



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

### Bava Kamma Daf Lamed

#### MISHNA

- If a person pours water in the reshus harabim and another person is damaged by it, the owner of the water must pay for the damage.
- If a person hides a thorn or a broken piece of glass in the reshus harabim, or if a person makes a fence of thorns against the reshus harabim, or if a fence fell into the reshus harabim, and a person was damaged by one of these things, the owner is chayuv to pay for the damage.

#### GEMARA

- **Rav** said, the owner of the water is chayuv only if the person's clothing was ruined by the water. However, if the person was injured because he slipped on the water, the owner of the water would not be chayuv, because it is the ground that injured him. **R' Huna** asked him, the water mixes with the earth and creates mud, and that mud should be considered as owned by the owner of the water, and he should therefore be chayuv to pay!? **Rav** answered, I was referring to a case where the water was absorbed into the ground and there was no mud.
  - **Q:** Based on this, this Mishna and the last one are saying the same thing!? **A:** One Mishna is to teach when one poured water in the summer (when pouring water into the reshus harabim is not allowed) and one is to teach when one poured water in the winter (when pouring water into the reshus harabim is allowed). In fact, a Braisa says, that although in the winter one may do so, if he does so and someone is damaged by it, he is chayuv.

#### HAMATZNI'AH ES HAKOTZ...

- **R' Yochanan** said, the owner of the thorn fence is only chayuv if the thorns were sticking out into the reshus harabim. However, if they were all in his own property, he is patur. **R' Acha the son of R' Ika** explained, the reason for this is that it is not usual for people to rub against a wall.
  - A Braisa says, if someone hides thorns or glass in someone else's wall, and the owner of the wall then demolished the wall, which caused it to fall into the reshus harabim and the glass or thorns did damage there, the one who hid these items is chayuv.
    - **R' Yochanan** said, this is only the case if the wall was a weak wall (and the other person should have therefore thought that the wall may be demolished). However, if it was a strong wall he would be patur and the owner of the wall would be chayuv.
    - **Ravina** said, from here we see that if a person covers his bor with someone else's cover, and the owner of the cover comes and take back his cover, the owner of the bor would be chayuv for any damage caused by the bor.
      - **Q:** This seems to be obvious!? **A:** We would have thought that in the case of the wall the owner of the thorns and glass is chayuv, because the owner of the wall does not know who owns these items and therefore need not notify him before demolishing the wall. However, in the case with the bor, we would say that the owner of the cover has to notify the owner of the bor in order for him to be chayuv.
  - A Braisa says, the "Chassidim Harishonim" would hide their thorns and their glass in their fields and would put them at least 3 tefachim deep into the ground so that they not block the plow. **R' Sheishes** would throw them into a fire. **Rava** would throw them into the Diglas River.
    - **R' Yehuda** said, if someone wants to be a "chassid" he should be careful with the laws of damages. **Rava** said he should be careful with the concepts of

Mesachta Avos. **Others** said he should be careful with the concepts of Mesachta Brachos.

#### MISHNA

- If one puts his straw into the reshus harabim so that it be trampled on and turned into fertilizer, and a person is damaged by it, the owner of the straw is chayuv for the damages. Also, whoever takes the straw first can be koneh it. **R' Shimon ben Gamliel** said, whoever creates a peril in the reshus harabim and it causes damage, is chayuv to pay for the damage, and whoever takes the items first can be koneh it.
- If one moves animal wastes in the reshus harabim and someone is damaged by it, the person who moved it is chayuv for the damage.

#### GEMARA

- **Q:** Should we say that the Mishna does not follow **R' Yehuda**? Because **R' Yehuda** says in a Braisa that in the fertilizing season a person is allowed to put his fertilizer out in the reshus harabim for people to trample. **A:** The Mishna may follow **R' Yehuda**. Although he says a person is allowed to do that, he would agree that if it did damage, the person would be chayuv.
  - **Q:** We find that **R' Yehuda** says a person is patur if his "Ner Chanukah" started a fire, because he had permission to put it at the entrance to his house or store. Presumably this means he had permission from Beis Din, and we see that **R' Yehuda** says that if a person has permission he would be patur from any damage he causes!? **A:** In that case he is patur because he has permission to put it there based on a *mitzvah*, not just permission from Beis Din.
  - **Q:** A Braisa says, if the **Chachomim** gave permission for someone to put something into the reshus harabim and that thing caused damage, he would be chayuv. **R' Yehuda** says he would be patur. We see that **R' Yehuda** says a person would be patur in such a case!? **A:** **R' Nachman** said, the Mishna is discussing the time of the year when it is not the fertilizing season, and could therefore follow **R' Yehuda**, who only says he is patur during the fertilizing season. **A2:** **R' Ashi** said, our Mishna is discussing straw, which is slippery, and therefore even **R' Yehuda** would agree in that case that the person would be chayuv.

#### KOL HAKODEM BAHEN ZACHA

- The Mishna said that the **Rabanan** instituted a penalty for anyone who put items that cause a hazard into the reshus harabim, and said that they become hefker so that the first person who takes them can be koneh them. **Rav** said, this penalty applies to the principle value of the item as well as to any improvements of the item (e.g. the straw that was improved by being trampled on by people). **Ze'iri** said, the penalty only applies to the value of the improvement, but not to the value of the principle (and that value will have to be paid for).
  - **Q:** The Mishna's second case, regarding the animal wastes moved in the reshus harabim, does not say that whoever takes it first is koneh. According to **Ze'iri** this makes sense, because animal wastes do not improve by being left there, so the penalty does not apply. However, according to **Rav**, why wasn't the penalty mentioned in this case as well? **A:** Since it was already mentioned in the earlier case of the straw, the Tanna did not feel the need to mention it again in this case.
    - **Q:** A Braisa on this Mishna says "if the items are taken it is considered to be gezel". Presumably this is referring to the case of the animal wastes, and we see that the penalty does not apply in that case!? **A:** The Braisa is referring to all the cases of the Mishna, and the Braisa is saying that if someone takes the items from the first person who took them and was koneh them, it would be gezel.
    - **Q:** A Braisa says as follows. If someone puts straw out into the reshus harabim to become fertilizer and someone is damaged by it, the owner is chayuv for the damage, and whoever takes it first can be koneh it, and it is mutar with regard to gezel. However, if someone moves animal wastes in the reshus harabim and it damages someone, the owner is chayuv, and it is assur with regard to gezel. We clearly see from here that there is a different halacha for straw and for animal waste, which is problematic according to **Rav**!? **A:** **R' Nachman bar Yitzchak** said, with regard to an item that has improvement (e.g. the straw), the

**Rabanan** penalized the principle value along with the improvement. With regard to an item that does not have improvement (e.g. the animal wastes), the

**Rabanan** did not institute a penalty at all.

- **Q:** According to **Rav**, is the penalty put into effect immediately, or only once there is actual improvement? **A:** From the fact that we asked on **Rav** from the case of animal waste, which does not improve, we see that **Rav** must hold the penalty kicks in even before there is improvement, because if not, what was the question to begin with.
  - That is no proof, because that was asked before **R' Nachman's** explanation that the penalty is limited to items that have improvement. However, once we know that, the question becomes, does the penalty take effect only once there is actual improvement, or even before that.
- **Q:** Maybe we can say that the machlokes between **Rav and Ze'iri** is actually a machlokes among Tanna'im in a Braisa. The Braisa says, with regard to a document which calls for interest payments, **R' Meir** says we penalize the holder and he may not collect the principle or the interest payments. The **Chachomim** say he may collect the principle, but not the interest. Maybe we can say that **Rav** holds like **R' Meir** and that **Ze'iri** holds like the **Rabanan**? **A:** **Rav** would say that the **Rabanan** hold that way in that case because the principle is something that was permissible, but in the case of putting items into the reshus harabim, which is assur, they would agree that the penalty would apply to the principle as well. **Ze'iri** would say, **R' Meir** says that way there because the issur begins at the time the document was written. However, when items are put into the reshus harabim, who says that they will cause damage at all, and therefore it can be that **R' Meir** would not penalize the principle in that case.
- **Q:** Maybe we can say that the machlokes between **Rav and Ze'iri** is actually a machlokes among Tanna'im in another Braisa. The Braisa says, if someone puts straw into the reshus harabim to make it into fertilizer, and it damages someone, the owner is chayuv, and whoever takes the straw first is koneh it, and it is assur with regard to gezel. **R' Shimon ben Gamliel** says, anyone who makes a hazardous condition in the reshus harabim and it causes damage, the owner would be chayuv for the damage, and whoever takes the item first would be koneh it, and it is mutar with regard to gezel. Now, how could the Braisa say "whoever takes it first is koneh" and then say "it is assur with regard to gezel"? We must say that it means that with regard to the improvement, whoever takes it first is koneh, and with regard to the principle, it is assur as gezel, and **R' Shimon ben Gamliel** comes to argue and says that even with regard to the principle, whoever takes it first is koneh!? **A:** **Ze'iri** would have to say that this is a machlokes among Tanna'im. However, **Rav** would say that all agree that the principle is penalized as well, and the machlokes is whether we announce that this is the halacha (that people have the right to take these items) or only pasken that way after the fact.
  - In fact, we find that **R' Huna in the name of Rav** said this is the halacha, but we don't rule this way for the people. **R' Ada bar Ahava** said, this is the halacha, and we rule this way for people (even initially).
    - **Q:** We find that **R' Huna** paskened in an actual case that certain items left in the reshus harabim were mutar to be taken!? **A:** That owner was warned several times and didn't change his ways, and that is why **R' Huna** allowed his items to be taken.