



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

Bava Kamma Daf Mem Vuv

PEREK SHOR SHENAGACH ES HAPARAH -- PEREK CHAMISHI

MISHNA

- If an ox gored a cow and we find a dead fetus from the cow at its side, and we don't know whether this miscarriage happened before the goring or as a result of the goring, the owner of the ox must pay half damages for the cow and  $\frac{1}{4}$  damages for the offspring.
- Similarly, if a pregnant cow gored an ox and we find the baby by the cow, but we don't know if the baby was born before the goring (in which case the baby was not involved in the goring), or if it was born after (in which case it too was involved in the goring), the nizik may collect half damages from the body of the cow and  $\frac{1}{4}$  damages from the body of the baby.

GEMARA

- **R' Yehuda in the name of Shmuel** said, the Mishna follows the view of **Sumchos**, who says that when there is a safek as to the ownership of money, it is divided. However, the **Rabanan** say this is a major rule regarding judgment – “hamotzi meichaveiro alav haraya” (“HMAH”).
  - **Q:** Why do they use the phrase “this is a major rule regarding judgment”? **A:** This teaches that even if the nizik says he is certain of the facts and the mazik says that he is not absolutely certain, we would still say HMAH. **A2:** It was said for the case when a person buys an ox and finds that it is a goring ox. **Rav** says the sale may be voided, and **Shmuel** says the seller may say “I sold it to you to be shechted”, and the only way the buyer can void the sale is if he can *prove* that he bought the ox for plowing (and not to be shechted).
    - **Q:** Why don't we just look to see why this buyer normally buys oxen? If he normally buys for plowing, we should assume that this ox was also purchased for plowing, and if he normally buys for shechting, then this should be assumed to have been bought for shechital? **A:** The machlokes between **Rav and Shmuel** is in a case where the person buys oxen for both purposes.
    - **Q:** Why don't we look at the price that was paid for the ox, and see if it is a price paid for plowing oxen or for oxen used for slaughter? **A:** The machlokes is in a case where the price of meat increased to the point that both these animals were equal in price.
    - **Q:** **Rav** seems to say that the animal must be returned even if the seller does not have the money to return to the buyer. In that case why wouldn't we say that the buyer can keep the animal in lieu of the money? **A:** The case is where the seller does have money, and that is why the animal is returned.
    - **Rav** says the sale becomes void because we follow the majority, and since most people buy oxen for plowing, we assume that the buyer wanted to do so as well. **Shmuel** says the seller can say, “I sold you an animal for slaughter”, because we don't follow the majority. We only follow majority regarding questions of issur. However, when dealing with questions of money, we say HMAH.
  - A Braisa clearly says that the case of our Mishna would be subject to the machlokes between **Sumchos and the Rabanan**.
  - **R' Shmuel bar Nachmeini** said, the source for the halacha of HMAH is from the pasuk where Moshe said, whoever has a complaint “yigash aleihem” (should come to them). Using the word “yigash” instead of the more typical “yavo” teaches that the people should come with proof, thus teaching HMAH.

- **Q: R' Ashi** asked, why is a pasuk needed to teach this? It is logical that the one looking to take something must bring proof to allow him to take it!? **A:** Rather, the pasuk is needed for the halacha of **R' Nachman in the name of Rabbah bar Avuha**, who says that the pasuk teaches that when a plaintiff comes with a claim and the defendant refuses to pay because he has a different claim against the plaintiff, we must first deal with the claim of the plaintiff, and can then later deal with the claim of the defendant.
  - **Nehardai** said, if the defendant is going to lose money because of depreciation of his assets if his claim is not dealt with quickly, we will first deal with his claim and then with the claim of the plaintiff.

V'CHEIN PARAH SHENAGCHAH ES HASHOR...

- **Q:** Does the Mishna mean that he collects half of the damage and then an additional quarter of the damage? Since we are dealing with a tam, there should only be a total of one half of the damages paid!? **A: Abaye** said, that when the Mishna says half the damages it means that  $\frac{1}{4}$  of the damages are collected from the body of the cow, and when it says  $\frac{1}{4}$  is collected from the baby, it means that  $\frac{1}{8}$  is collected from the body of the baby.
  - **Q:** If the cow and the baby belong to the same person, the nizek should be able to tell the owner – in either case you owe me for half the damages!? **A:** The case is where the cow belonged to one person and the baby belonged to another person.
    - The Gemara says, the nizek can go first to the owner of the cow and tell him “you must pay me for the full half damages unless you can prove that there is someone else partially responsible” (i.e. the baby). Therefore, the Mishna must be dealing with the case where the nizek first went to the owner of the baby for payment, and the owner can tell the nizek, “you obviously feel that there is another partner in the damages, therefore I need only pay you for half of the half damages”. **Others** say that even if the nizek first went to the cow’s owner, this owner can tell him, “I have a chazakah that the cow was still pregnant at the time that it gored, and therefore a chazakah that there is another responsible party in these damages”. Therefore, the cow owner would only have to pay for half of the half damages.
  - **Q: Rava** asked, the Mishna uses the terms “half the damage” and “ $\frac{1}{4}$  of the damage”, so how can **Abaye’s** explanation be correct!? **A:** Rather, **Rava** said, the Mishna is discussing where the cow and the baby belong to one person, and the Mishna is saying, if the cow is present to collect from, the nizek may collect the entire half damages from the cow, but if the cow is not available for payment, the nizek may collect  $\frac{1}{4}$  payment from the body of the baby.
    - This seems to suggest that if we knew for sure that the cow was pregnant when it gored, **Rava** would hold that the entire half damages could be collected from the baby as well. This is because **Rava** holds the baby is like any other part of the body of the mother. However, if a chicken did damage, one could not collect from its egg, because a chicken’s egg is not considered to be part of its body.