



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

Bava Kamma Daf Mem

- A Braisa says, an apitrapis must pay for damages, but they do not pay kofer (if the animal kills somebody).
 - Presumably this is because the Braisa holds that kofer is paid to achieve a kaparah, and the minors do not need a kaparah. **R' Chisda** said, the Braisa follows the view of **R' Yishmael the son of R' Yochanan ben Broka**, as seen in a Braisa. The Braisa says, kofer is paid in the amount of the value of the nizik. **R' Yishmael the son of R' Yochanan ben Broka** says it is the value of the mazik. It seems that the **T"K** holds that kofer is a compensatory payment, which is why it is paid based on the value of the nizik, and **R' Yishmael** holds it is a kaparah, which is why it is based on the mazik.
 - **R' Pappa** said, it may be that they both agree that kofer is for kaparah, and the machlokes is only regarding the amount of the kaparah payment. The **T"K** learns from a gezeira shava that it is based on the nizik. **R' Yishmael** bases the value on logic, that the payment is to bring a kaparah for the mazik.
- **Rava** was praising **R' Acha bar Yaakov** to **R' Nachman**. **R' Nachman** told **Rava**, that he should bring **R' Acha** to him. When he came, **R' Nachman** told him "ask me a question". **R' Acha** asked, if an ox that is owned by partners kills someone, do the partners pay kofer? They can't each pay a full kofer, because the Torah says that one kofer is paid, not two. They can't each pay half kofer, because only full kofer brings a kaparah!? While **R' Nachman** contemplated this question, **R' Acha** asked another question. A Mishna says that for eirechin obligations we take security for payment. We do not do so for a chatas or asham obligation. **R' Acha** asked, do we take security for a kofer obligation? On the one hand it is like a chatas obligation, since both bring kaparah, and therefore there is no need to take security, or maybe since the money goes to a person, and not to hekdes, he doesn't feel the pressing need to pay, and we therefore do need to take security!? Also, maybe since he himself did not do the aveirah, rather it was his animal that did, he treats it more leniently, and therefore we have to take security to make sure he pays!? **R' Nachman** told **R' Acha**, "leave me alone, you have already quieted me with the first question!"
- A Braisa says, if a person borrowed an ox on the assumption that it was a tam, and it is found to be a muad, if it gored while in the possession of the borrower the owners must pay for half the damages and the borrower must pay for half. If an ox was borrowed and became a muad while in the possession of the borrower, and he then returned it to the owners and it gored there, the owners only pay for half the damage and the borrower is fully patur.
 - **Q:** In the first case of the Braisa, why is the borrower chayuv for anything at all? He should tell the owner that he only accepted to watch the ox as a tam!? **A: Rav** said, the case is that the borrower could tell that this ox had a tendency to gore. Therefore he should have watched it as such.
 - **Q:** Still, he should say that he borrowed a tam, not a muad, and therefore should not be responsible for a muad!? **A:** The owner can tell him, even if it was a tam you would be chayuv to pay for half damages. Therefore, now as well, you must pay for half damages.
 - **Q:** He should tell the owner, if it was a tam the damages would be paid from the body of the animal, and now that it is a muad I have to pay from my pocket!? **A:** The owner can tell him, even if it was a tam and was paid from the body of the animal, you would then have to pay me that value when you return the borrowed animal to me.
 - **Q:** He should tell the owner, if it was a tam I could have admitted the liability and been patur (this follows the view that payment for half damages is a penalty, and one who admits liability to a penalty is patur)!? Even according to

the view that the half damages payment is not a penalty payment, he should say that he could have hidden the ox in the swamp, preventing any payment to be taken from its body, and therefore any payment at all!? **A:** The case is that Beis Din seized the ox for payment, at which time it was too late to admit liability, and too late to hide the ox.

- **Q:** If so, the owners should not have to pay half the damages!? They should say to the borrower, you have given our ox to someone who we cannot litigate with, and therefore you must bear the burden of the full damages!? **A:** The borrower can tell the owners, if I would have given the ox back to you, Beis Din would have anyway seized it from you.
- **Q:** They can tell him, if you would have returned the ox, we would have hidden it to prevent it being taken away from us!? **A:** He can tell them, the animal is a muad, and therefore you would have to pay from your pockets, irrespective of where the animal is.
 - **Q:** That is true if the owners have other possessions for Beis Din to collect from. What about if they have no possessions besides the ox? **A:** The borrower can tell them, the same way I am obligated to give the ox to you, I am also obligated to give it to the nizik, because you are responsible to give it to the nizik, and through the rule of **R' Nosson**, since I must give it to you, and you must give it to the nizik, I then must give it directly to the nizik.
 - **Q:** The Braisa said that when the ox is returned to the owners, it reverts to its tam status. That is based on the view that a change of reshus removes the muad status. However, the first case of the Braisa says that the muad status remains even though the ox went from the reshus of the owners to the reshus of the borrower!? **A: R' Yochanan** said, it must be that the Tanna of the first case is not the Tanna of the second case. **A2: Rabbah** said, the Braisa holds that a change in reshus does not change the muad status. The reason that it reverts to a tam in the second case is that the owners can say that the borrower is not fit to make the ox into a muad (because the borrower does not guard the ox like an owner would). **A3: R' Pappa** said, the Braisa holds that a change in reshus does change the muad status. The reason that it remains a muad in the first case is because the ox is never considered to fully leave the reshus of the owner, and therefore, going to the borrower is not a true change of reshus.

SHOR HA'ITZTADIN EINO CHAYUV MISAH...

- **Q:** An animal that killed a person is assur to be brought as a korbon. What about an animal like this, that was trained to gore, which is not put to death when it kills? **A: Rav** says it is valid to be brought as a korbon, because it is considered to be an oneis, which didn't kill by its own free will, and **Shmuel** says it is passul, because an aveirah was done with it.
 - **Q:** A Braisa says that **R' Shimon** says that a goring animal is not treated the same when it was done as an oneis or willingly. Presumably he means that if the goring was done as an oneis it may be brought as a korbon, and if done willingly it may not!? **A: R' Shimon** is referring to the animal being put to death. If it gored willingly, it is put to death. If it was done b'oneis, it is not.
 - **Q:** The Braisa quoted above said that the owner of an ox that gored and killed must pay kofer, whereas the owner of an animal that was mezaneh with a person does not need to pay kofer. If the case is that the animal was mezaneh with a woman and killed her, he surely would have to pay kofer!? If he didn't kill her, then of course he does not have to pay kofer, but that is not a leniency in the halacha of an animal that was mezaneh, rather it is because the animal didn't kill!? **A: Abaye** said, the case is where the woman was brought to Beis Din and put to death by Beis Din for the znus. We would have thought that it is as if the animal killed her. The Braisa therefore teaches that the owner does not have to pay kofer. **A2: Rava** said, the case is that the animal did kill her with the znus. The reason that the owner does not have to pay kofer is because the killing wasn't done by the animal with an intent to kill. It was done with the intent to pleasure himself.

- The difference between **Abaye and Rava** would be where an animal trampled on a child and killed it (without intent to do so), while in the reshus of the nizik. According to **Abaye** the owner would have to pay kofer. According to **Rava**, since there was no intent to kill, the owner would not have to pay kofer.
- A Braisa says like **Rav**. The Braisa says, an ox that was trained to gore, and then gored and killed a person, the ox would not be put to death, and it would be valid to be brought as a korbon, because it is considered to have been forced to kill.