



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

Bava Kamma Daf Yud Daled

- **Q: R' Elazar** had said, that if a field is owned by 2 partners, and the animal of one partner damaged the property of the other, he is patur. The Gemara now asks, **R' Yosef** taught in a Braisa that says that the partner would be chayuv for shein and regel!? **A: R' Elazar** would answer, we find another Braisa that clearly says that a partner is patur for shein or regel in a field owned by them both.
 - **Q:** The two Braisos contradict each other!? **A:** The second Braisa is discussing a chatzer in which they each have full rights to plant and have full rights to bring in their animals. That is why he is patur. The Braisa of **R' Yosef** is discussing a chatzer where they each had rights to plant, but did not have rights to bring in their animals. That is why the partner is chayuv for the damage done.
 - **Q: R' Zeira** asked, if both partners have the right to plant there, it is not considered to be "bi'eir bisdei acher", so why is he chayuv for the damage? **A: Abaye** said, since he has no right to bring his animals in there, it is considered to be a "sdei acher".
 - **R' Acha MiDifti** asked **Ravina**, maybe we can say that just as the Braisos don't argue, **R' Chisda** and **R' Elazar** also don't argue, rather **R' Chisda** is talking about a field owned by partners where they don't have a right to bring in their animals, and **R' Elazar** is discussing a field where they have the right to bring in their animals? **Ravina** answered, that can definitely be the case. Even if you say they do argue, they may just be arguing in whether the answer of **Abaye** is a good answer.
 - The Braisa mentioned above said, **R' Shimon ben Elazar** said 4 rules regarding damages. The first is that any damage that happens in the reshus of the nizek, and not of the mazik, the mazik will always be chayuv "in full".
 - The Braisa doesn't say he is chayuv "for all", but rather that he is chayuv "in full", meaning that he is chayuv for the complete damage. This follows **R' Tarfon**, who says that even a tam pays for the full damage of keren if it takes place in the reshus of the nizek.
 - **Q:** The later part of the Braisa (the fourth rule) says, if the damage happens in a place that doesn't belong to either the mazik or the nizek, the mazik is chayuv for shein and regel in full, and for keren he is chayuv for half if the animal is a tam and for the whole damage if the animal is a muad. Now, this can't mean that neither of them have rights to that land, because then it is not "bisdei acher" (which means the nizek's field), and he wouldn't be chayuv for shein and regel. Rather, we must understand this to mean that they don't *both* have rights there, rather only *one* has rights there – i.e. the nizek. Yet we see that for keren a tam pays half the damages. This follows the **Rabanan** and not **R' Tarfon**!? **A:** We must say that the earlier part follows **R' Tarfon**, and this later part follows the **Rabanan**. **A2: Ravina in the name of Rava** said, we can say that the entire Braisa follows **R' Tarfon**. The Braisa is discussing a field in which only the nizek has planting rights, but the nizek and the mazik have rights to bring in their animals. Therefore, with regard to shein and regel it is considered to be the field of the nizek, and with regard to keren, it is considered to belong to them both and is like a reshus harabim in which case even **R' Tarfon** agrees that keren as a tam pays for only half the damage.

MISHNA

- Damages are established by assessing money, with something worth money, in front of Beis Din, on the basis of witnesses, who are free men, and Yidden.
- Women are included in the halachos of damages.
- Both the nizek and the mazik are involved in the payment for the damages.

GEMARA

- **Q:** What does the Mishna mean “assessing money”? **A: R’ Yehuda** said, this means that we assess a monetary value to the damage, and don’t simply tell the nizek to take the ox or the damaging item as payment for the damage.

SHAVEH KESEF

- This refers to real estate. As a Braisa says, Beis Din only collects from real estate. However, if the nizek seized other property, Beis Din would collect using this other property as well.
 - **Q:** How are the words “shaveh kesef” understood to refer to real estate? **A: Rabbah bar Ulla** said, we understand it as saying “something that is worth any amount of money that is paid for it”, and is not subject to being voided if there is an overpayment of a sixth. That is true of real estate, which is not subject to the halachos of “ona’ah”.
 - **Q:** Slaves and documents are also not subject to ona’ah!? **A: Rabbah bar Ulla** said, we understand it as saying “something that is acquired with money”, and real estate is acquired with money.
 - **Q:** Slaves and documents are also acquired with money!? **A: R’ Ashi** said, the Mishna means to say something that is worth like money, but is not itself money. All moveable assets are considered to be money itself. It is only land that is considered to be worth money, but is not thought of as money itself.
- **Q: R’ Yehuda bar Chinina** asked **R’ Huna the son of R’ Yehoshua**, the Mishna says that Beis Din only collects from real estate, however we have the pasuk of “yashiv” that teaches that anything of value can be used for payment!? **A:** The Mishna is referring to collecting from orphans, where the collection may only come from real estate.
 - **Q:** If the Braisa is referring to a case of orphans, how could the Braisa then say that if the nizek seized other property, Beis Din allows him to collect from that!? **A:** The case is that the nizek seized this other property before the mazik died. That is why he may collect from this property.

BIFNEI BEIS DIN

- This means that the real estate must be owned by the mazik at the time that he is before Beis Din. This comes to exclude the case of the mazik who sold all of his possessions before coming to Beis Din.
 - **Q:** This would mean that Beis Din would not collect for a creditor from fields sold by the debtor!? **A:** Rather, the Mishna’s statement of “bifnei Beis Din” comes to exclude a Beis Din made up of dayanim who don’t have semicha.

AHL PI EIDIM

- This comes to exclude a case of a person who admitted that he owed a penalty, and then witnesses testified that he owed the penalty, in which case he would be patur.
 - **Q:** According to the view that says that in such a case the person is chayuv to pay the penalty, what is the Mishna teaching? **A:** He would say that the next part of the Mishna is what is necessary – that the witnesses must be free men, to the exclusion of slaves, and they must be Yidden, to the exclusion of goyim.