



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

### Bava Kamma Daf Lamed Hey

#### GEMARA

- **R' Avahu** taught a Braisa in front of **R' Yochanan**, if someone does any destructive act on Shabbos he is patur, except for someone who wounds somebody or burns something. **R' Yochanan** said, this is not a correct Braisa, because a person would even be patur for wounding and burning. The only reason one would be chayuv for these actions would be if he wounded because he needed the blood for his dog, or if he burned because he needed the ashes.
  - **Q:** Our Mishna compared the cases of an ox burning a pile of grain on Shabbos and a person doing so. Presumably, just as the ox didn't burn it because it needed the ashes, the person didn't burn it for its ashes either. Still, the Mishna says that the person is patur to pay, because he is chayuv misah for burning on Shabbos, which would not be the case if he burned it for a reason other than needing the ashes!? **A:** The Mishna means to compare the case of the ox to the person, that just as the person burned it for the ashes, the animal burned it for the ashes as well. **R' Avya** explained, the Mishna is discussing a very smart ox that has a bite on its back and wants the ashes so that it can roll on it to heal the bite. We know this is the ox's intent in burning the grain, because we actually see that he rolls around in the ashes after burning it.
    - We find cases of intelligent animals like this, as we find that **R' Pappa's** ox had a toothache, and went and removed the cover from a barrel of beer so that it could drink the beer and heal the toothache.
    - **Q:** The **Rabanan** asked **R' Pappa**, we can't say that the case of the ox is like the case of the person in this way, because that would mean that in the first case of the Mishna the ox intended to embarrass someone, and that is something an animal is not capable of doing!? **A:** The case would be where the ox intended to damage. As a Braisa says, that if a person intends to injure he would chayuv for boshes even if he did not intend to embarrass the victim.
    - **Rava** said, the Mishna does not refute **R' Yochanan**, because the Mishna is discussing a case of shogeg, and **Chizkiya** has taught that even when one is not chayuv misah because an act (of killing, or of chilul Shabbos) was done b'shogeg, he is still patur from having to pay.
      - **Q:** The **Rabanan** asked **Rava**, the Mishna says the reason he is patur is because he is chayuv misah!? **A:** The Mishna means, that since if it is done b'meizid it would carry the death penalty, therefore, even when it is done b'shogeg he is still patur from having to pay.

#### MISHNA

- If an ox was chasing another ox, and the chased ox was later found to be damaged. The owner of the chased ox says the damage was done by the chasing ox, and the owner of the chasing ox said the damage was done from a rock when it was scratching itself against it, the halacha is "hamotzi meichaveiro alav haraya".
- If 2 oxen were chasing a third ox, and it is clear that the chased ox was damaged by one of the oxen, and the owner of each chasing ox blames the damage on the other chasing ox, they are both patur (because they can each lay blame on the other).
  - If both of the chasing oxen belonged to the same person, both of them are chayuv. If the chased ox owner says it was the larger one that did the damage (the oxen were each a tam, and therefore only pay from the body of the damaging animal, therefore a larger animal would have the ability to pay a larger amount towards the half damages) and the chasing oxen owner said it was the smaller one, or if one of the chasing oxen was a tam

and the other was a muad, and the chased ox owner says it was the muad that did the damage and the chasing oxen owner said it was the tam, the halacha is “hamotzi meichaveiro alav haraya”.

- If two oxen belonging to one owner were being chased by two other oxen who also belonged to one owner, and one of the chasing oxen were large and the other was small, and one of the chasing oxen damaged one of the chased oxen, and the other damaged the other, and the nizik says that the large ox damaged the large ox and the small one damaged the small one, and the mazik says that the large damaged the small and the small damaged the large, or if one of the damaging oxen was a tam and the other was a muad, and the nizik says that the muad damaged the large animal and the tam damaged the small animal, and the mazik says the reverse is true, again, the halacha is that “hamotzi meichaveiro alav haraya”.

#### GEMARA

- **R’ Chiya bar Abba** said, from our Mishna we see that the **Rabanan** argue on **Sumchos**, who says that when there is doubt about ownership of money (when the doubt is based on the circumstances, even without their claims) the money is divided (the first case of our Mishna is that type of safek, and we see that the **Rabanan** say “hamotzi meichaveiro alav haraya”). **R’ Abba bar Mamal** asked **R’ Chiya bar Abba**, did **Sumchos** say his halacha even when both parties make claims of certainty (which is the case of our Mishna)? **R’ Chiya** said, yes.
  - **Q:** How do we know that the Mishna is a case of where they make claims of certainty?  
**A:** The Mishna says the nizik says “your ox damaged my ox” and the mazik responded “not so, rather your ox was damaged scratching itself on a stone”. Those are claims of certainty (“bari”).
    - **Q: R’ Pappa** asked, if the beginning of the Mishna is discussing claims of bari, that means the end of the Mishna (the nizik says the large animal did the damage, or the muad did the damage, and the mazik says it was the small animal, or the tam) must be discussing the same. Now, in that case the Mishna said “hamotzi meichaveiro alav haraya”, which suggests that if no proof is brought the nizik would collect, but only according to the level admitted to by the mazik. This seems to refute **Rabbah bar Nosson**, who says that if a person claims that someone owes him wheat, and the defendant says he owes barley, not wheat, the defendant would be patur from having to pay anything at all (and would not even pay the barley that he admits to)!? Rather, in order to understand the Mishna without refuting **Rabbah bar Nosson**, you will have to say that the Mishna is instead discussing a case where one party made a claim of bari and the other made a claim of uncertainty (“shema”), which is not the way the Mishna was explained by **R’ Chiya bar Abba**!? **A:** The Mishna can’t be discussing a case where one party made a claim of bari and the other made a claim of shema, as can be proven. If the case is where the nizik made a claim of bari and the mazik made a claim of shema, that would still refute **Rabbah bar Nosson**, because according to him he should still be entirely patur! Rather, you will say that the nizik made a claim of shema and the mazik made a claim of bari, which would mean that the beginning of the Mishna is discussing that case as well. If that is true, our Mishna would not be arguing with **Sumchos**, because **Sumchos** would agree in that case that we don’t say the money is divided!
      - **R’ Pappa** said, we can say that the end of the Mishna is discussing the case where the nizik has a claim of shema and the mazik has a claim of bari, and the beginning of the Mishna is where the nizik has a claim of bari and the mazik has a claim of shema.
      - **Q: R’ Pappa** had refuted **R’ Chiya bar Abba’s** understanding of the Mishna, because that would lead to the different parts of the Mishna referring to different cases. However, according to **R’ Pappa** the Mishna is still referring to different cases in the different sections!? **A:** According to **R’ Chiya bar Abba**, one part would have to be dealing with two claims of bari, and the other part would have to be dealing with one claim of bari and one of shema. That is considered to be two very different cases, and cannot be the proper understanding. According to

**R' Pappa**, one part deals with the nizik making a bari and the mazik making a shema, and the other part is reversed. That is still considered to be one case, and can be the proper understanding of the Mishna.

- We have stated previously, **Rabbah bar Nosson** says, if a person claims that someone owes him wheat, and the defendant says he owes barley, not wheat, the defendant would be patur from having to pay anything at all (and would not even pay the barley that he admits to).
  - **Q:** What is his chiddush? This is stated explicitly in a Mishna!? **A:** If we would only have the Mishna, we would think that when the Mishna says he is “patur” it means that he does not need to pay him the value of wheat, but would still have to pay for the barley. He therefore teaches that he is even patur from having to pay for barley.
  - **Q:** Our Mishna said in its last case, “If two oxen belonging to one owner were being chased by two other oxen who also belonged to one owner, and one of the chasing oxen were large and the other was small, and one of the chasing oxen damaged one of the chased oxen, and the other damaged the other, and the nizik says that the large ox damaged the large ox and the small one damaged the small one, and the mazik says that the large damaged the small and the small damaged the large”, and ultimately said that “hamotzi meichaveiro alav haraya”, which suggests that the mazik would have to pay according to his own claim. However, according to **Rabbah bar Nosson** he should not have to pay anything at all!? **A:** The Mishna means that if the nizik brings proof he will be able to collect payment, but until he does, he will actually collect nothing at all.
    - **Q:** A Braisa on our Mishna explicitly says that the nizik is paid according to the claim of the mazik!? **A:** The Braisa is referring to where the nizik seized the oxen. That is the only time he would collect.
  - **Q:** Our Mishna said in its last case, “if one of the damaging oxen was a tam and the other was a muad, and the nizik says that the muad damaged the large animal and the tam damaged the small animal, and the mazik says the reverse is true, again, the halacha is that hamotzi meichaveiro alav haraya”, which suggests that the mazik would have to pay according to his own claim. However, according to **Rabbah bar Nosson** he should not have to pay anything at all!? **A:** The Mishna means that if the nizik brings proof he will be able to collect payment, but until he does, he will actually collect nothing at all.
    - **Q:** A Braisa on our Mishna explicitly says that the nizik is paid according to the claim of the mazik!? **A:** The Braisa is referring to where the nizik seized the oxen. That is the only time he would collect.

HAYU SHNEYHEM SHEL ISH ECHAD SHNEYHEM CHAYAVIM

- **Q: Rava MiParzika** asked **R' Ashi**, this seems to suggest that if one of 2 tam oxen damaged, the nizik may collect payment from whichever animal he wants!? **A:** This case is where the animals are both a muad (in which case payment is not limited to the body of the damaging ox, so it makes no difference which one he uses for payment).
  - **Q:** If the Mishna is discussing where they are both a muad, why does the next part of the Mishna say that when one animal was large and the other is small and the nizik and mazik each claim that a different animal did the damage, that the halacha is hamotzi meichaveiro alav haraya? If they are anyway a muad, the mazik must pay for the full damage, irrespective of the value of the damaging ox!? **A: R' Ashi** said, the end of the Mishna is discussing where the oxen are each a tam, and the earlier part of the Mishna is discussing where they are a muad.
    - **Q: R' Acha Saba** asked **R' Ashi**, if the Mishna is discussing a case of muad, why does it say “they are chayuv” (presumably referring to the oxen)? It should say “the owner is chayuv”!? Also, why does the Mishna say “they are *both* chayuv”!? **A:** We must say that the Mishna is discussing where they are each a tam, and the Mishna is following **R' Akiva**, who says that the mazik and the nizik become partners in the damaging animal. The Mishna is saying the mazik only pays if both oxen are present. However, if one is lost, the mazik can tell the nizik, bring proof that the remaining ox is the one that did the damage and then I will pay you.

**HADRAN ALACH PEREK HAMANI'ACH!!!**