



## Daf In Review – Weekly Chazarah

Maseches Bava Kamma, Daf ע"א – Daf ע"ב

Daf In Review is being sent I'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen, A"H  
vI'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

-----Daf ע"ב---72-----

HASHOCHET V'NIMTZEIS TREIFAH...

- **R' Chavivi MiChuzna'ah** said to **R' Ashi**, we see from our Mishna that the act of shechita is considered to take effect at the end of the act, because if the act is considered to begin at the beginning of the shechita, then it would become assur at the very beginning of the shechita in the Azarah, and the rest of the shechita would no longer be considered as if done to the animal of the owner (because it is assur), and he should therefore not be chayuv for daled v'hey. **R' Huna the son of Rava** said, this no proof. It may be that the beginning of the act already makes it assur, but it may also be that the beginning of the act is also what creates the liability of daled v'hey! **R' Ashi** said, that cannot be, because the pasuk says "utivacho", which teaches that a complete shechita is needed to obligate in daled v'hey.
  - **Q:** How would the view that shechita that makes something assur (as when shechted in the Azarah) begins at the start of the shechita explain our Mishna? **A: R' Ashi** said, **R' Gamda in the name of Rava** said, the case of the Mishna is where he shechted part of the trachea and esophagus outside the Azarah and completed cutting them inside. Therefore, the issur came at the end of the shechita, which is also when the daled v'hey obligation set in.
  - **Others** say that the above discussion was said in reference to the following machlokes. **R' Shimon in the name of R' Levi Saba** said, the act of shechita is considered done only at the end. **R' Yochanan** said, it has effect in the beginning as well. On this machlokes **R' Chavivi MiChuzna'ah** said to **R' Ashi**, maybe we should say that **R' Yochanan** holds that the issur of shechting chullin in the Azarah is only D'Rabanan, because if he holds it is D'Oraisa, why is the ganav chayuv for daled v'hey in our Mishna? The animal should become assur at the beginning of the shechita in the Azarah, and the rest of the shechita would no longer be considered as if done to the animal of the owner (because it is assur), and he should therefore not be chayuv for daled v'hey!? **R' Acha the son of Rava** said, this no proof. It may be that the beginning of the act already makes it assur, but it may also be that the beginning of the act is also what creates the liability of daled v'hey! **R' Ashi** said, that cannot be, because the pasuk says "utivacho", which teaches that a complete shechita is needed to obligate in daled v'hey.
    - **Q:** How would the view that shechita that makes something assur (as when shechted in the Azarah) begins at the start of the shechita explain our Mishna? **A: R' Ashi** said, **R' Gamda in the name of Rava** said, the case of the Mishna is where he shechted part of the trachea and esophagus outside the Azarah and completed cutting them inside. Therefore, the issur came at the end of the shechita, which is also when the daled v'hey obligation set in.

MISHNA

- If witnesses testified that someone stole an ox or sheep and then testified that he shechted or sold it, and they were then found to be zomemim, they must pay the entire amount of daled v'hey.
- If witnesses testified that someone stole an ox or sheep and other witnesses then testified that he shechted or sold it, and they were all found to be zomemim, the first set must pay keifel, and the second set pays the difference between daled v'hey and keifel.
  - If only the second set were found to be zomemim, the ganav must pay keifel, and the second set pays the difference between daled v'hey and keifel.
  - If only one witness of the second set was found to be a zomeim, the entire second set becomes batul. If one witness of the first set was found to be a zomeim, both sets of witnesses are batul, because if there is no established theft, there is no liability for the shechita or selling either.

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### GEMARA

- We have learned, regarding a witnesses that was found to be a zomeim, **Abaye** said he becomes passul retroactively from when he gave his testimony, because at that time he has given false testimony and is labeled as a rasha, and the pasuk says that a rasha is passul to say testimony, and **Rava** said he becomes passul from the time he is found to be a zomeim and onward, because the fact that we believe the witnesses who are labeling these witnesses as zomemim, rather than the other set, is a chiddush, and therefore we can only apply the psul from the time that they are found to be zomemim.
  - **Others** say, that **Rava** really holds like **Abaye** that he becomes passul retroactively, and the only reason he says they become passul on a going forward basis is to protect purchasers who may have used these people as witnesses on their documents during this time, unaware that they were passul.
  - **Q:** What is the difference between the two reason given for **Rava**? **A:** One difference would be where 2 witnesses made one witness a zomeim and two others made the second witness a zomeim. In that case it is not a chiddush that we believe the other witnesses, because it is 2 against 1, not 2 against 2. However, the concern for the purchasers still exists. Another difference would be if the second set of witnesses makes the first set passul by testifying that they are thieves. In these cases, there is no chiddush that the second set are believed, but the concern for the purchasers still exists.
  - **R' Yirmiya MiDifti** said, **R' Pappa** paskened in practice like **Rava**. **R' Ashi** said the halacha follows **Abaye**. The Gemara paskens like **Abaye** (this is the “ayin” of the mnemonic “y’aal k’gam”, which are the cases in which we pasken like **Abaye** over **Rava**).

### -----Daf ל"ג-----73-----

- **Q:** Our Mishna said, if witnesses testify that someone stole an ox and then testify that he shechted the animal, and these witnesses are then found to be zomemim, they must pay for the full daled v’hey. Presumably the case is where they first testified that he stole, and at a later time testified that he shechted it, and they were then found to be zomemim regarding the theft and later found zomemim regarding the shechting. Now, according to what **Abaye** said earlier, that when witnesses become zomemim they become passul retroactively to the time of their testimony, that would mean that when they are found zomemim on the testimony of the theft, it means they were passul from the moment of their testimony. This means further, that their testimony regarding the shechita was never valid testimony, which means they can’t become zomemim regarding that testimony. If so, why do they have to pay daled v’hey!? **A:** The case is where they were first found to be zomemim regarding the testimony on the shechita.
  - **Q:** Still, when they are then found to be zomemim on the theft, we determine that they were passul from their testimony on the theft, and therefore still become passul from the time of that testimony!?  
**A:** The case of the Mishna is where they testified regarding the theft and the shechita at the same time.
- **Q:** Maybe we can say that the machlokes between **Abaye** (zomemim become passul retroactively from the time of their testimony) and **Rava** (zomemim become passul from the time they are found to be zomemim) is actually a machlokes among Tanna'im. A Braisa says, if witnesses testify to a theft, and they then testify to a subsequent shechita, and are then found to be zomemim regarding the theft, this falls into the rule that testimony that becomes batul in part becomes fully batul. If they became zomemim on the shechita (but not on the theft), the ganav pays keifel and the zomemim pay the difference to daled v’hey. **R' Yose** said, that is only if there are 2 sets of witnesses (one on the theft and one on the shechita). However, if there is only one set (who testify on the theft and the shechita), this would fall into the rule that testimony that becomes batul in part becomes fully batul. Now, **R' Yose** can’t be understood as his words are read simply, because why would it be that if there is a single set of witnesses, and they become zomemim on the shechita, they would automatically become batul for the testimony on the theft as well? Rather, we must say that when **R' Yose** says “2 sets” he is referring to one set who first testified on the theft and later testified on the shechita, and when he says “one set” he is referring to where they testified on the theft and the shechita at the same time. Presumably, all hold that testimony said “toch kidei dibur” is considered to be one testimony. The machlokes between **R' Yose** and the **Rabanan** would therefore seem to be that the **Rabanan** hold that zomemim become passul only from the time that they are made zomemim. Therefore, when the testimony for the theft and the shechita are given together, since they

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only become passul later, the testimony regarding the part that they did not become zomemim on remains valid, whereas **R' Yose** holds that they become passul retroactively, and therefore, since the testimony was all said together, the entire testimony becomes batul. This would be the same machlokes as the one between **Abaye and Rava!** **A:** The Gemara says, it could be that all agree that zomemim become passul retroactively. The machlokes between the **Rabanan and R' Yose** is whether toch kidei dibur renders the entire testimony as one. The **Rabanan** hold it is not rendered as one, and therefore he only becomes passul for the testimony of the shechita, and not of the theft, and **R' Yose** holds it is one testimony, and the entire thing therefore becomes batul.

- **Q:** We see from a Mishna in Nedarim that **R' Yose** holds that two statements made toch kidei dibur are not considered to be one statement!? **A:** **R' Yose** holds of a shorter time for toch kidei dibur (“shalom alecha”), and not of a longer time period (the time it takes to say “shalom alecha rebbi umori”). The Mishna in Nedarim is discussing the longer time period, and the Braisa is discussing the shorter time period.
- **Rava** said, if witnesses testified that a person murdered, and the witnesses were first contradicted and then found to be zomemim, the witnesses would be put to death (like regular zomemim), because contradiction is considered to be the beginning stages of zomemim. **Rava** said, I can prove this from a Braisa. The Braisa says, if witnesses testified that a master blinded the eye of his slave (which would set him free) and then knocked out his tooth (which would make the master chayuv to pay for the tooth), which would be beneficial for the master, and the witnesses were found to be zomemim, they must pay the value of the eye to the slave. Now, if they are the only set of witnesses, why would they pay the value of the eye to the slave? They set him free!? Also, they should have to pay the value of the slave to the master, for they tried to free the slave from the master's control!? Also, how would this have been beneficial to the master!? Rather, we must say that first witnesses came and said that the master knocked out the slave's tooth and then blinded his eye, which would require the master to pay for the eye. A second set of witnesses then came and said first the eye was blinded and then the tooth was knocked out, in which case the master need only pay for the tooth, which is why this testimony is more beneficial to the owner. Now, the first set contradict the second set. If the second is then found to be zomemim, they must pay the value of the eye to the slave (because they tried to take that away from him and give him only the value of a tooth). We see from here that although they were contradicted, they can still become zomemim.
  - **Abaye** said, this is no proof. The case could be where there were only 2 sets of witnesses, and the second set contradicted *and* made the first set into zomemim. It may be that only in that case do they become zomemim, but if they were contradicted by another set, they could no longer become zomemim for that testimony. In fact, the case must be talking about where there are only two sets, because the next part of the Braisa talks about only 2 sets of witnesses.

### -----Daf 74-----

- **Rava** had said that contradiction of testimony is the beginning of hazama, and therefore if witnesses have their testimony contradicted by other witnesses, they are still subject to hazama.
  - **Q: R' Acha the son of R' Ika** asked **R' Ashi**, where does **Rava** learn this halacha from? It can't be that he learns it from the Braisa previously quoted by the Gemara (which **Rava** explained as referring to a first set of witnesses that said the master first knocked out his slave's tooth and then his eye, and a second set said the reverse, and a third set then made the second set into zomemim, and we see that although the second set was contradicted by the first set, they are still subject to hazama), because the second set in the Braisa can be said not to be contradicted, because Beis Din would say the master is chayuv to pay for the value of the tooth (like the second set said), since even the first set agrees that the master is chayuv to pay at least that much. If so, they cannot be said to be contradicted, and maybe that is why they are subject to hazama. How does **Rava** know that in a true case of contradiction, he would still be subject to hazama? **A: R' Ashi** said, **Rava** learns this from the second part of the Braisa, which he understands to be talking about where one set of witnesses testified that a master first knocked out the slave's tooth and then blinded the slave's eye, and Beis Din therefore said that the master must pay for

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the eye. A second set of witnesses then came and said the reverse, which contradicts the first set and makes them retract the verdict. The Braisa then says that if the first set were found to be zomemim, they are treated like zomemim. We see from here that hazama applies even after a contradiction. **Abaye** argued and said that the second case of the Braisa is only talking about 2 sets of witnesses. Not three. Therefore there is no proof that there is hazama after a contradiction.

- **Q: R' Zeira** asked, why are we assuming that if the master damaged two of the slave's organs he goes out free with the first and gets paid for the second? Maybe he only goes out free and does not get paid? **A: Abaye** said, the pasuk says "tachas einu" and "tachas shino", which teaches that damage of one sets him free. Therefore, it must be that he gets paid for damage to the second.
- **R' Idi bar Avin** said, we can see from our Mishna like **Rava** said, that contradiction is the beginning of hazama. The Mishna said, if the same set of witnesses testify to the theft and the shechita or sale, and they are then found to be zomemim, they must pay for the full value of daled v'hey. Presumably, the case is where they first testified to the theft, then testified on the shechita, then became zomemim on the theft, and then became zomemim on the shechita. Now, once they became zomemim on the shechita, they are considered to be contradicted regarding the shechita (because they said he shechted a stolen animal, and the hazama regarding the theft contradicts that and says there was no theft), and yet the Mishna says that when they are later zomemim on the shechita as well they must pay for the full daled v'hey! This proves that contradiction is considered to be the beginning of hazama.
  - The Gemara says this is no proof. The case may be where they became zomemim on the shechting first. Therefore they were not first contradicted.
- This machlokes between **Abaye and Rava** is actually a machlokes among Tanna'im. We learned, if witnesses who testified to a murder were first contradicted and then found to be zomemim, there is a machlokes between **R' Yochanan and R' Elazar** – one says they are put to death and the other says they are not.
  - We can prove that **R' Elazar** is the one who says they are not put to death, for we find that **R' Elazar** says, if witnesses who testified to a murder were contradicted, they get malkus for saying false testimony. Now, if he holds that if they were to become zomemim they would be put to death, they should not get malkus, because malkus is not given for a lav that can carry the death penalty.
    - **Q:** Why would he say they get malkus? It is 2 witnesses against 2 witnesses, so why do we believe the second set more than the first? **A: Abaye** said, the case is where the reported murder victim walked into Beis Din, thus making it clear that the first set lied.

### MISHNA

- If 2 witnesses testified to the theft, and only one witness testified to the shechita or the sale, or the ganav admitted to the shechita or the sale, he only pays keifel, and not daled v'hey.
- If he stole and shechted on Shabbos, or shechted for avodah zara, or if he stole from his father and his father died and he then shechted or sold the animal, or if he stole and gave it to hekdesch and then shechted it or sold it, the ganav pays keifel, and not daled v'hey. **R' Shimon** says, if it is kodashim for which he would be responsible, he pays dalaed v'hey. If he would not be responsible, he would not pay daled v'hey.

### GEMARA

- **Q:** It is obvious if there is only one witness that he would not be subject to daled v'hey!? **A:** The Mishna is teaching that just like in the case of a single witness, if a second witness came and joined him the ganav would be chayuv daled v'hey, so too where he admitted to it, if witnesses later came and testified to the shechita or sale, he would also become chayuv to pay daled v'hey. This comes to exclude **R' Huna**, who says in the name of **Rav**, that if one admits to a penalty and then witnesses testified to his action that would subject him to a penalty, he would be patur.
  - **Q: R' Chisda** asked **R' Huna**, it once happened that **R' Gamliel** blinded the eye of his slave Tavi, and he was very happy that Tavi would go out free. When he told **R' Yehoshua** his "good news", **R' Yehoshua**

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told him he does not go out free, because it is a penalty, and you alone admit to it without any witnesses to the act, and the penalty is therefore not applied. Now, this suggests that if there were witnesses after the fact, he would be subject to the penalty, and refutes **R' Huna!**? **A: R' Huna** said, that case is different, because **R' Gamliel** did not admit in front of Beis Din. However, if an admission is made in front of Beis Din, the person will never become subject to the penalty.

- **Q: R' Yehoshua** was the Av Beis Din, so the admission was made in front of Beis Din!? **A:** Still, they were not *in* Beis Din.
- **Q:** In a Braisa about this story **R' Yehoshua** said to him, “you have already admitted to it”, implying that even if witnesses later came he would remain patur. Presumably we should say that the 2 Braisos argue. The first Braisa holds that if after an admission witnesses came he would be chayuv, and the second Braisa holds that he would be patur!? **A:** All agree that if witnesses later came he would be patur. The machlokes is that the first Braisa holds that the admission was made out of Beis Din, and therefore it is not considered to be a full admission, and if witnesses later come he would be chayuv, and the second Braisa holds it was done in Beis Din, and therefore he would always remain patur.

### -----Daf דף-----75-----

- We have learned, if one admits to being chayuv a penalty, and then witnesses testify to his guilt as well, **Rav** says he is patur from the penalty, and **Shmuel** says he is chayuv.
  - **Rava bar Ahilai** said, the reason for **Rav** is based on a drasha of the pesukim. The double verbiage of “himatzei timatzei” teaches that the ganav is chayuv for keifel when he is found guilty by witnesses. Now, we would already know this from the pasuk of “asher yarshi’un”!? It must be that this teaches that he if he admits and then witnesses come, he is patur.
    - **Shmuel** uses the pasuk for the drasha of the yeshiva of **Chizkiya** (taught in an earlier Gemara).
  - **Q: Rav** asked **Shmuel**, a Braisa says, if a ganav saw witnesses coming to testify, so he quickly told Beis Din, “I stole, but I did not shecht or sell it”, he only pays for the principal amount. We see that he doesn’t pay keifel even if witnesses testify after his admission!? **A: Shmuel** said, the Braisa is talking about a case where the witnesses did not ultimately come and testify.
    - **Q:** The Braisa continues and says, **R' Elazar the son of R' Shimon** says “let the witnesses come and testify” (and make him chayuv in keifel). This suggests that the **T”K** holds that even if they came he would not become chayuv in keifel!? **A: Shmuel** said, I can hold like **R' Elazar the son of R' Shimon**, who clearly holds like me.
      - **Q:** According to **Shmuel** we will have to say that the Tanna’im in the Braisa argue regarding his view. Will **Rav** also have to say so? **A: Rav** will say that even **R' Elazar the son of R' Shimon** holds like him. It is only there, where the admission came as a way to preempt the witnesses, that **R' Elazar the son of R' Shimon** says he would be chayuv if the witnesses do testify. However, in a case of a true admission, even **R' Elazar the son of R' Shimon** would agree that he would be patur even if witnesses later came and testified.
  - **R' Hamnuna** said, it would seem that **Rav** said his halacha in a case where the ganav admitted to stealing, in which case he obligates himself to pay for the principal, and then witnesses came, in which case he would be patur from keifel. However, if he said he didn’t steal, and witnesses said that he did steal (making him chayuv to pay keifel), and he then said “I shechted or sold the animal”, he would be chayuv to pay daled v’hey, because his admission did not obligate him to pay anything.
    - **Rava** said, I can refute this logic based on an earlier Gemara. The Gemara brought the story of **R' Gamliel** when he blinded the eye of his slave Tavi, and **R' Yehoshua** told him that the slave does not go free as a penalty, because **R' Gamliel** admitted to it, which suggested that if witnesses would come he become chayuv. **R' Chisda** asked this as a question to the view of **Rav**, and **R' Huna** did not answer that this case was different because **R' Gamliel** did not obligate himself to pay anything with his admission. We see that this point makes no difference.

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- **R' Chiya bar Abba in the name of R' Yochanan** said like **R' Hamnuna**.
- **R' Ashi** said we can prove this point from our Mishna and a Braisa.
  - Our Mishna says, if 2 witnesses testified to the theft, and only one witness testified to the shechita or the sale, or the ganav admitted to the shechita or the sale, he only pays keifel, and not daled v'hey. Why doesn't the Mishna just give the case where even the theft was only testified to by one witness and say that he pays only principal? The Mishna is teaching that if there were 2 witnesses to the theft, in which case a later admission to the shechita doesn't obligate him in anything, that is when an admission is similar to a single witness – just as if a second witness joins the first the ganav would be chayuv, so too if after such an admission (that didn't obligate him in anything) witnesses testify, he would be chayuv. However, if his original admission made him chayuv to pay principal, he would not become chayuv if witnesses then testified.
  - The Braisa quoted earlier says, if a ganav saw witnesses coming to testify, so he quickly told Beis Din, "I stole, but I did not shecht or sell it", he only pays for the principal amount. Why doesn't the Braisa give the case of where he admitted to the theft or the shechting? The reason must be, because if he admitted to the theft, making him chayuv to pay principal, and witnesses then came, that is when he would be patur. However, if he only admitted to the shechting and then witnesses testified that he shechted, he would be chayuv, because his admission caused no liability on his part.
  - The Gemara says, this Braisa is no proof. The Braisa is teaching that if he admits to the theft, he will not be chayuv for the shechting, even if it was testified to by witnesses, because since he is patur from the keifel, he won't be chayuv in any additional payments.
- **Q:** Maybe we can say that the concept of **R' Hamnuna** is actually a machlokes among Tanna'im. A Braisa says, if 2 witnesses testified to a theft, and another 2 testified to the shechita, and the witnesses to the theft were then found to be zomemim, all the testimony of both sets becomes batul, because testimony that becomes batul in part, becomes batul in whole. If the witnesses to the shechting become zomemim, the ganav must pay keifel and the zomemim pay the difference between keifel and daled v'hey. **Sumchos** says, they pay keifel and he pays the difference to daled v'hey. Now, what case is **Sumchos** talking about? It must be that there is another case in the Braisa. The case is that 2 witnesses testified that he stole, and the ganav says "it is true that I stole and shechted it, but you were not there", and he then brings witnesses to testify that they were not there, making them into zomemim. The owner of the animal then brought witnesses that testified that the ganav stole the animal and shechted it. In this case the **Rabanan** say that the zomemim pay keifel and the ganav does not have to pay for the difference to daled v'hey, and **Sumchos** says that he does have to pay for that difference. The machlokes is based on the fact that the admission to the shechita did not obligate him in anything, and whether that will make him patur if witnesses later testify. We see this is a machlokes Tanna'im!? **A: R' Acha the son of R' Ika** said, it may be that all agree that such an admission would not make him patur from a penalty if witnesses later testified. The machlokes is whether witnesses that cannot possibly be made into zomemim are valid witnesses. In this case, since the ganav brings witnesses that he says saw him steal and saw that the first set of witnesses were not there, these witnesses that he brought cannot be made into zomemim, because the ganav himself has admitted that they were there. The **Rabanan** say they are not valid witnesses, and their testimony to the theft and shechita is invalid, and the ganav therefore only pays based on his own admission. **Sumchos** holds that such witnesses are valid, and they therefore obligate the ganav to pay the difference between the keifel and the daled v'hey.
  - **Q:** We pasken that witnesses that cannot become zomemim are passul!? **A:** That is when they can't be made zomemim because we don't know the day or time that they witnessed – which is a weakness in their testimony. However, in the case of the Braisa,

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the reason they cannot be made zomemim is the admission of the ganav. This helps to strengthen their testimony, not weaken it.

- **Q:** According to **Sumchos**, why do the first witnesses pay keifel? The ganav admits that he must pay for the principal, so they should only have to pay for one extra value of the animal, not two!? **A: R' Elazar in the name of Rav** said, read the Braisa to mean that they only have to pay that one extra amount, and not the full two times.

### -----Daf 17-----76-----

GANAV V'HIKDISH V'ACHAR KACH TAVACH UMACHAR...

- **Q:** We can understand why he is not chayuv daled v'hey for the shechita, because it took place after it belonged to hekdesch, so he shechted an animal that no longer belonged to the owner. However, why is he not chayuv daled v'hey for making it hekdesch? Why should that be any different than selling the animal to someone else? **A:** The Mishna follows **R' Shimon**, who holds that when someone is responsible for something of hekdesch (i.e. if something happens to it he would be responsible to replace it) it is considered to still be somewhat in his possession even when it is by hekdesch. The Mishna is discussing where the ganav had this arrangement, and therefore it is never considered to be fully out of his possession, which is why he is not chayuv for daled v'hey.
  - **Q:** The end of the Mishna introduces the view of **R' Shimon**, which means the earlier part of the Mishna is not the view of **R' Shimon**!? **A:** The Mishna is referring to a ganav who stole kodashim kalim, and follows the view of **R' Yose Haglili**, who says that kodashim kalim is considered to be the property of the owner, and it therefore is considered to remain in the possession of the ganav.
  - **Q:** This would suggest that in the case of kodshei kodashim he would have to pay daled v'hey if he gave it to hekdesch. If so, instead of giving the case of the ganav who stole, shechted, then made it hekdesch, in which case he must pay daled v'hey, why doesn't the Mishna stick to a case where he gave it to hekdesch before the shechita, and give a case of chiyuv for daled v'hey when it is kodshei kodashim!? **A:** We must say that whether it is kodshei kodashim or kodshei kalim the ganav will not be chayuv for daled v'hey. With regard to why giving to hekdesch is treated differently than a sale to another person, the reason is that upon a sale the animal which was once known as the animal of the seller is now known as the animal of the buyer. However, when given to hekdesch, it still retains the name as the animal of the owner. That is why it is not considered to be a sale for purposes of daled v'hey.

R' SHIMON OMER...

- **Q:** We can understand that **R' Shimon** holds that giving to hekdesch is considered a sale of the animal for purposes of daled v'hey. However, why does he say that if he bears responsibility he is chayuv for daled v'hey, and if he does not he is patur? The opposite would seem to make more sense!? If he is still responsible, it is still in his possession and should therefore not be considered a sale!? **A: R' Shimon** is not talking about the case that the **T"K** was discussing. The Mishna means to say, if a second ganav steals from the first ganav, he does not pay daled v'hey. Similarly, if a ganav steals hekdesch from the house of the owner he will not pay daled v'hey, because the pasuk says "v'gunav mibeis ha'ish", and not from hekdesch. **R' Shimon** says, if the owner is responsible for that hekdesch, then the ganav would be chayuv, because it is called "mibeis ha'ish".
- **Q:** We know that **R' Shimon** holds that a shechita that is not valid is not given the status of a shechita. If so, when he steals kodashim and shechts it outside the Azarah, it is not a valid shechita and therefore he should not be chayuv for daled v'hey!? **A: R' Dimi in the name of R' Yochanan** said, the case is where it was an unblemished animal, and the ganav took it and shechted it in the Azarah as a korbon for the sake of the owner.
  - **Q:** If so, he has not stolen from the owner, because the owner has effectively brought his korbon!? **A: R' Yitzchak bar Avin** said, the case is where the blood spilled and was never put on the Mizbe'ach. **Ravin in the name of R' Yochanan** said, the case is where the ganav shechted it in the Azarah not for the sake of the owner. **Reish Lakish** said, the case is where the animal had a mum, and he shechted it outside the Azarah
    - **R' Elazar** wondered, according to **R' Yochanan**, since it is the offering of the blood that makes the korbon valid and mutar to eat, without that taking place it is not a valid shechita!? Also,

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according to **Reish Lakish**, without redemption of the animal, it is not mutar to eat and is not a valid shechita!? The Gemara says, **R' Elazar** forgot the shita of **R' Shimon**, that any blood ready and fit to be offered on the Mizbe'ach is considered as if it was offered, and anything that is ready to be redeemed is considered as if it is already redeemed. We see this in Braisos (a Braisa regarding a korbon becoming assur as nossar shows that **R' Shimon** holds that as soon as the blood is fit to be offered, it is considered to be as if it was offered for certain halachos, and a Braisa regarding the para adumah shows that **R' Shimon** holds that when the para adumah is fit and is able to be redeemed, it is considered as if it was redeemed for certain halachos).

### -----Daf ת"ז---77-----

- **R' Yochanan** explained that **R' Shimon** in the Mishna is talking about a case where the ganav shechted the korbon in the Azarah not for the sake of the owner. **Reish Lakish** said the case is where the animal had a mum, and he shechted it outside the Azarah.
  - **Q:** It is understandable why **R' Yochanan** didn't say like **Reish Lakish**, because he wanted to explain the Mishna as even discussing a case of animals without a mum. However, why didn't **Reish Lakish** explain like **R' Yochanan**? **A:** He holds that the pasuk teaches that one is only chayuv for shechting in a situation in which he would be chayuv for selling. Since if he sells a korbon that has no mum the sale would not be a valid sale (and he would not be chayuv for it), he would also not be chayuv for shechting a korbon that had no mum.
    - They follow their views elsewhere. We find that regarding a sale by a ganav of a treifah according to **R' Shimon** (who holds that a shechita would not make him chayuv in daled v'hey, because the shechita of a treifa is not a valid shechita), **R' Yochanan** says he would be chayuv for daled v'hey, because the obligation for selling is not connected to the obligation for shechting. **Reish Lakish** says he would be patur for selling a treifah, because the obligation for selling *is* connected to the obligation for shechting.
    - **Q: R' Yochanan** asked **Reish Lakish**, a Braisa says, if a ganav steals an animal of klayim and shechts it, or steals a treifah and sells it, he is chayuv to pay daled v'hey. Now, presumably this follows **R' Shimon**, and we see that the obligation for selling is not connected to the obligation for shechting!? **A: Reish Lakish** said, the Braisa follows the **Rabanan**, not **R' Shimon**.
      - **Q:** If it follows the **Rabanan**, why does the Braisa say there is an obligation for the selling of a treifah, which suggests that there is no obligation for the shechting of a treifah? **A:** If you say the Braisa follows **R' Shimon**, you would have the same question – why does the Braisa only discuss shechting of an animal of klayim, and not selling? You would answer that we mention shechita but mean to include selling as well. We can answer the same thing according to the **Rabanan**, that regarding a treifah we mention selling, but mean to include shechita as well.
        - **R' Yochanan** would say, if you say the Braisa follows **R' Shimon**, since only selling applies to a treifah, the Braisa similarly only mentions one act – shechita – regarding klayim. However, if you hold that the Braisa follows the **Rabanan**, the Braisa should list them both together and say – if the ganav stole a klayim or a treifah and then shechted or sold them he is chayuv!? This is difficult to understand according to **Reish Lakish**.
      - **Q:** Why would one be chayuv daled v'hey for shechting klayim? The pasuk says the word “seh”, and **Rava** has said that wherever the pasuk uses the word “seh” it comes to exclude klayim!? **A:** The pasuk says “oy”, which comes to include klayim.
        - **Q:** We find in a Braisa regarding kodashim that the word “oy” comes to *exclude*, and not to *include*!? **A: Rava** said, it depends on the context of the pasuk. Regarding daled v'hey, where the pasuk says “shor oy seh” (an ox and a sheep) which can't produce a klayim animal, the word “oy” comes to include klayim.



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Regarding kodashim the pasuk says “kesev oy eiz”, which can produce an animal of klayim, and therefore the word “oy” comes to exclude klayim.

- **Q:** Regarding kodashim there is also a pasuk that says “shor oy kesev”, which can’t produce klayim together, and we therefore should say that the “oy” comes to include klayim!? **A:** Since the end of that pasuk (“kesev oy eiz”) comes to exclude, the first part of the pasuk must come to include as well.
  - **Q:** Maybe we should say that since the first part of the pasuk comes to include, the second part of the pasuk should come to include as well!?  
**A:** There is a reason to say that two exclusions are necessary – one to exclude klayim, and one to exclude an animal that looks like a species of animal different than its mother. There is no reason to need two inclusions – if klayim is included, surely the animal that doesn’t look like its mother is included. Therefore, it must be that both pesukim are exclusions.

### -----Daf פלג---78-----

- **Q:** The Gemara quoted **Rava**, who said that whenever the pasuk uses the word “seh” it means to exclude klayim. What case is this teaching needed for? Regarding korbanos we learn to exclude klayim from the extra word “oy”. Regarding maaser we learn a gezeirah shava on the word “tachas” from korbanos to exclude klayim there as well. Regarding a bechor we learn a gezeira shava from maaser to exclude klayim, or we can learn it from the fact that an animal that looks like a different species than its mother is excluded from bechor, so surely klayim is excluded. Based on all this, where is **Rava’s** teaching needed!? **A:** It is needed for “peter chamor” (redemption of a firstborn donkey), as a Mishna teaches, that the redemption may not be done with an animal of klayim.
  - **Q: R’ Elazar** argues in the Mishna and says that klayim may be used, so according to him, what is **Rava’s** teaching needed for? **A: R’ Elazar** will say it is needed to exclude a specific type of klayim – where a kosher animal was impregnated by a non-kosher animal, and gave birth to a non-kosher looking animal. This would not follow **R’ Yehoshua**, because he learns this exclusion from the pasuk of “sei kvasim v’sei izim”, which he darshens to teach that both parents must be kosher animals.
- **Rava** asked, if a person said “harei alai olah” and separated an ox for this purpose, and a ganav then stole this animal. If the ox has been lost, can the ganav give the owner a lamb or a bird to be brought as an olah in its place (which is less expensive), because the owner will fulfil his promise to bring an olah by bringing these animals, or can the owner say, “I wanted to do the mitzvah in the best possible way (with a more expensive animal)”? **Rava** then answered, that the ganav could just give a lamb or bird in its place.
  - **R’ Acha the son of R’ Ika** quoted this view as a statement from **Rava** (rather than as a question and answer).

### MISHNA

- If a ganav sold the animal but retained 1% for himself, or if he was a partner in the animal before he stole his partner’s share, or if he stole and shechted the animal and the shechita was improper causing it to be a neveilah, or if he slits the neck down the length or rips out the trachea or esophagus, in all these cases he would have to pay keifel, but would be patur from paying daled v’hey.

### GEMARA

- **Q:** What part of the animal can be part of that 1% holdback that would make it be considered as not entirely sold? **A: Rav** said, it must be something that the shechita would make mutar, and **Levi** said, even if he only left over the shearings for himself, he would be patur from daled v’hey. A Braisa says like **Levi** as well.
  - **Q:** A Braisa says, if the ganav sold the animal except for its hand, its foot, its horn, or its shearings, he would be patur. **Rebbi** says, if he left off the sale something that if missing would make the shechita passul, he is patur. **R’ Shimon ben Elazar** says, if he left out its horn he would be patur, but if he left out

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its shearings he would be chayuv. Now, **Levi** can hold like the **T”K**, but who will **Rav** hold like!? **A:** He will hold like **R’ Shimon ben Elazar** in a Braisa, who says that if he sold it except for an arm or a leg, he is patur, but if he sold it except for its horn or its shearings he is chayuv.

- **Q:** What is the basis of the machlokes? **A:** The **T”K** holds “utvacho” and “micharo” refer to a complete shechita and a complete sale. If anything is left out he would therefore be patur. **Rebbi** holds that “utvacho” clearly refers to something that is needed to make a valid shechita, and we learn “micharo” from there to teach that it too refers to something that is needed for a valid shechita. **R’ Shimon ben Elazar** holds that a horn, which is not typically cut off, if it is left out of the sale it makes him patur from daled v’hey. With regard to shearings, which are typically cut off, leaving it out of the sale does not make him patur from daled v’hey. **R’ Shimon ben Elazar** of the Braisa would hold, with regard to the hands and feet, which need shechita to make them mutar to eat, leaving them out of a sale makes him patur from daled v’hey. With regard to horns and shearings, since they are not subject to shechita, leaving them out does not make him patur.
  - **Q:** The Braisos contradict each other with regard to the view of **R’ Shimon ben Elazar**!? **A:** Each Braisa is a different Tanna’s view on what **R’ Shimon ben Elazar** held.
- A Braisa says, if a ganav steals an animal missing a leg, or a lame animal, or a blind animal, or an animal belonging to partners, he would chayuv in daled v’hey. If partners steal an animal, they would be patur from daled v’hey.
  - **Q:** Another Braisa says that partners who steal are chayuv!? **A:** **R’ Nachman** said, the first Braisa is discussing a case where they stole from another partner in the animal (their fellow partner in the animal), and the second Braisa is discussing a case where they stole from an unrelated person.
    - **Q:** **Rava** asked **R’ Nachman**, a Braisa says that a ganav who steals from his partner, or partners who steal from an unrelated person are patur, because the pasuk says “utvacho”, which means the ganav is only chayuv daled v’hey if he does the full shechita, and when he steals with a partner he is only doing half. This refutes what **R’ Nachman** said!? **A:** **R’ Nachman** said, we must say that the earlier Braisos are not contradictory, because the Braisa that says they are chayuv is talking about where one partner shechted and the other consented that he do so. The Braisa that says they are patur is discussing where one of the partners shechted without the other’s consent. In that case they would be patur from daled v’hey.
- **Q:** **R’ Yirmiya** asked, if the ganav sold the animal except that he has rights to it for 30 days, or he sold it except for the rights to its work, or except for the rights to its offspring, what is the halacha? Is the sale complete and he is chayuv in daled v’hey, or not? With regard to the last question, clearly according to the view that a fetus is part of the mother, by leaving out the fetus he has left out part of the animal. The question is according to the view that a fetus is not considered part of the mother – do we say that since it is attached, leaving it out makes the sale incomplete, or do we say that since it is destined to be separated from the mother it is not considered to be part of the mother and does not render the sale incomplete? **Others** explain, do we say that since a fetus is not considered to be part of the mother, leaving it out is not considered to make the sale incomplete, or do we say that since a fetus that is not viable and can only become mutar to eat through the shechita of the mother, leaving the fetus out of the sale makes the sale incomplete? **TEIKU**.
- **Q:** **R’ Pappa** asked, if a ganav stole an animal, cut off a leg, and then sold it, what is the halacha? Do we say that he did not sell everything that he stole, so he is patur from daled v’hey, or do we say that whatever he did sell, he sold completely and therefore is chayuv? **TEIKU**.
- A Braisa says, if a ganav stole an animal and gave it to someone else to shecht for him, or he gave it to someone else to sell for him, or he gave it to someone else to be makdish it for him, or he sold it on credit, or bartered it, or gave it as a gift, or gave it to repay a debt, or used it to pay for things that he bought on credit, or he used it for presents for his bride, in all these cases he is chayuv to pay daled v’hey.
  - **Q:** What is the Braisa teaching? **A:** The Braisa is teaching the first case, that although we typically say there is no shaliach for an aveirah (and the one who actually did the aveira would be chayuv, not the principle), with regard to the shechting there is, because the pasuk compares shechting to selling – just like selling involves another person, so too the shechita can involve another person. The Braisa also

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teaches that in the case of the one who made it hekdesch he is chayuv, because there is no difference between the case of selling to a regular person or giving it to hekdesch.