



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

Bava Kamma Daf Mem Daled

V'CHEIN B'BEIN V'CHEIN B'BAS

- A Braisa says, the pasuk of “oy bein yigach oy bas yigach” teaches that one is chayuv for his ox's killing of minors just as he is chayuv for the killing of adults. The Braisa says, this seems to be learned without the need for the pasuk, because a person is chayuv for killing a person, and a person is chayuv for his ox killing a person. Just like when the person himself kills there is no difference between the killing of minors or adults, the same should be when one's ox kills!? Also, we have a kal v'chomer – if in the case of a person killing another person, the Torah said that a minor who kills is treated differently than an adult who kills, and yet it makes no difference if the victim is a minor or an adult, then when an ox kills, where the age of the ox makes no difference, surely we would know that the age of the victim also makes no difference!? The Braisa says, we would say that a person killing another person is different, because the person would also be chayuv in the 4 payments, and maybe that is why he is also chayuv for killing a minor. However, maybe an ox would not be chayuv for killing a minor. That is why we need the pasuk to teach that he is chayuv for the ox's killing of a minor. The Braisa then says, the pasuk teaches regarding a muad. How do we know that a tam would also be put to death for the killing of a minor? Maybe we can say that just as there is liability for the killing of a man or woman, and there is no difference whether the animal was a tam or a muad, so too, when there is liability for a minor, there should be no difference whether the animal is a tam or a muad. Also, we can learn this from a kal v'chomer – if regarding adult men and women, who are responsible for the damage that they cause, yet if they are killed there is no difference if the killing animal was a tam or a muad, then minors, who are not responsible for the damage they cause, surely there should be liability for killing them whether the ox is a tam or a muad!? The Braisa says these would not be valid sources. The first attempted source requires us to learn a tam from the case of a muad. That is not a proper derivation, because the fact that we find that a muad is treated stringently does not mean that we would similarly treat a tam stringently as well. Also, the kal v'chomer is not valid either. Adults are chayuv in all mitzvos, while minors are not. Therefore, the pasuk says the word “yigach” twice, to teach that a muad is chayuv and a tam is chayuv, whether the goring killed or if it only produced damage.

MISHNA

- If an ox was rubbing against a wall and caused the wall to fall down onto a person, killing him, or if the ox intended to kill an animal and instead killed a person, or intended to kill a goy and instead killed a Yid, or intended to kill a person who was not viable and instead killed a person who was viable, he is patur.

GEMARA

- **Shmuel** said the ox is patur from being put to death, but the owner would be chayuv to pay kofer. **Rav** said the owner is even patur from kofer as well.
 - **Q:** How could **Shmuel** say the Mishna means that he must pay kofer? The Mishna is discussing a tam!? **A:** We can explain the Mishna like **Rav** said elsewhere, that the case is where this animal has become a muad to rub against walls and have them fall on, and kill, people.
 - **Q:** If the case is where the animal has done this a number of times, the animal should be put to death, since it has intended to do so!? **A:** The case is where he rubbed against the wall to scratch himself, and did not intend to push it down and kill a person.

- **Q:** How do we determine the intent of the animal? **A:** If after the wall fell and the person was killed, the animal continued to rub against it, it shows he was doing so to scratch himself.
 - **Q:** This case is a case of tzroros, and there is no liability for kofer in a case of tzroros!? **A:** **R' Mari the son of R' Kahana** said, the case is where the animal continued pushing the wall until it was on the person, in which case it is his direct action, and not one of tzroros.
 - There is a Braisa that is a proof to **Shmuel** and refutes **Rav**. The Braisa says, there is a case where an ox that killed a person is chayuv misah and kofer (a muad that killed with intention), a case where he is chayuv kofer and not misah (a muad that killed unintentionally), a case where he is chayuv misah and not kofer (a tam that killed intentionally), and case where he is patur from both (a tam that killed unintentionally). From the second case we see clearly like **Shmuel**, and not like **Rav**.
- If an ox unintentionally damages a person, **R' Yehuda** says he would be chayuv, and **R' Shimon** says he would be patur. **R' Yehuda** learns this from kofer, for which one is chayuv even if the killing was unintentional. **R' Shimon** learns this from the putting to death of the ox, which is only done if it intentionally killed. **R' Yehuda** doesn't learn from misah, because he rather learn a case of payment from a case of payment. **R' Shimon** doesn't learn from kofer, because he rather learn the liability of the ox from a case of liability of the ox (damages from misah, which are both caused by the animal's actions) and not from kofer which is liability of the owner (it is caused by his not properly guarding the ox).

NISKA VEIN LAHAROG ES HABIHEIMA V'HARAG ES HA'ADAM...

- The Mishna suggests, that had the animal intended to kill one Yid and instead killed another Yid, the animal would be chayuv misah. The Mishna does not follow **R' Shimon**, who says in a Braisa that if the ox intended to kill one person and instead killed another, he would be patur. **R' Shimon** darshens the pasuk of "hashor yisakel v'gam b'alav yumas" to teach that the liability of the ox is the same as the liability of the owner. Just as the owner would be patur if he intended to kill one person and instead killed someone else, the same holds true for the ox. He learns this halacha regarding a person from the extra words "v'arav lo" in a pasuk. **R' Yannai** explains that the **Rabanan** who argue (and say that intending to kill one and instead killing another will be chayuv) hold that these words teach that if a person throws a stone into a group of people consisting of Yidden and goyim, he would be patur (he had general intent to kill a person in that group, but because there is no intent to kill a person for who he would definitely be chayuv misah, he is patur).
 - **Q:** What is the case of this group of people? If there are mostly goyim, he should be patur based on the fact that a majority are goyim. Even if there is an equal amount of Yidden and goyim, he would still be patur, because we are lenient in matters involving capital punishment!? **A:** The case is where there are mostly Yidden. Still, even if there is only one goy, he is considered to be "kavu'ah" (set in place) and the rule is that "kol kavu'ah kimechtza ahl mechtza dami" (it is given the status of equal), and because we are lenient in cases of capital punishment, he is patur.

MISHNA

- The ox of a woman, of minor orphans, of orphans under an apitrapis, a wild ox, the ox of hekdesch, or the ox of a ger that died without heirs, which killed a person, is put to death. **R' Yehuda** said, a wild ox, the ox of hekdesch, and the ox of a ger that died are all patur from misah, because they don't have owners (and the pasuk specifically mentions the owner).

GEMARA

- A Braisa says, the Torah writes the word "shor" seven times with regard to an ox that kills a person. These 6 extra uses of the word come to include 6 cases: the ox of a woman, of minor orphans, of orphans under an apitrapis, a wild ox, the ox of hekdesch, or the ox of a ger that died without heirs. **R' Yehuda** said, a wild ox, the ox of hekdesch, and the ox of a ger that died are all patur from misah, because they don't have owners.
- **R' Huna** said, **R' Yehuda** would say that even if an ox killed and was then made hekdesch, or killed and was then made hefker, it would also be patur from misah. We can learn this from the fact that he gives two cases of hefker – the case of a wild ox and the case of the ox of the ger

that died. Both of these cases are cases of hefker. Why are both given? It is to teach that even if it was made hekdesch or hefker after the killing, it is patur from misah.

- A Braisa says this as well, and says that **R' Yehuda** learns this from the pasuk of “v'huad b'baalav...v'heimis”. This teaches that the ox must be owned at the time of the killing and the time that it stands in Beis Din.
 - **Q:** The pasuk also says “hashor yisakel”, which refers to the time of the verdict, which would suggest that the ox must be owned at that time as well, so why does the Braisa only say that it must be owned at the time of the killing and the time that it is brought to Beis Din? **A:** The Braisa should be amended to say that the ox must be owned at the time of the killing, the time it is brought to Beis Din, and the time of the verdict.