



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

Bava Kamma Daf Pey Daled

- Another Braisa says, **R' Shimon ben Yochai** says, "ayin tachas ayin" means a monetary payment. It can't mean an actual eye for an eye, because what would happen in the case where a blind person blinded someone else? It can't be that in that case he would pay money, but in other cases not, because the pasuk says "mishpat echad yihiyeh lachem", which teaches that there must be one halacha universally applied!
 - The Gemara says this is no proof, because it may be that it means an actual eye for an eye, and where it is not possible (the attacker is already blind), he would be patur. We find this concept by a person who is a treifah who killed a regular person, in which case the treifah will not be put to death (because of a technicality that witnesses who testify to the murder can never be said to wanting to put this person to death, because he is already legally dead, and as such cannot become eidim zomemim).
- The Yeshiva of **R' Yishmael** taught a Braisa that said, the pasuk regarding a person who damaged another person says "kein yinasen (should be given) bo", and "giving" refers to money.
 - **Q:** Are we to say that the pasuk of "kasher yitein mum ba'adam" also refers to money (certainly it does not)!? **A:** They were darshening the extra words. The words "kein yinasen bo" are extra, and come to teach that he is punished with a monetary payment.
- The Yeshiva of **R' Chiya** taught a Braisa that says, the pasuk says "yad b'yad", which teaches that he is punished with something that is given from hand to hand, which refers to money.
 - **Q:** If that is how we darshen these words, how are we to understand the words "regel b'regel"? **A:** They were darshening the extra words of "yad b'yad".
- **Abaye** said, we can learn from the Yeshiva of **Chizkiya** that a person who damages another person is punished with a monetary payment. They darshed, the pasuk says "an eye for an eye" and "a soul for a soul", which teaches that we don't punish with an eye and a soul for an eye. Now, if an eye for an eye is taken literally, there are times that inflicting this punishment might kill the attacker, in which case it would be an eye *and* a soul for an eye!? It must be that punishment is only with money.
 - **Q:** The Gemara asks, maybe we assess and see, if this person can withstand us blinding him, we do so. If he cannot, we do not do so. If we assess that he can withstand it, but it turns out that he dies in the process, so be it. We have a similar concept when we mete out malkus!?
- **R' Zvid in the name of Rava** said, the pasuk says "petza tachas patza", which teaches that the attacker must pay for pain even if he also pays for damages. Now, if "an eye for an eye" is taken literally, why would he pay for the pain he caused? He is being punished by undergoing a similar pain when his eye is blinded! It must be that the "eye" refers to a monetary payment.
 - The Gemara says this is no proof. It may be that an eye for an eye is taken literally, and there is a payment for pain when the attacker has a higher pain tolerance and therefore suffered less than the victim.
- **R' Pappa in the name of Rava** said, the pasuk says "v'rapo yirapei", which teaches that the attacker must pay for the healing even if he also pays for damages. Now, if "an eye for an eye" is taken literally, why would he pay for the healing? He is being punished by undergoing a similar injury and must bear a similar cost of healing! It must be that the "eye" refers to a monetary payment.
 - The Gemara says this is no proof. It may be that an eye for an eye is taken literally, and there is a payment for healing when the attacker has a quicker healing time than the victim.

- **R' Ashi** said, we learn a gezeira shava of “tachas” from a person that damages an animal to a person that damages a person. Just as in the case of the animal he is punished with a monetary payment, the same is when he damages a person.
 - **Q:** Why don't we instead learn a gezeira shava of “tachas” from a murderer, and just as over there we take his life for his taking a life, so too over here we take his eye for his having taken an eye? **A:** We rather learn a case of damage from a case of damage, than learn a case of damage from a case of death.
 - **Q:** We should learn a case of a person from a case of a person, rather than learning a case of a person from a case of an animal!? **A:** **R' Ashi** said, we learn the gezeira shava of “tachas” from the case of rape, where the punishment is a monetary payment, and the case is a person who damaged.
- A Braisa says, **R' Eliezer** says, an eye for an eye is to be understood literally.
 - **Q:** Does he not hold like all the Tanna'im who brought various proofs that it is not to be taken literally!? **A:** **R' Ashi** explained, he agrees that it is a monetary payment, but he means that the attacker pays based on the value of his own eye, not based on the value of the victim's eye.
- There was once a donkey that cut off the hand of a child. The people went to **R' Pappa bar Shmuel**, and he told them that all 5 payments (nezek, tzaar, ripuy, etc.) must be paid. **Abaye** asked, an animal did the damage, in which case only damage should be paid. **R' Pappa** (who had thought that a person had inflicted the damage) said, if so, let the owner pay for the damage. They asked him, but we need to assess the child as a slave!? He answered, go and do so. The father of the child said, “I do not want my child to be appraised as a slave, as it is degrading”. They said to him, but you are negatively impacting your child by causing him to lose payment!? The father said, I will give him money instead.
- There was once an ox that chewed off the hand of a child. They went to **Rava**, and he told them to appraise the child as a slave to assess damages. They asked **Rava**, you have said that any case requiring us to appraise like a slave cannot be adjudicated in Bavel!? He answered, I am saying to do so only in case the victim seizes assets, so that we should know how much he may retain from that seizure.
 - **Rava** is following his own reasoning, as we find that **Rava** says, that when an animal damages another animal, or when a person damages an animal, we judge such cases in Bavel. However, when a person damages another person, or when an animal damages a person, we do not judge such cases in Bavel.
 - **Q:** Presumably we don't judge this second set of cases, because the pasuk teaches that we need expert dayanim with semicha, and in Bavel we don't have that. The same requirement applies to a case of an animal who is damaged, so why do we adjudicate those cases in Bavel? Rather, it must be that in the cases of a damaged animal we say that we are doing the shlichus of the Beis Din in EY. If so, why can't we do the same when a person is damaged? **A:** We only do their shlichus when we are certain as to the amount. When a person is damaged, and an appraisal needs to be done, we do not do the shlichus for them.
 - **Q:** When an animal is damaged we are also not certain as to the amount!? Rather, we look to the market to establish an amount. Why would a person who is damaged be treated differently? Also, if it is based on certainty, we should judge cases of keifel and daled v'hey in Bavel, and we know that we do not!? **A:** We only do their shlichus for cases of payment, not for cases of penalty.
 - **Q:** When a person is damaged it is payment, not penalty, so we should judge it!? **A:** We only do their shlichus in common cases, and a person damaging another person is not common.
 - **Q:** Damages for embarrassment and depreciation are common, so we should do their shlichus and adjudicate in those cases!? **A:** We find that **R' Pappa** did adjudicate such cases.
 - **Q:** We find that **R' Nachman** said that we may not adjudicate such cases in Bavel!? **A:** We only do their shlichus when the cases are common and there is a monetary loss involved (like one who is trying to collect a loan). However, if it is common but there is no monetary loss, or visa-

versa, we would not adjudicate this case in Bavel. Therefore, a person damaging a person is not adjudicated in Bavel, because it is uncommon. A case of embarrassment is not adjudicated in Bavel, because there is no monetary loss involved.

- **Q:** Is it true that in Bavel we judge cases of an animal damaging another animal? We find that **Rava** says that we do not judge the case of an ox that damaged in Bavel!? Now this can't be referring to where the ox damaged a person, because we don't even judge cases of a person damaging a person, so surely we wouldn't judge the case of an ox damaging a person (which is even less common)!? Rather, he must be referring to where an ox damaged another ox, and we see that he says we don't judge this case in Bavel!? **A: Rava** was talking about a case of a tam, which is a penalty, and therefore is not dealt with in Bavel. The case that he says we do deal with is a case of shein or regel, where the ox is always considered to be a muad.

TZAAR KAV'O B'SHPUD OY B'MASMER...

- **Q:** Who is the Tanna in our Mishna who holds that tzaar must be paid for even if there is no associated damage? **A: Rava** said, it is **Ben Azzai**, as we find in a Braisa. The Braisa says, **Rebbi** says a burn was said first, and **Ben Azzai** says a burn with a bruise was said first. What is the machlokes? **Rebbi** says, when the pasuk says "kviya" it refers to a burn without a bruise, so when the pasuk later says "chaburah" it comes to teach that the burn stated earlier is only with an associated bruise. **Ben Azzai** says that "kviya" on its own means there is a bruise, so when the pasuk then says "chaburah" it comes to teach that the earlier burn need not have an associated bruise. **R' Pappa** asked, it would seem that the opposite is more correct, that **Rebbi** holds kviya on its own refers to where there is a bruise and **Ben Azzai** says that it does not, and the word chaburah then teaches according to **Rebbi** that kviya is even without an associated wound and according to **Ben Azzai** that there is an associated wound.
 - **Another** way to understand the machlokes is that all agree that kviya refers to a burn with an associated bruise and without one. The machlokes is whether we view kviya as a klal and chaburah as a prat, since they are separated with the words "petza tachas patza". **Rebbi** says they are not viewed as a klal uprat, and therefore kviya even refers to where there is no bruise. **Ben Azzai** says it is darshened as a klal uprat, and therefore kviya is limited to where there is a bruise. According to **Rebbi**, the word chaburah teaches that if there is a bruise he would have to pay for damages in addition to paying for pain.