



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

Bava Kamma Daf Nun Aleph

- There was an ox that fell into an irrigation ditch that was one amah (6 tefachim) deep. The owner immediately shechted it. **R' Nachman** said that the animal is a treifah based on the fall. **R' Nachman** said, had the owner been wise, he would have asked and learned that had he waited to allow the animal to live for 24 hours, the animal would have been mutar to eat. We see that **R' Nachman** holds that even less than 10 tefachim is enough of a fall to kill an animal.
 - **Q: Rava** asked **R' Nachman**, our Mishna says that less than 10 tefachim is not enough of a fall to kill an animal!? **A:** There is enough for the impact of the fall to kill, and not enough to create bad air, and a person is only chayuv for damage done by the bad air, not by the impact of the fall.
 - **Q:** If so, why is he chayuv for damage done? **A:** There is not enough bad air to kill, but there is enough to do damage.
 - **Q:** A Mishna says, that when killing someone with skila, we push the person off a height that is 3 times the height of a person. Now, if even less than 10 tefachim can kill by impact, why do we need such a high place? **A:** According to you, why not use a height of 10 tefachim? Rather, like **R' Nachman in the name of Rabbah bar Avuha** said, we use a greater height so that the killing be as painless as possible.
 - **Q:** Why not use even a greater height? **A:** That would cause the body to become disgusting upon impact, and we don't want to do that.
 - **Q:** A Braisa says that the obligation to put a fence around one's roof is when his roof is at least 10 tefachim off the ground. Now, if even less than 10 tefachim can kill with its impact, why is a fence only needed when the roof is 10 tefachim high? **A:** The Torah requires a roof on a "house", and a structure less than 10 tefachim high is not a "house".
 - **Q:** If so, if the house is 10 tefachim tall from the outside, it is less than that from the inside, so it is also not a "house"!? **A:** The case is where the earth inside the house was dug out so that it is 10 tefachim tall on the inside as well.
 - **Q:** If so, even if it is less than 10 on the outside, it can be a "house" when it is 10 on the inside!? **A:** Rather, the reason **R' Nachman** held that the animal was a treifah was because from the stomach of the animal to the ground was 4 tefachim. The depth of the irrigation ditch was 6 tefachim. Altogether, the animal fell a depth of 10 tefachim.
 - **Q:** If so, why does the Mishna say that the bor has to be 10 tefachim to kill an animal? Six tefachim should be enough!? **A:** The Mishna is discussing the case where the animal was lying on the ground and rolled into the pit.

MISHNA

- If there is a pit of two partners, and the first one passed by and did not cover it, and then the second one passed by and did not cover it, the second one is chayuv.

GEMARA

- **Q:** How can a bor be said to belong to partners? This makes sense according to **R' Akiva** who says that the case of bor can be when it is dug in one's reshus and he is then mafkir the area around the bor, but not the bor itself, because the case could be where the bor was dug in the reshus of the partners and they were mafkir the area around. However, if we hold that one is patur for a bor in his reshus, the only way to be chayuv for bor is in the reshus harabim, so how can we have a bor that belongs to partners!? It can't be that they both made a shaliach to dig a bor, because we hold that there is no valid shaliach for an aveirah, and the responsibility would

therefore not go back to them!? It also can't be where the first one dug 5 tefachim and the second one dug the next 5, because only the second person is chayuv in that case!? It can make sense according to **Rebbi**, with respect to a case of damage (but not death), but in a case of death according to **Rebbi**, and in a case of death or damage according to the **Rabanan**, how can we have a case of a bor of partners? **A: R' Yochanan** said, the case is where there was a bor that was 9 tefachim deep, and they together pulled out a clump of earth that then made it 10 tefachim deep.

- **Q:** What is the machlokes (mentioned) between **Rebbi and the Rabanan**? **A:** A Braisa says, if one person dug a bor of 9 tefachim, and a second person made it 10 tefachim deep, the second person is chayuv for any and all damage. **Rebbi** says, the second person is chayuv if an animal dies falling in. If an animal is only damaged, both people are chayuv.
 - The **Rabanan** hold that the words of "ki yichreh" in the pasuk are extra (if we are told one is chayuv for opening a bor, surely he is chayuv for digging a bor), and therefore come to teach that when a second person digs after a first, only the second person is chayuv. **Rebbi** said these words are needed for a different drasha.
 - It may be that **Rabanan** also say this is needed for the other drasha. Rather, they say the pasuk of "ki yichreh ish bor" teaches that only one person is chayuv, not two. **Rebbi** says this is needed to teach that an ox would not be chayuv for digging a bor. The **Rabanan** say the pasuk says "ish" twice. **Rebbi** says it was written twice to be consistent, not for a drasha.
 - **Q:** According to the **Rabanan**, why is it that the second person is chayuv? Maybe the first person should be chayuv? **A:** The pasuk says "v'hameis yihyeh lo", which teaches that the one who makes the bor deep enough to cause death is the one who is chayuv.
 - **Q: Rava** used this pasuk for a different drasha!? **A:** Both drashos can be learned from this pasuk.
- **Q:** A Braisa says, if a person digs a bor 10 tefachim deep, and another person extends that to 20 tefachim deep, and third person makes it 30 tefachim deep, they are all chayuv. However, another Braisa says, if a person digs a bor 10 tefachim deep, and a second person comes and plasters the walls, making the air worse, the second person is chayuv!? Should we say that the first Braisa follows **Rebbi** and the second follows the **Rabanan**? **A: R' Zvid** said, both Braisos can follow the **Rabanan**. The **Rabanan** put sole responsibility on the second person only when the first person didn't make it capable of killing. However, when the first person did, they would agree that both people would be chayuv.
 - **Q:** The case of the person who plastered the walls is a case where the first person created a bor that can kill, and yet the Braisa says that only the second person is chayuv!? **A:** That case is talking about where bor was built wide, and therefore there was not enough bad air to kill an animal. When the second person came and added the plaster, it was he who created an atmosphere of bad air that was capable of killing an animal.
 - **Others** say that **R' Zvid** said, both Braisos can follow **Rebbi**, and the reason only the second person is chayuv in the second case is because the bor was constructed in a way that there was not even enough bad air to cause damage, and certainly not to kill. It was the second person alone who created that atmosphere.
- **Rava** said, if there was a bor that was 9 tefachim deep, and a person placed a stone at the mouth of the bor, which created a combined depth of 10 tefachim, the liability of the people involved would be subject to the machlokes between **Rebbi and the Rabanan**.
 - **Q:** This seems obvious!? **A:** We would think that when one adds depth to the bottom of the pit is when we say that his bad air caused the death, and that is why he would be chayuv, but when he adds "depth" from above, he should be patur.
- **Q: Rava** asked, if the second person, who made the 9 tefach bor into a 10 tefach bor, came and filled up a tefach, or removed his stone from the outside, do we say that he has negated whatever he had done and will be patur, or do we say that his original action made the entire bor to be considered as his and he therefore remains chayuv? **TEIKU**.

- **Rabbah bar bar Chana in the name of Shmuel bar Marsa** said, if a person digs a bor 8 tefachim deep, with the bottom two tefachim being of water, and an animal falls into it and dies, he would be chayuv. The reason is that each tefach of water creates bad air like two tefachim of dry land. Therefore, it is like a 10 tefach bor.
 - **Q:** What if it is a 9 tefach bor with one tefach of water? Do we say that there is less water and therefore less bad air, or do we say that since it is actually 9 tefachim deep, even one tefach of water is enough to kill? **Q2:** What if the bor is 7 tefachim deep and has 3 tefachim of water? Do we say it creates enough bad air, or since the depth is less, maybe it does not? **TEIKU.**
- **R' Shizbi** asked **Rabbah**, what is the halacha if the second person made the bor wider, but not deeper? **Rabbah** said, this person has lessened the bad air, and certainly would not be chayuv! **R' Shizbi** said, but he has increased the size of the bor, making it more likely for an animal to fall in!? **R' Ashi** said, we look and determine – if the animal died because of bad air, the second person is patur, and if the animal died from the impact of the fall, the second person is chayuv. **Others** say that **R' Ashi** said we look and determine – if the animal fell from the side that the second person had expanded, he is chayuv. If not, he is patur,.
- We have learned, if a bor has a depth equal to its width, **Rabbah and R' Yosef** both said in the name of **Rabbah bar bar Chana** who said in the name of **R' Mani** – one said that there is always bad air unless the width is more than the depth, and the other said there is only bad air if the depth is more than the width.

AVAR ALAV HARISHON V'LO KISAHU

- **Q:** At what point does the first person become patur? **A: Rabbah and R' Yosef** both said in the name of **Rabbah bar bar Chana** who said in the name of **R' Mani** – one said that it is from the time that the second person used the bor, and the other said it is from the time that he gave the cover to the second person.
 - We find that this is actually a machlokes in a Braisa between the **Rabanan** (who say it is from the time the second person used the bor) and **R' Eliezer ben Yaakov** (who says it is from the time he gives the cover). The machlokes is, that **R' Eliezer ben Yaakov** holds of breirah, and therefore use by the second person is not use of the first person's bor (he takes only his own water) and therefore does not become responsible for the first person's portion of the bor until he is given the cover. The **Rabanan** don't hold of breirah.
 - We find that they argue in this same way regarding partners entering their shared chatzer after they made a neder not to have hana'ah from each other, in which case the **Rabanan** say they may not enter the chatzer, and **R' Eliezer ben Yaakov** says they may.
- **R' Elazar** said, if one sells a bor, as soon as he gives the buyer the cover, the buyer is koneh the bor.
 - **Q:** What is the case? If he is paying money, he should be koneh with the money!? If he is making a chazakah, he should be koneh with the chazakah!? **A:** He is making a chazakah. Typically, the seller must tell the buyer to make a chazakah, and the buyer can then be koneh. **R' Elazar** is teaching that giving over the cover is the equivalent of telling him to go and make a chazakah.
- **R' Yehoshua ben Levi** said, if one is selling a house, when he gives over the keys, the buyer is koneh.
 - **Q:** What is the case? If he is paying money, he should be koneh with the money!? If he is making a chazakah, he should be koneh with the chazakah!? **A:** He is making a chazakah. Typically, the seller must tell the buyer to make a chazakah, and the buyer can then be koneh. **R' Yehoshua ben Levi** is teaching that giving over the keys is the equivalent of telling him to go and make a chazakah.
- **Reish Lakish in the name of R' Yannai** said, if someone sells a herd of animals, as soon as he gives the "mashkuchis" (the thing that the herd follows) to the buyer, the buyer is koneh.
 - **Q:** What is the case? If he is making meshicha, he should be koneh with that, and if he is making mesirah, he should be koneh with that!? **A:** He is making a meshicha. Typically, the seller must tell the buyer to make a meshicha, and the buyer can then be koneh. He is teaching that giving over the mashkuchis is the equivalent of telling him to go and make a meshicha.

- **Q:** What is a mashkuchis? **A:** In Bavel they said it is a bell. **R' Yaakov** said it is the goat that leads the herd.