



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

Bava Kamma Daf Mem Zayin

- **Rava** said, when an ox gores a pregnant cow and we are determining damages, we do not assess the value of the cow by itself and the baby by itself, rather, we assess the value of the cow while it was pregnant with the baby, because giving them separate values will result in a higher value and greater damages, which will disadvantage the mazik. We find the same thing when one cut off the arm of another's slave (we assess the value based on the difference between his value with the arm and his value without the arm, but not the value of the arm itself and how much a master would demand to allow for his slave's arm to be cut off). We find the same concept regarding damage done to someone's field (we don't value the damaged produce, rather we value the entire field with the produce and then without the produce, and use that difference in value).
 - **Q: R' Acha the son of Rava** asked **R' Ashi**, if the halacha is that the mazik should pay the higher amount, why would we say that he should pay a lesser amount so that he shouldn't be "disadvantaged"? **A: R' Ashi** said, it is because the mazik can say, "I damaged a pregnant cow and should therefore pay based on an assessment of a pregnant cow".
- It is obvious that if the cow belongs to one person and the baby to another person, the payment for the fattening that the cow had goes to the owner of the cow. With regard to the payment for the enlargement of the body due to the pregnancy, **R' Pappa** says it goes to the owner of the cow, and **R' Acha the son of R' Ika** says it is divided between the owner of the cow and the owner of the baby.
 - The Gemara paskens that it is divided between the owner of the cow and the owner of the baby.

MISHNA

- If a potter brought his pots into someone's chatzer without permission and the animal of the chatzer's owner broke the pots, he is patur. If the animal was damaged by the pots, the potter is chayuv. If he had brought in the pots with permission (and the animal broke the pots), the owner of the chatzer would be chayuv.
- If a person brought his produce into someone's chatzer without permission and the animal of the chatzer's owner ate the produce, he is patur. If the animal was damaged by the produce, the owner of the produce is chayuv. If he had brought in the produce with permission (and the animal ate the produce), the owner of the chatzer would be chayuv.
- If a person brought his ox into someone's chatzer without permission and the animal of the chatzer's owner gored that animal, or his dog bit that animal, he is patur. If the animal of the trespasser gored the animal of the chatzer's owner, the trespasser is chayuv. If the ox fell into a water pit of the chatzer and spoiled the water, the trespasser is chayuv. If the owner of the chatzer's father or son was in the pit (and was killed by the falling ox), the trespasser would be chayuv to pay kofer. If he had brought in the ox with permission (and the animal was damaged by the other animals), the owner of the chatzer would be chayuv.
- **Rebbi** says, in all these cases the owner of the chatzer would not be chayuv (even if the item was put in the chatzer with permission), unless he accepted responsibility to guard the item.

GEMARA

- **Q:** The Mishna seems to say that the potter is chayuv for damaging the animal only because it was brought in without permission. This suggests that when it is brought in with permission he would not be chayuv for damaging the animal. This seems to follow the view of **Rebbi**, who says that unless responsibility is explicitly accepted, there is no responsibility. The Mishna then says

that if the pots were brought in with permission and the animal of the chatzer's owner damaged it, he would be chayuv. This seems to follow the view of the **Rabanan**, who say that there is responsibility even without explicit acceptance. The Mishna at the end then brings the shita of **Rebbi**. Must we say that the beginning and end follow the view of **Rebbi**, and the middle follows the view of the **Rabanan**!? **A: R' Zeira** said, it must be that the different parts of the Mishna were said by different people. **A2: Rava** said, the first two parts follow the **Rabanan**, and even they hold that the owner of the chatzer will become responsible when he gives permission for the item to come into his chatzer, because by giving permission he has accepted to become a shomer chinam on the items.

HICHNIS PEIROS AV LACHATZAR BAAL HABAYIS...

- **Rav** said, the owner of the produce is chayuv only when the animal injured itself by slipping on the produce. However, if it was damaged by eating the produce, he would be patur, because the person can say that the animal should not have eaten it.
 - **Q: R' Sheishes** said, I think **Rav** was sleeping when he said this, because a Braisa says, if someone puts poison in front of an animal (who then eats it and dies), he would be patur to pay in this world, but would be chayuv under the laws of Heaven. This suggests that it is by poison that the person is patur, because it is not normal for an animal to eat poison. However, with regard to produce, which is normal for an animal to eat, he would even be chayuv to pay as well. Now, according to **Rav** he should be patur because he can say that the animal should not have eaten it!? **A: Rav** could say that the Braisa could hold that even for produce he would be patur from paying. The chiddush of the Braisa is that even in the case of poison, he will be chayuv under the laws of Heaven. We can also answer that the case of poison is talking about a poisonous type of produce, and we see that he is patur when the animal is damaged by eating produce.
 - **Q: A Braisa** says, if a woman went into someone's property without permission to grind wheat, and the owner's animal ate the wheat, he is patur from having to pay for the wheat. If the animal was damaged, the woman would be chayuv. Now according to **Rav** she should be patur!? **A: Just as we explained the Mishna as dealing with where the animal slipped on the produce, the same can be said for the Braisa.**
 - The one who asked thought that the Mishna used the phrase "the animal was damaged *by it*", which lends itself to mean that he slipped on it. This Braisa says "it was damaged", which suggests that it was damaged through eating.
 - **Q: A Braisa** says, if a person brought his ox into a chatzer without permission, and the ox ate produce of the chatzer and got sick and died, the owner of the chatzer is patur. However, if the ox was there with permission, the owner of the chatzer would be chayuv. Now, according to **Rav** he should be patur, because he can say that the animal should not have eaten it!? **A: Rava** said, you can't ask from a case where it was there with permission to **Rav's** case, where it was there without permission. When he is given permission, the owner of the chatzer accepts all responsibility.
- **Q: If the owner of a chatzer accepted responsibility for an item that is put into his chatzer, does he mean to only be responsible to guard against himself doing damage, or even to guard against other people doing damage?**
 - **Q: Maybe we can bring a proof from a Braisa taught by R' Yehuda bar Simon**, which says, if a person put produce into a chatzer without permission, and an ox came from somewhere else and ate it, he is patur. However, if the produce was put there with permission, he is chayuv. Now, who is the "he" that is patur in the first case and chayuv in the second case? Presumably it refers to the owner of the chatzer, and we see that he accepts responsibility even to guard from damage of other people!? **A: It may mean that the owner of the ox is patur and chayuv. The reason he is patur in the first case is that since the produce had no right to be there, it is not considered to have been eaten in the chatzer of the nizek, and shein in the reshut harabim is patur. When it is there with permission, it is considered to be the reshut of the nizek for this purpose, and therefore he would be chayuv for shein.**
 - **Q: Maybe we can bring a proof from a Braisa which says, if a person put an ox into a chatzer without permission, and another ox came from somewhere else and gored it, he is patur. However, if the ox was put there with permission, he is chayuv. Now, who is the "he" that is patur in the first case and chayuv in the second case? Presumably it**

refers to the owner of the chatzer, and we see that he accepts responsibility even to guard from damage of other people!? **A:** It may mean that the owner of the other ox is patur and chayuv. The Braisa is following the view of **R' Tarfon**, who says that one is chayuv full damages for keren when it is done in the reshus of the nizik. Therefore, when the ox was there with permission, it is considered to be the reshus of the nizik and he is chayuv full damages. When it was there without permission, it is considered to be the reshus harabim, and therefore he is only chayuv for half damages, and when the Braisa says he is patur, it means he is patur from full damages, but chayuv for half damages.