



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

### Bava Kamma Daf Chuf

- **Ilfa** said, if an animal is in the reshus harabim and sticks out its neck and eats food from the back of another animal, the owner is chayuv for full damages, because eating from the back of an animal is considered to be eating in the reshus of the nizik.
  - **Q:** Maybe we can prove that a Braisa supports this halacha. The Braisa says, if someone has his basket slung over his shoulder to his back, and an animal comes and eats from it, the owner is chayuv to pay for the food. **A:** It may be that the Braisa is discussing a case where the animal jumped to reach the food. This is not normal for it to do, and therefore is considered to be keren, for which one is chayuv in the reshus harabim.
- **Q: R' Zeira** asked, what would be the halacha if the animal took produce from the reshus hayachid, and dragged it to, and eventually ate it in, the reshus harabim? **A:** A Braisa taught by **R' Chiya** said, if a pile of food was partially in the reshus harabim and partially in the reshus hayachid, if the animal ate it inside the reshus hayachid the owner is chayuv, if not he is patur. Now, presumably the case is that the pile was dragged into the reshus hayachid and we see that he is chayuv!?
  - This may not be a proof, because the Braisa may mean that he is chayuv for the part of the pile that was initially in the reshus hayachid and patur for the part that was not. Or, it may be that the Braisa is discussing long stalks of aspasta. Since each stalk is partially in each reshus, we follow the location of the animal who eats it. However, in a case of regular produce, where some stalks are in the reshus harabim and others are in the reshus hayachid, it may be that we follow the location of the stalks, and not of the animal.

ACHLA KSUS...

- **Rav** said, when the Mishna says he is only chayuv in the reshus of the nizik, it is even going on the case of where the animal ate clothing and keilim. The reason he would be patur in the reshus harabim is because the person who left his clothing or keilim in the reshus harabim did something not normal, therefore, if the animal comes and also does something not normal (and eats these things), he will be patur. **Shmuel** said that the Mishna means to say that for fruit and vegetables he would only be chayuv in the reshus of the nizik. However, for eating keilim (which is keren), he would even be chayuv in the reshus harabim.
  - **Reish Lakish** said like **Rav**. **Reish Lakish** follows his shitah elsewhere where he said that if there are 2 animals in the reshus harabim, one is walking and one is sitting down, if the walking animal kicked the sitting animal, the owner would be patur (it is not normal for an animal to sit in the reshus harabim, and is also not normal for the animal to intentionally kick the other animal). However, if the sitting animal kicked the walking animal, he would be chayuv. **R' Yochanan** said like **Shmuel**.
    - **Q:** Do we have to say that **R' Yochanan** even disagrees with **Reish Lakish** in the case of the 2 animals? **A:** It may be that he would agree in that case, because that is certainly not normal for an animal to sit in middle of the reshus harabim. However, he may hold that leaving keilim or clothing in the reshus harabim is normal, because people will often put down their items to allow themselves to rest.

V'IHM NEHENIS MISHALEMES...

- **Q:** How much is considered to be the amount he benefitted? **A: Rabbah** said it is the value of the straw it would have taken to fill the animal in the way it is now filled. **Rava** said it is the value of barley when it is cheap. There is a Braisa to support each view.
- **Q: R' Chisda** repeated to **Rami bar Chama** a question that was asked among the talmidim. The question was, if a person lives in another's chatzer without the owner's knowledge, does he

have to pay him rent or not? What is the case? If it is a chatzer that is not meant to be rented and a person who doesn't need to rent a place, then the person living there cannot be said to have benefitted, and the owner cannot be said to have lost anything, so it would be obvious that nothing needs to be paid. If it is a chatzer that is meant to be rented out and a person that needs to rent a place to stay, then he has benefitted and the owner has lost out, so clearly he would have to pay. Rather, the case must be where the chatzer is not meant to be rented out, but the person needs to rent a place to stay. In that case, can the one living there say "you have not lost anything so I do not need to pay you anything", or could the owner say "you have benefitted from me, so you need to pay me"? **A: Rami bar Chama** said, we can answer this from our Mishna which says that the owner of the animal must pay for the benefit he got. We see that one must pay for a benefit that he receives.

- **Q: Rava** asked, the case of the Mishna is a case where one benefitted and the other suffered a loss, whereas the case of the question was where one did not suffer a loss, so they are very different!? **A: Rami bar Chama** held that the cases are similar, because he holds that fruit left in the reshus harabim is considered to be hefker.
- **Q:** Maybe we can answer the question from a Mishna. The Mishna says, if a person owns fields that surround another person's field on three sides, and the outer person puts up fences that enclose the inner person on three sides, we don't make the inner person contribute to the cost of the fence. This suggests that if he owned fields on all 4 sides and enclosed the entire inner field with a fence, the inner person would be obligated to contribute to the fence, even though this is a case of the inner person benefitting and the outer person not losing anything! **A:** That case is different, because the outer person can say, "if not for the inner person I could have just surrounded my outer perimeter with a fence, but now I have to surround my inner perimeter as well". Therefore, he has caused him a loss and that is why he has to pay.
- **Q:** The end of that Mishna says, **R' Yose** says, if after being fenced in on the 3 sides, the inner person fences the 4<sup>th</sup> side on his own, we make him contribute for the other 3 sides as well. This suggests that if it was the outer person who put up the fence on the 4<sup>th</sup> side as well, the inner person would not be obligated to pay anything. We see that he is patur even where he benefits, but where the other person is not losing anything!? **A:** The Mishna may mean that if the outer person puts up an expensive fence, the inner person can say that he would have only put up a cheap fence and contributes to the amount of a cheap fence. However, if the inner person put up an expensive fence on the 4<sup>th</sup> side, we make him contribute to the expensive fence on the other 3 sides as well.
- **Q:** A Mishna says, if a 2 story house (a different person owning each floor) collapsed, and the owner of the lower floor refuses to rebuild, the owner of the upper floor may rebuild the lower floor and live there until the owner of the lower floor pays him for all expenses spent on building the lower floor. Now, this suggests that the owner of the upper floor does not need to pay rent for the time that he was living there, and we see that in a case where one benefits and the other does not lose, no payment needs to be made!? **A:** That case is different, because the owner of the lower floor is obligated to provide the ability for there to be an upper floor, and therefore the owner of the upper floor may live there rent-free until he is paid for the expenses.
- **Q:** That same Mishna says, **R' Yehuda** says that "even the owner of the upper floor who lived in the place of the other person without his knowledge must pay rent". We see that when one benefits and the other doesn't lose, the benefiter must still pay!? **A:** In that case the owner of the ground floor does lose, because by someone living there, the walls become dirty and the house is no longer new.
- This question was sent to the yeshiva of **R' Ami**, and he said, what has the person who lived in the chatzer done to the owner, and what loss or damage has he caused him? For sure he should not have to pay! When the question was asked to **R' Chiya bar Abba**, he said we must look into this further. When they asked him again he said "If I would have come up with an answer, I would have sent it to you!"
- We have learned, that in the case where one benefits and the other person does not lose, **R' Kahana in the name of R' Yochanan** said he does not have to pay and **R' Avahu in the name of R' Yochanan** said that he does have to pay.

- **R' Pappa** said that **R' Avahu** did not hear this explicitly from **R' Yochanan**. What happened was that **R' Avahu** said in front of **R' Yochanan** that such a person would have to pay and **R' Yochanan** remained quiet. He thought the silence served as a sign of agreement. In truth, the silence was based on the fact that there was no proof to this concept from the Mishna that they were discussing.