



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

### Bava Kamma Daf Chuf Tes

R' YEHUDA OMER B'MISKAIVEN CHAYUV...

- **Q:** What is the case of having intent that would cause the owner of the pitcher to be chayuv according to **R' Yehuda**? **A: Rabbah** said, the case is where he intended to take the pitcher down from his shoulder (and he tripped and smashed the pitcher against the wall – tripping is considered to be negligent and would therefore make him chayuv).
  - **Q: Abaye** asked, that would mean that **R' Meir** (the **T"K** of our Mishna), who is more stringent, must hold that he would be chayuv even if the pitcher fell apart on its own when it was on his shoulder!? **A: Rabbah** said, that is correct. **R' Meir** would say he is chayuv even if the entire pitcher fell apart, leaving only the handle in his hand.
    - **Q:** Why would he be chayuv? He is an oneis, and an oneis is patur, and we find that an oneis is patur even regarding damages!? **A:** Rather, **Abaye** said, the **T"K** and **R' Yehuda** are arguing over two points – they argue about damage that happens at the time of the fall, and they argue about damage that happens after the fall. With regard to damage during the fall, they argue whether one who trips is considered to be negligent – the **T"K** says he is negligent and **R' Yehuda** says he is not. With regard to damage after the fall, they argue whether one is chayuv for the damage done by his item left in the reshus harabim after he makes it hefker – the **T"K** holds he is chayuv and **R' Yehuda** holds he is patur. This must be the correct understanding of this machlokes, because we see that the Mishna gave two cases – if a person slipped on the water, *or* if a person is injured by a broken piece of the keili. Why do we need two cases that seem to be the same for all practical purposes? It must be that slipping on the water happened at the time of the fall, and injury by the broken piece happened after the fall. We see that there is a machlokes regarding two cases in the Mishna.
      - **Q:** If we say the Mishna is talking about a machlokes in each of these two cases (during the fall through negligence, and after the fall by making the item hefker), then the Braisa which seems to follow our Mishna must be discussing the same 2 types of cases. The Braisa gives the cases of a person whose pitcher broke and he did not remove the pieces and gives the case of a person whose camel fell in the reshus harabim. Now, the case of the pitcher can be understood as causing damage during the fall or after the fall (as in our Mishna). However, the case of the camel can only be understood as causing damage after the fall (where he makes the animal hefker after it fell), but how can it be understood as a case of damage during the fall (if the animal trips that would not make the person to be considered as negligent)!? **A: R' Acha** said, the case would be where the owner led the camel down a path that was covered with water (and cannot be seen because of the water). In that case, if the animal trips, **R' Meir and the Rabanan** in the Braisa would argue whether the owner is considered to be negligent for leading him down that path.
        - **Q:** If there is another path he could have gone down, he is clearly negligent!? If there is no other path, he is an oneis!? **A:** The case must be where the owner tripped, and the camel then tripped over him.
      - In the case where they argue where the items caused damage after he made it hefker, what is meant by **R' Yehuda** when he says “if he had

intent, he is chayuv"? **A: R' Yosef** said, it means that if he had intent to be koneh the broken pieces, then he would be chayuv.

- **R' Elazar** said, that the machlokes between **R' Meir and the Rabanan** in the Braisa is regarding damage that takes place at the time of the fall.
  - **Q:** This suggests that they agree regarding damage that takes place after the fall. It can't be said that they would both agree that he would be patur after the fall, because the Braisa seems to clearly say that **R' Meir** says he would be chayuv in that case!? It also can't be said that they would both agree that he would be chayuv, because the **Rabanan** seem to clearly say that he would be patur!? **A:** Rather, **R' Elazar** must mean that they *even* argue regarding damage that happens at the time of the fall, and he was teaching us like **Abaye** said, that they argue regarding both cases.
- **R' Yochanan** said, they only argue regarding damage that happens after the fall.
  - **Q:** This would suggest that he holds that they agree regarding damage that takes place at the time of the fall. It can't be said that they both agree that he would be patur, because **R' Yochanan** later says that **R' Meir** holds that a person who trips is considered negligent, which would mean that he would say the person is chayuv!? It also can't be said that all would agree that the person would be chayuv, because **R' Yochanan** seems to also say that the **Rabanan** would say that tripping is not considered to be negligent, which would mean that they hold the person would be patur!? **A: R' Yochanan** means to teach us that a person who makes the item hefker is only patur according to the **Rabanan** in a case like this, where he tripped and is therefore an oneis. However, in other cases he would be chayuv.
- We have learned regarding an item left in the reshus harabim, which the owner made hefker, there is a machlokes between **R' Elazar and R' Yochanan** – one says he is chayuv and the other says he is patur.
  - **Q:** Maybe we should say that the view that says he is chayuv follows **R' Meir** and the view that says he is patur follows the **Rabanan**? **A:** Everyone would agree that according to **R' Meir** the person is chayuv. However, there can be a machlokes as to what the **Rabanan** would hold. Simply we can say that the person would be patur. We can also say that they only say the person is patur when he tripped, and is therefore an oneis, but in this case, where he didn't trip, they may agree that he is chayuv.
  - We can prove that **R' Elazar** is the one who says that he is chayuv, because **R' Elazar** said in the name of **R' Yishmael** that there are two things that don't technically belong to a person, but the Torah treats it as if it is owned by the person: a bor in the reshus harabim, and chametz after six hours on Erev Pesach. We see that he holds that a bor that is hefker is still considered owned by the person and would make him chayuv.
  - **Q:** We find that **R' Elazar** says exactly the opposite!? A Mishna says that if someone moves around animal waste in the reshus harabim and it does damage, he is chayuv. **R' Elazar** says he is only chayuv if he intended to be koneh the wastes, but if not he is patur. We see that he holds that if the item is hefker the person would be patur!? **A: R' Ada bar Ahava** said, the Mishna is discussing a case where the person put the wastes back in the

exact spot that he found it. In that case he is patur, because he did nothing to bring about that damage.

- **Ravina** said, this case would be analogous to a case of where someone found an open bor, covered it, and then uncovered it again, in which case he would be patur, because he did not create the bor that did the damage. **Mar Zutra the son of R' Mari** said to him, the cases are not the same. When he moves the waste he has totally removed the bor that the first person set down. When he covers and uncovers a bor, he has not removed the bor that the person set down!? Rather, the analogous case would be where one found a bor, filled it, and then dug it up again, in which case the second person would be chayuv!? **R' Ashi** therefore said, the case of the Mishna must be where the wastes were not lifted 3 tefachim off the ground, and that is why it is not considered to in any way undo the placing of the bor of the person who put it there to begin with.
- **Q:** Based on this understanding, why did **R' Elazar** have to say that the Mishna is discussing a case where it was lifted less than 3 tefachim, and he would only be chayuv if he intended to be koneh the wastes, why didn't he instead understand the Mishna where it was lifted more than 3 tefachim, and then say that even if he did not intend to be koneh he would still be chayuv!? **A: Rava** said, the Mishna uses the word "hafach" (turned over) instead of "higbi'ah" (lifted). This suggests that the case being discussed is where it was lifted less than 3 tefachim.
- Now that we know it is **R' Elazar** who says that he is chayuv, it must be **R' Yochanan** who says that he would be patur.
- **Q:** We find that he says the opposite!? A Mishna says that if someone make a fence of thorns on his property abutting the reshus harabim and it caused damage, he is chayuv. **R' Yochanan** says, he is only chayuv if the thorns protruded into the reshus harabim. However, if they were only on his property, he would be patur (even if he was then mafkir that area to the reshus harabim). Presumably, the reason he would be patur is because the bor was made in his reshus, but any bor made in the reshus harabim (where he does not own it, or where it was an item that he made hefker) he would be chayuv!? **A:** Really he holds that in that case he would be patur (which would mean that when a bor is made in one's own reshus he would be chayuv). The reason that in this case of the thorns he is patur is because it is not usual for people to rub up against walls, and therefore he does not have to try and prevent damage to someone who does rub up against the wall.
- **Q:** We find that he says the opposite!? We know that **R' Yochanan** always follows an anonymous Mishna, and there is an anonymous Mishna that says that if a person digs a bor in the reshus harabim and it causes damage, he would be chayuv!? **A:** Rather we must say that **R' Yochanan** holds that a bor of hefker is chayuv.
- **Q:** That would mean that **R' Elazar** would hold that he is patur, and we have said that he said in the name of **R' Yishmael** that a bor of hefker is considered to be owned by the person and he would be chayuv!? **A:** That is the view of his rebbi, **R' Yishmael**.

However, **R' Elazar** himself holds that the person would be patur.