



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

### Kesubos Daf Mem Aleph

#### MISHNA

- If one says that he seduced a particular girl, he must pay boshes and pegam based on his admission, but does not pay the penalty.
- If one says that he stole, he pays the principal based on his admission, but does not pay the penalty of keifel, or "4 and 5".
- If one says that his ox killed a Jew, or killed another ox, he must pay based on his admission. However, if he says that his ox killed someone's slave, he does not pay the penalty.
- The general rule is, whenever one pays for more than what he damaged, he does not pay that based on his own admission.

#### GEMARA

- **Q:** Why didn't the Mishna give the example of where one admits to having raped a girl? **A:** The Mishna means to say, surely in the case of rape we would believe him. The Mishna is saying, that even when he says that he seduced her, which means that she was a willing participant, still we believe him and he must pay the boshes and pegam, even though his admission means that she was willingly mezaneh.
  - The Mishna does not agree with **R' Shimon ben Yehuda in the name of R' Shimon** of a Braisa, who said that one who admits to having seduced a girl will not pay boshes or pegam either, because he is not believed to say that the girl was a willing participant in zenus.
    - **Q: R' Pappa** asked **Abaye**, if she is willing to accept the hit to her reputation and take the money, may she do so? **A:** Since it may not be acceptable to the father we would still not accept his admission. Even if he is ok with it, we still wouldn't accept it, because there may be a family member somewhere who doesn't want the embarrassment from that reputation.

#### HA'OMER GANAVTI MISHALEIM ES HAKEREN...

- There is a machlokes regarding the "half nezek" that is paid by a "tam" ox – **R' Pappa** says it is considered to be a compensatory payment (really he should be paying the entire damage but the Torah had pity, since he was not warned regarding his ox), whereas **R' Huna the son of R' Yehoshua** says it is a penalty payment (really he should pay nothing, since he had no way of knowing his ox would gore, but the Torah said he must pay half as a penalty).
  - **Q:** A Mishna says, the damaged party and the damager are both involved in the payment. Now, presumably this is discussing the half nezek payment and thereby suggests that it is a compensatory payment, because if it is a penalty the damaged party should be getting nothing at all, so how can we say that he is considered to be involved in the payment but only getting half? **A:** The Mishna is referring to the Halacha that the owner of the dead animal is responsible to sell it and bears any loss from further depreciation of the dead animal.
    - **Q:** That Halacha is already taught earlier in the Mishna!? **A:** We need to be taught this in regard to a "tam" and separately in regard to a "muad". We would think that a tam hasn't been warned and that is why the damaged party must deal with the dead animal, and a muad must pay full so maybe only in that case the damaged party must deal with the dead animal.
  - **Q:** A Mishna says, the difference between a tam and muad is that a tam pays from the body of the animal and a muad must pay from his best property. The Mishna does not say that a difference is that a tam would not pay based on his own admission. This would therefore suggest that the half nezek payment is compensatory!? **A:** It may be

that the Mishna left out that difference, but it would in fact be a difference. We see that the Mishna left out other differences as well, as we see it left out the fact that a tam does not pay kofer when the ox kills a person, whereas a muad does.

- The Gemara says that it may be that kofer is not being left out, because the Mishna may follow **R' Yose Haglili** who says that a tam pays half kofer, and that difference is included in the Mishna's statement.
- **Q:** Our Mishna says that when one admits that his ox killed another ox he will pay for the damage. Presumably this refers to a tam and we see that the payment is considered compensatory!? **A:** The Mishna is referring to a muad.
  - **Q:** That would mean that a tam would not pay based on his own admission. If so, instead of the Mishna giving the example of the penalty for when an ox kills a slave, why not give the example of a tam!? **A:** The Mishna wanted to only discuss cases of muad.
- **Q:** Our Mishna says, the general rule is that when one pays more than what he damaged he does not pay on his own admission. This suggests that one who pays less than what he damaged (i.e. half nezek) would pay on his own admission, and this proves that half nezek is a compensatory payment!? **A:** The inference of the Mishna should be that if one pays exactly for what he damages he must pay on his own admission.
  - **Q:** If so, the Mishna should say the general rule as being that one who pays for exactly what he damaged pays on his own admission. This would more clearly mean that one who pays more *or* less does not!? **A:** This is a **TEYUFTA** of the view that half nezek is a penalty payment.
- The Gemara paskens that half nezek is a penalty payment.
  - **Q:** We just said TEYUFTA to that view!? **A:** The TEYUFTA based on the verbiage on the Mishna is not a total refutation. The Mishna did not want to list a rule which would suggest that all half nezek is penalty, because there is a form of half nezek payment ("tzroros") which we are taught Halacha L'Moshe MiSinai is considered to be a compensatory payment.
  - Now that we paskened that half nezek is a penalty payment, if a dog eats a sheep or a cat eats a large chicken (these are unusual occurrences and would only be subject to half nezek) the payment cannot be collected in Bavel (where penalties cannot be collected). However, if the damaged party grabs an asset from the damager, we do not make him return it. Also, if the damaged party asks for a court date in Eretz Yisrael and the damager refuses to go, we put the damager in cheirem.
    - The Gemara says that in either case we put the damager in cheirem until he gets rid of the damaging animal, based on **R' Nosson**, who learns from a pasuk ("v'lo sasim damim b'veisecha") that one should not keep a vicious dog or a rickety ladder (i.e. dangerous items) in his house.

**HADRAN ALACH PEREK EILU NAAROS!!!**