



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

Bava Kamma Daf Mem Tes

MISHNA

- If an ox intended to gore another ox, but instead gored a pregnant woman and caused her to miscarry, the owner is patur from paying for the babies. If a person intended to hit another person and instead hit a pregnant woman and caused her to miscarry, he is chayuv to pay the husband for the value of the babies.
 - How does one pay for the value of the babies? They assess the value of the woman before losing the babies, and her value after losing the babies. The difference is what must be paid to the husband. **R' Shimon ben Gamliel** says, if so, a woman increases in value after she gives birth!? Rather, we assess the babies to see how much they are worth.
 - The payment is given to the husband. If he had died, the payment is given to the husband's heirs. If she was a freed slave who had married a freed slave, or if she and her husband with both geirem (in both these cases there are no heirs), the person is patur from making the payment.

GEMARA

- **Q:** The Mishna seems to say that the owner of the ox is patur from having to pay for the babies only because the ox intended to gore another ox. This suggests that if it had intended to gore the woman, he would be chayuv to pay for the babies. This refutes **R' Ada bar Ahava**, who says that an ox is not chayuv to pay for this even if he intended to gore the woman!? **A:** **R' Ada bar Ahava** will say, the Mishna would agree that even if the ox intended to gore the woman, he would be patur. The reason the Mishna spoke in terms of intention for another ox is because it wanted to give that case regarding a person – where he intended for one person and ultimately hit the woman – because that is how that case is given in the pasuk.
- **R' Pappa** said, if an ox gored a maidservant, causing her to miscarry, the owner of the ox must pay for the value of the babies to the owner of the maidservant, because this is no different than if the ox would have damaged a pregnant donkey of another person, in which case he would have to pay.

KEITZAD MISHALEM DMEI VLADOS

- **Q:** This shouldn't be referred to as the value of the babies, it should also be referred to as the increase to the value of the woman because of the babies!? **A:** That is what the Mishna means – this assessment gets us the value of the babies and of the appreciation to the woman because of the babies.

AMAR R' SHIMON BEN GAMLIEL IHM KEIN MISHEHA'ISHA YOLEDES MASHBACHAS

- **Rabbah** explained, **R' Shimon ben Gamliel** is saying that a woman who is not pregnant is worth more than a woman who is pregnant because of the danger involved in pregnancy. If so, assessing in this way will not result in any payment!? Rather, we must assess the value of the babies and give that amount to the husband. A Braisa explains in this way as well. **Rava** explained, **R' Shimon ben Gamliel** is saying that (as stated earlier) there are two parts to the payment – the value of the babies, and the value of the appreciation of the woman through the pregnancy. The value of the babies should go to the husband, but why does the appreciation to the woman not go to her at all? Rather, we must say that the payment for the appreciation to the woman is split between the woman and the husband. A Braisa explains this way as well.
 - **Q:** The two Braisos contradict each other!? **A:** The first Braisa is discussing a woman pregnant with her first child, who is not yet known to be able to survive childbirth, and therefore loses value during pregnancy. The second Braisa is discussing a woman who has already had other children.

- **Q:** Why do the **Rabanan (T"K)** hold that even the appreciation to the woman is given to the husband? **A:** They say that the extra word "harah" (pregnant) in the pasuk teaches that this appreciation is also paid to the husband. **R' Shimon ben Gamliel** darshens this to teach the halacha of **R' Eliezer ben Yakov**, that the person is only chayuv if he hit the woman at the place of the womb.
 - **R' Pappa** said, this means if he hits her anywhere on her torso – which means to exclude if he hits her on her arms or legs.

HUYSA SHIFCHA V'NISHTACHRIRA OY GIYORES PATUR

- **Rabbah** said, this is only if the woman was hit while her husband was still alive and he then died. Since he was alive, it belonged to him, and once he dies, because he has no heirs, the mazik acquires it from the ger. However, if he hit her after her husband died, since she acquires the babies at the time of her husband's death, the payment must be given to her. **R' Chisda** said, babies are not bundles of money that are acquired like that! Rather, if the husband is alive when the babies are lost, the Torah says the payment is given to him. If the husband is not alive and has no heirs, the payment is not made at all.
 - **Q:** A Braisa says, if a person hit a woman and caused her to miscarry, he must pay her for the nezek and the tzaar, and must pay the value of the babies to the husband. If the husband is not alive, the payment goes to his heirs. If the woman is not alive, her payment goes to her heirs. If she was a freed slave who was married to freed slave, or if she and her husband were geirem, and the husband died with no heirs, the mazik is koneh the payment. This refutes **Rabbah**!? **A:** In the same way that we explained the Mishna to be discussing a case where she was hit while the husband was alive and then the husband died, we can explain this Braisa as discussing the same case. **A2:** The Braisa could even be discussing where she was hit after her husband (the ger) died, and we must read the Braisa as saying that "she" acquires the payment.
 - **Q:** Maybe we can say that the machlokes between **Rabbah and R' Chisda** is actually a machlokes among Tanna'im. A Braisa says, if a Yisraelis marries a ger, and a person hits her and causes her to miscarry, if this happened while the husband was alive, the payment for the babies goes to him. If it happened after he died, one Braisa says he is chayuv to pay and another Braisa says that he is patur. Presumably they argue in the machlokes between **Rabbah and R' Chisda**!? **A:** It may be that the first Braisa follows **R' Shimon ben Gamliel**, and the second Braisa follows the **Rabanan**.
 - **Q:** If it follows **R' Shimon ben Gamliel**, even if the husband did not die the woman is entitled to part of the payment!? **A:** If he is still alive she is entitled to half the payment for her appreciation due to the pregnancy. If it happened after he died, she gets that entire payment.
 - **A2:** We can say that both Braisos even follow **R' Shimon ben Gamliel**. The Braisa that says he is chayuv is talking about payment for the appreciation to the woman, and the Braisa that says he is patur is talking about payment for the babies.
 - **Q:** If the wife takes over the husband's position with regard to the other half of the payment for her appreciation, then **R' Shimon** would also hold that she takes over his position with regard to the payment for the babies!? Also, if **R' Shimon** says that she steps into his position for the other half of the payment, we should say that the **Rabanan** would agree in principle and say that she steps into his shoes for the entire payment!? If so, how can we give these two answers to explain the contradiction of the Braisos? **A:** It may be that she only steps into the husband's place to collect something that she was partially collecting beforehand. Therefore, she would not be entitled to any payment for the babies according to **R' Shimon**, and she would not be entitled even to payment for her appreciation according to the **Rabanan**.
- **R' Yeiva Saba** asked **R' Nachman**, if a person grabs the documents of a ger after he died, is he koneh the paper? When a person grabs the document does he only mean to use that as a means to be koneh the land mentioned in the deed (the document), and therefore he doesn't intend to, and will not, be koneh the paper. Or, maybe he has in mind to be koneh the paper as well? He answered, does he need the paper to act as a cover for a pitcher (he surely did not intend to be koneh the paper)!? **R' Yeiva** said, "Yes, maybe he was koneh it to use for that purpose"!

- **Rabbah** said, if a ger had a mashkon from a Yid, and the ger died, and another Yid came and made a kinyan on this mashkon, we take it away from him and give it back to the Yid who owns it, because upon the death of the ger, the lien is removed from the mashkon. On the other hand, if a Yid had a mashkon from a ger and the ger dies, and another Yid came and made a kinyan on the mashkon, the lender (the Yid who had the mashkon) keeps the mashkon to the extent needed to cover his loan, and the other Yid is koneh any remaining amount.
 - **Q:** Why isn't his chatzer automatically koneh the entire mashkon for him, because we have learned that **R' Yose bar Chanina** says a chatzer is koneh even without intent of the owner!? **A:** The case is where the lender was out of town. In that case, his chatzer won't be koneh for him, because it is only koneh for him when he could have made his own kinyan had he wanted to.
 - The Gemara paskens that **Rabbah's** ruling only applies where the mashkon was not in the lender's chatzer at the time of death of the ger. If it was, he would be koneh the entire thing.