



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

Bava Kamma Daf Lamed Gimmel

- A Braisa says, if workers go into the property of the employer to collect their wages, and while there they were gored by his ox or bitten by his dog, and died as a result, the employer is patur from having to pay kofer (because they entered without permission). **Others** say, the workers have the right to enter the employer's reshus to collect their wages, and therefore the employer would be chayuv to pay kofer.
 - **Q:** What is the case? If this employer can usually be found in the city, then why would the **Others** say that the workers have the right to enter his property to collect their wages? They should collect from him when he is in the city!? If he is usually only found in his house, why would the **T"K** say that they may not enter his property? They have every right to do so to collect their wages!? **A:** The case is where the employer is sometimes found in the city, but not usually, and the workers therefore went to his house and knocked on his door. When they did so he said "yes". The **Others** hold that "yes" means "come in", and the workers are therefore entering with permission. The **T"K** holds that "yes" means "stay where you are", and they therefore had no permission to enter.
 - A Braisa says that if a worker goes into the reshus of the employer to collect his wages and is killed by the employer's ox or dog, the employer is patur from having to pay kofer even though the worker entered with permission. Now, if he entered with actual permission the employer would clearly be chayuv!? Rather, we must say that the worker knocked, the employer responded with a "yes", and the Braisa holds that "yes" means "stay where you are".

MISHNA

- If two oxen, who were each a tam, fought with each other and damaged each other, the owner of the ox that was damaged less will pay half of the excess damage to the owner of the ox that was damaged more.
 - If they were both a muad, the owner of the ox that was damaged less will pay for the full excess damage to the owner of the ox that was damaged more.
 - If one was a tam and one was a muad, if the damage done by the muad was more than the damage done by the tam, the muad pays for the full excess damage. If the damage done by the tam was more than the damage done by the muad, the tam pays for half of the excess damage.
 - Similarly, if two people injured each other, the one who did more damage will pay for the full excess damage to the other person.
 - If a person and a muad ox damaged each other, then the one who did more damage will pay for the full excess damage.
 - If a person and a tam ox damaged each other, if the damage done by the person was more than the damage done by the tam, the person pays for the full excess damage. If the damage done by the tam was more than the damage done by the person, the tam pays for half of the excess damage.
 - **R' Akiva** says, even in this case, if the tam did more damage, the tam must pay for the full excess damage.

GEMARA

- A Braisa says, the pasuk of "kamishpat hazeh yei'aseh lo" teaches that just as when an ox injures another ox, if the injuring ox was a tam he pays half damages and if he was a muad he pays full damages, the same would apply to an ox that damaged a person. **R' Akiva** says "hazeh" refers to

the immediately preceding pasuk (which discusses a muad) and teaches that an ox that damages a person is always given the status of a muad, and the words “yei’aseh lo” teach that the payment only needs to be made up to the value of the damaging ox, and not beyond that.

- **Q:** According to the **Rabanan**, why does the pasuk say the word “zeh”? **A:** They say it is needed to teach that the owner is not chayuv for the 4 payments in this case.
 - **R’ Akiva** learns this from the pasuk of “*ish ki yitein mum ba’amiso*”. The **Rabanan** say, from this pasuk we would say that it is only patur from having to pay for pain.

MISHNA

- If an ox worth 100 zuz gored an ox worth 200 zuz, killing it, and the carcass is worthless, the owner of the dead ox takes the live ox as payment for his damages.

GEMARA

- The Mishna follows **R’ Akiva** from a Braisa. The Braisa says, **R’ Yishmael** says we must appraise the live ox in Beis Din and the owner then pays the appropriate value. **R’ Akiva** says that the live ox itself is to be used for the payment.
 - The machlokes is that **R’ Yishmael** holds that the damage is considered like a debt, which the damager must pay. **R’ Akiva** holds that the nizek and mazik become partners in the live ox. The machlokes is based on the pasuk that says that the live ox should be sold and its proceeds divided. **R’ Yishmael** holds that this pasuk is directed to Beis Din, and the sale should be done if the mazik has no other means to pay. **R’ Akiva** says this pasuk is directed to the nizek and mazik, and teaches that they are considered to be partners in the animal.
 - **Q:** What is the practical difference between them? **A:** The difference would be if the nizek was makdish the property. According to **R’ Yishmael** it would not become kodesh, and according to **R’ Akiva** it would.
 - **Q:** **Rava** asked **R’ Nachman**, according to **R’ Yishmael**, what would the halacha be if the mazik sold the ox? Since he says that the mazik is a debtor, he still owns the animal and could therefore sell the animal, or maybe we should say that since the nizek has a lien on the animal, the mazik cannot sell it!? **A:** **R’ Nachman** said, the animal would not be sold.
 - **Q:** A Braisa says that it will be considered as sold!? **A:** It is sold, but the nizek can go and take it back from the buyer for payment of the damage.
 - **Q:** If he can take it back, then in what respect is it considered as sold? **A:** If the buyer used the ox before it was taken back, he does not have to pay for that use.
 - **Q:** This seems to suggest that we collect moveable items that were sold by the debtor!? **A:** This case is different, because it is considered as if the ox is made an “apotiki” for payment of the damages, in which case it may be taken back even though it is moveable property.
 - **Q:** We have learned that **Rava** said that a slave can be used as an apotiki, but an ox cannot!? **A:** The reason a slave may be used for an apotiki is because it becomes public knowledge. This ox, which has gored, also becomes public knowledge because of its goring, and therefore can also be used as an apotiki.
- **R’ Tachlifa** of EY taught a Braisa in front of **R’ Avahu** that said, if he sold the live ox, the sale is not effective, but if he was makdish the ox, it does become hekdesch.
 - **Q:** Who sold the ox? If the mazik is the one who sold it, the Braisa must follow **R’ Akiva**, who says that the ox is no longer his to sell, and the part of the Braisa that says he can make it hekdesch must follow **R’ Yishmael**!? If we say it is the nizek who sold it, then when we say the sale is not effective it follows **R’ Yishmael**, and when it says the hekdesch is effective it follows **R’ Akiva**!? **A:** The Braisa refers to where the mazik sold it, and even **R’ Yishmael** agrees that the sale is not effective, because the nizek has a lien on the ox. Also, the hekdesch will be effective even according to **R’ Akiva** as a gezeira of **R’ Avahu**, who says that we are goizer so that people shouldn’t say that hekdesch went out to chullin without first being redeemed. Therefore, although it is truly not hekdesch, a minimal amount would have to be given as redemptio.

- A Braisa says, if an ox that is tam does damage, then before the ox is taken to Beis Din: if it is sold, the sale is effective; if it is made hekdesch, it becomes hekdesch; if it was shechted or given away as a gift, what was done was done. However, once the ox was taken to Beis Din, if it is sold, the sale is not effective; if it is made hekdesch, it does not become hekdesch; if it was shechted or given away as a gift, it is not effective. If creditors of the mazik came and collected the ox for their debt, whether the debt happened before the damage or visa-versa, the creditor may not keep the ox, because the damage is only paid from the body of the ox. If an ox that is a muad damaged, whether it was already brought to Beis Din or not, if it is sold, the sale is effective; if it is made hekdesch, it becomes hekdesch; if it was shechted or given away as a gift, what was done was done. If creditors of the mazik came and collected the ox for their debt, whether the debt happened before the damage or visa-versa, the creditor may keep the ox, because the damage is anyway paid from the best of the mazik's properties (and is not limited to the body of the ox).
 - When the Braisa says that the sale of the tam ox before it goes to Beis Din is a valid sale, it follows **R' Yishmael** and means that the nizik will be allowed to take it back from the purchaser, but if the purchaser used the ox when he had it, he will not have to pay for that use. When the Braisa says that the hekdesch is effective, it means that a minimal amount will have to be given for its redemption, on the basis of the gezeirah of **R' Avahu**.
 - **Q:** The Braisa said, if it was shechted or given as a gift, what was done was done. Now, the gift being effective is teaching that the recipient of the gift does not need to pay for any use that he had before it is taken from him by the nizik. However, the case of it being shechted, why can't the meat just be taken by the nizik as payment? **A: R' Shizbi** said, this is teaching that the nizik must bear the loss from any depreciation to the value of the animal due to the shechita.
 - **R' Huna the son of R' Yehoshua** said, from here we can learn that if someone damages the lien of another, he is patur.
 - **Q:** This seems obvious from the Braisa, so why does **R' Huna** have to say that? **A:** We would think that in the case of the shechita he can tell the nizik, "I didn't do anything except take away the breath (the life) of the animal", and that is why he is patur. However, in a case when he did real damage to property subject to a lien, maybe he should be chayuv. **R' Huna** therefore teaches that he is not chayuv.
 - **Q: Rabbah** has already taught this, when he said that if someone burns the documents of another (preventing him from having the ability to collect his debts) he is patur!? **A:** We would think that in that case he is patur because he only damaged paper that is the *evidence* of a lien, but not the property of the lien itself. The Braisa teaches that even when he damages the property of the lien he is not chayuv.
 - **Q:** The Braisa said, if creditors of the mazik came and collected the ox for their debt, whether the debt happened before the damage or visa-versa, the creditor may not keep the ox, because the damage is only paid from the body of the ox. Now, if the damage took place before the debt, this would make sense. However, if the debt was incurred before the damage, why can't the creditor keep the ox as payment for his debt? Even if the debt happened after the damage, since the debtor seized the ox, he should be allowed to keep it!? Are we to learn from here that when a later creditor seizes an asset he must return it in favor of an earlier creditor!? **A:** Typically, once an asset is seized, he may keep it. However, in this case, because the payment for damages is limited to the body of the ox, the nizik has a stronger lien. Therefore, in this case he is able to demand the return of the ox for payment of the damages.