



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

Bava Kamma Daf Nun

MISHNA

- If a person digs a bor in the reshus hayachid and then makes the opening in the reshus harabim, or if he digs a bor in the reshus harabim and makes the opening in the reshus hayachid, or if he digs a bor in one reshus hayachid and makes the opening in another reshus hayachid, he is chayuv.

GEMARA

- A Braisa says, if a person digs a bor in the reshus hayachid and makes the opening in the reshus harabim, he is chayuv for damage that it causes. **R' Yishmael** says, this is the case of bor that is meant in the pasuk. **R' Akiva** says the case of bor in the pasuk is where one digs a pit in his property and is mafkir the land around the pit, but not the pit itself.
 - **Rabbah** said, with regard to a bor in the reshus harabim all would agree that he is chayuv, based on the pasuk of "ki yiftach" and "ki yichreh", which teaches that a person is chayuv for opening and digging a bor even if it is not in his property. The machlokes is regarding a bor in his own reshus. **R' Akiva** says he would be chayuv for that as well, as the pasuk refers to the "baal habor", which shows there can be an owner of the bor, and **R' Yishmael** says that he would be patur, and "baal habor" refers to the one who creates the damage by digging the bor.
 - **Q:** Based on this, what does **R' Akiva** mean in the Braisa when he says "this is the case of bor in the pasuk"? We see that he holds that all cases of bor are chayuv!? **A:** He means that this is the case of bor that the Torah mentions first when it begins to discuss liability for payment.
 - **R' Yosef** said, all agree that a bor dug in the reshus hayachid will be chayuv, as the pasuk refers to "the owner of the bor". The machlokes is regarding a bor in the reshus harabim – **R' Yishmael** says he would be chayuv, as can be learned from the pasuk of "ki yiftach" and "ki yichreh", whereas **R' Akiva** uses these phrases for other drashos, and therefore says that one is only chayuv when he digs the bor in his property.
 - **Q:** Based on this, what does **R' Yishmael** mean in the Braisa when he says "this is the case of bor in the pasuk"? We see that he holds that all cases of bor are chayuv!? **A:** He means that this is the case of bor that the Torah mentions first when it begins to discuss damages.
 - **Q:** A Braisa says, if one digs a bor in the reshus harabim with its opening in the reshus hayachid, he is patur, even though he may not do this because one may not dig underneath the reshus harabim. If one digs a bor in the reshus hayachid with its opening in the reshus harabim, he is chayuv. If one digs a bor in the reshus hayachid which abuts the reshus harabim, as a foundation for his house, he is patur. **R' Yosef the son of R' Yehuda** says he is chayuv unless he makes a wall 10 tefachim high around the bor, or unless he keeps the bor at least 4 tefachim away from the place where people walk. Now, the Braisa seems to say that he is patur only because he dug the bor for a foundation, but otherwise he would be chayuv for digging a bor in his own reshus. This contradicts the beginning of the Braisa that says that he is patur if he digs a bor in his own reshus!? Now, according to **Rabbah** we can say that the first case follows **R' Yishmael** and the later case follows **R' Akiva**. However, according to **R' Yosef**, we can say that the later case follows all views, but who would the first case follow!? **A:** **R' Yosef** will answer, the entire Braisa can follow all views, and the

first case is where the person was not mafkir his property or the bor, and that is why he is patur.

- **R' Ashi** said, now that you have said that according to **R' Yosef** the entire Braisa can follow all views, we should also say that according to **Rabbah** the Braisa should be interpreted as not following different views. Rather, just as the first case follows **R' Yishmael**, the next case follows **R' Yishmael** as well, and the case is where he dug the bor wide enough that it was in the reshus harabim as well. It is only in that case that he is patur if it was done for purposes of a foundation.
 - **Q:** A Braisa says, if one digs a bor in the reshus hayachid with its opening in the reshus harabim, he is chayuv. If he digs it in the reshus hayachid next to the reshus harabim he is patur. Now, according to **Rabbah** we can say that the entire Braisa follows the view of **R' Yishmael**, however, according to **R' Yosef**, although we can say that the first case follows **R' Yishmael**, the last case will seem to follow neither view!? **A:** **R' Yosef** will say that the last case is discussing a case of digging for a foundation, and therefore follows all views.
- A Braisa says, if one dug a bor, left it open, and gave it to the public to use, he is patur for any damage that it causes. If he dug it, left it open, and did not give it to the public, he would be chayuv. It was the practice of Nechunya the bor digger, to dig, open, and then give it to the public to use. The **Chachomim** said, this person has fulfilled the halacha.
 - A Braisa says, the daughter of Nechunya the well digger once fell into a large well. When they told this to **R' Chanina ben Dosa**, he eventually told them that she would be fine. It turned out that she was fine. They asked him how he knew this. He said, it cannot be that the child of the tzaddik would be harmed with the thing that this tzaddik did for the sake of the people.
 - **R' Abba** said, even so, Nechunya's son died of thirst (because he too was a tzaddik, and Hashem deals strictly with tzaddikim).
 - **R' Chanina** said, whoever says that Hashem disregards aveiros should have his life disregarded.
 - **R' Chana or R' Shmuel bar Nachmeini** said, the pasuk says Hashem is "Erech Apayim" (which is written in the plural form) to say that Hashem is patient in giving reward to tzadikim and in giving punishment to the resha'im.
- A Braisa says, a person may not clear stones from his reshus into the reshus harabim. It once happened that there was a person who did so, and a certain chossid saw him and said "Empty person! Why are you taking stones from someplace that does not belong to you and putting it someplace that does belong to you!?" The person laughed at him. A short time later this person lost his possessions and had to sell his field. He walked by that place in the reshus harabim and tripped over the stones that he threw there. He said, that chossid told me a smart thing.

MISHNA

- If a person digs a bor in the reshus harabim and an ox or donkey falls into it, he is chayuv. He is chayuv no matter what type of ditch he digs. If so, why does the pasuk specify with the word "bor"? Just like a standard bor is 10 tefachim deep, which is deep enough to kill the animal, so too for any other ditch he is chayuv if it is 10 tefachim deep. If the bor was less than 10 tefachim deep and an ox or donkey fell into it and died, he would be patur. If the animal fell into it and was injured, he would be chayuv.

GEMARA

- **Rav** said, a person is chayuv for his bor because of the injury caused by the bad air in the bor, and not because of the damage from the impact of the fall. We see from here that **Rav** holds that the impact was done by the ground, and for that the person would not be chayuv. **Shmuel** said he is chayuv because of the bad air *and* certainly because of the impact of the fall. It must be that he is chayuv for the bad air as well, because the Torah makes a person chayuv for all cases of a bor, which even includes where the bor is lined with soft wool, when there is no injury from impact.

- The machlokes between them would be where a person elevated a piece of the reshus harabim, and an animal fell off that and died. According to **Rav** he would be patur, because there is no bad air above ground. According to **Shmuel** he would be chayuv.
- **Rav's** view is based on the word "v'nafal" in the pasuk, which suggests that the animal fell in head first into the deepest part of the bor, which is where the bad air is found. **Shmuel** says that "v'nafal" suggests falling in any way, even feet first, in which case the animal would not be in a place of bad air.
- **Q:** The Mishna said, we learn from "bor" that "so too for any other ditch...". According to **Shmuel** the "so too" comes to include the case of where he raised an area in the reshus harabim. However, according to **Rav**, what is this coming to include? **A:** It comes to include ditches other than a bor, which it states and then explains explicitly in the Mishna.
 - **Q:** Why did the Mishna have to mention 5 different types of ditches? **A:** If it would only say "bor" we would say that a bor has bad air at 10 tefachim because it is small and round, but a "si'ach", which is long, maybe doesn't have bad air. If we would only say si'ach, we would say that it has bad air because it is narrow, but a "me'arah", which is square, does not have bad air. If we would only say me'arah we would say that it has bad air because it has a roof, but "charitzin", which don't have a roof do not have bad air. If we would only say charitzin, we would think that it has bad air because it is not wider on top than on the bottom, but "ne'itzin", which is, does not have bad air. That is why all these cases are needed.
- **Q:** The Mishna says, if the bor was less than 10 tefachim and an animal fell in and died, he is patur, but if the animal was damaged, he is chayuv. Now, presumably he is patur because the impact at that height is not enough to kill him, even though there is bad air there. We see that he is chayuv for the impact!?! **A:** When it is less than 10 tefachim deep, there is no bad air.
 - **Q:** If there is no bad air, why is chayuv if the animal was damaged? **A:** The air is bad enough to damage an animal, but not bad enough to kill an animal.