



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

### Bava Kamma Daf Tes Vuv

VIHANASHIM B'KLAL HANEZEK

- **Q:** How do we know this halacha? **A:** **R' Yehuda in the name of Rav** said, we learn it from a pasuk that compares women to men regarding all punishments. **R' Elazar's** yeshiva taught, it is based on a pasuk that compares women to men for all monetary laws in the Torah. **Chizkiya's** yeshiva taught, it is based on the pasuk that compares the killing of a woman to the killing of a man for the death penalty.
  - All these pesukim are necessary. If we would only have the first pasuk we would say only regarding punishments women are treated the same, because we want them to be able to get a kapparah. If we would only have the second pasuk we would say it is only regarding monetary matters that women are treated equal, because these laws are needed to carry out daily living activities. If we would only have the 3<sup>rd</sup> pasuk we would say that only there women are given the same status, because regarding loss of life the Torah is more stringent to have the killer put to death.

HANIZIK V'HAMAZIK B'TASHLUMIN

- 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:** Our 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 payment it would mean that the damaged party should truly 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 leaves 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:** A 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, when the Mishna wants to give an example of a penalty, instead of giving

the example of the penalty 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:** The 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 a penalty, because there is a form of half nezek payment – i.e. “tzroros” – which we are taught by a Halacha L’Moshe MiSinai that it 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 nizek grabs an asset from the mazik, we do not make him return it. Also, if the nizek asks for a court date in Eretz Yisrael and the mazik refuses to go, we put the mazik in cheirem. The Gemara says that in either case we put the mazik 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.

#### MISHNA

- There are 5 cases of an animal that is a tam, and 5 of a muad. An animal is not a muad to gore, to push, to bite, to sit on something, or to kick.
  - Shein is a muad to eat something that is fit for it to eat. Regel is a muad to break things in its normal course of walking. An ox can become a muad. An ox that damages in the property of the nizek. And a person that damages.
- A wolf, a lion, a bear, a leopard, a *bardelas*, and a snake are all considered to be a muad. **R’ Elazar** says, if they are domesticated, they are not a muad, but a snake is always a muad.

#### GEMARA

- **Q:** From the fact that the Mishna says that shein is a muad, it must be that the case of the Mishna is taking place in the property of the nizek. The Mishna also says that the ox in that case is not a muad, and presumably will pay half damage. This follows the **Rabanan**, who say that keren only pays half damage when the damage takes place in the property of the nizek. However, the Mishna then says that an ox that damages in the property of the nizek is considered to be a muad and will presumably pay for full damages. This follows **R’ Tarfon**, who argues on the **Rabanan**!? **A:** We must say that the beginning of the Mishna follows the **Rabanan**, and the end of the Mishna follows **R’ Tarfon**. In fact, we find that **Shmuel** told **R’ Yehuda** to explain the Mishna in this way.