



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

Bava Kamma Daf Yud Gimmel

- A Braisa says, the pasuk says “uma’alah ma’al BaHashem”. **R’ Yose Haglili** says, this comes to include kodshei kalim in the halachos of false promises regarding someone else’s property, because kodshei kalim are the property of the one who has them. **Ben Azzai** says it only comes to include a Shelamim. **Abba Yose ben Dustai** says that **Ben Azzai** only meant to include a bechor, and nothing more.
 - **Q:** What is **Ben Azzai** coming to exclude when he limits it to a Shelamim? It can’t be meant to exclude a bechor, because a Shelamim needs semicha, nesachim, and tnufa of the breast and leg, and a bechor does not, so it can’t be that a Shelamim would be considered to be the property of the person and a bechor would not!? **A: R’ Yochanan** said, it comes to exclude animal maaser. Just as we find that there are greater restrictions with regard to selling maaser, we also say that there are less ownership rights in maaser.
 - **Another version** says that the question was on **Abba Yose ben Dustai**, who limits it to bechor. On that we ask, what does that come to exclude. We say it can’t come to exclude Shelamim, because if a bechor, which is kadosh from birth, is considered to be the money of the owner, then surely a Shelamim will be! **R’ Yochanan** said, that it comes to exclude animal maaser. Just as we find that there are greater restrictions with regard to selling maaser, we also say that there are less ownership rights in maaser.
 - **Q: Abba Yose ben Dustai** said “her refers *only* to bechor”, which would mean that he does not come to include Shelamim as well!? **KASHYEH.**
- **Rava** said, when the Mishna said that anything not subject to me’ilah, if damaged, would require the mazik to pay for the damage, it meant that only things that are not hekdesh at all. However, if it is hekdesh, whether kodshei kodashim or kodshei kalim, no damage would have to be paid for.
 - **Q:** If this is true, why didn’t the Mishna just say “property of a regular person”? **KASHYEH.**
- **R’ Abba** said, if a Shelamim ox that is a tam damaged property, the amount to be paid as half damage is only paid up to the value of the meat that would be eaten by the owner of the Shelamim, and not from the parts that are to go on the Mizbe’ach.
 - **Q:** That is obvious, that the person can’t collect from the part that goes for Hashem!? **A: R’ Abba** is teaching that he does not take more from the value of the meat to make up for the value of the parts that are going on the Mizbe’ach.
 - **Q:** Who would this follow? The **Rabanan** hold that when there is joint liability for something, and one party can’t pay, the nizik does not collect more from the party who can pay (so it is obvious that he won’t collect more from the meat). **R’ Nosson** says that he would collect more (so in this case he should collect more from the meat)!? **A:** We can say that it follows the **Rababan**, and that they hold that way only when we are dealing with two distinct entities. However, in this case it is all from one animal, so maybe they would agree that we take more from the meat as payment for the other parts. We can also say that it follows **R’ Nosson**. When there are 2 damagers, it can be said that one contributed to the damage more than the other, and that is why he can collect more from one if the other is not capable of paying. However, in this case, he cannot say that the meat did more damage than the parts that go on the Mizbe’ach, so there is no reason to allow him to collect from the meat to make up for the other parts.

- **Rava** said, if a Todah damaged property, the nizik can collect from the value of the meat, but not from the value of the bread.
 - **Q:** That is the obvious, because the bread didn't do any damage!? **A:** The chiddush is the next part of **Rava's** statement, when he says that the nizik eats the meat and the mazik brings the breads.
 - **Q:** That also seems obvious!? **A:** We would have thought to say that the bread is brought to allow consumption of the meat, and therefore we should not require the mazik to bring the bread. He therefore teaches that the bread is an obligation of the one who must bring the korbon, and therefore the mazik must bring the bread.

NECHASIM SHEHEIN SHEL BNEI BRIS

- This comes to exclude the property of a goy, as a Mishna later says, if one damages the property of a goy, he is patur.

NECHASIM HAMEYUCHADIN

- This comes to exclude the case of where two people each claim it was the other's ox that did the damage. In that case the nizik cannot collect from either person.
- A Braisa says this comes to exclude property that was hefker.
 - **Q:** What is the case? If a person's ox damaged property of hefker, there is no one to claim damages!? If the case is that a hefker ox damaged someone's property, let the nizik just take the ox for himself!? **A:** The case is that someone else claimed ownership of the ox before the nizik. The Mishna is teaching that the nizik cannot take it away from this new owner.
- **Ravina** said, this comes to exclude the case where the mazik makes his ox hekdesh or hefker right after the damage was done. In fact, a Braisa says this as well, and says that **R' Yehuda** darshens a pasuk to teach that one is only chayuv when the ox is owned by the same person at the time of the damage or death, and at the time it is brought to Beis Din.
 - **Q:** The pasuk used for the drasha actually discusses the verdict, which should mean that it must still be owned by that same person at the time of the verdict!? **A:** We must change the Braisa to say that he requires the same ownership at the time of the damage, at the time it is brought to Beis Din, and at the time of the verdict.

CHUTZ MEIRESHUS HAMYUCHEDES LAMAZIK

- The reason is, the mazik can tell the nizik, your ox had no business to be on my property!

URESHUS HANIZIK V'HAMAZIK

- **R' Chisda in the name of Avimi** said, a chatzer that belongs to partners, if one of them does damage to the other with shein or regel he would be chayuv. Based on this our Mishna means to put this phrase with the next part of the Mishna (that says he must pay for damages). **R' Elazar** says he would be patur for shein and regel, and our Mishna means to put this phrase with the previous phrase (where the damage happens in the reshus of the mazik) and to say that he is patur, and when the Mishna says "when it does damage the mazik must pay" it is coming to include keren.
 - **Q:** This explanation can fit according to **Shmuel**, who says that keren was not mentioned in the first Mishna, which is why the Mishna is referring to it here. However, according to **Rav**, who says that keren is included in "shor" of the first Mishna, what is the phrase "when it does damage the mazik must pay" coming to include? **A:** It comes to include the case of an unpaid shomer, a borrower, a paid shomer, or a renter, where if an animal did damage in their reshus, a tam would pay half damage and a muad would pay full damage, but if the animal damaged because the wall enclosing them fell down at night, or was broken open by robbers, they would be patur for any damage.
 - **Q:** What is this case? If it means that the ox of the lender damaged the ox of the borrower, it can't be that we would make the lender pay, because it is the borrower who would be chayuv for any damage done by the borrowed ox!? If the case is where the borrower's ox damaged the borrowed ox, it can't be that he would only have to pay for half the damage, because the lender can tell him, you are fully responsible for my ox!? **A:** The case is where the borrowed ox (the lender's ox) damaged the borrower's ox, in a case where the borrower only accepted responsibility to protect the borrowed ox from harm, but not to prevent it from damaging others.

- **Q:** If that is the case, why does the Braisa say that the wall “fell down at night”, which suggests that if it happened during the day the borrower would be chayuv? If he didn’t accept responsibility to prevent it from damaging, why would he be chayuv? **A:** The Braisa means to say, even if he did accept responsibility to prevent it from damaging, if the damage happened because the wall fell at night, he would still be patur.