



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

### Bava Kamma Daf Yud

- A Braisa says, in some ways an ox is more stringent than a bor, and in some ways a bor is more stringent than an ox. An ox is more stringent in that if it kills a person the owner must pay kofer, if it kills a slave the owner must pay 30 shekalim, if it kills a person and was sentenced to stoning it becomes assur to benefit from, and it is a moveable mazik. None of these characteristics are shared by bor. A bor is more stringent in that it stands ready to damage from its creation, and it is immediately a muad, both of which don't apply to an ox.

The Braisa continues, an ox is more stringent than fire, and fire is more stringent than an ox. An ox is more stringent in that if it kills a person the owner must pay kofer, if it kills a slave the owner must pay 30 shekalim, if it kills a person and was sentenced to stoning it becomes assur to benefit from, and if it is given to a cheireish, shoteh, or katan to watch and then does damage, the owner is chayuv. None of these things apply to fire. Fire is more stringent in that it is a muad immediately, which is something that an ox is not.

The Braisa continues, fire is more stringent than bor and bor is more stringent than fire. Bor is more stringent in that it stands ready to damage from the time it is created, and if it is given to a cheireish, shoteh, or katan to watch and then does damage, the owner is chayuv. Neither of these things apply to fire. Fire is more stringent in that it is a moveable mazik, and is a muad to consume something that is fit for it and even something that is not for it, both of which don't apply to bor.

- **Q:** Why doesn't the first part of the Braisa also say that an ox is more stringent in the way that it is chayuv for breaking keilim, which is not true for a bor!? **A:** The Braisa follows **R' Yehuda**, who says that one is chayuv for keilim that are broken by a bor.
  - **Q:** The Braisa can't be following **R' Yehuda**, because the Braisa says that a fire is a muad to consume something that is not fit for it, which presumably refers to keilim, and the Braisa says that only a fire is a muad for keilim, and not a bor!? **A:** We must say that the Braisa follows the **Rabanan**, who say that the owner of a bor is not chayuv for keilim that broke in it. The reason it left this difference out in the first case is because it left out other differences as well. For example, it left out the case of damage done to hidden items, for which fire is patur but the other damagers are chayuv. **A2:** We can even say that the Braisa follows **R' Yehuda**. However, when he says that a fire is a muad for something not fit for it, he is referring to the damage done by a fire to a plowed field, or to the blackening of stones by the fire.
  - **Q:** **R' Ashi** asked, why doesn't the Braisa list the difference that the owner of an ox is chayuv if the ox damages an ox that was once designated as a korbon and then became passul, whereas the owner of a bor would not be chayuv for damage done to such an ox!? Now, if we say that Braisa follows the **Rabanan**, since they left out other differences (as stated above) they also left out this one. However, according to **R' Yehuda**, what else was left out besides this one? **A:** He left out the case of an ox that trampled on a plowed field, in which case the owner of the ox would be chayuv, but this cannot apply to a bor.
    - The Gemara says, this is not considered to be "left out", because this case is covered by the difference stated "an ox is a moveable mazik". Therefore, it is difficult to say that the Braisa follows **R' Yehuda**.

HICH'SHARTI B'MIKTZAS NIZKO

- A Braisa says, if I caused a portion of the damage, I am obligated to pay for the entire damage as if I caused the entire damage. What is an example of this? If one digs a bor to 9 tefachim deep,

and another person comes and makes it 10 tefachim deep, the second person is chayuv for any and all damage.

- This does not follow **Rebbi** in a Braisa. The Braisa says, if one person dug a bor of 9 tefachim, and a second person made it 10 tefachim deep, the second person is chayuv for any and all damage. **Rebbi** says the second person is chayuv if an animal dies falling in. If an animal is only damaged, both people are chayuv.
  - **R' Pappa** said that the Braisa can be said as discussing payment for the death of an animal, and therefore the Braisa can follow **R' Yehuda** as well.
- **Q: R' Zeira** asked, there is also another example – the case of someone who gave his ox to 5 people to watch, and one of them were negligent and the ox did damage, where the halacha is that only that one person is chayuv!? **A:** This is not a good example. What would the case be? If the ox cannot be guarded without this person, then it is obvious that he is chayuv. If the case is that it can be watched without him, then why would he alone be chayuv?
- **Q: R' Sheishes** asked, the rule of the Braisa should also be applied to a person who adds bundles of wood to a fire, and only that last person should be chayuv!? **A:** This is not a good example. What would the case be? If the fire would not have damaged without this added wood, then it is obvious that he is chayuv. If the case is that it would anyway have damaged, then why would he alone be chayuv?
- **Q: R' Pappa** asked, the rule of the Braisa should also be applied to the case in a Braisa where 5 people sit on a bench and nothing happens to the bench, and then a heavy person came and sat down on the bench as well, and the bench broke. In that case the heavy person is chayuv for the entire bench even though he didn't cause the entire damage!? **A:** This is not a good example. What would the case be? If the bench would not have broken if not for him, then it is obvious that he is chayuv. If the case is that it would anyway have broken, then why would he alone be chayuv?
  - **Q:** How are we then to understand this Braisa of the 5 people on the bench? **A:** The case is that without this last person the bench would have broken in two hours, but with him it broke faster. The other people can say, we would have gotten up before it broke, but you came and made it break faster. That is why he is chayuv.
    - **Q:** Why can't this last person tell them, if not for you people the bench would not have broken! So, why is only he chayuv? **A:** The case is that this last person was leaning on the other 5, preventing them from getting up.
    - **Q:** If that is the case, it is obvious that he alone would be chayuv!? **A:** The chiddush is that damage caused by his force is the equivalent of damage caused by his body.
- **Q:** The rule of the Braisa should also be applied to the case in a Braisa where **R' Yehuda ben Beseira** said that if 10 people hit a man with a stick, and they hit him one after the other, and the man died from the beating, only the last person is chayuv. We see that he did only a part of the damage and yet he is chayuv for the entire damage!? **A:** We don't give this case, because we are not discussing a case involving death. **A2:** We don't mention this case, because we will not list a case that has to follow a single view when it is argued upon by the **Rabanan**.

#### CHAVTI B'TASHLUMEI NIZKO

- The Mishna doesn't say "I am chayuv for the damage", but rather says "I am chayuv for the complete payment of the damage". This suggests that the nizik keeps the carcass of the animal that was killed, and the mazik must pay for the difference between the value of the carcass and the value of a live animal.
  - The Mishna is saying the same thing that was taught in a Braisa, that the words "payment for the damage" teach that the nizik must deal with the carcass of the animal that was killed.
  - **Q:** How do we know this? **A: R' Ami** said, we learn this from the word "yishalmeh" in the pasuk, which can be read as "yashlimenah", which means he must make complete. **R' Kahana** said, we learn this from a drasha on the pasuk of "yivi'eihu eid hatreifah lo yishalem". He darshens "until the damage of the treifa he must pay, but he need not

pay for the value of the treifah itself". **Chizkiya** said, we learn this from the pasuk of "v'hameis yihiyeh lo" – the carcass belongs to the nizek.

- **Q:** How do we know that "lo" refers to the nizek? **A: Abaye** explained, if it meant the mazik, the pasuk could have simply said "shor tachas hashor". The reason the pasuk added "v'hameis yihiyeh lo" must be to teach that the carcass belongs to the nizek.
- All these pesukim are needed. The first pasuk refers to a person who damages an animal, which is not a common case. We would think, since it is not common, that is why the nizek must deal with the carcass. However, in the second pasuk, regarding a treifah (an animal attacking another animal), we would say that since it is more common the mazik must deal with the carcass. If we would only have the pasuk of treifah, we would say, in that case the nizek must deal with the carcass, because the damage happened without the owner's involvement. If we would have these 2 pesukim, we would think that in the case of the third pasuk (a muad, who intends to do damage) it is considered as being common and more direct, and therefore the nizek should not have to deal with the carcass. If we only had this last pasuk we would say that in the other case, where the person was negligent in his watching of the animal, the damage can be attributed to him and that is why the mazik should have to deal with the carcass. That is why all pesukim are needed.
- **Q: R' Kahana** asked **Rav**, why do we need the pasuk to teach that the nizek must deal with the carcass? We have learned that the mazik may give anything of value for payment of the damage, so he can simply give the carcass to the nizek as part of his payment, so of course the nizek must deal with the carcass!? **A:** The pasuk teaches that the carcass belongs to the nizek from the moment of death, and therefore, if the carcass begins to depreciate in value, that loss is borne by the nizek.
  - **Q:** Maybe we can say that the concept of who must bear the loss of depreciation of the carcass is actually a machlokes among Tannaim. A Braisa says, the pasuk of "ihm tarof yitareif yivi'eihu eid" teaches that the watchman must bring proof that this happened with an oneis, and he would then be patur. **Abba Shaul** says, this means that the watchman must immediately bring the carcass to Beis Din so that they can assess the value. Maybe we can say that **Abba Shaul** holds that the depreciation of the carcass is the nizek's burden, and the **T"K** holds that it is not!? **A:** It may be that all agree that the nizek bears the burden of the loss. The machlokes may be who is responsible to carry the carcass to Beis Din.
    - In fact, a Braisa brings a machlokes as to who must bring the carcass. One view is based on the pasuk of the mazik whose bor damaged an animal and says "kesef yashiv l'balav v'hameis", which we darshen to mean that the owner of the bor must also lift the carcass out of the bor. The pasuk is needed for a case where the carcass has the same value in the bor and out of the bor (and not more outside of the bor). The chiddush is, that even in that case the owner of the bor must remove it from the bor (even though he gains nothing by doing so).