



## Daf In Review – Weekly Chazarah

### Maseches Kesuvos, Daf יז – Daf יח

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

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- We said earlier that **R' Chisda** said that **R' Nechunya** agrees that where one stole cheilev and ate it, that he would be chayuv to pay, because he was chayuv for stealing when he lifted the cheilev, and was not chayuv kares until he ate the cheilev.
  - **Q:** Should we say that **R' Chisda** argues on **R' Avin**, because **R' Avin** says that if one shoots an arrow 4 amos in the reshus harabim on Shabbos, and it tears someone's cloth in the process, he is patur from having to pay the money, because the uprooting and movement of the arrow is part and parcel of its landing and causing him to be chayuv for Shabbos. According to this, the lifting of the cheilev is also part and parcel of his eating it, and he should not be chayuv to pay through his lifting!? **A:** The cases are very different. It is impossible to be chayuv without the uprooting of the arrow, but it is not necessary to lift the cheilev in order to eat it, because he can bend down and eat it. **A2:** In the case of the arrow, once he releases the arrow it cannot be stopped from ripping the cloth, and that is why it is part of the same action. However, after lifting the cheilev, it is still possible for him not to eat it. Therefore, it is not considered to be part of the same action.
    - The difference between these answers would be when one carried a knife 4 amos in reshus harabim and ripped a cloth in the process. According to the first answer he would be patur. According to the second answer he would be chayuv.
  - **Q: R' Bibi bar Abaye** asked on **R' Avin**, a Braisa says, if one steals a wallet on Shabbos, lifts it up, and carries it into the reshus harabim, he is chayuv to pay for what he stole, because the stealing took place before the chiyuv misah of carrying it into the reshus harabim. If he dragged it out, he would be patur from paying, because the stealing and issur Shabbos happened when he drags it into reshus harabim. Now, according to **R' Avin**, in the first case we should also say that the lifting was part and parcel of the carrying into the reshus harabim and he should therefore be patur from paying!? **A:** The case is where he lifted it without intention to take it out of the house, so the lifting is not called an "akira" and is not part and parcel of carrying it outside.
    - **Q:** He would not be chayuv if that were the case, because **R' Simon in the name of R' Ami in the name of R' Yochanan** said, that if one lifts something to move it within the house and then decides to take it out, he would be patur!? **A:** The reason he is chayuv for the stealing is because after lifting it, he stopped in the house, and then started moving again and carried the item out. The original lifting is therefore not the akira that makes him chayuv for Shabbos.
    - **Q:** Presumably this would mean that he would be chayuv to pay only if he stopped to rest, but if he stopped to adjust the package on his shoulder, since that is normal, it would not be considered a full stop and he would therefore be patur from paying. If so, instead of the Braisa giving the case of him dragging the item to give an example of where he would be patur from paying, why can't it give the example of where he stopped to adjust the package!? **A:** It must be that the reason he is chayuv to pay is because the Braisa follows **Ben Azzai**, who holds that one who is walking is considered to be making a stop and a new akira with every step. If so, the stealing was done before he was chayuv for Shabbos.
      - **Q:** If so, when the Braisa wants to give a case where he is patur from paying, instead of giving the case where he dragged the item, why doesn't the Braisa give the case of where he threw the item, in which case the stealing and the chiyuv for Shabbos come from the same action and he would therefore be patur!? **A:** The Braisa wanted to give the case of dragging the item, because one would think this is not the normal way of

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carrying it and he would therefore not be chayuv for Shabbos at all. The Braisa teaches that he is chayuv.

- The Braisa must be discussing a medium sized item, because if it was a large item, it would be normal to drag it, and if it was a small item, it would not be normal.
- **Q:** Where was it dragged to? If it was dragged into the reshus harbaim, he would be chayuv for Shabbos, but would not be chayuv for stealing (because he cannot be koneh it with meshicha in the reshus harabim)!? If he dragged it into the reshus hayachid, he would be chayuv for stealing but would not be chayuv for Shabbos!? **A:** The case is where he dragged it into the side of the reshus harabim (where one can be koneh with meshicha).
- **Q:** Who would this follow? According to **R' Eliezer**, the sides of the reshus harabim have the status of the reshus harabim, and according to the **Rabanan** it has the status of the reshus hayachid!? **A:** It follows **R' Eliezer**. He holds that regarding Shabbos it has the status of the reshus harabim, but regarding kinyan, one can be koneh there with meshicha.
- **R' Ashi** said that the Braisa is discussing where he dragged the item but held it in his hand which was within 3 tefachim to the ground. Although it is considered dragging, he is koneh it as **Rava** says, that a person's hand is given the significance of allowing him to be koneh something that is placed in it.
  - **R' Acha** explained the Braisa like this as well. **Ravina** said that the case is where he dragged it, and he is koneh because a thief can be koneh with meshicha in the reshus harabim.

### -----Daf לב-----32-----

HABAH AHL ACHOSO V' AHL ACHOS AVIV...

- **Q:** A Mishna says that one who has bi'ah with his sister, father's sister, mother's sister, wife's sister, brother's wife, father's brother's wife, or with a niddah, gets malkus. Now, we have a rule that one who gets malkus does not pay money for the same act that he gets malkus for. If so, our Mishna that says that he does pay must hold that he does not get malkus!? **A:** **Ulla** said, our Mishna is discussing where the sister is a naarah, so he pays the fine and doesn't get malkus. The other Mishna is discussing where the sister is already a bogeres, so there is no fine, and is why he gets malkus.
  - **Q:** A bogeres would get money for boshes and pegam, and he should not get malkus there either!? **A:** The Mishna is discussing where she is a shoteh, who does not get boshes or pegam.
    - **Q:** She should still get money for the pain that he caused her!? **A:** The Mishna is discussing a case of when she was seduced and not raped, so there is no pain.
    - Based on this, we can even say that the other Mishna is discussing a sister who was a naarah, but the case is where she was an orphan and was seduced, so there is no payment due to her.
  - **Q:** We see that **Ulla** holds, that wherever one is chayuv money and malkus, he pays the money and need not get the malkus. Where does he know this from? **A:** He learns it from the case of one who hits another person. Such a person pays for the damage he caused and is then patur from malkus.
    - **Q:** Maybe the payment of money is only considered to be more stringent in the case of one who damages another, because he is chayuv in 5 forms of payment, but in any other case, maybe we choose to give him malkus rather than make him pay!? And if the reason payment is preferred is because it is lenient and we want to be more lenient on the person, we still can't learn from the case of one who hits another, because that case is unique in that it is allowed in Beis Din (Beis Din may hit another when giving malkus)!? **A:** He learns it from eidim zomamim, who are chayuv malkus and payment, and they are required to make payment and do not receive malkus.

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- **Q:** Maybe that case is different because zomamim don't need to be warned, and they also don't do a true act!? **A:** He learns it from a tzad hashava from one who hits and from zomamim. They are both chayuv malkus and payment, and they both pay and are patur from malkus. The same is therefore true of all other cases.
- **Q:** Maybe we can't learn out from those two cases, because they each have a stringent aspect (as stated) and a lenient aspect!? **A:** **Ulla** learns it from a gezeirah shava on the word "tachas", from one who hits to one who violates a naarah.
- **R' Yochanan** said that the other Mishna may also be discussing a sister who is a naarah, and the difference between our Mishna and that Mishna is that in that Mishna the man was warned that he would get malkus, whereas in our Mishna he was not.
  - **Q:** From here we see that **R' Yochanan** holds that if one is chayuv money and malkus for which he has been warned, we choose to give him malkus and make him patur from payment. How does he know this? **A:** The pasuk says "kidei rish'aso", which teaches that we only give one punishment for an action, and not two. The pasuk then says "arba'im yakenu", which teaches that when faced with malkus and payment, we are to give him malkus.
    - **Q:** When one hits and damages another, he is chayuv for money and malkus and yet we make him pay and he is then patur from malkus!? **A:** It is as **R' Illa'a** said regarding zomamim, that the Torah specifically said to make them pay and not get malkus. The same is regarding one who hits another.
      - Regarding zomamim the pasuk says that we must do to them as they wanted to do to the other, and the pasuk then says "yad b'yad". This teaches that we make them give something that passes from hand to hand (i.e. money) rather than get malkus.
      - Regarding one who hits another the pasuk says we must do to him as he has done to the other, and the pasuk then says "kein yinasen bo". This teaches that he must do something that can be given (i.e. money) and is then patur from malkus.
  - **Q:** Why doesn't **R' Yochanan** use the gezeira shava as **Ulla** did? **A:** He says that it nullifies the effect of the pasuk that says that one gets malkus for bi'ah with his sister.
    - **Q:** That can't be right, because the full effect of the pasuk will take place with regard to any sister who is not a naarah!? **A:** **R' Yochanan** holds like **Abaye** that the word tachas regarding one who violates is needed for another drasha. **Ulla** learns this drasha from another pasuk, as does **Rava**.

### -----Daf ל"ג-----33-----

- **R' Elazar** said, the reason that zomamim are subject to payment rather than to malkus is because we cannot give them a warning before they do the aveirah, therefore we cannot give them malkus. **Rava** explained, they cannot be warned, because if they are warned before saying their testimony they will claim that they forgot when making the testimony. If they are warned at the time of testimony, that will prevent people from making even truthful testimony. And, once the testimony is done it is surely too late to warn them.
  - **Q:** **Abaye** asked, why can't we warn them "toch kidei dibur" of their testimony? **R' Acha the son of R' Ika** asked, why can't we warn them earlier and then gesture to them during the testimony to remind them of the warning? **A:** **Abaye** then said, in truth zomamim do not even need to be warned before they are punished. The pasuk tells us to do to them as they wanted to do. They wanted to kill another without giving him a warning, so we kill them without the need to give them a warning.
    - **Q:** **R' Sama the son of R' Yirmiya** asked, what about the case when they get malkus for attempting to give a Kohen the status of a chalal? In that case the pasuk of "do to them like they wanted to do to the other" is not in effect. If so, we should need to warn them before giving them malkus!? **A:** The pasuk says "mishpat echad yihiyeh lachem", which teaches that one set of

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rules apply, and therefore the Halacha is that zomamim never need to be warned before being punished.

- **R' Shisha the son of R' Idi** said that one who hits and damages another pays money and does not get malkus based on the pasuk that says “v'lo yihyeh ason anosh yei'aneish” (if he intended murder and ultimately did not murder, he must pay rather than get malkus). The pasuk is explained by **R' Elazar** as referring to a case where the person was warned against the death penalty, and this warning suffices as a warning against malkus, because a warning for a more stringent punishment suffices as a warning for a more lenient punishment.
  - **Q: R' Ashi** asked, why do we assume that a warning for a more stringent punishment suffices for a more lenient punishment? Even if we do assume that, why do we assume that the death penalty is more stringent than malkus? Maybe malkus is more stringent as we find that **Rav** said that the pain of malkus is very, very severe? **A: R' Sama the son of R' Assi** said to **R' Ashi**, **Rav** was referring to an unlimited number of malkus. However, when it is limited in number, it is not worse than death.
  - **Q: R' Yaakov of Nehar Pekod** asked, this explanation can work according to the **Rabanan** who say the pasuk refers to where a warning was given. However, according to **Rebbi** the pasuk may be understood where no warning was given, which may be why the pasuk says that he pays and gets no malkus. However, how would we know that where he was warned we would still make him pay and not give him malkus? **A: R' Yaakov** said in the name of **Rava**, we learn from a pasuk that if a person is at risk of dying from being hit, we imprison the attacker and await the outcome of the victim – if he dies we put the attacker to death, and if he does not die we make the attacker pay. Clearly the case must be where he was warned for the death penalty (or else there would be no possibility of him receiving the death penalty), which suffices as a warning for the more lenient malkus, and yet the pasuk teaches that we make him pay and he does not get malkus.
    - **Q: R' Ashi** asked, why do we assume that a warning for a more stringent punishment suffices for a more lenient punishment? Even if we do assume that, why do we assume that the death penalty is more stringent than malkus? Maybe malkus is more stringent, as we find that **Rav** said that the pain of malkus is very, very severe? **A: R' Sama the son of R' Assi** said to **R' Ashi**, **Rav** was referring to an unlimited number of malkus. However, when it is limited in number, it is not worse than death.
    - **Q: R' Mari** asked, maybe that pasuk is referring to one who killed the person accidentally, in which case we wait to see if he will be subject to galus, and not to the death penalty (which means he was not warned at all)!? This Gemara says, this remains a **KASHYEH**.
- **Reish Lakish** said, our Mishna does not argue with the Mishna that says the person would get malkus for bi'ah with the women listed. Our Mishna follows the view of **R' Meir**, who says that one can get malkus and have to pay money for the same action. When our Mishna says he must pay, it means in addition to malkus.
  - **Q:** If our Mishna follows **R' Meir**, then even one who violates his daughter should be subject to the penalty, and yet the Mishna later on says that he is not!? Even though he would be chayuv misah in that case, a Braisa says that **R' Meir** requires payment even if the person is chayuv misah in the case where one stole a sheep and slaughtered in on Shabbos!? **A:** That Braisa was explained to be referring to a case where one person stole and he instructed another person to shecht it (so he is chayuv to pay because he is not chayuv misah).
    - **Q:** Why would he be chayuv for a shechita done by someone else? **A: Rava** said, the Torah compares the shechting of the sheep to the selling of the sheep, to teach that just as the selling is done through someone else, one would be chayuv if the shechita was done through another as well. **R' Yishmael** taught that the word “oy” teaches that one would be chayuv through a shaliach. The Yeshiva of **Chizkiya** taught that this is learned from the word “tachas”.

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- **Q:** The Gemara had said that the reason **R' Meir** said that one who steals a sheep and then has a shaliach shecht it for him on Shabbos, he is chayuv to pay back 4 sheep is because the action of the shaliach is attributed to him

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(and he is not chayuv misah because he did not do the actual shechita). **Mar Zutra** asks, how can it be that if the thief himself would have done the shechita he would be patur from paying, but when a shaliach does it for him he becomes chayuv!? **A:** Even if he would do the shechita himself, he would be chayuv to pay. He wouldn't pay because of "kam lei b'diraba minei", but he would have the chiyuv to pay.

- **Q:** If the case is where a shaliach shechted it for him, why do the **Rabanan** say that he is patur from having to pay? **A:** The view of the **Rabanan** is the shita of **R' Shimon**, who says that a shechita which doesn't permit the meat to be eaten is not considered to be a shechita (and would therefore not obligate one to pay the 4 sheep).
- **Q:** A shechita done on Shabbos makes the meat mutar to be eaten and should therefore be considered a "shechita"! **A:** The **Rabanan** in the Braisa follow the view of **R' Yochanan Hasandler**, who says that a shechita done intentionally on Shabbos makes the meat assur forever.
  - There is a machlokes between **R' Acha and Ravina** as to the reason for **R' Yochanan Hasandler's** view. One says the meat is assur D'Oraisa based on a pasuk, and the other says it is only assur D'Rabanan. According to the view that it is only assur D'Rabanan, we must say that when the **Rabanan** say he is patur from having to pay they are going on the other cases of the Braisa (where he shechted for avodah zara or where the animal was a "shor haniskal").
- **Q:** The Braisa also said that the thief would be patur to pay if he shechted it to avodah zarah. The Halacha is that as soon as the first cut is made, the animal becomes assur b'hana'ah. If so, when he completes the shechita it is no longer the animal of the original owner that he is shechting, and as such should not be chayuv to return 4 sheep!? **A: Rava** said, the case is where the thief said that it should be for the avodah zarah at the time of completion of the shechita.
- **Q:** The Braisa also gave the case of where the thief shechts a shor haniskal. A shor haniskal is assur b'hana'ah and as such does not belong to the person it was stolen from!? **A: Rabbah** said, the case is where the owner had given the animal to a shomer to watch, and the animal killed someone while in the possession of the shomer and was then condemned to death, and **R' Meir** must hold like **R' Yaakov** who says that the shomer can return the condemned animal to the owner and be patur from repaying, and he also holds like **R' Shimon** who would say that if one stole the animal from that shomer he would have to repay him (because that causes the shomer to have to pay for a new animal). Therefore the thief must pay.
- **Rabbah** said, we can say that the Braisa refers to where the thief himself did the shechita, and normally **R' Meir** would hold that when one is chayuv misah he would not have to pay. However, in these cases, where there is a novelty in the Torah requiring him to pay 4 or 5 times what he stole, he will have to pay even if he is chayuv misah.
  - We find that **Rabbah** says this as well, that if one steals before Shabbos and shechts on Shabbos he would be chayuv to pay, but would be patur if he stole and shechted on Shabbos.
  - **R' Pappa** said, if one stole before Shabbos and shechted on Shabbos he would be chayuv to pay, because he was chayuv to pay before Shabbos began. However, if one had borrowed an animal before Shabbos, and he shechted it on Shabbos, he would be patur (because he becomes chayuv to pay at the time that he becomes chayuv for Shabbos).
    - **Q: R' Acha the son of Rava** asked **R' Ashi**, **R' Pappa** is saying exactly what **Rabbah** had said! What is he teaching us? **A: R' Ashi** said, **R' Pappa** is teaching regarding a borrowed animal. We would think that he is considered to be chayuv from the time that he takes possession, not the time of shechita, and therefore should be chayuv to pay. **R' Pappa** teaches that he is not chayuv until the time of shechita, and he is therefore patur from having to pay.
  - **Rava** said, if a person leaves a borrowed animal in his estate, his heirs may use it for the remainder of the borrowing period. If the animal dies, they need not pay for it. If they thought their father owned it and they therefore shechted and ate it, they must repay in the amount of cheap meat. If their father left over real property, they are chayuv to pay.
    - Some say this last statement (regarding the real property) was said in regard to the first part (where the animal died) and some say it was said in regard to the last part (where they shechted it). The one who says it is on the first part would surely hold that it applies on the last part as

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well, and argues on **R' Pappa** (by saying it is on the first part they are saying that the responsibility comes at the time of the borrowing, which is in conflict what **R' Pappa** said, above). The one who says it applies to the latter statement would say that it does not apply to the first statement, and would therefore agree with **R' Pappa**.

- **Q:** We can understand why **R' Yochanan** did not answer the conflicting Mishnayos according to the answer of **Reish Lakish**, because **R' Yochanan's** answer had the Mishna follow the majority view of the **Rabanan**. Why didn't **Reish Lakish** follow the view of **R' Yochanan**!? **A:** **Reish Lakish** holds that if one did an action that carries the malkus penalty and a monetary payment, he would be patur from the payment even if he ultimately would not be chayuv in the malkus (i.e. he was not warned).
  - We find that they argue about this elsewhere as well. **R' Dimi** said that **R' Yochanan** says one would be chayuv to pay unless he was actually getting the malkus or misah, and **Reish Lakish** says he would be patur from paying even if he does not get the malkus or misah.

### -----Daf ל"ה-----35-----

- **Q:** **R' Dimi** had said that **R' Yochanan** holds that if one does something b'shogeig, for which he would have been chayuv misah if it were done b'meizid, and this action also caused him to be chayuv money, he would have to pay the money. **Rava** asked, **Chizkiya** taught that the Torah compares one who kills a person to one who killed an animal to teach that just as one is always chayuv to pay when he kills an animal (whether done b'shogeig or b'meizid), one who kills a person will always be patur from paying money whether the act was done b'shogeig or b'meizid (i.e. whether the person will be put to death or not)!? **A:** **Ravin** said, even **R' Yochanan** agrees that one who did such an act would be patur from paying. The machlokes is where one did an act b'shogeig, that would have made him chayuv to get malkus had it been done b'meizid, and the act also brought a monetary obligation. In that case **R' Yochanan** says he would be chayuv to pay (the drasha with the comparison brought above only encompasses where one does an act that carries the death penalty, not malkus), and **Reish Lakish** would say that he is not chayuv to pay (the Torah specifically included the chiyuv malkus to be just like a chiyuv misah).
  - **Abaye** said, that we learn that malkus is like misah based on a gezeirah shava on the word "rasha". **Rava** said, we learn a gezeirah shava based on the word "makei".
    - **Q:** **R' Pappa** asked **Rava**, we don't find that the word "makei" is used by a malkus obligation!? **A:** **Rava** said, it is not based on a word, but rather on the general concept of "hitting".
    - **Q:** The act of hitting another does not bring malkus!? It brings a monetary obligation!? **A:** There is an extra pasuk there that is not needed to teach regarding a hitting that caused monetary damage, so we darshen it as applying to a hitting that caused less than a peruta worth of damage, in which case there would be a malkus penalty.
      - **Q:** In this case he is not even obligated for any payment, so how can this teach that a malkus obligation would make one patur from paying? **A:** The case is where he also ripped the person's clothing as he hit him. We learn that he is not chayuv to pay for the clothing.
  - **Q:** **R' Chiya** asked **Rava**, how does **Chizkiya** know that the pasuk regarding killing an animal always results in the person being chayuv to pay money? Maybe the pasuk refers to when it is done on Shabbos, in which case it would depend on whether it was done b'shogeig or b'meizid!? **A:** The pasuk says "makei beheimah yishalmena u'makei adam yumas". This is talking about a case where the person was warned (because he is being put to death). If the pasuk is talking about killing an animal on Shabbos and he was warned, he would not have to pay. It must be that the pasuk is not discussing when this took place on Shabbos.
- **Q:** **R' Pappa** asked **Abaye**, according to **Rabbah** who said that although **R' Meir** holds that when one is chayuv misah he does not pay a monetary obligation, when it comes to the penalty for stealing a sheep he would pay, because that entire penalty is a novelty and it therefore applies even when he is facing the death penalty, who would **Rabbah** say our Mishna follows? It can't follow **R' Meir**, because the next Mishna says that one does not

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pay when he gets the death penalty for violating his daughter although that is a penalty as well. It can't follow **R' Nechunya ben Hakanah** who says that **R' Meir** says one gets malkus and pays, because in our Mishna he pays and does not get malkus. It can't follow **R' Yitzchak** who says that a lav which carries the kares penalty does not carry the malkus penalty, because bi'ah with a mamzeres is clearly only subject to malkus and still the Mishna says that he pays the money and doesn't get malkus. Now, if **Rabbah** holds like **R' Yochanan** he can say that the Mishna is discussing where he wasn't warned and therefore will not get malkus and must pay, that can work for our Mishna. However, how will he explain the Mishna according to **Reish Lakish**? **A:** It must be that he holds like **R' Yochanan**.

- **Q: R' Masna** asked **Abaye**, according to **Reish Lakish** who says that one is patur from paying when he does an action that carries malkus, even if it was done b'shogeg (so that he will not be getting the malkus), who is the shita that argues on **R' Nechunya** and holds that one who does an act that carries kares would still have to pay if it was done in a way in which he won't be chayuv for the kares (e.g. it was done b'shogeg)? **A:** It can be **R' Meir** who says that one gets malkus and still must pay, or it can follow **R' Yitzchak** who says that a chiyuv kares does not carry a chiyuv malkus.

### -----Daf ל"ג-----36-----

- A Braisa says, girls who are arayos or shniyos to a man are not entitled to the penalty if they are raped or seduced by that man. A girl who did mi'un is not entitled to the penalty if she is then raped or seduced. An aylunis is also not entitled to this penalty. A woman who was divorced as a "shem rah" (her husband claims she was not a besulah and it was proven by witnesses that she was mezaneh after her kiddushin and before her nisuin) is not entitled to the penalty.
  - **Q:** What is meant by arayos and shniyos? If arayos mean arayos D'Oraisa and shniyos mean arayos D'Rabanan, why wouldn't the shniyos get the penalty? D'Oraisa they are mutar to this man!? **A:** Arayos means women assur to him with the death penalty and shiyos mean women assur to him with kares. The Braisa holds that women assur with only a lav would be entitled to the penalty, and the Braisa would therefore follow the view of **Shimon HaTeimani**. **A2:** Others say that arayos refer to women assur with the death penalty and kares, and shniyos refer to women assur with a lav, and they all don't get the penalty. According to this, the Braisa follows the view of **R' Shimon ben Menasya**.
  - **Q:** The Braisa says that a girl who did mi'un (which must be done as a minor) is not entitled to the penalty. This suggests that any other minor would be entitled. This follows the **Rabanan** who say that a minor gets the penalty. The next part of the Braisa says that an aylunis does not get the penalty, presumably because she is considered to be a minor. This follows **R' Meir**, who says that a minor does not get the penalty. Must we say that one part follows the **Rabanan** and another part follows **R' Meir**? **A:** We can say that the Braisa follows **R' Yehuda**, who says that even a naarah may do mi'un. However, with regard to collecting the penalty, he holds like **R' Meir** that a minor is not entitled to the penalty.
    - **Q:** We find that **R' Yehuda in the name of Rav** said that the view that a minor is not entitled to the penalty is the view of **R' Meir**. If **R' Yehuda** held that way as well, they would have said it is the view of **R' Meir and R' Yehuda**!? **A:** The Tanna of the Braisa is a Tanna who holds like **R' Meir** in one regard (that a minor is not entitled to the penalty) and argues with him in another regard (he says that even a naarah may do mi'un).
    - **Rafram** said, when the Braisa says "mamenes" it refers to a girl who *can do* mi'un (i.e. a minor), and not to one who actually did mi'un. Therefore we can't infer that any other minor may collect to the penalty.
      - **Q:** Why not simply say "a minor"? **KASHYEH**.
  - **Q:** The Braisa said that an aylunis does not get the penalty. However another Braisa says that she does!? **A:** The first Braisa follows **R' Meir** and the other Braisa follows the **Rabanan**.
    - **Q:** This Braisa that was just mentioned in the above paragraph also stated that a man may not make a claim against his wife who is a bogeres that she was missing her besulim. However, we find that **Rav** says that a bogeres who is a besulah may have multiple bi'ahs her first night

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although she sees blood, because we say the blood is from her besulim. We see that a bogeres does have besulim!? **A:** Her husband would be believed if he made the claim that she didn't have any blood with the first bi'ah. What the Braisa meant is that he is not believed to say that he found a "pesach pasu'ach".

- The Braisa also said that **Sumchos in the name of R' Meir** said that the husband of a blind woman cannot make a claim that she was not a besulah. **R' Zeira** explained, the reason for this is that such women constantly fall and lose their besulim when they fall onto the ground.
- **Q:** The Braisa says that if a woman was divorced as a "shem rah" (presumably meaning that her husband brought witnesses that she was mezaneh as an arusah) and is then violated, she is not entitled to the penalty. Now, such a woman would be chayuv skila!? **A: R' Sheishes** said, the Braisa means that a girl who had a bad name in her young years and is then violated does not get the penalty (we assume she was mezaneh based on her reputation, and is therefore not a besulah).
  - **R' Pappa** said, based on this we would say that a document that has a reputation for being forged cannot be used to collect.
    - The Gemara explains, that just as where there are 2 people who say a girl solicited them for zenus, we will consider her not to be a besulah, because we assume that she eventually found someone to be mezaneh with, so too, if 2 people come and say the document owner asked them to forge the document, we assume it is forged, because if he couldn't find anyone to forge he may have forged it on his own.

### MISHNA

- The following are naaros who are not entitled to the penalty: a convert, captured woman, or maidservant who converted, or was freed when more than 3 years old and who were then violated, although **R' Yehuda** says that the captured girl would still be entitled to the penalty; a man who violates his daughter, his daughter's daughter, his son's daughter, his wife's daughter, her son's daughter, her daughter's daughter, in all these cases she is not entitled to the penalty because the man is chayuv misah in Beis Din and we learn from a pasuk that one who is chayuv misah does not pay money in addition to being put to death.

### GEMARA

- **R' Yochanan** said that **R' Yehuda** (in our Mishna) and **R' Dosa** make the same point, because **R' Dosa** says in a Braisa that a captured daughter of a Kohen who is freed may eat terumah (we don't assume she was violated).
  - **Rabbah** said, this is not necessarily true. It may be that **R' Yehuda** only holds that way in the Mishna so that the violator should not benefit by being free from paying the penalty, but in the case of the Braisa he may say that she may not eat terumah. Also, it may be that **R' Dosa** only holds that way for D'Rabanan terumah, but regarding the penalty which is D'Oraisa, it may be that he would say that she is not entitled to it.
    - **Q: Abaye** asked, **R' Yehuda** says his Halacha even in regard to the amount of the girl's kesubah, where there is no violator who is benefitting from that, so how can you say that his Halacha is based on the premise that we don't want the sinner to benefit!? **A:** We give her the higher kesubah so that people shouldn't hold back from marrying her.
  - **Q:** How could we say that **R' Yehuda** holds that a captured woman is assumed not to have been violated? A Braisa says that a Kohen who ransoms a captured girl may marry her, but if he is only a witness that testifies that she was not violated, he may not marry her. **R' Yehuda** says that in either case he may not marry her!? **A: R' Pappa** says, we must change the wording of the Braisa so that **R' Yehuda** is saying that in either case he *may* marry her. **A: R' Huna the son of R' Yehoshua** says the Braisa should state as is. **R' Yehuda** is saying according to the shita of the **Rabanan** – you should hold that in either case he may not marry her!? The **Rabanan** however say that if he ransoms her and testifies for her he may marry her, because the fact that he spent money on her must mean that he checked her out and she was not violated.



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- **Q: R' Pappa bar Shmuel** asked **R' Yosef**, we find a Braisa where **R' Yehuda** says that we are concerned that a convert was mezaneh up until the point of her conversion. If so, he would say the same thing regarding a captured woman!? **A: R' Yosef** said, a captured woman will watch herself from being mezaneh, whereas a goy before the conversion will not.

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- **Q: R' Pappa bar Shmuel** asked, in our Mishna **R' Yehuda** says that we do not presume that a captured woman was violated, but in a Braisa **R' Yehuda** says that a captured woman must wait 3 months before she gets married to make sure she wasn't pregnant from her captors (which means we do presume that she was violated) and **R' Yosef** says she may get married immediately!? **A: R' Yosef** didn't know what to answer, so **R' Pappa bar Shmuel** said that **R' Sheishes** said, the case in the Braisa is where she was seen being violated.
  - **Q: If so, why does R' Yosef** allow her to get married immediately? **A: Rabbah** said, **R' Yosef** holds that such women have methods of preventing themselves from becoming pregnant (either by using a cloth or by turning herself over right after the bi'ah). **R' Yehuda** holds that these methods are not always performed perfectly, and therefore we must be concerned that they became pregnant.

### SHENE'EMAR V'LO YIHIYEH ASON ANOSH YE'ANEISH...

- **Q: We have learned that the source for this rule is the pasuk of "kidei rishaso"!? A: One pasuk teaches when a person is chayuv misah and money (there is loss of life so one punishment is enough), and the other pasuk teaches for when a person is chayuv malkus and money (the sin was not as severe so one punishment is enough).**
  - **Q: According to R' Meir** who says that one gets malkus and pays money, why are both pesukim needed? **A: One pasuk teaches when a person is chayuv misah and money (one is a punishment to the body and one is to the pocketbook, so only one can be done), and the other pasuk teaches for when a person is chayuv malkus and misah (we don't do 2 punishments to the body).**
- **Q: A pasuk says "lo sikchu kofer l'nefesh rotzei'ach" (don't take money for the life of a murderer). Why is that pasuk needed? A: The pasuk is teaching that we do not take money from a murderer and in that way exempt him from being put to death.**
- **Q: A pasuk says "lo sikchu kofer lanus ehl ihr miklato" (don't take money for one who ran to galus). Why is that pasuk needed? A: The pasuk is teaching that we do not take money from a murderer and in that way exempt him from having to go into galus.**
  - Both pesukim are needed, one by shogeg and one by meizid. If it would only say a pasuk by meizid, we would say that there we can't take money for the punishment because the aveirah was so grave, but when it was a shogeg maybe we could take money. If we would only say shogeg we would say that there we can't take money because he is not losing his life, but by meizid we can take money to prevent his loss of life. This is why both pesukim are needed.
- **Q: A pasuk says that the a kapara for murder can only take place through the killing of the murderer. Why is this pasuk needed? A: It is needed to teach that if after the egla arufa process was done we find the murderer, he still must be put to death.**
- **Q: A pasuk says, "and you shall clean out the murderers from among you". Why is that pasuk needed? A: It teaches that the death penalty of "sayif" is done at the person's neck (not some other stabbing or cutting). This is learned from a comparison to egla arufah.**
- **Q: A pasuk says, anyone who has been condemned to death must be put to death and shall not be redeemed. What is this pasuk needed? A: It teaches that a person who has been sentenced to death no longer has a value for an eirichen vow.**
  - According to **R' Chananya ben Akavya** who says that this person does have an eirech value, he would say that the pasuk teaches like **R' Yishmael the son of R' Yochanan ben Broka** in a Braisa. We would think that just as one who is chayuv misah at the Hands of Heaven can give money and receive a kaparah (through kofer), the same should be true for one who is chayuv misah in Beis Din. The pasuk teaches that money cannot take the place of this death penalty.

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- **Q:** We can learn this from the pasuk of “lo sikchu kofer”, mentioned above!? **A:** If we only had that pasuk we would say that an action carrying the death penalty for which there is no kapara when done b’shogeg, cannot be substituted with money, but such an action which does have a kapara when done b’shogeg maybe could be substituted for money. The other pasuk teaches that neither case can be substituted for money.
- **Q: Rava** asked, we learn this concept from **Chizkiya** (brought in the Gemara earlier) who taught that one who is chayuv misah does not pay money!?