



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

### Bava Kamma Daf Lamed Daled

- A Braisa says, if an ox worth 200 gored an ox also worth 200 and caused it damage (a decrease in value) of 50, and the value of the injured ox then rose to 400, but had it not been injured the value would have risen to 800, the mazik must still pay half the damage as it was at the time of the damage (half of 50). If after the injury the injured ox's value continued to decrease, the mazik must pay half of the decrease of its value at the time that the ox is brought to Beis Din. If the value of the damaging ox rose, the mazik still only pays half of the damage as it was at the time of the injury (and the nizek can't say that he effectively owns 1/8 of the animal – it was worth 200 and he was owed 25 from it) and should therefore share in 1/8 of the increase of value (this seems to follow **R' Yishmael**, who says that the nizek has no rights of ownership in the damaging animal). If the value of the damaging party decreased, the mazik only pays based on its value at the time that it is brought to Beis Din (this seems to follow **R' Akiva**, who says that the nizek becomes an owner of the damaging ox).
  - **Q:** Shall we say that in the last half of the Braisa, the first part follows **R' Yishmael** and the last part follows **R' Akiva**? **A:** The entire thing can follow **R' Akiva**. The reason the nizek does not share in the appreciation of value is because the case is discussing where the mazik spent money fattening the ox, resulting in the increase of value. Since it was all at the mazik's expense, only the mazik benefits from the appreciation.
    - **Q:** If this is the case (that the owner fattened it and brought about the increase in value), then in the first half of the Mishna, why does the Mishna say that if the injured ox increased in value the mazik must still pay for the decrease that he initially caused? The increase is only because the nizek spent money to fatten it, so of course the mazik may not benefit from that!?!? **A: R' Pappa** said, the first half of the Mishna can be talking about where the nizek fattened the animal, or where the animal's value appreciated on its own. The chiddush is, that even where it happened on its own the mazik must still pay for the initial decrease. The end of the Braisa can only be discussing the case of where the mazik fattened his animal.
  - **Q:** The Braisa said that if the value of the injured ox continued to depreciate, the mazik must pay based on its value when it stands before Beis Din. Why did it depreciate further? If it was due to work, why would the mazik have to pay for that!?!? **A: R' Ashi** said, the case is where it continued to depreciate because of the injury it suffered from the mazik's ox.

### MISHNA

- If an ox that is worth 200 gored an ox that is also worth 200, killing it, with the carcass being worthless, **R' Meir** says, this is the case that the pasuk is referring to when it says "they shall sell the live ox and divide the money". **R' Yehuda** said, it is true that that is the halacha, but that can't be what is meant by the pasuk, because the pasuk continues and says "and they should also divide the dead one", which in this case does not apply. Rather, the pasuk is referring to the case where an ox worth 200 gored an ox also worth 200, killing it, and the carcass is worth 50. In this case the nizek and the mazik each take half of the live ox and half of the dead ox.

### GEMARA

- A Braisa says, if an ox worth 200 gored an ox also worth 200, killing it, and the carcass is worth 50, the nizek and the mazik each take half of the live ox and half of the dead ox. **R' Yehuda** says, this is the case that is referred to by the pasuk in the Torah. **R' Meir** says this is not the case. Rather the case is where an ox that is worth 200 gored an ox that is also worth 200, killing it,

with the carcass being worthless. That is the case regarding which the pasuk says “they shall sell the live ox and divide the money”. If so, how are we to understand the next part of the pasuk that says “and they should also divide the dead one”? It means to teach that half of the depreciation of the animal between the time it was alive and the time that it was killed is paid to the nizek from the value of the live animal.

- **Q:** According to **R’ Meir and R’ Yehuda**, the nizek and mazik are ending up with the same amount of money, so what is the difference between them? **A:** **Rava** said, the machlokes is who must bear the loss for further depreciation of the carcass after the time of death. **R’ Meir** says that is the loss of the nizek, and **R’ Yehuda** says that the mazik must bear half that loss.
  - **Q: Abaye** asked, if that is true, that would mean that according to **R’ Yehuda** a tam is being treated more stringently than a muad, because a muad does not bear any of the loss of further depreciation of the carcass!? Although we find that **R’ Yehuda** has a higher standard of guarding a tam than a muad, with regard to payment **R’ Yehuda** clearly says in a Braisa that it must be that a tam is treated more leniently than a muad!? **A:** Rather, **R’ Yochanan** said, the machlokes between **R’ Meir and R’ Yehuda** is regarding a case where the carcass appreciates in value after the time of death. **R’ Meir** holds that appreciation is totally for the benefit of the nizek, and **R’ Yehuda** says that the mazik is entitled to benefit from half that increase.
    - In fact, we find that **R’ Yehuda** holds this way, because in a Braisa he states that one would possibly think that a mazik can make money off the damage if the value of the carcass is more than the value that the animal was worth when alive. However, we will not allow a mazik to make money from his damage, and a pasuk teaches this as well. Now, the basis for even thinking to say that a mazik could make money if the carcass increases the value dramatically is only because **R’ Yehuda** holds that the mazik shares half of the increase in the value of the carcass when that reduces his payment.
- **Q: R’ Acha bar Tachlifa** said to **Rava**, according to **R’ Yehuda**, who says that they must split the value of the live and dead ox, it is possible that the tam would pay more than half the damage, and this can’t be right, because we know from the pesukim that a tam only pays half the damage!? **A: R’ Yehuda** would agree with **R’ Meir** that the Torah means that the nizek is only entitled to half the damage, which is gotten from the sale of the tam ox. He learns this from the pasuk of “v’gam es hameis yechetzun”. Although **R’ Yehuda** previously darshened this pasuk differently, he would say that the extra word “v’gam” teaches that the payment is limited to half the damage, and the pasuk can also teach that the mazik shares in the appreciation of the carcass (as learned previously).

#### MISHNA

- There is a person who is chayuv for the action of his ox, but is patur when the action is his own, and a person who is patur for the action of his ox, but is chayuv when the action is his own.
  - How is this so?
    - If one’s ox embarrassed someone, the owner is patur, but if he himself embarrassed someone, he is chayuv. If his ox blinded his slave or knocked out the tooth of his slave, he would be patur, but if he himself did that, he would be chayuv (to let him free).
    - If one’s ox wounded the owner’s father or mother, he would be chayuv to pay, but if he himself did so, he would be patur (because he would be chayuv misah). If his ox set a pile of grain on fire on Shabbos, he would be chayuv, but if he himself did so, he would be patur, because he would be chayuv misah.