



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

Bava Kamma Daf Chuf Hey

MISHNA

- What is the case of the ox damaging in the property of the nizik? If the ox gored, pushed, bit, sat, or kicked and damaged by doing so, if this was done in the reshus harabim, the owner only pays half damage. If it took place in the reshus of the nizik, **R' Tarfon** says he would pay full damages and the **Rabanan** say he would pay half damages.
 - **R' Tarfon** said, if in a place where the Torah was meikel and said that shein and regel are patur in the reshus harabim, but said that in the reshus of the nizik they must pay full damages, then surely with regard to keren, which the Torah was machmir and said that he must pay half damages even in the reshus harabim, surely the Torah means to be machmir and require him to pay full damages in the reshus of the nizik! The **Rabanan** responded, we say the concept of "dayo", which says that the newly learned halacha can't be greater than the source halacha, and therefore, just as in the reshus harabim he only pays half damages, so too in the reshus of the nizik, he only pays half damages. **R' Tarfon** said, I am not learning the case of keren from the case of keren. Rather, I learn keren from shein and regel – if they must pay full damages in the reshus of the nizik, then surely keren must do so as well. The **Rabanan** said, even so, we say dayo, and just like keren pays half damages in the reshus harabim, keren also pays half damages in the reshus of the nizik.

GEMARA

- **Q:** Does **R' Tarfon** not hold of the concept of dayo? We learn from a Braisa that dayo is a concept that is D'Oraisa!? **A:** He doesn't hold of dayo if saying dayo will refute the kal v'chomer. In this case, even without the kal v'chomer we would know that he must pay half damages, so limiting it to half damages based on dayo effectively refutes the kal v'chomer.
 - **Q:** **R' Pappa** asked **Abaye**, we find a Tanna in a Braisa who does not say dayo even when the kal v'chomer would not be refuted!? The Braisa learns from a kal v'chomer that the keri of a zav makes a person tamei when touched or carried. The kal v'chomer is, if the keri of a tahor person, whose spit is not tamei, is tamei, then the keri of a zav, whose spit is tamei, is surely tamei. Now, we should say dayo to limit the tumah of the zav's keri to touching, and not carrying. Yet, the Tanna doesn't say this!? **A:** We would know from the pasuk that the keri of a zav makes a person tamei when touched, just like the keri of any other man. The kal v'chomer is therefore only needed to teach regarding carrying the keri. Therefore, if we say dayo, the kal v'chomer will be refuted.
 - **Q:** Who is the Tanna who holds that the keri of a zav makes a person tamei by carrying it? It can't be **R' Eliezer**, who clearly says in a Braisa that the keri of a zav does not make a person tamei through carrying it. It also can't follow **R' Yehoshua**, who says that the keri of a zav will make a person who carries it tamei *only because* it is not possible that there is not some zivus mixed in there as well. We see that if it was pure keri he would hold that it does not give off tumah through carrying!? **A:** It is the Tanna of a different Braisa, which clearly says that the keri of a zav gives off tumah through carrying.
 - **Q:** **R' Acha MiDifti** asked **Ravina**, we find a Tanna in a Braisa who does not say dayo even when the kal v'chomer would not be refuted!? The Braisa learns from a kal v'chomer that a mat of reeds touched by a meis becomes tamei, from the fact that a mat of reeds touched by a zav is tamei. The Braisa uses this kal v'chomer to teach that the mat touched by the meis will be tamei not only until nightfall, but even for 7 days. Now, why don't we say dayo to limit this tumah until nightfall (like by a zav), because

saying so does not totally refute the kal v'chomer!? It must be because this Tanna does not say dayo at all!? **A: Ravina** said, **R' Nechumei bar Zecharya** already asked this to **Abaye**, who answered that the kal v'chomer is actually used to teach that a mat touched by a *sheretz* is tamei (on this kal v'chomer we can't say dayo, because it is limited to a tumah lasting until nightfall). Then, with a gezeirah shava from *sheretz* to *meis*, we learn that the mat touched by a *meis* will also be tamei.

- The words used in this gezeirah shava are “extra” words. If they weren't, we would be allowed to refute the gezeirah shava. We would refute it by saying that *sheretz tumah* is more stringent in that it makes something tamei even if the *sheretz* is only the size of a lentil. But, because the words are extra, we can't refute it.
 - The words are extra, because it says those same words by tumah associated with “*shichvas zera*”, which is written immediately before the tumah of a *sheretz*. We could have learned this from there. The Torah wrote it again by *sheretz* to make it “extra” for use in the gezeirah shava.
 - The words used for the gezeirah shava by *tumas meis* are also extra, because a *tumas meis* is compared to tumah from *shichvas zera* and could be learned from there. The Torah repeats it by *tumas meis* to make it “extra” for the gezeirah shava. Now the words of the gezeirah shava are “extra” on both sides and therefore cannot be refuted even according to the view that a gezeirah shava can be refuted even if the words are extra on one side of the gezeirah shava.
 - Although there is a view that says that even when learning a gezeirah shava we don't exceed the limit of the source of the halacha, over here we would say that there is 7 day tumah in the case of the *meis*, based on a pasuk that teaches that all tumah of a *meis* is 7 day tumah.
- **Q:** Why don't we say that *shein* and *regel* should be chayuv in the reshus harabim based on a kal v'chomer – if *keren*, which only pays half damages in the reshus of *nizik*, is chayuv in the reshus harabim, then *shein* and *regel*, which pay full damages in the reshus of the *nizik* should surely be chayuv in the reshus harabim!? **A:** The pasuk says “*ubi'eir bisdei achier*”, which excludes liability in the reshus harabim.
 - **Q:** Maybe the pasuk means that he won't pay full damage in the reshus harabim, but he should at least pay half *nezek* there!? **A:** The pasuk regarding half payment for *keren* says “*v'chatzu es kaspo*” (*his money*), which we darshen to mean, that only *keren* pays half damages, and not *shein* and *regel*.