



## Daf In Review – Weekly Chazarah

Maseches Bava Kamma, Daf כב – Daf טב Daf

In Review is being sent l'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen, A"H  
v'l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

-----Daf לב---23-----

- **Rava** said, **Abaye** had the following question. According to **R' Yochanan** (that a person is chayuv for the damage his fire does because it is considered to be his arrows – i.e. his force), why is it that the halacha is that one is not chayuv to pay for something that he damages that is hidden (e.g. in a haystack)? **Abaye** then answered, that the case would be where one lit a fire in his own chatzer, and the wall of his chatzer then fell down (not because of the fire), and the fire therefore damages because it is uncontained, in which case he would be patur for the damage done to hidden items outside the fallen wall, because it is no longer considered to be his arrow.
  - **Q:** If so, it should no longer be considered his arrow for exposed things either, and he should be patur from them as well!? **A:** We must say that **R' Yochanan** also holds of the reason that a fire is chayuv because it is considered to be the person's property. The case must be where after the wall fell he could have put it back up, but didn't. Therefore, it is considered like someone who did not close the door in front of his animal, in which case he would be chayuv. He would still be patur for the hidden things, because the Torah specifically makes him patur for hidden things that were damaged by one's fire.
  - **Q:** If **R' Yochanan** agrees to the reason of **Reish Lakish**, what is the difference between them? **A:** According to **R' Yochanan**, if one's fire burns another person, the first person would be chayuv for nezek, tzaar, ripuy, and sheves, whereas according to **Reish Lakish**, since the fire is his property, he would not be chayuv in anything besides nezek, because one is not chayuv for the other things when his property did the damage.

AHL HACHARARAH MISHALEM...

- **Q:** Who is chayuv to pay for the stack of grain? **A:** The owner of the dog.
  - **Q:** Why isn't the owner of the coal also chayuv for leaving his coal in a place that the dog could take it and cause damage with the fire? **A:** The Mishna is discussing a case where he properly guarded his coal.
    - **Q:** If he properly guarded his coal, how did the dog get it? **A:** The case is that the dog dug into the locked house and got the coal.
    - **R' Mari the son of R' Kahana** said, we see from here that a regular, closed door is considered normal for a dog to dig through and get in (if it was unusual, the owner would only have to pay for half damages).
- **Q:** Where did the dog eat the cookie? If it ate it at a stack of grain not belonging to the owner of the cookie, then it does not fit into the pasuk of "ubi'eir bisdei acheir"!? **A:** It must be that he ate it at the stack of the owner of the cookie.
  - We can learn from here that if the cow of the mazik ate fruit in the field of the nizik, we don't say that the mouth of the cow is considered to be in the property of the mazik. Rather, the cow and the eating is considered to be in the chatzer of the nizik. For we find that this is a question that was asked – whether the mouth of the cow is treated as the chatzer of the nizik or of the mazik.
    - **Q:** If it is viewed as the chatzer of the mazik, how can we ever have a case of a person being chayuv for shein!? **A:** **R' Mari the son of R' Kahana** said, the case of shein would be where an animal did damage when it rubbed against a wall for hana'ah and damaged it, or rolled on fruits for hana'ah and damaged them.
    - **Q:** **Mar Zutra** asked, we learn from the pasuk that shein refers to a case where something is fully destroyed, and these cases do not lead to total destruction!? **A:** **Ravina** said, the case is where it entirely rubs out pictures on the wall. **R' Ashi** said, the case is where it completely smashes the fruit into the ground, making them totally useless.
    - **Q:** Maybe we can answer the question from a Mishna. The Mishna says, if a person incites a dog or a snake on another person, he is patur. Who is patur? Presumably the Mishna means that the

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inciter is patur, but the owner of the dog would be chayuv. Now, if we were to say that the mouth of the animal is considered to be like the chatzer of the mazik, the owner should not be chayuv, because he can tell the injured person that his hand had no place being in his chatzer (the mouth of the dog)!? **A:** The Mishna may mean that *even* the inciter is patur, and surely the owner would be patur. Or we can say that the case is where the dog stuck its fangs into the person without bringing it into his mouth.

- **Q:** Maybe we can answer from the next part of that Mishna. The Mishna says, if a person takes a snake and sticks its fangs into another person, killing him, **R' Yehuda** says he is chayuv misah and the **Chachomim** say he is patur and rather the snake is put to death. Now, if we say the animal's mouth is considered to be the chatzer of the mazik, the owner should tell the victim, you had no place putting your hand into my chatzer, and the snake should not be killed!? **A:** With regard to killing an animal that has killed, we don't use this reasoning, as we see in a Braisa as well.
- There were goats of the Tarbu family that were causing damage to **R' Yosef**, who therefore asked **Abaye** to tell the Tarbus to keep the goats in their own property. **Abaye** said to **R' Yosef**, they will tell me that you should build a fence around your property to stop them from coming in!
  - **Q:** If the responsibility is on the nizik to keep the damagers out, how will one ever be chayuv for shein? **A:** The case would be where the animal digs under the fence and gets into the property, or if the fence fell down at night and the animal walked in.
- **R' Yosef** announced, if goats that are waiting for the market day to be shechted, do damage, we warn their owners two or three times. If they listen, fine. If not, we shecht the goats immediately, even at the lower, pre-market day price.

### -----Daf 72-----24-----

#### MISHNA

- Which animal is a tam and which is a muad? **R' Yehuda** says, a muad is any animal that they have testified about on 3 days. It goes back to being a tam when it stops doing those things for 3 days. **R' Meir** says, a muad is an animal that they have testified about what it did three times, and it is a tam if the children can touch it without it goring.

#### GEMARA

- **Q:** Why does **R' Yehuda** require three days to make a muad? **A:** **Abaye** said, the pasuk could have said "tmol", which would refer to one day. It instead says "mitmol", which refers to a second day. It then says "shilshom", which refers to a third day. The pasuk then says "v'lo yishmirenu baalav", which refers to the fourth goring. **Rava** said, "tmol" and "mitmol" refer to one day. "Shilshom" refers to a second day. "V'lo yishmirenu" refers to the third time, and teaches that he must pay full damages for the *third* time.
- **Q:** Why does **R' Meir** say that 3 occurrences are enough, even if they all take place on the same day? **A:** A Braisa says, **R' Meir** says, if it becomes a muad when it is done on 3 separate days, surely it should become a muad when it is done three times on the same day! The **Chachomim** said to **R' Meir**, we find that a zavah becomes tamei only if she sees blood on three consecutive days, and not if she sees blood 3 times in one day!? **R' Meir** said, that is because of a drasha of the pasuk.
- A Braisa says, which animal is a muad? **R' Yosef** says, any animal that they have testified about on 3 separate days. It goes back to being a tam if the children touch it and it doesn't gore. **R' Shimon** says a muad is an animal that they have testified about what it has done 3 times, and the concept of "3 days" is only said with regard to making it back into a tam.
  - **R' Nachman in the name of R' Adda bar Ahava** said, the halacha follows **R' Yehuda** regarding muad, because **R' Yosef** paskens like him, and the halacha follows **R' Meir** regarding becoming a tam again, because **R' Yosef** agrees with him. **Rava** asked **R' Nachman**, why don't you pasken like **R' Meir** regarding

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muad since **R' Shimon** paskens like him? **R' Nachman** said, I follow **R' Yose**, because he always has good reasons for his shitah.

- **Q:** Are the 3 days that **R' Yehuda** requires needed to make the ox a muad, or are they needed to make the person a muad? The difference would be where 3 sets of witnesses testified, and each pair testified that the ox gored on a different day. In that case the ox has become a muad, but because they are coming together, the owner can say that he was only testified against once! **A:** A Braisa says, that the testimony must take place in the presence of the owner *and* in the presence of Beis Din. Also, the witnesses only become eidim zomemim if all 3 sets of witnesses become eidim zomemim. Now, if the purpose of the testimony is to make the ox a muad, this makes sense, because the case would be where all 3 sets are coming to testify together to make the owner chayuv full damages for the victim of the third attack, and that is why they can all become zomemim together, because they all intended to obligate the owner to pay full damages. However, if the point of the testimony is to make the owner a muad, they would need to come on 3 separate days, and in that case the first two sets can say that they only came to obligate the owner to pay half damages, because they did not know that another set of witnesses would be coming. If so, how do we make them zomemim and make them pay the amount of full damages!?
  - **R' Ashi** said that **R' Kahana** said this Braisa is equally as problematic according to the view that the witnesses come to make the ox a muad, because the earlier witnesses can still claim that they didn't know that the other witnesses in Beis Din were also going to testify about this ox! The Gemara says, the Braisa is referring to a case where the sets of witnesses signaled to each other regarding their intent to testify about this ox. Therefore, they all did intend to require the owner to pay full damages. **R' Ashi** said, the case could be where all the sets came one after the other, so we know that they were each aware of the other. **Ravina** said, the case could be where they know the owner, but not which of his oxen did the damage.
    - **Q:** If the 3<sup>rd</sup> set can't identify the ox, they can't properly warn the owner to guard the ox, which means they can't make him a muad. If so, how can they become eidim zomemim? **A:** They tell him "You have a goring ox in your herd, and you must therefore guard your entire herd".
- **Q:** If one incites the dog of one person onto another person, what is the halacha? The inciter is certainly patur, because he didn't actually do the damage, but is the dog owner chayuv? Could he say "it wasn't my fault", or would we tell him "you have a dog that is susceptible to inciting and you therefore should have gotten rid of it"? **A:** **R' Zeira** said, our Mishna says that a muad goes back to being a tam if the children provoke it and it doesn't gore. This suggests that if it would gore, the owner would be chayuv even though the animal was provoked by the children. **Abaye** said, this is no proof. Maybe the Mishna means that if it would gore it would still be considered to be a muad, but for that goring there would be no payment obligation.
  - **Q:** A Mishna says that if one incited a dog or a snake against a person, he is patur. Presumably this means that the inciter is patur but the owner is chayuv!? **A:** The Mishna may mean that *even* the inciter is patur.
  - **Rava** said, even if we say that when one incites a dog against another person the owner is chayuv, if the victim was the inciter, the owner would be patur. This is because of the rule that when someone does something that is not normal, and someone else comes along and adds by doing something not normal, the first person will be patur. Therefore, although the owner has a dog that is susceptible to incitement, the victim is responsible, because he alone did the incitement.
    - **R' Pappa** said to **Rava**, this rule was used by **Reish Lakish** in a case, and therefore you would hold like him. The case is, if there are 2 animals in the reshus harabim, one is walking and one is sitting down, if the walking animal kicked the sitting animal, the owner would be patur (it is not normal for an animal to sit in the reshus harabim, and is also not normal for the animal to intentionally kick the other animal). However, if the sitting animal kicked the walking animal, he would be chayuv. **Rava** said, I would hold that the walking animal would be chayuv for kicking the sitting animal, because we would say to the owner of the walking animal "You have a right to walk on the sitting animal, but not to kick it"!

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-----Daf דב--25-----

## MISHNA

- What is the case of the ox damaging in the property of the nizik? If the ox gored, pushed, bit, sat, or kicked and damaged by doing so, if this was done in the reshus harabim, the owner only pays half damage. If it took place in the reshus of the nizik, **R' Tarfon** says he would pay full damages and the **Rabanan** say he would pay half damages.
  - **R' Tarfon** said, if in a place where the Torah was meikel and said that shein and regel are patur in the reshus harabim, but said that in the reshus of the nizik they must pay full damages, then surely with regard to keren, which the Torah was machmir and said that he must pay half damages even in the reshus harabim, surely the Torah means to be machmir and require him to pay full damages in the reshus of the nizik! The **Rabanan** responded, we say the concept of “dayo”, which says that the newly learned halacha can't be greater than the source halacha, and therefore, just as in the reshus harabim he only pays half damages, so too in the reshus of the nizik, he only pays half damages. **R' Tarfon** said, I am not learning the case of keren from the case of keren. Rather, I learn keren from shein and regel – if they must pay full damages in the reshus of the nizik, then surely keren must do so as well. The **Rabanan** said, even so, we say dayo, and just like keren pays half damages in the reshus harabim, keren also pays half damages in the reshus of the nizik.

## GEMARA

- **Q:** Does **R' Tarfon** not hold of the concept of dayo? We learn from a Braisa that dayo is a concept that is D'Oraisa!? **A:** He doesn't hold of dayo if saying dayo will refute the kal v'chomer. In this case, even without the kal v'chomer we would know that he must pay half damages, so limiting it to half damages based on dayo effectively refutes the kal v'chomer.
  - **Q:** **R' Pappa** asked **Abaye**, we find a Tanna in a Braisa who does not say dayo even when the kal v'chomer would not be refuted!? The Braisa learns from a kal v'chomer that the keri of a zav makes a person tamei when touched or carried. The kal v'chomer is, if the keri of a tahor person, whose spit is not tamei, is tamei, then the keri of a zav, whose spit is tamei, is surely tamei. Now, we should say dayo to limit the tumah of the zav's keri to touching, and not carrying. Yet, the Tanna doesn't say this!? **A:** We would know from the pasuk that the keri of a zav makes a person tamei when touched, just like the keri of any other man. The kal v'chomer is therefore only needed to teach regarding carrying the keri. Therefore, if we say dayo, the kal v'chomer will be refuted.
    - **Q:** Who is the Tanna who holds that the keri of a zav makes a person tamei by carrying it? It can't be **R' Eliezer**, who clearly says in a Braisa that the keri of a zav does not make a person tamei through carrying it. It also can't follow **R' Yehoshua**, who says that the keri of a zav will make a person who carries it tamei *only because* it is not possible that there is not some zivus mixed in there as well. We see that if it was pure keri he would hold that it does not give off tumah through carrying!? **A:** It is the Tanna of a different Braisa, which clearly says that the keri of a zav gives off tumah through carrying.
  - **Q:** **R' Acha MiDifti** asked **Ravina**, we find a Tanna in a Braisa who does not say dayo even when the kal v'chomer would not be refuted!? The Braisa learns from a kal v'chomer that a mat of reeds touched by a meis becomes tamei, from the fact that a mat of reeds touched by a zav is tamei. The Braisa uses this kal v'chomer to teach that the mat touched by the meis will be tamei not only until nightfall, but even for 7 days. Now, why don't we say dayo to limit this tumah until nightfall (like by a zav), because saying so does not totally refute the kal v'chomer!? It must be because this Tanna does not say dayo at all!? **A:** **Ravina** said, **R' Nechumei bar Zecharya** already asked this to **Abaye**, who answered that the kal v'chomer is actually used to teach that a mat touched by a *sheretz* is tamei (on this kal v'chomer we can't say dayo, because it is limited to a tumah lasting until nightfall). Then, with a gezeirah shava from *sheretz* to meis, we learn that the mat touched by a meis will also be tamei.
    - The words used in this gezeirah shava are “extra” words. If they weren't, we would be allowed to refute the gezeirah shava. We would refute it by saying that *sheretz* tumah is more stringent

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in that it makes something tamei even if the sheretz is only the size of a lentil. But, because the words are extra, we can't refute it.

- The words are extra, because it says those same words by tumah associated with "shichvas zera", which is written immediately before the tumah of a sheretz. We could have learned this from there. The Torah wrote it again by sheretz to make it "extra" for use in the gezeirah shava.
  - The words used for the gezeirah shava by tumas meis are also extra, because a tumas meis is compared to tumah from shichvas zera and could be learned from there. The Torah repeats it by tumas meis to make it "extra" for the gezeirah shava. Now the words of the gezeira shava are "extra" on both sides and therefore cannot be refuted even according to the view that a gezeirah shava can be refuted even if the words are extra on one side of the gezeirah shava.
  - Although there is a view that says that even when learning a gezeira shava we don't exceed the limit of the source of the halacha, over here we would say that there is 7 day tumah in the case of the meis, based on a pasuk that teaches that all tumah of a meis is 7 day tumah.
- **Q:** Why don't we say that shein and regel should be chayuv in the reshus harabim based on a kal v'chomer – if keren, which only pays half damages in the reshus of nizik, is chayuv in the reshus harabim, then shein and regel, which pay full damages in the reshus of the nizik should surely be chayuv in the reshus harabim!? **A:** The pasuk says "ubi'eir bisdei achier", which excludes liability in the reshus harabim.
    - **Q:** Maybe the pasuk means that he won't pay full damage in the reshus harabim, but he should at least pay half nezek there!? **A:** The pasuk regarding half payment for keren says "v'chatzu es kaspou" (his money), which we darshen to mean, that only keren pays half damages, and not shein and regel.

### -----Daf 17---26-----

- **Q:** We should say that shein and regel are only chayuv for half damages in the reshus of the nizik, based on a kal v'chomer from keren – if keren, which is chayuv in the reshus harabim, is only chayuv half damages in the reshus of the nizik, then shein and regel, which are patur in the reshus harabim, should surely only be chayuv half damages in the reshus of the nizik!? **A:** The pasuk regarding shein and regel says "yishaleim", which teaches that there must be a "complete" payment.
- **Q:** We should say that keren should be patur in the reshus harabim based on a kal v'chomer – if shein and regel, which are chayuv for full damages in the reshus of the nizik, are patur in the reshus harabim, then keren, which is only chayuv half damages in the reshus hanizik, should surely be patur in the reshus harabim!? **A: R' Yochanan** said, the pasuk regarding keren says the extra word "yechetzun", which teaches that keren pays half damages in the reshus of the nizik and in the reshus harabim.
- **Q:** We should say that a person who kills another person (in a case where he will not be chayuv misah) should be chayuv to pay kofer based on a kal v'chomer – if an ox, whose damage will never result in the payment of the 4 additional payments (tzaar, ripuy, sheves, boshes), will make the owner obligated to pay kofer, then surely when a person, who is chayuv in the additional 4 payments when he damages, should be chayuv to pay kofer if he kills!? **A:** The pasuk regarding kofer uses the word "alav", which serves to limit the kofer payment to when an animal kills, and not when the person himself kills.
- **Q:** The owner of an ox should be chayuv in the additional 4 payments when his ox damages, based on a kal v'chomer – if a person, who is not chayuv in kofer, is chayuv for these 4 payments, then an ox, who does create a chiyuv of kofer, should surely create a chiyuv for these 4 payments!? **A:** The pasuk regarding these payments says "ish...ba'amiso", which teaches that only a person, and not an animal, can create this chiyuv.
- **Q:** If an animal stepped on and killed a child in the reshus of the nizik, as it was walking, is there a kofer obligation? Do we say that when keren becomes a muad, it becomes normal for the animal to act in this way, and that is why it pays kofer, so regel, which is also normal for the animal, therefore also carries the kofer obligation, or do we say that keren pays kofer because of the intent to damage, and since regel doesn't have

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intent, there is no kofer payment? **A:** A Braisa says, if an ox goes into the reshus of the nizik and gores and kills the property owner, **R' Tarfon** says the ox is stoned and the owner must pay full kofer – whether the ox was a tam or a muad. Now, **R' Tarfon** learns that full kofer must be paid even for a tam from **R' Yose Haglili**, who holds that a tam pays half kofer in the reshus harabaim. **R' Tarfon** says it is full kofer in the reshus of the nizik based on a kal v'chomer from regel. We see that there is kofer for regel.

- **R' Simi of Neharda'ah** said, this is no proof. It may be that regel doesn't pay kofer, and that **R' Tarfon** is using regel to establish a kal v'chomer that the reshus of the nizik is more stringent than the reshus harabim.
  - **Q:** That is not a valid kal v'chomer, because damages can be said to be more stringent than kofer, as we see that one is chayuv for damages of fire, but not for kofer for fire!? **A:** The kal v'chomer can be made in a case where regel damages something hidden, in which case fire is not chayuv for damages.
  - **Q:** We can ask that even in this case one would be chayuv for the damages of a bor, and therefore damages cannot serve as a basis for a kal v'chomer to teach regarding kofer!? **A:** The kal v'chomer would be based on a case of regel damaging keilim, in which case bor would not be chayuv.
  - **Q:** We can ask that even in this case one would be chayuv for the damages of a fire, and therefore damages cannot serve as a basis for a kal v'chomer to teach regarding kofer!? **A:** The kal v'chomer would be based on a case of regel damaging hidden keilim, in which case bor and fire would not be chayuv.
  - **Q:** We can ask that even in this case one would be chayuv for the damages of a person, and therefore damages cannot serve as a basis for a kal v'chomer to teach regarding kofer!? **A:** Therefore, it must be that the kal v'chomer is learned from the fact that regel pays kofer.

### **SHEMAH MINAH.**

- **R' Acha MiDifti** said to **Ravina**, this makes sense as well, because if not, we can ask that he can't bring a kal v'chomer from regel, because regel itself is not chayuv in kofer but is chayuv in damages!? Rather, we must say that regel does pay kofer. **SHEMAH MINAH.**

### **MISHNA**

- A person is always a muad, whether he damages b'shogege, b'meizid, whether he was awake or asleep. If a person blinds another person (even b'shogege), or broke keilim, he must pay full damages.

### **GEMARA**

- The Mishna compares the case of blinding a person to breaking keilim, to teach that just as when a person damages keilim there are no payments for the additional 4 items (tzaar, ripuy, etc.), the same is true for an unintentional blinding of another person.
- **Q:** How do we know that a person must pay for damage done even when unintentional? **A: Chizkiya** said, the pasuk says the extra words of "petza tachas patza", to teach that a person is even chayuv to pay for unintentional damage.
  - **Q:** That pasuk is needed to teach that a person must pay for pain even when he pays for damages!? **A:** The word "tachas" is not needed to teach that. Therefore, we can learn both things.
- **Rabbah** said, if a person did not know that there was a stone on his lap, and he then stood up and the stone fell off: if the stone damaged someone, the person is chayuv (even though it was unintentional) for damages, he is patur for the other 4 payments, if the stone went from reshus harabim to reshus hayachid on Shabbos he would not be chayuv, if he accidentally killed he would not be chayuv to go into galus, and if he injured his slave it would be a machlokes between **R' Shimon ben Gamliel and the Rabanan** whether the slave would go out free.
  - If initially he knew that the stone was on his lap and he forgot that it was there, and he then stood up and the stone fell off: if the stone damaged someone, the person is chayuv (even though it was unintentional) for damages, he is patur for the other 4 payments, if he accidentally killed he would be chayuv to go into galus, if the stone went from reshus harabim to reshus hayachid on Shabbos he would

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not be chayuv, and if he injured his slave it would be a machlokes between **R' Shimon ben Gamliel and the Rabanan** whether the slave would go out free.

- If he intended to throw the stone two amos, but it accidentally went 4 amos: if the stone damaged someone, the person is chayuv (even though it was unintentional) for damages, he is patur for the other 4 payments, if the stone went 4 amos in the reshus harabim on Shabbos he would not be chayuv, if he accidentally killed he would not be chayuv to go into galus, and if he injured his slave it would be a machlokes between **R' Shimon ben Gamliel and the Rabanan** whether the slave would go out free.
- If he intended to throw the stone 4 amos and it went 8 amos: if the stone damaged someone, the person is chayuv (even though it was unintentional) for damages, he is patur for the other 4 payments, with regard to Shabbos, if he said let it land wherever it lands, then he would be chayuv, and if not he would be patur, if he accidentally killed he would not be chayuv to go into galus, and if he injured his slave it would be a machlokes between **R' Shimon ben Gamliel and the Rabanan** whether the slave would go out free.
- **Rabbah** also said, if someone throws a keili off a roof and someone else comes and breaks the keili before it hits the ground, the person who broke the keili is patur, because he is considered to have broken a broken keili.
- **Rabbah** also said, if someone threw a keili off a roof, but there were pillows beneath it on the ground that would have prevented it from breaking, and someone else then came and took away the pillows before the keili landed on them (causing the keili to break when it hit the ground), the person who threw it is patur, because his throwing of the keilim would not have broken the keilim.
- **Rabbah** also said, if a person threw a child off a roof and another person “caught” the child on a sword, killing him, it would be subject to the machlokes between **R' Yehuda ben Beseira and the Rabanan** as to who would be chayuv for the killing of this child. A Braisa says that if 10 people hit a person with 10 sticks and the person died, the **Rabanan** say that whether they all hit at the same time or if they hit consecutively, they will all be patur. **R' Yehuda ben Beseira** says if it was done consecutively the last person would be chayuv, because he brought about the death quicker. In our case also, the person who caught him on the sword brought about the death quicker.
  - If an ox came and caught the child on his horns, killing the child, it would be subject to the machlokes between **R' Yochanan ben Broka and the Rabanan** as to whether the owner would be chayuv kofer. According to the **Rabanan** kofer is determined based on the value of the nizek, and since in this case the child is already considered dead as soon as he is thrown off the roof, he has no value and therefore kofer would not be paid. According to the **R' Yochanan ben Broka**, kofer is determined based on the value of the mazik, so kofer would have to be paid.

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- **Rabbah** also said, if a person fell off a roof and landed on top of a woman in a way that he had bi'ah with her, and in the process injured her, he is chayuv for the 4 additional payments, and if the woman was his yevama he is *not* konah her with this bi'ah.
  - This means he is chayuv for nezek, tzaar, ripuy, and sheves, but not for boshes, because a Mishna says that one is not chayuv for boshes unless the act was intended.
- **Rabbah** also said, if a person was pushed off a roof by an unusually strong wind, and he landed on someone, injuring and embarrassing them, he is chayuv for damages, but not for the additional 4 payments. If he was pushed off by a usual wind, he is also chayuv for the other payments, but not for boshes. If he turned himself midair so that he break his fall by falling on someone else, he would even be chayuv for boshes, because we learn from a pasuk that as long as he intended for the act that does the damage, even if he did not intend to embarrass someone by doing so, he is still chayuv for boshes.
- **Rabbah** also said, if a person puts a burning coal on another person's heart, which causes the other person to die, the person who put the coal there is patur for the killing (because the other person should have taken the coal off of himself). If the person put the burning coal on someone's clothing and the clothing burned, he is chayuv to pay for the clothing.

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- **Rava** said, both of these halachos are taught in a Mishna. A Mishna says that if someone pushed someone into water or fire and held him down, he is chayuv for the killing. However, if he only pushed him in and the person could have gotten out of the water or the fire, he would be patur for the killing. This teaches the halacha of the coal on the heart. Another Mishna says, if a person says “rip my clothing or break my keili” and a person then goes and does so, the person is chayuv (because the person meant, you can break my keili if you are willing to pay). This teaches the concept of the halacha of the person who puts the coal on the clothing of the other person.
- **Rabbah** asked, what is the halacha if someone puts a burning coal onto the heart of someone else’s slave? Do we consider it as putting a coal on the person or on his property? If you will say that a slave is considered to be like the body of the owner himself, what would be the halacha if he put the coal on another person’s ox? **Rabbah** then answered, a slave is considered to be like the body of the owner himself, and an ox is considered to be like his property (and would have the same halacha as when he places the coal on the other person’s clothing).

### HADRAN ALACH PEREK KEITZAD HAREGEL!!!

#### PEREK HAMANI’ACH -- PEREK SHLISHI

#### MISHNA

- If a person places a “kad” (a type of keili) in the reshus harabim, and another person comes and trips on it and breaks it, the one who tripped is patur from having to pay for the jug, and if he was injured, the one who placed the “chavis” (a type of keili) there is chayuv to pay for the damage done to the person.

#### GEMARA

- **Q:** The Mishna begins by discussing a “kad” and ends by discussing a “chavis”? We find two other Mishnyos that do this as well!? **A: R’ Pappa** said, kad and chavis are the same thing. The point of knowing this is that if someone made a deal to sell one of these and then gave the other (kad is generally thought of as a pitcher or jug and chavis is generally thought of as a barrel), the sale is valid.
  - **Q:** What are the circumstances of this case? If the sale was in a place where people don’t refer to one type of keili as both a kad and a chavis, then how could he give something that was not said? **A:** The case must be where most people refer to a jug as a kad and a barrel as a chavis, but there are some people who use these terms interchangeably. We would think that we must follow the majority. Therefore, he teaches that we don’t follow the majority in money matters.

#### UBAH ACHEIR V’NISKAL BAH USHVARA PATUR

- **Q:** Why is he patur from having to pay for the pitcher? Why don’t we say that he should have looked where he was walking? **A:** In the name of **Rav** it was said that the case is where the person filled the entire area with pitchers, so it was impossible not to walk and trip over them. **Shmuel** said the case is where he tripped over it at night, and therefore could not have been expected to see it. **R’ Yochanan** said the case is where the pitcher was at a corner, where the person could not have been expected to see it before tripping on it.
  - **Q: R’ Pappa** said, our Mishna seems not to agree with **Rav**, because according to him, the Mishna didn’t have to say that the person tripped on the pitcher. It could have even said that the person simply broke the pitcher!? **A: R’ Zvid in the name of Rava** said, the Mishna could have given the case of where he simply broke the pitcher. The reason the Mishna gave the case of where he tripped is because the end of the Mishna needs to give that case, because only there would the owner of the pitcher be chayuv to pay for damages.
  - **R’ Abba** said to **R’ Ashi**, in EY they said in the name of **Ulla**, the reason the person who tripped is not chayuv to pay for the pitcher is because a person does not look where he walks, and is therefore not expected to do so either.
  - It once happened that a person tripped over a keili in full daylight and broke the keili and **Shmuel** said he was chayuv to pay for the keili. In a similar case **Rabbah** also said the person was chayuv to pay.



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- **Q: Shmuel** is following his earlier view. Should we say that this means that **Rabbah** holds like **Shmuel**? **A: R' Pappa** said, the case of **Rabbah** was regarding a barrel at the corner of an olive press, where it is normal and within one's right to keep his barrels there. It is only in that case that **Rabbah** holds that the person is chayuv for breaking the barrel.
- **R' Chisda** sent to **R' Nachman**, the dayanim say that the boshes payment for a kick with the knee is 3 sela'im, for a kick with the foot is 5 sela'im, and for hitting with a donkey's saddle is 13 sela'im. What is the amount of the boshes payment for hitting someone with the handle or the blade of a shovel? **R' Nachman** sent back, "Chisda, Chisda, are you collecting penalties in Bavel!? Send me the facts of the case". **R' Chisda** sent, there was a water source that was owned by people and each had a right to draw water on alternating days. It happened that one of the people tried drawing water on a day that he was not supposed to. A fight broke out and the other person hit him with the handle of a shovel. **R' Nachman** said, in this case he would not be chayuv anything, because even according to the view that one may not take matters into his own hands, since he was facing a loss here (if the person would draw the water), he is certainly allowed to take matters into his own hand, and therefore was right to hit him.
  - We have learned that **R' Yehuda** says a person may not take matters into his own hand, and **R' Nachman** says that one may. If a person is facing a loss, all agree he make take matters into his own hand to prevent that loss. The machlokes is when there is no impending loss. In that case **R' Yehuda** says, since there is no loss the person should go to Beis Din to adjudicate the dispute. **R' Nachman** says, since the person is acting properly according to his legal claim, we do not require him to go to Beis Din.
  - **Q: R' Kahana** asked, a Braisa says, **Ben Bag Bag** says, do not sneak into another person's property to take back something of yours, because you may appear to be a thief. Rather, "break his teeth" (beat him) and tell him that you are taking back something that belongs to you. We see from here that one may take matters into his own hand!? **A: R' Yehuda** said, **Ben Bag Bag** is a lone shita, and the **Rabanan** argue with him and agree with me! **A2: R' Yannai** said, "break his teeth" means take him to Beis Din.
    - **Q: According to R' Yannai** the Braisa shouldn't say "and he should tell him", rather it should say "and they should tell him"!? Also, it should not say "I am taking what belongs to me", rather it should say "he is taking what belongs to him"!? **KASHYEH**.

### -----Daf ןב---28-----

- The Gemara brought a machlokes whether one may take matters into his own hand, or whether he must go to Beis Din to adjudicate.
  - **Q: A Braisa** says, if an ox went on top of another ox, trying to kill it, and the owner of the lower ox came and pulled away his ox, causing the upper ox to fall and die, the owner of the lower ox is patur. Now, presumably we are discussing a case where the upper ox was a muad, which means that the owner of the lower ox would have been fully paid for any damage and not have had to bear any loss, and still he was allowed to take matters into his own hands!? **A: This is no proof.** The Braisa can be talking about a tam, where the person would have had to bear some loss, in which case all would agree that he may take matters into his own hands.
    - **Q: The end of that Braisa** says, if the person pushed the top ox off and the ox fell and died, the person would be chayuv. Now, if the case is where that ox was a tam, why would the person be chayuv? He was saving himself from suffering a loss!? **A: He should have pulled his own ox out** (which is a less dangerous method) instead of pushing the other ox off. That is why he is chayuv.
  - **Q: A Braisa** says, if a person fills another person's chatzer with barrels of wine or oil, the owner of the chatzer may break the barrels to walk in and out. We see that a person may take matters into his own hands!? **A: R' Nachman bar Yitzchak** said, the Braisa means he may break them to walk out to Beis Din, and may break them to walk in to get his documents of proof that he needs to show to Beis Din.
  - **Q: A Braisa** says, if the master of a Jewish slave who is a nirtza uses force to get him to leave his house after his term is over, and in doing so injures the slave, the master is patur. We see that a person may take matters into his own hands even though he is not suffering a loss!? **A: The Braisa** is discussing a slave who is a ganav, and therefore as long as he remains in the house the master is exposed to loss.

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Until now, he had the fear of his master and certainly wouldn't steal. However, once his term is over, that fear is gone, and his remaining in the house is therefore a threat of financial loss. **A2: R' Nachman bar Yitzchak** said, the Braisa is discussing a slave who was given a non-Jewish maid to marry. Once his term is over he is no longer allowed to live with her. Therefore the master may use force to get him to leave, to prevent him from doing an aveirah with her.

- **Q:** Our Mishna said that if the person trips over the pitcher and breaks it he is patur, which suggests that if he went ahead and broke it he would be chayuv. This teaches that one may *not* take matters into his own hands!? **A: R' Zvid in the name of Rava** said, he would be patur even if he broke the pitcher. The reason the Mishna speaks in terms of him tripping on the pitcher is because it needs to do so in the next case, where he trips and injures himself, in which case the owner of the pitcher must pay for the injury.
- **Q:** A Braisa says, the pasuk teaches that if a woman saved her husband from being beaten by grabbing the private area of the attacker, she must pay for the boshes. Presumably the Braisa is discussing where she had no other way to save her husband, and we see that she was not allowed to take matters into her own hands even to prevent a loss!? **A:** The case is where she could have saved him in another way.
  - **Q:** If so, when the Braisa then contrasts this case with a case in which the woman would be patur, and says that case would be if she was a messenger of Beis Din, why couldn't the Braisa say that she would be patur in a case where she didn't have another way to save her husband!? **A:** That is actually what the Braisa means to say – if she has no other way to save him, she becomes like a messenger of Beis Din and would be patur.
- **Q:** A Mishna says, if there was a public path running through someone's field, and he decided to instead give the public a path on the side of his field and take the path in the middle of his field for himself, the halacha is that the new path is considered to be given to the public, and the old path is not considered to belong to the person (and he can't prevent the people from using it). Now, presumably it does become his, and the Mishna means that he still may not prevent people from using it. This shows that one may not take matters into his own hands!? **A: R' Zvid in the name of Rava** said, the **Rabanan** were goizer that a person may not take a path like this out of concern that he may replace it with a crooked path that is more difficult for the public to use. Therefore, he does not even take ownership of the original path at all. **A2: R' Mesharshiya** said, that the case of the Mishna is where he actually replaced the path with a crooked path, and it is in that case that he does not get ownership of the original path. **A3: R' Ashi** said, any path on the side of a field is considered to be a crooked path, because it makes some people further from where they have to go (as compared to a path in the middle).
  - **Q:** If so, why does he also lose the new path to the people? Let him say, you take back what was yours and I will take back what was mine!? **A:** He cannot do so based on the statement of **R' Yehuda**, that once the public makes a kinyan on something, it may not be taken back from them.
- **Q:** A Braisa says, if a field owner left peyah on one side of his field, and poor people then came and took produce from another side of the field, the place they took from becomes peyah as well. The Gemara assumes that what he initially designated as peyah now becomes the owner's again, but he may still not prevent the people from taking the grain. We see that a person may not take matters into his own hands (because if he could, he should stand there with a stick and prevent anyone from taking from that area)!? **A: Rava** said, the Braisa means that the land is peyah in the sense that he does not need to give maaser from that grain, but it truly does now go back under the ownership of the field owner, and he could prevent people from taking from it.

### MISHNA

- If a pitcher of water broke in the reshus harabim and a person then slipped on the water and injured himself, or he injured himself on a broken piece of the pitcher, the owner of the pitcher is chayuv to pay for the injury. **R' Yehuda** says, if the owner of the pitcher had intent, he would be chayuv. If he did not, he would be patur.

### GEMARA

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- **R' Yehuda in the name of Rav** said, the owner is only chayuv if the person's clothes became ruined by the water. However, if he physically injured himself by falling, the owner would be patur, because it is the ground that injured him, not the water (the water is a grama). When **R' Yehuda** told this to **Shmuel**, he said we have learned that a bor is never chayuv for damage done to keilim. The water is a form of bor, so why would he be chayuv for the clothing, which are a form of keilim!? **Rav** holds that the water would only be a form of bor if the water was made hefker. The Mishna is discussing where the water was not made hefker, and is therefore no different than his ox, and that is why he is chayuv even for keilim.
  - **Q: R' Oshaya** asked, a Braisa says, we learn from the pasuk that bor will be patur for damage done to people or keilim. Therefore, if an ox fell in with its keilim, or a donkey with its keilim, the owner of the bor would only be chayuv for the animal, and not for the keilim. A case comparable to this would be a person who left his stone, knife, or package in the reshus harabim and it caused damage. Therefore, if someone banged his pitcher against the stone left in the reshus harabim and the pitcher broke, the owner of the stone would be chayuv. Now, the beginning of this Braisa refutes **Rav** (because it considers an item left in the reshus harabim as a bor, and **Rav** said it would have the status of one's ox), and the end refutes **Shmuel** (it says the owner of the rock would be chayuv for the keili, and a bor is patur for keilim)!? **A:** We can ask that the Braisa itself is self-contradictory! Rather, we can say that **Rav** will understand the Braisa fully according to his view and **Shmuel** will explain it fully according to his view. **Rav** will say that the first part of the Braisa is discussing where the person made the items hefker, in which case they are a form of bor. The Braisa then means to say, however, if they were not made hefker, then if the stone caused damage he would be chayuv (because that stone would be a form of his ox, and not bor). **Shmuel** would say that the Braisa means to say, once we have established that any items left in the reshus harabim are a form of bor, the Braisa then says, that according to **R' Yehuda**, who says that bor is chayuv for keilim, if the stone damaged someone's keili, the owner of the stone would be chayuv.
    - **R' Elazar** said, the owner of the stone would only be chayuv if the person tripped on the stone and broke his keili against the stone. However, if he tripped on the ground and broke the keili on the stone he would be patur (because the ground caused the fall). This does not follow **R' Nosson**, who says that one is chayuv even if he was not the cause of the fall.
      - **Others** say that **R' Elazar** said that the owner is chayuv even if the person tripped on the ground. According to this version he is following the view of **R' Nosson**.

### -----Daf װׁ-----29-----

R' YEHUDA OMER B'MISKAVEN CHAYUV...

- **Q:** What is the case of having intent that would cause the owner of the pitcher to be chayuv according to **R' Yehuda**? **A: Rabbah** said, the case is where he intended to take the pitcher down from his shoulder (and he tripped and smashed the pitcher against the wall – tripping is considered to be negligent and would therefore make him chayuv).
  - **Q: Abaye** asked, that would mean that **R' Meir** (the T"K of our Mishna), who is more stringent, must hold that he would be chayuv even if the pitcher fell apart on its own when it was on his shoulder!? **A: Rabbah** said, that is correct. **R' Meir** would say he is chayuv even if the entire pitcher fell apart, leaving only the handle in his hand.
    - **Q:** Why would he be chayuv? He is an oneis, and an oneis is patur, and we find that an oneis is patur even regarding damages!? **A:** Rather, **Abaye** said, the T"K and **R' Yehuda** are arguing over two points – they argue about damage that happens at the time of the fall, and they argue about damage that happens after the fall. With regard to damage during the fall, they argue whether one who trips is considered to be negligent – the T"K says he is negligent and **R' Yehuda** says he is not. With regard to damage after the fall, they argue whether one is chayuv for the damage done by his item left in the reshus harabim after he makes it hefker – the T"K holds he is chayuv and **R' Yehuda** holds he is patur. This must be the correct understanding of

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this machlokes, because we see that the Mishna gave two cases – if a person slipped on the water, or if a person is injured by a broken piece of the keili. Why do we need two cases that seem to be the same for all practical purposes? It must be that slipping on the water happened at the time of the fall, and injury by the broken piece happened after the fall. We see that there is a machlokes regarding two cases in the Mishna.

- **Q:** If we say the Mishna is talking about a machlokes in each of these two cases (during the fall through negligence, and after the fall by making the item hefker), then the Braisa which seems to follow our Mishna must be discussing the same 2 types of cases. The Braisa gives the cases of a person whose pitcher broke and he did not remove the pieces and gives the case of a person whose camel fell in the reshus harabim. Now, the case of the pitcher can be understand as causing damage during the fall or after the fall (as in our Mishna). However, the case of the camel can only be understood as causing damage after the fall (where he makes the animal hefker after it fell), but how can it be understood as a case of damage during the fall (if the animal trips that would not make the person to be considered as negligent)!? **A: R' Acha** said, the case would be where the owner led the camel down a path that was covered with water (and cannot be seen because of the water). In that case, if the animal trips, **R' Meir and the Rabanan** in the Braisa would argue whether the owner is considered to be negligent for leading him down that path.
  - **Q:** If there is another path he could have gone down, he is clearly negligent!? If there is no other path, he is an oneis!? **A:** The case must be where the owner tripped, and the camel then tripped over him.
- In the case where they argue where the items caused damage after he made it hefker, what is meant by **R' Yehuda** when he says “if he had intent, he is chayuv”? **A: R' Yosef** said, it means that if he had intent to be koneh the broken pieces, then he would be chayuv.
- **R' Elazar** said, that the machlokes between **R' Meir and the Rabanan** in the Braisa is regarding damage that takes place at the time of the fall.
  - **Q:** This suggests that they agree regarding damage that takes place after the fall. It can't be said that they would both agree that he would be patur after the fall, because the Braisa seems to clearly say that **R' Meir** says he would be chayuv in that case!? It also can't be said that they would both agree that he would be chayuv, because the **Rabanan** seem to clearly say that he would be patur!? **A:** Rather, **R' Elazar** must mean that they *even* argue regarding damage that happens at the time of the fall, and he was teaching us like **Abaye** said, that they argue regarding both cases.
- **R' Yochanan** said, they only argue regarding damage that happens after the fall.
  - **Q:** This would suggest that he holds that they agree regarding damage that takes place at the time of the fall. It can't be said that they both agree that he would be patur, because **R' Yochanan** later says that **R' Meir** holds that a person who trips is considered negligent, which would mean that he would say the person is chayuv!? It also can't be said that all would agree that the person would be chayuv, because **R' Yochanan** seems to also say that the **Rabanan** would say that tripping is not considered to be negligent, which would mean that they hold the person would be patur!? **A: R' Yochanan** means to teach us that a person who makes the item hefker is only patur according to the **Rabanan** in a case like this, where he tripped and is therefore an oneis. However, in other cases he would be chayuv.

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- We have learned regarding an item left in the reshus harabim, which the owner made hefker, there is a machlokes between **R' Elazar** and **R' Yochanan** – one says he is chayuv and the other says he is patur.
  - **Q:** Maybe we should say that the view that says he is chayuv follows **R' Meir** and the view that says he is patur follows the **Rabanan**? **A:** Everyone would agree that according to **R' Meir** the person is chayuv. However, there can be a machlokes as to what the **Rabanan** would hold. Simply we can say that the person would be patur. We can also say that they only say the person is patur when he tripped, and is therefore an oneis, but in this case, where he didn't trip, they may agree that he is chayuv.
  - We can prove that **R' Elazar** is the one who says that he is chayuv, because **R' Elazar** said in the name of **R' Yishmael** that there are two things that don't technically belong to a person, but the Torah treats it as if it is owned by the person: a bor in the reshus harabim, and chametz after six hours on Erev Pesach. We see that he holds that a bor that is hefker is still considered owned by the person and would make him chayuv.
  - **Q:** We find that **R' Elazar** says exactly the opposite!? A Mishna says that if someone moves around animal waste in the reshus harabim and it does damage, he is chayuv. **R' Elazar** says he is only chayuv if he intended to be koneh the wastes, but if not he is patur. We see that he holds that if the item is hefker the person would be patur!? **A: R' Ada bar Ahava** said, the Mishna is discussing a case where the person put the wastes back in the exact spot that he found it. In that case he is patur, because he did nothing to bring about that damage.
    - **Ravina** said, this case would be analogous to a case of where someone found an open bor, covered it, and then uncovered it again, in which case he would be patur, because he did not create the bor that did the damage. **Mar Zutra the son of R' Mari** said to him, the cases are not the same. When he moves the waste he has totally removed the bor that the first person set down. When he covers and uncovers a bor, he has not removed the bor that the person set down!? Rather, the analogous case would be where one found a bor, filled it, and then dug it up again, in which case the second person would be chayuv!? **R' Ashi** therefore said, the case of the Mishna must be where the wastes were not lifted 3 tefachim off the ground, and that is why it is not considered to in any way undo the placing of the bor of the person who put it there to begin with.
    - **Q:** Based on this understanding, why did **R' Elazar** have to say that the Mishna is discussing a case where it was lifted less than 3 tefachim, and he would only be chayuv if he intended to be koneh the wastes, why didn't he instead understand the Mishna where it was lifted more than 3 tefachim, and then say that even if he did not intend to be koneh he would still be chayuv!? **A: Rava** said, the Mishna uses the word "hafach" (turned over) instead of "higbi'ah" (lifted). This suggests that the case being discussed is where it was lifted less than 3 tefachim.
  - Now that we know it is **R' Elazar** who says that he is chayuv, it must be **R' Yochanan** who says that he would be patur.
  - **Q:** We find that he says the opposite!? A Mishna says that if someone make a fence of thorns on his property abutting the reshus harabim and it caused damage, he is chayuv. **R' Yochanan** says, he is only chayuv if the thorns

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protruded into the reshus harabim. However, if they were only on his property, he would be patur (even if he was then mafkir that area to the reshus harabim). Presumably, the reason he would be patur is because the bor was made in his reshus, but any bor made in the reshus harabim (where he does not own it, or where it was an item that he made hefker) he would be chayuv!? **A:** Really he holds that in that case he would be patur (which would mean that when a bor is made in one's own reshus he would be chayuv). The reason that in this case of the thorns he is patur is because it is not usual for people to rub up against walls, and therefore he does not have to try and prevent damage to someone who does rub up against the wall.

- **Q:** We find that he says the opposite!? We know that **R' Yochanan** always follows an anonymous Mishna, and there is an anonymous Mishna that says that if a person digs a bor in the reshus harabim and it causes damage, he would be chayuv!? **A:** Rather we must say that **R' Yochanan** holds that a bor of hefker is chayuv.
- **Q:** That would mean that **R' Elazar** would hold that he is patur, and we have said that he said in the name of **R' Yishmael** that a bor of hefker is considered to be owned by the person and he would be chayuv!? **A:** That is the view of his rebbi, **R' Yishmael**. However, **R' Elazar** himself holds that the person would be patur.