liability because it is his arrow. The halacha follows the opinion of Rabi Yochanan.

This is something unique about *aish* that is not found in the other *nezikin*. Here, the Torah didn't just make the arsonist liable for damages, but actually considered the arsonist as doing the action himself, as if he personally threw a stone and damaged something. We find this hinted at in the wording of the verse itself. For other forms of damage, the verse simply states that the owner must pay. Here, the Torah adds "by the one who ignited the fire", as if attributing the damage directly to him.

COVERED ITEMS:

This attribution has important ramifications. For example, the gemara derives that fire damage is not liable for items that were covered when the fire reached them. Despite this, the gemara wonders how this could be possible according to Rabi Yochanan, as we know that a person who actively damages is certainly liable even for covered items. The gemara is then

forced to concede that there are cases of fire damage that cannot be attributed directly to the arsonist and can only be classified as his property having caused damage. The special exemption of covered items will be referring specifically to those cases.

As an example of such a case, the gemara gives the following scenario: someone ignites a fire within his own property, but it is guarded against spreading elsewhere by a tall brick wall surrounding the property. Subsequently, the wall falls down due to an unrelated circumstance, and the fire spreads to the neighboring property and causes damage. This fire cannot possibly be considered his "arrow", because at the time he ignited it, it could not spread.

LIABILITY AS PROPERTY THAT DAMAGES:

In other words, for a fire to be considered the action of the arsonist, it had to have been a threat at the time of its creation. Only his initial ignition is considered his direct action because that force spreads continuously until it damages. Whereas, if the initial ignition was not a threat, even if something changes afterward and it spreads, it is not the action of the arsonist.

On the other hand, the arsonist is still liable, not because it is his action, but because it is his property that did the damage. As the gemara explains, even Rabi Yochanan agrees that there exists a milder liability for *aish* in cases where it is not his arrow, and in those cases, he will not be liable for damage that occurs to covered items. There is one exception where he will not be liable altogether: if the fire was guarded properly and the fence fell down unexpectedly, and the fire spread before he had the chance to contain it. This would be categorized as an *oness*, an unavoidable occurrence, and he would not be liable for any damage.

In summary, the halachos are as follows:

1. If one makes an unprotected fire that spreads and causes damage, he is considered an *adam hamazik*, and is fully liable as if he had shot an arrow and caused damage.
2. If the fire was protected, and the wall fell down

unexpectedly, causing damage before it could be contained, this is an *oness* and there is no liability at all.

3. If the wall fell due to an unrelated circumstance, but he could have contained it and didn't, he is liable for the damage to uncovered items but is exempt from damage to covered items.

One case that isn't clear from the gemara, is if the fire was protected at the time he lit it, but with an unreliable protection that was likely to fall and allow the fire to spread. While it is certainly not less than a failure to contain a fire, one can still question whether this can be categorized as his arrow, causing him to be liable even for covered items. Both the Chazon Ish and Rav Shlomo Zalman Aurbach remain inconclusive on this point.

CAUSING A FIRE WITHOUT LIGHTING IT:

A related discussion is that of a fire that one caused but did not ignite. For example, if one leaves an appliance such as an iron or toaster plugged in until a fire erupts. Would this be considered his arrow, or merely his unprotected property?

Rav Shlomo Zalman Aurbach finds the answer to this question in the words of Tosafos (Bava Kama 22a). In defining *isho mishum chitzov*, that a fire can be like an arrow, Tosafos add that one need not actually ignite the fire, it suffices that he was negligent with his coals and the fire erupted. Apparently, even though coals are not flaming - they're just very hot, it is still considered his arrow because they are prone to flame up without proper caution. An appliance that creates heat and causes fires when left plugged in is the exact same thing as coals. It's not a fire, but it's likely to become one if not guarded properly.

However, Rav Shlomo Zalman asks on Tosafos, how does this differ from the case of the gemara where the wall fell down after the fire was lit and he could have contained it? In that case, the gemara said clearly that it is not considered his arrow. To resolve this, he explains that in the case where the wall fell, the fire did not have the ability

to cause damage at the time that it was lit. It was only due to the unrelated circumstance of the wall falling down that it became a *mazik*. Whereas, an unprotected coal, even if it isn't flaming, is already a *mazik*, it just hasn't done anything yet. The same goes for an appliance that is plugged in, which if left to its own devices will turn into a fire.

LIABILITY THROUGH OWNERSHIP:

One final question which is dealt with by some acharonim, is a fire that one did not light, but he technically owns it. There is a stringency that we find by animals or obstacles that one owns, that the owner is responsible to restrain or remove them even if someone else put them in a place where they can do damage. If he doesn't take immediate action, he is liable for the damage they cause. Does fire share the same stringency? For example, if one buys a machine that is already running, and leaves it running until it causes a fire and does damage. He never lit the fire, but he owns it. Is he liable?

The Even Ha'ezel discusses this question, and concludes that he would be liable, but only as property that does damage, not as his arrow. Because the source of the fire is his, he is responsible to ensure it is protected, and if he doesn't he is liable for the damage. However, because he did not actually light it, it cannot be considered his arrow that damaged.

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