



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

Bava Kamma Daf Tzaddik Aleph

- **Q:** They asked, do we need to assess the item that caused the damage before awarding damages or not? Do we say that for a capital case we must do so, to determine if the item is capable of causing death, but any item can cause damage, and therefore we don't need to assess, or do we say that we must assess in the case of damage as well?
 - **Q:** Maybe we can answer from a Mishna. The Mishna said that a bor must be 10 tefachim deep in order to be capable of causing death. Therefore, if it was less than 10 and an animal fell into it and died, the digger would be patur, but if the animal was only injured, he would be chayuv. Presumably, the Mishna means to count up, and to say that from 1-10 tefachim it cannot cause death, but it can cause damage. We see that damages must be paid for any depth and we don't need to assess! **A:** The Mishna is discussing a bor in a descending order – 10 tefachim can cause death, and a drop less can cause damage. For anything even less deep, we would have to assess each damage to see whether it could have been caused by that depth.
 - **Q:** Maybe we can answer from a Braisa. The Braisa says, if the master hit the slave in the eye and blinded him, or on the ear and made him deaf, the slave would go out free. However, if he hit a wall near the slave's eye and that caused him to become blind, or if he hit a wall near his ear and caused him to become deaf, he would not go out free. Presumably he would not go out free, because we must assess the cause of damage, and hitting a wall is not thought of as a true cause of damage. We see that we do assess for damage! **A:** The reason he is patur is because we say that the slave caused the damage to himself, by allowing himself to get scared in that way.
 - **Q:** Maybe we can answer from a Braisa. The Braisa says, with regard to the 5 types of payment, the mazik must pay these amount immediately. With regard to nezek, tzaar, and boshes, they are simply given immediately. With regard to ripuy and sheves, we must determine how long it will take the victim to recover. If they assessed an amount and the recovery took longer than expected, he only needs to give the amount that was assessed. If they assessed and the recovery time was shorter than expected, he still must pay the full amount of the assessment. We see that we do need to assess for the damage! **A:** The Braisa is discussing assessing the *person*, and that is no question and clearly must be done. The question was whether we must assess the *item* that caused the damage, to determine whether it was capable of doing that damage.
 - **A:** The Braisa quoted earlier in the Gemara said, **Shimon Hateimani** said, the item in question must be brought to Beis Din for inspection. We clearly see that an assessment of the item must be made. **SHEMA MINAH.**
 - The Braisa quoted above said that if they assessed and the recovery time was shorter than expected, he still must pay the full amount of the assessment. This supports **Rava**, who says that if they assessed a recovery time of a day, and in middle of the day the victim was able to get up and went to work, he is still given the amount for the full day.

RAKAK V'HIGIYA BO HAROK V'HE'EVIR...

- **R' Pappa** said, this is only if the spit actually touched his body. However, if it landed on his clothing, the spitter would be patur.
 - **Q:** Why should it be any less that one who was embarrassed with words? **A:** In EY they said in the name of **R' Yose bar Avin**, we see from here that one would not be chayuv a monetary payment for embarrassing another with words.

HAKOL LEFI K'VODO...

- **Q:** Is the **T"K** coming to be lenient, and saying that there may be a poor person who would get less if he was embarrassed, or is he coming to be machmir and saying that a wealthier person

would get a larger amount than stated in the Mishna if he were embarrassed? **A:** Since **R' Akiva** said in the Mishna that even poor Yidden are viewed as aristocrats who have lost their money, it must be that the **T"K** was coming to be meikel, and to say that these people would not be viewed in that manner. **SHEMA MINAH.**

UMAASEH B'ECHAD SHEPARAH ROSH HA'ISHA...

- **Q:** How could **R' Akiva** have allowed him time to pay? We find that **R' Chanina** says we do not give someone time to pay for an injury he caused!? **A:** We don't give time when the injury caused actual loss. Embarrassment does not cause actual loss, so for that we do allow time to pay.

SHAMRA OMEDES AHL PESACH CHATZEIRAH...

- **Q:** A Braisa says that **R' Akiva** told the man "you don't have an argument, because a person is *allowed* to wound himself". In our Mishna he said that a person is *not* allowed to do so!? **A:** **Rava** said, the Mishna is discussing actual wounding, which a person may not do. The Braisa is discussing embarrassing oneself, which a person may do.
 - **Q:** Our Mishna is discussing embarrassing oneself!? **A:** **R' Akiva** was saying, not only would you be wrong regarding boshes, which a person has a right to do to himself, rather even wounding, which a person may not do to themselves, if they would do it they would be patur..."
 - **Q:** A Braisa regarding nedarim says that a person may make a neder to harm himself!? **A:** That is referring to a neder to observe a fast.
 - **Q:** Based on this, how would we explain the parallel case of where he makes a neder to harm others? That he will make them observe a fast? How can he do that? **A:** He does that locking them in a room without food.
 - **Q:** A Braisa says, the case of making a neder to harm other people is where a neder is made to hit someone else!? **A:** We must say that it is a machlokes among Tanna'im – one Tanna holds that **R' Akiva** holds that a person may not wound himself, and the other holds that **R' Akiva** holds that a person may wound himself.
 - **Q:** Who is the Tanna that holds it is assur? You can't say that it is **R' Elazar**, who darshens a pasuk in a Braisa to teach that a person who commits suicide will be punished, because suicide is different than wounding. **A:** It is **R' Elazar** in another Braisa who says that one is chayuv for "baal tashchis" if he rips his clothing more than necessary for a meis. Now, if he holds one is chayuv for ripping clothing, certainly he would hold one is chayuv for actually wounding himself.
 - **Q:** Maybe ripping clothing is worse, because it will not "heal" itself, whereas skin will? In fact, we find that **R' Chisda** preferred to allow his skin, rather than his clothing, to touch the thorns, because his skin would heal!? **A:** The Tanna who holds it is assur is **R' Elazar Hakapar Beribi**, who says a person who pains himself with fasting is considered to be a sinner. Certainly then, a person who wounds himself will be considered a sinner.

HAKOTZETZ NETI'OSAV...

- **Rabbah bar bar Chana** taught a Braisa in front of **Rav**, if someone says to another "you killed my ox" or "you cut down my tree", and the other person responds "you told me to kill it" or "you told me to cut it down", the mazik is patur. **Rav** asked, if that is true, people will do damage and just claim that they were told to do so!? **Rabbah bar bar Chana** asked, should I delete the Braisa? **Rav** said, no. We can say that the Braisa is talking about an ox that was chayuv misah and a tree that had to be cut down (it was used for avodah zarah or was dangerous to people). It is only then that the person is believed, because this ox must be killed, and this tree must be cut down.
 - **Q:** If that is the case of the Braisa, what is the plaintiff claiming? **A:** He claims that he wanted to do the mitzvah (of killing the ox or cutting down the tree) himself, and that opportunity was now taken away from him. We find that **R' Gamliel** required one person to pay 10 golden dinars to a second person when the first person did the mitzvah of "kisuy hadam" before the second person had a chance to, in a case where it was the

second person's mitzvah to do (because he shechted the bird and was therefore entitled to do the mitzvah of kisuy hadam).

- **Rav** said, a palm tree that produces a kav of fruit may not be cut down.
 - **Q:** A Mishna says that an olive tree may not be cut down if it produces even a quarter of a kav!? **A:** Olives are more valuable.
- **R' Chanina** said, his son died prematurely only because he cut down a fig tree prematurely.
- **Ravina** said, if the wood is worth more than the fruit, the tree may be cut down. A Braisa says this as well.
- **Shmuel's** sharecroppers brought him dates that tasted like wine. They explained that the tree grows near the grapevines. **Shmuel** said, if so, the tree is causing the wine in the grapes to be weak, so chop it down.
- **R' Chisda** saw a palm tree growing near the grapevines. He told his sharecropper to chop it down, because the value of the vines exceeded the value of the tree.