



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

Bava Kamma Daf Daled

- **Q:** We have learned that **Shmuel** says that the damager of shor in the Mishna refers to keren, and maveh refers to shein. Why did the Tanna leave out regel from the Mishna's list? **A:** When the Mishna says "when it damages the damager is chayuv", which is an extra clause, it comes to include regel in the Mishna.
 - **Q:** Why not list regel explicitly? **A:** **Rava** therefore said, shor refers to regel and maveh refers to shein. When the Mishna says that each cannot be learned from the other it is because regel is different in that it is a common type of damage and shein is different in that the animal derives benefit from the damage.
 - **Q:** Why did the Tanna not list keren? **A:** When the Mishna says "when it damages the damager is chayuv", which is an extra clause, it comes to include keren in the Mishna.
 - **Q:** Why not mention keren explicitly? **A:** The Mishna only lists the damagers that are a muad from the very beginning, and not the damagers (like keren) that are first a tam and then a muad).
- **Q:** Why doesn't **Shmuel** hold like **Rav**, that maveh refers to a person who does damage? **A:** He would say, the later Mishna lists a person who does damage, so it can't be that that is what is meant by maveh in this Mishna.
 - **Q:** Why not mention a person who damages in the first Mishna? **A:** The first Mishna is only discussing damage committed by a person's property, not by the person himself.
 - **Q:** How does **Rav** answer this? **A:** He says the later Mishna mentions a person only in the context of stating that he is an immediate muad. However, the principle place of mentioning a person who does damage is in our Mishna.
- According to **Rav**, when the Mishna says that shor and maveh are different, it should be understood as follows. Shor is more stringent in that the owner is chayuv kofer if the shor kills someone, whereas a person is not chayuv kofer when he himself kills someone. On the other hand, a person is more stringent in that when he damages he is chayuv for 4 additional things beyond the actual damage (he must pay for the pain, for the healing, for the incapacity to work, and for the embarrassment).
 - **Q:** The Mishna says that the common characteristic of the avos in the Mishna is that it is normal for them to damage. According to **Rav**, who says that shor refers to keren, that is not true, because it is not normal for an animal to damage with keren!? **A:** The Mishna is speaking about a muad, where it is even normal for it to damage with keren, since it has done so in the past.
 - **Q:** Can it be said that it is normal for a person to do damage? **A:** The Mishna is discussing a person who is sleeping. Since he stretches in his sleep, it is normal for him to do damage.
 - **Q:** The Mishna says that "the damager must be guarded by you". That makes sense when the damager is something other than the person himself. According to **Rav**, who says that maveh refers to the person, that phrase doesn't make sense!? **A:** We have this same issue with a Braisa, and there **R' Avahu** said, we must understand this to mean that with regard to the person he must watch himself, although the phraseology is better suited for the other 3 cases of damagers. We will explain our Mishna is this same way.
- **Q:** **R' Mari** asked, maybe maveh refers to water that damaged, as we find the word "tiveh" is used in reference to water in a pasuk!? **A:** In that pasuk, the word tiveh is actually going on the word "fire", not on the word "water".

- **Q: R' Zvid** asked, if so, maybe maveh is fire!? **A:** That can't be, because "hever" is listed separately in the Mishna, and that refers to fire.
- **R' Oshaya** taught a Braisa that there are 13 avos damagers: the unpaid watchman, the borrower, the paid watchperson, the renter, actual damages, pain, healing, unemployment, embarrassment, and the 4 from our Mishna, brings to a total of 13.
 - **Q:** Why doesn't our Mishna list these others? According to **Shmuel** we can say it is because our Mishna only deals with damage done by a person's property, and not by the person himself. However, according to **Rav**, why does our Mishna not mention these as well? **A:** When the Mishna said maveh, which is the person himself, he meant for that to include all forms of a person who is a damager.
 - **Q:** Why does **R' Oshaya** feel the need to list all these items separately? **A:** He says that we list two kinds of a person who damaged – a person who damages property, and a person who damages another person.
 - **Q:** If so, why doesn't he also list two types of shor – an animal that damages another animal, and an animal that damages a person? **A:** There is a difference between a person who damages property (only pays for the damage) and a person who damages another person (who must pay for pain, etc.). However, when an animal damages, the owner always pays the same thing – whether it damaged property or a person. That is why there is no need to list it separately.
 - **Q:** The cases of the watchmen, the borrower and the renter are also cases of a person damaging property, and yet they were listed separately!? **A: R' Oshaya** taught cases of direct damage and separately taught cases of indirect damage.
- **R' Chiya** taught a Braisa that there are 24 avos damagers: one who pays keifel (double), one who pays 4 or 5 times (if he steals a sheep or ox and then kills it or sells it), a ganav, a gazlan, eidem zomemim, a rapist, a seducer, a defamer, a person who makes another person's food tamei, one who mixes terumah into regular produce, one who makes another's wine into yayin nesech, and the 13 of **R' Oshaya**, is a total of 24.
 - **R' Oshaya** didn't list all these, because he only listed things where the person must pay for actual damage payments, and not where he must pay a penalty.
 - **Q:** The ganav and the gazlan don't pay a penalty, so why didn't he list them? **A:** These are included in the cases of the unpaid watchman and the borrower.
 - **Q:** If so, why did **R' Chiya** mention these separately? **A:** He listed a case where the property came into the person's hands in a permissible way, and then taught cases where the money came into his hand in a prohibited way.
 - **Q:** Eidem zomemim don't pay a penalty, so why doesn't he list it? **A:** He holds like **R' Akiva** who says that eidem zomemim don't pay if they admit to the crime, which means they are considered to pay a penalty.
 - **Q:** If he holds like **R' Akiva**, he should also hold like another view of **R' Akiva**, that when an animal damages a person he always pays for the full damage even if the animal is a tam, and therefore, he should list two types of shor!? **A: R' Akiva** holds that the full damage is only paid up to the worth of the damaging animal. Therefore it is often not fully paid, and that is why he doesn't list this as a separate animal that damages.
 - **Q:** The rapist, the seducer, and the defamer pay damages other than just a penalty, so why doesn't **R' Oshaya** list them? **A:** He already lists the payments for pain, embarrassment, and actual damages, so there is no reason to list them again.
 - **Q:** The one who makes food tamei, the one who mixes terumah with regular produce, and the one who makes wine into yayin nesech all pay monetary damages, not penalties, so why doesn't he list them? **A:** If he considers damage that is not noticeable (e.g. tumah) to be regular damage, then he already listed that. If he considers it not be a real damage, then it is a penalty and he does not list penalties.
 - **Q:** Maybe we can say that **R' Chiya** holds that such damage is not a true damage, because if it is, why does he need to list this separately? **A:** It

may be that he wanted to separately list damage that is noticeable and damage that is not noticeable.