



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

Bava Kamma Daf Vuv

HATZAD HASHAVA SHEBAHEN

- **Q:** What is the tzad hashavah coming to include?
 - **Abaye** said, it is coming to include the case of a person who left his stone, knife, or package on top of his roof, and a normal wind came and blew them down.
 - **Q:** If they damaged as they were falling to the ground, that is a toldah of fire, since they both have another force mixed in with it (i.e. the wind) and the person must therefore prevent it from damaging, and the Mishna therefore does not need to include this case here!? If they damaged after they already landed on the ground (e.g. someone tripped on them), then if they were made hefker, all would agree that they are simply a toldah of bor, since they were both ready to damage as soon as they were placed there and the person must therefore prevent the damage from taking place!? If the case is that he did not make them hefker, **Shmuel** still holds it is a toldah of bor!? **A:** The case is that he made them hefker, however it is not exactly like bor. The case of bor has no other force involved. This case has the wind involved. Therefore, we would say that the person maybe is not chayuv in this case. However, we then say that the damager of fire has another force involved, and yet it is chayuv. Therefore this case should also be chayuv. We then ask that maybe fire is chayuv because it is a moveable damager, and in this case the items are stationary on the ground? We answer that bor is chayuv although it is stationary. Based on this, we say the tzad hashava and include the case of a person who left his stone, knife, or package on top of his roof, and a normal wind came and blew them down.
 - **Rava** said, it is coming to include the case of a bor that is rolled around by the feet of people or animals (the person left an object in reshus harabim, and it was kicked around and moved to another place, and in that other place it caused someone damage).
 - **Q:** What is the case? If the object was made hefker, all would agree that it is simply a toldah of bor, since they were both ready to damage as soon as they were placed there and the person must therefore prevent the damage from taking place!? If the case is that he did not make it hefker, **Shmuel** still holds it is a toldah of bor!? **A:** The case is that he made it hefker, however it is not exactly like bor. The case of bor is different in that it is only the actions of the person that caused the damage. However, in this case, other people kicked around and brought it to the place where it eventually did damage. We then say that the case of shor is a case of damage by other than the actions of the man, and still we see that he is chayuv. We then ask, that shor is different in that it is moveable, whereas this case only damages once it is stationary!? We answer that bor is chayuv although it is stationary. Based on this, we say the tzad hashava and include the case of a bor that is rolled around by the feet of people or animals.
 - **R' Ada bar Ahava** said, it is coming to include the case of people who empty out the garbage from their waste systems and gutters into the reshus harabim, which a Braisa says they are allowed to do in the winter months (when the streets are anyway messy). Although they are allowed to do this, if these things damage something, the person would be chayuv for the damage.
 - **Q:** If these things damaged as they were being expelled from the property, they are considered to be toldah of a person damager (it is done with his ko'ach). If they damaged after they already landed on the ground (e.g. someone tripped

on them), then if they were made hefker, all would agree that they are simply a toldah of bor, since they were both ready to damage as soon as they were placed there and the person must therefore prevent the damage from taking place!? If the case is that he did not make them hefker, **Shmuel** still holds it is a toldah of bor!? **A:** The case is that he made them hefker, however it is not exactly like bor. The case of bor is done without permission to create the bor, in this case he had permission to expel these things into the reshus harabim. We then say that the case of shor is a case where it was done with permission (a person may walk his animals in the reshus harabim) and yet he would still be chayuv for keren. We then say that maybe shor is chayuv because it is a moveable damager, whereas in this case the items are not damaging until they are stationary. We answer that bor is chayuv although it is stationary. Based on this, we say the tzad hashava and include the case of people who empty out the garbage from their waste systems and gutters into the reshus harabim.

- **Ravina** said, it is coming to include the case of a Mishna, that if a wall or tree fell into the reshus harabim and damaged, the owner is patur, but if he was given a period of time to cut it down before it fell, and it fell after the time, he is chayuv.
 - **Q:** What is the case? If the object was made hefker, all would agree that it is simply a toldah of bor, since they were both ready to damage as soon as they were placed there and the person must therefore prevent the damage from taking place!? If the case is that he did not make it hefker, **Shmuel** still holds it is a toldah of bor!? **A:** The case is that he made it hefker, however it is not exactly like bor. The case of bor is different in that it is ready to damage from the time of its creation. The Mishna then says that the case of shor is a case of damage by something that was not ready to damage at the time of its creation, and still we see that he is chayuv. We then ask, that shor is different in that it is moveable, whereas this case only damages once it is stationary!? We answer that bor is chayuv although it is stationary. Based on this, we say the tzad hashava and include the case of a wall or tree that fell into the reshus harabim and damaged after the time for which an allowance was given for it to be taken down.

KISHEHIZIK CHAV HAMAZIK

- **Q:** Why does the Tanna say “chav” instead of “chayuv”? **A:** **R’ Yehuda in the name of Rav** said, this Tanna is from Yerushalayim, where they speak in shorter form.

LISHALEM TASHLUMEI NEZEK

- A Braisa says, the pasuk says “meitav sadeihu u’meitav karmo yishaleim” (using the possessive “his”). **R’ Yishmael** says, this refers to the best fields of the damaged party (the “nizik”). **R’ Akiva** says, this pasuk comes to teach that Beis Din may collect from the damager’s (the “mazik”) best fields, and we have a kal v’chomer to hekdesch.
 - **Q:** The Gemara understands that **R’ Yishmael** is saying that no matter which land of the nizik was damaged, the mazik must always pay the value as if it was the best land of the nizik that was damaged. The Gemara asks, if he damaged inferior land, why should he have to pay as if he had damaged superior land? **A:** **R’ Idi bar Avin** said, the case is where we don’t know if the row of produce eaten by the animal was of inferior or superior produce. That is when he must pay as if it were superior produce.
 - **Q:** **Rava** asked, the burden of proof is always on the one who is looking to collect the money, so why would the mazik have to pay for superior produce? **A:** **R’ Acha bar Yaakov** said, the case is where the best land of the nizik was comparable to the worst land of the mazik. The machlokes is that **R’ Yishmael** holds, if land is being used to pay for the damage it must be with land that is of equal quality to the best land of the nizik, and **R’ Akiva** says the land must be of the best quality land of the mazik. **R’ Yishmael** says, the word “sadeh” is used when discussing the damage (clearly referring to the field of the nizik) and the word “sadeh” is used regarding payment. We learn that just as the first “sadeh” refers to the field of the nizik, so too the second “sadeh” refers to the field of the nizik. **R’ Akiva** says, the pasuk says “meitav sadeihu u’meitav karmo yishaleim”, clearly referring to the field of the one who is paying (i.e. the mazik).

- **R' Yishmael** agrees that the simple meaning of the pasuk is as **R' Akiva** says, but he says that the application of this meaning will be in a case where the mazik has inferior and superior land, and the nizek only has superior land, but is in between the quality of the two types of land of the mazik. In that case, the mazik could not force the nizek to take the inferior land, rather he must give him from his superior land (even though it exceeds the quality of the nizek's land).