



Daf In Review – Weekly Chazarah

Maseches Bava Kamma, Daf ט כ – Daf ל

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

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MISHNA

- If a person pours water in the reshus harabim and another person is damaged by it, the owner of the water must pay for the damage.
- If a person hides a thorn or a broken piece of glass in the reshus harabim, or if a person makes a fence of thorns against the reshus harabim, or if a fence fell into the reshus harabim, and a person was damaged by one of these things, the owner is chayuv to pay for the damage.

GEMARA

- **Rav** said, the owner of the water is chayuv only if the person's clothing was ruined by the water. However, if the person was injured because he slipped on the water, the owner of the water would not be chayuv, because it is the ground that injured him. **R' Huna** asked him, the water mixes with the earth and creates mud, and that mud should be considered as owned by the owner of the water, and he should therefore be chayuv to pay!? **Rav** answered, I was referring to a case where the water was absorbed into the ground and there was no mud.
 - **Q:** Based on this, this Mishna and the last one are saying the same thing!? **A:** One Mishna is to teach when one poured water in the summer (when pouring water into the reshus harabim is not allowed) and one is to teach when one poured water in the winter (when pouring water into the reshus harabim is allowed). In fact, a Braisa says, that although in the winter one may do so, if he does so and someone is damaged by it, he is chayuv.

HAMATZNI'AH ES HAKOTZ...

- **R' Yochanan** said, the owner of the thorn fence is only chayuv if the thorns were sticking out into the reshus harabim. However, if they were all in his own property, he is patur. **R' Acha the son of R' Ika** explained, the reason for this is that it is not usual for people to rub against a wall.
 - A Braisa says, if someone hides thorns or glass in someone else's wall, and the owner of the wall then demolished the wall, which caused it to fall into the reshus harabim and the glass or thorns did damage there, the one who hid these items is chayuv.
 - **R' Yochanan** said, this is only the case if the wall was a weak wall (and the other person should have therefore thought that the wall may be demolished). However, if it was a strong wall he would be patur and the owner of the wall would be chayuv.
 - **Ravina** said, from here we see that if a person covers his bor with someone else's cover, and the owner of the cover comes and take back his cover, the owner of the bor would be chayuv for any damage caused by the bor.
 - **Q:** This seems to be obvious!? **A:** We would have thought that in the case of the wall the owner of the thorns and glass is chayuv, because the owner of the wall does not know who owns these items and therefore need not notify him before demolishing the wall. However, in the case with the bor, we would say that the owner of the cover has to notify the owner of the bor in order for him to be chayuv.
 - A Braisa says, the "Chassidim Harishonim" would hide their thorns and their glass in their fields and would put them at least 3 tefachim deep into the ground so that they not block the plow. **R' Sheishes** would throw them into a fire. **Rava** would throw them into the Diglas River.
 - **R' Yehuda** said, if someone wants to be a "chassid" he should be careful with the laws of damages. **Rava** said he should be careful with the concepts of Mesachta Avos. **Others** said he should be careful with the concepts of Mesechta Brachos.

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MISHNA

- If one puts his straw into the reshus harabim so that it be trampled on and turned into fertilizer, and a person is damaged by it, the owner of the straw is chayuv for the damages. Also, whoever takes the straw first can be koneh it. **R' Shimon ben Gamliel** said, whoever creates a peril in the reshus harabim and it causes damage, is chayuv to pay for the damage, and whoever takes the items first can be koneh it.
- If one moves animal wastes in the reshus harabim and someone is damaged by it, the person who moved it is chayuv for the damage.

GEMARA

- **Q:** Should we say that the Mishna does not follow **R' Yehuda**? Because **R' Yehuda** says in a Braisa that in the fertilizing season a person is allowed to put his fertilizer out in the reshus harabim for people to trample. **A:** The Mishna may follow **R' Yehuda**. Although he says a person is allowed to do that, he would agree that if it did damage, the person would be chayuv.
 - **Q:** We find that **R' Yehuda** says a person is patur if his “Ner Chanukah” started a fire, because he had permission to put it at the entrance to his house or store. Presumably this means he had permission from Beis Din, and we see that **R' Yehuda** says that if a person has permission he would be patur from any damage he causes!? **A:** In that case he is patur because he has permission to put it there based on a *mitzvah*, not just permission from Beis Din.
 - **Q:** A Braisa says, if the **Chachomim** gave permission for someone to put something into the reshus harabim and that thing caused damage, he would be chayuv. **R' Yehuda** says he would be patur. We see that **R' Yehuda** says a person would be patur in such a case!? **A:** **R' Nachman** said, the Mishna is discussing the time of the year when it is not the fertilizing season, and could therefore follow **R' Yehuda**, who only says he is patur during the fertilizing season. **A2:** **R' Ashi** said, our Mishna is discussing straw, which is slippery, and therefore even **R' Yehuda** would agree in that case that the person would be chayuv.

KOL HAKODEM BAHEN ZACHA

- The Mishna said that the **Rabanan** instituted a penalty for anyone who put items that cause a hazard into the reshus harabim, and said that they become hefker so that the first person who takes them can be koneh them. **Rav** said, this penalty applies to the principle value of the item as well as to any improvements of the item (e.g. the straw that was improved by being trampled on by people). **Ze'iri** said, the penalty only applies to the value of the improvement, but not to the value of the principle (and that value will have to be paid for).
 - **Q:** The Mishna's second case, regarding the animal wastes moved in the reshus harabim, does not say that whoever takes it first is koneh. According to **Ze'iri** this makes sense, because animal wastes do not improve by being left there, so the penalty does not apply. However, according to **Rav**, why wasn't the penalty mentioned in this case as well? **A:** Since it was already mentioned in the earlier case of the straw, the Tanna did not feel the need to mention it again in this case.
 - **Q:** A Braisa on this Mishna says “if the items are taken it is considered to be gezel”. Presumably this is referring to the case of the animal wastes, and we see that the penalty does not apply in that case!? **A:** The Braisa is referring to all the cases of the Mishna, and the Braisa is saying that if someone takes the items from the first person who took them and was koneh them, it would be gezel.
 - **Q:** A Braisa says as follows. If someone puts straw out into the reshus harabim to become fertilizer and someone is damaged by it, the owner is chayuv for the damage, and whoever takes it first can be koneh it, and it is mutar with regard to gezel. However, if someone moves animal wastes in the reshus harabim and it damages someone, the owner is chayuv, and it is assur with regard to gezel. We clearly see from here that there is a different halacha for straw and for animal waste, which is problematic according to **Rav**!? **A:** **R' Nachman bar Yitzchak** said, with regard to an item that has improvement (e.g. the straw), the **Rabanan** penalized the principle value along with the improvement. With regard to an item that does not have improvement (e.g. the animal wastes), the **Rabanan** did not institute a penalty at all.

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- **Q:** According to **Rav**, is the penalty put into effect immediately, or only once there is actual improvement? **A:** From the fact that we asked on **Rav** from the case of animal waste, which does not improve, we see that **Rav** must hold the penalty kicks in even before there is improvement, because if not, what was the question to begin with.
 - That is no proof, because that was asked before **R' Nachman's** explanation that the penalty is limited to items that have improvement. However, once we know that, the question becomes, does the penalty take effect only once there is actual improvement, or even before that.
- **Q:** Maybe we can say that the machlokes between **Rav and Ze'iri** is actually a machlokes among Tanna'im in a Braisa. The Braisa says, with regard to a document which calls for interest payments, **R' Meir** says we penalize the holder and he may not collect the principle or the interest payments. The **Chachomim** say he may collect the principle, but not the interest. Maybe we can say that **Rav** holds like **R' Meir** and that **Ze'iri** holds like the **Rabanan**? **A:** **Rav** would say that the **Rabanan** hold that way in that case because the principle is something that was permissible, but in the case of putting items into the reshus harabim, which is assur, they would agree that the penalty would apply to the principle as well. **Ze'iri** would say, **R' Meir** says that way there because the issur begins at the time the document was written. However, when items are put into the reshus harabim, who says that they will cause damage at all, and therefore it can be that **R' Meir** would not penalize the principle in that case.
- **Q:** Maybe we can say that the machlokes between **Rav and Ze'iri** is actually a machlokes among Tanna'im in another Braisa. The Braisa says, if someone puts straw into the reshus harabim to make it into fertilizer, and it damages someone, the owner is chayuv, and whoever takes the straw first is koneh it, and it is assur with regard to gezel. **R' Shimon ben Gamliel** says, anyone who makes a hazardous condition in the reshus harabim and it causes damage, the owner would be chayuv for the damage, and whoever takes the item first would be koneh it, and it is mutar with regard to gezel. Now, how could the Braisa say “whoever takes it first is koneh” and then say “it is assur with regard to gezel”? We must say that it means that with regard to the improvement, whoever takes it first is koneh, and with regard to the principle, it is assur as gezel, and **R' Shimon ben Gamliel** comes to argue and says that even with regard to the principle, whoever takes it first is koneh!? **A:** **Ze'iri** would have to say that this is a machlokes among Tanna'im. However, **Rav** would say that all agree that the principle is penalized as well, and the machlokes is whether we announce that this is the halacha (that people have the right to take these items) or only pasken that way after the fact.
 - In fact, we find that **R' Huna in the name of Rav** said this is the halacha, but we don't rule this way for the people. **R' Ada bar Ahava** said, this is the halacha, and we rule this way for people (even initially).
 - **Q:** We find that **R' Huna** paskened in an actual case that certain items left in the reshus harabim were mutar to be taken!? **A:** That owner was warned several times and didn't change his ways, and that is why **R' Huna** allowed his items to be taken.

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MISHNA

- If two potters were walking behind each other in the reshus harabim, and the first one tripped and fell, and the second one then tripped over the first one and fell, the first one is chayuv for any damage caused to the second one.

GEMARA

- **R' Yochanan** said, don't think the Mishna only follows **R' Meir**, who says that a person who trips is considered to be negligent and that is why he is chayuv. Rather, the Mishna can even follow the **Rabanan**, who say that such a person is an oneis and is patur. However, in the Mishna he is chayuv because the case is where he had enough time to get up before the second potter tripped over him, and since he did not, he is chayuv. **R' Nachman bar Yitzchak** said, that even if he did not have enough time to get up, the **Rabanan** would say that he is chayuv in

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this case, because he should have warned the person behind him, and he did not do so. **R' Yochanan** would say that if he did not have enough time to get up, he cannot be expected to warn someone either.

- **Q:** A Mishna says, if a person carrying a beam was walking in front of a person carrying a barrel, and the barrel broke on the beam, the owner of the beam is patur. However, if the owner of the beam had stopped walking, and that caused the barrel to walk into him and break the barrel, the owner of the beam would be chayuv. Presumably, this refers to where he stopped to adjust the beam on his shoulder, which is normal for one to do, and yet we see that he is chayuv, because he should have warned the person walking behind him, and this Mishna is a proof to **R' Nachman**!? **A:** The case is where he stopped to rest, which is not normal to do in the reshus harabim, and that is why he is chayuv for not warning the person behind him.
 - **Q:** This would mean that if he stopped to adjust the beam he would be patur. If so, when the end of the Mishna says that if the beam owner told the barrel owner to stop, then the beam owner would be patur, the Mishna could have given a different case of patur, and said that he is only chayuv in the first case because he stopped to rest, but if he had stopped to adjust the beam he would be patur!? **A:** The Mishna wanted to give this case, because it is teaching that even if the beam owner stopped to rest, he will be patur if he told the barrel owner to stop.
- **Q:** A Braisa says, if potters are walking one behind the other, and the first one trips and falls, the second one then falls over the first one, and the third one then falls over the second one, the first one is chayuv for the damage to the second one, and the second one is chayuv for the damage to the third one. If they all fell because of the first one, the first one is chayuv for the damage to them all. If they warned each other, then they are patur. Presumably, this is talking about where they could not get up in time to prevent the one behind them from tripping over them, and we see that they are chayuv if they don't warn, which is a proof to **R' Nachman**!? **A:** The case is where they did have enough time to get up.
 - **Q:** This would mean that if they didn't have time to get up they would be patur. If so, instead of giving the case that if they warned each other they would be patur, the Braisa should say, they are only chayuv if they had enough time to get up, but if they didn't have enough time to get up they would be patur!? **A:** The Braisa wanted to give this case, because it is teaching that even if they had enough time to get up, if they warned each other they would be patur.
 - **Rava** said, the Braisa means that the first one is chayuv for the damage caused by his body and by his property. The second potter is chayuv for the damage caused by his body, but not by his property.
 - **Q:** This doesn't seem to be right!? If one who trips is considered to be negligent, the second potter should even be chayuv for damage done by his property, and if one who trips is not considered to be negligent, even the first potter should not be chayuv at all!? **A:** **Rava** holds that the first one to trip is definitely considered to be negligent. The second potter is chayuv for damage caused by his body, because he should have gotten up, but didn't. He is patur for damage caused by his property, because he can claim that he tripped through no fault of his own.
 - **Q:** A Braisa says, all of them are chayuv for damage caused by their bodies, and are patur for damage done by their property. Presumably this refers even to the first one, and refutes **Rava**!? **A:** The Braisa means all of them *besides* the first one.
 - **Q:** The Braisa says "all of them"!? **A:** **R' Ada bar Ahava** said, this refers to "all of the ones who were damaged by others", and the first one was not damaged by anybody.
 - **Q:** If so, the Braisa should say "the damaged ones", and not use the words "all of them"!? **A:** Rather, we must say that **Rava** meant that the first potter is chayuv for damages done to the body and the property of the second potter, whereas the second potter is only chayuv for damages done to body of the third potter, and not to his property. The reason for this is, that the second potter is considered to be a bor, and a bor is not chayuv for damage to keilim.

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- **Q:** This makes sense according to **Shmuel** who says that something can get the status of a bor even if it is not hefker. However, according to **Rav**, who says that only something that is hefker gets the status of a bor, how can this be understood!? **A:** We must say that **Rava** meant like we said originally. Although we asked that the words “all of them” are problematic, we will explain this as **R’ Ada bar Ahava** did to **Ravina**, that when we say that even the first person is patur it is referring to where the keilim of the first person damaged the keilim of the second person.
- **Q:** The Braisa said, if they all fell because of the first potter, the first potter is chayuv for the damages to all of them. How could it be that the third potter fell because of the first potter, but not because of the second potter? **A: R’ Pappa** said, the case is where the first potter was sprawled out across the width of the road, so although the third potter was able to get around the second one, he couldn’t avoid the first one. **R’ Zvid** said, the case is where he was stretched across the width of the road like the stick of a blind person.

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MISHNA

- If one person was walking in the reshus harabim with his barrel and another person was walking with a beam and they collided so that the beam broke the barrel, the owner of the beam is patur, because they both have equal rights to carry their items through the reshus harabim.
- If the one carrying the beam was in front and the one with the barrel was behind him, if the barrel bumped into the beam, causing the barrel to break, the owner of the beam is patur. If the beam owner made a sudden stop, causing the barrel to bump into the beam, then the owner of the beam would be chayuv for the damage. However, if he told the barrel owner to stop, then the beam owner would be patur.
 - If the one carrying the barrel was in front and the one with the beam was behind him, if the beam bumped into the barrel, causing the barrel to break, the owner of the beam is chayuv. If the barrel owner made a sudden stop, causing the beam to bump into the barrel, then the owner of the beam would be patur for the damage. However, if he told the beam owner to stop, then the beam owner would be chayuv.
- The same principles would apply where one person is carrying a lit candle and another person is carrying flax.

GEMARA

- **Q: Rabbah bar Nosson** asked **R’ Huna**, what is the halacha if a man injures his wife during tashmish? Do we say that since he had permission to do what he did he is patur, or do we say that he should have been more careful, and is therefore chayuv? **A: R’ Huna** said, we see from our Mishna that when the person with the beam and the person with the barrel both had rights to do what they were doing, they are patur.
 - **Q: Rava** asked, if in the case of a forest where a person chopping wood accidentally killed another man, he is chayuv to go into galus, then in the case of the husband, where he is considered to be in the reshus of the wife, surely he should be chayuv for any injury he causes her!? Although in our Mishna the people were there with reshus and they are patur, that is because they both were involved in the action that caused the damage. In the case of the couple, only the husband is doing an action that causes the damage!?
 - Although we find that a woman gets punished for znus, which would mean she is considered to be involved in the act, in truth she is considered part of the act only because she has hana’ah from the act, but with regard to damage, she is not considered to be involved in the act.

HAYA BAAL KORAH RISHON...

- **Reish Lakish** said, 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

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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.

- **Q:** Maybe we can say that our Mishna is a proof to **Reish Lakish**, because the Mishna says that if the beam owner was walking in front and the barrel bumped into it and broke, the beam owner would be patur, but if the beam owner made a sudden stop, which caused the barrel to bump into it, he is chayuv. Now, this case of where he stopped is analogous to the case of where the sitting animal kicked the walking animal, and we see that he is chayuv! **A:** Not only is this not a proof, the Mishna is actually problematic for **Reish Lakish**, because his ruling suggests that the sitting animal is chayuv only because it kicked, but if the walking animal tripped over it he would be patur. Yet, in our Mishna, the damage happened when the beam was standing still, and still the owner is chayuv!
 - The Mishna is not problematic, because the case is where the beam blocked the entire path and there was no way to avoid it. In the case of the animals, the sitting animal was on one side of the path, and the other animal could have walked around it to avoid it. That is why the owner of the sitting animal will be patur if his animal did not kick and damage.
 - **Q:** Maybe the next part of our Mishna can be used as a proof for **Reish Lakish**. The Mishna says that if the barrel was in front, then if the beam broke the barrel, the barrel owner is chayuv. However, if the barrel stopped, causing the beam to bump into it and break the barrel, the beam owner is patur. Now, this last case is analogous to the walking animal kicking the sitting animal, and the Mishna says that he is patur! **A:** The cases can't be compared. In the case of the Mishna the beam owner had every right to walk in a normal fashion, like he is doing. However, in the case of the animals, the owner of the sitting animal can say, you had every right to step on my animal, but you had no right to kick my animal, and therefore there is reason to say that the walking animal should be chayuv for doing so.

MISHNA

- If two people are going in the reshus harabim – one is running and the other is walking, or if they are both running, and they did damage to each other, they are both patur.

GEMARA

- The Mishna does not follow **Isi ben Yehuda**, who says in a Braisa that the one who is running is chayuv, because he is not acting in a normal way. **Isi** agrees that if someone was running on Erev Shabbos “bein hashmashos” that he would be patur, because at that time people have permission to run.
 - **R' Yochanan** said that the halacha follows **Isi ben Yehuda**.
 - **Q:** **R' Yochanan** always paskens like the anonymous Mishnayos, and our, anonymous Mishna says that even if someone ran he is patur!? **A:** Our Mishna is discussing Erev Shabbos bein hashmashos. It must be the case, because if not, why did the Mishna give the case of one person running and say that he is patur, and then say that if they are both running they are patur. The second case is obvious after the first case!? Rather, it must be that the case of one person running was Erev Shabbos bein hashmashos, and the Mishna then means to say that if happened at any other time the runner would be chayuv, but, if they were both running they are patur even at a time other than Erev Shabbos bein hashmashos.
 - **Q:** Why does he have permission to run on Erev Shabbos during bein hashmashos? What Shabbos preparations are still being done at that time? **A:** It is like **R' Chanina** and **R' Yannai** would do, when they would go out to greet the Shabbos at that time.

MISHNA

- If someone chops wood in the reshus harabim and it causes damage in the reshus hayachid, or visa-versa, or if one chops wood in the reshus hayachid and it does damage in another reshus hayachid, he is chayuv.

GEMARA

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- It is necessary to state all three cases. If we would only say the case of where he chops in the reshus hayachid and damages in the reshus harabim, we would say in that case he is chayuv, because there are a lot of people in the reshus harabim and he should have known to be careful, but in the opposite case, he had no reason to think that people would be right next to him in the reshus hayachid and he should therefore be patur. If we would only say the case of where he chopped wood in the reshus harabim, we would say that in that case he is chayuv, because he had no right to chop wood in the reshus harabim, but when he chops in the reshus hayachid he should be patur. If we would only say these 2 cases, we would say he is chayuv for the reasons given above. However, when he chops in one reshus hayachid and damages in another reshus hayachid, where neither of these reasons apply, we would say that he should be patur.
- A Braisa says, if a person went into a carpentry shop without permission, and a woodchip hits him and kills him, the carpenter is patur (from having to go into galus). If the person entered with permission, the carpenter would be chayuv.
 - **R' Yose bar Chanina** said, this means he is chayuv in the 4 payments if the person was injured, but would be patur from galus if the person was killed, because this is different than the case of the accidental killing in the forest, where the forest belongs equally to the killer and the victim, whereas in this case the victim went into the property of the carpenter.
 - **Rava** said, we should say a kal v'chomer – if in the case of a forest, although they have equal rights to the forest, we consider it as if the victim was there with the permission of the killer and the killer must therefore go to galus, then in the case of the carpenter, where the victim actually did have permission, the killer should surely have to go into galus!? Rather, **Rava** said, what **R' Yose bar Chanina** meant was that the carpenter is patur from galus, because galus is not enough to bring a kaparah for him, because he is a shogeg that is bordering on being a meizid.
 - **Q: Rava** asked, a Mishna says, if the shaliach of Beis Din who was giving malkus gave one more than he was told to give, and the person died from that last lash, the shaliach must go into galus. Now, this is clearly a case of a shogeg bordering on a meizid, and yet he goes into galus!? **A: R' Simi of Neharda'ah** said, the case of the Mishna is where the shaliach made a mistake in his counting of the malkus. That case is not considered to be bordering on being a meizid.
 - **Q: Rava** asked, a Braisa says that the one giving the malkus is not the one who does the counting (a dayan does that)!? **A: R' Simi** said, the case is that the dayan made the mistake in counting, but the shaliach who thereby gave the extra lash must go into galus.
 - **Q:** A Mishna says, if someone threw a stone into the reshus harabim and it killed someone, he must go into galus. Now this is a case of bordering on meizid, because he knew that there would be many people there, and yet he goes into galus!? **A: R' Shmuel bar Yitzchak** said, the case is that the person was demolishing his wall, and therefore was not throwing stones into the reshus harabim with no purpose.
 - **Q:** Still, he should have checked to see if anyone was there before he threw it!? **A:** The case is that he did it at night.
 - **Q:** Even at night, he should have checked first!? **A:** The case is that he was throwing the stones of his wall into a garbage dump.
 - **Q:** What type of garbage dump? If many people are always there, he is bordering on a meizid, and if many people are not normally there, he is an oneis!? **A: R' Pappa** said, it is a garbage dump that is generally only used as a bathroom by people at night, but once in a while is used by day as well. Therefore, when he throws the stone there during the day, he cannot be said to be a meizid (because people don't generally use it by day), but he also cannot be said to be an oneis (because people sometimes do use it by day).
 - **R' Pappa in the name of Rava** said that **R' Yose's** statement was said in regard to the earlier part of the Braisa, which discussed the person who walked into the carpentry shop without

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permission and was killed, in which case the Braisa says that the carpenter is patur. On that case **R' Yose** said that he is chayuv for the 4 payments if the victim is injured, but is patur from galus if the victim is killed.

- According to the version that this was said on the later part of the Braisa, they would agree that it also applies to the earlier part. However, according to the version that it was said on this earlier part, it may be that in the later part of the Braisa, since he entered with permission, the carpenter would be chayuv to go into galus.
- **Q:** How can we say that the carpenter would be chayuv to go into galus if the victim entered with permission? A Braisa says that if a person enters the shop of a blacksmith and was killed from the sparks, the blacksmith is patur from having to go into galus, whether the person entered with permission or not!? **A:** This Braisa is discussing the student of the blacksmith, where the blacksmith was pushing him to leave, and thought that he actually had left. That is why he is patur.
 - **Q:** If that is the case, then even if it is a person other than a student, he should also be patur!? **A:** Someone other than the student does not have the fear of the teacher on him, and therefore the blacksmith should not assume that the person left just because he had told him to do so.
- **R' Zvid in the name of Rava** said that the statement of **R' Yose** was made on the following Braisa. The Braisa says, that **R' Eliezer ben Yaakov** learns from a pasuk, if someone threw a stone, and someone else put himself into the path of the stone and was killed by it, the thrower is patur from having to go into galus. It was on this that **R' Yose bar Chanina** said, he is patur from galus, but would be chayuv to pay the 4 payments if the victim was only injured.
 - According to the view that it was said on this Braisa, it would certainly apply to the earlier Braisa (with the carpenter) as well. According to the view that it was said on the first Braisa, it may be that with regard to the case of this later Braisa the thrower is patur from everything, even the 4 payments.

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- A Braisa says, if workers go into the property of the employer to collect their wages, and while there they were gored by his ox or bitten by his dog, and died as a result, the employer is patur from having to pay kofer (because they entered without permission). **Others** say, they workers have the right to enter the employer's reshus to collect their wages, and therefore the employer would be chayuv to pay kofer.
 - **Q:** What is the case? If this employer can usually be found in the city, then why would the **Others** say that the workers have the right to enter his property to collect their wages? They should collect from him when he is in the city!? If he is usually only found in his house, why would the **T"K** say that they may not enter his property? They have every right to do so to collect their wages!? **A:** The case is where the employer is sometimes found in the city, but not usually, and the workers therefore went to his house and knocked on his door. When they did so he said "yes". The **Others** hold that "yes" means "come in", and the workers are therefore entering with permission. The **T"K** holds that "yes" means "stay where you are", and they therefore had no permission to enter.
 - A Braisa says that if a worker goes into the reshus of the employer to collect his wages and is killed by the employer's ox or dog, the employer is patur from having to pay kofer even though the worker entered with permission. Now, if he entered with actual permission the employer would clearly be chayuv!? Rather, we must say that the worker knocked, the employer responded with a "yes", and the Braisa holds that "yes" means "stay where you are".

MISHNA

- If two oxen, who were each a tam, fought with each other and damaged each other, the owner of the ox that was damaged less will pay half of the excess damage to the owner of the ox that was damaged more.

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- If they were both a muad, the owner of the ox that was damaged less will pay for the full excess damage to the owner of the ox that was damaged more.
- If one was a tam and one was a muad, if the damage done by the muad was more than the damage done by the tam, the muad pays for the full excess damage. If the damage done by the tam was more than the damage done by the muad, the tam pays for half of the excess damage.
- Similarly, if two people injured each other, the one who did more damage will pay for the full excess damage to the other person.
- If a person and a muad ox damaged each other, then the one who did more damage will pay for the full excess damage.
- If a person and a tam ox damaged each other, if the damage done by the person was more than the damage done by the tam, the person pays for the full excess damage. If the damage done by the tam was more than the damage done by the person, the tam pays for half of the excess damage.
 - **R' Akiva** says, even in this case, if the tam did more damage, the tam must pay for the full excess damage.

GEMARA

- A Braisa says, the pasuk of “kamishpat hazeh yei’aseh lo” teaches that just as when an ox injures another ox, if the injuring ox was a tam he pays half damages and if he was a muad he pays full damages, the same would apply to an ox that damaged a person. **R' Akiva** says “hazeh” refers to the immediately preceding pasuk (which discusses a muad) and teaches that an ox that damages a person is always given the status of a muad, and the words “yei’aseh lo” teach that the payment only needs to be made up to the value of the damaging ox, and not beyond that.
 - **Q:** According to the **Rabanan**, why does the pasuk say the word “zeh”? **A:** They say it is needed to teach that the owner is not chayuv for the 4 payments in this case.
 - **R' Akiva** learns this from the pasuk of “ish ki yitein mum ba’amiso”. The **Rabanan** say, from this pasuk we would say that it is only patur from having to pay for pain.

MISHNA

- If an ox worth 100 zuz gored an ox worth 200 zuz, killing it, and the carcass is worthless, the owner of the dead ox takes the live ox as payment for his damages.

GEMARA

- The Mishna follows **R' Akiva** from a Braisa. The Braisa says, **R' Yishmael** says we must appraise the live ox in Beis Din and the owner then pays the appropriate value. **R' Akiva** says that the live ox itself is to be used for the payment.
 - The machlokes is that **R' Yishmael** holds that the damage is considered like a debt, which the damager must pay. **R' Akiva** holds that the nizek and mazik become partners in the live ox. The machlokes is based on the pasuk that says that the live ox should be sold and its proceeds divided. **R' Yishmael** holds that this pasuk is directed to Beis Din, and the sale should be done if the mazik has no other means to pay. **R' Akiva** says this pasuk is directed to the nizek and mazik, and teaches that they are considered to be partners in the animal.
 - **Q:** What is the practical difference between them? **A:** The difference would be if the nizek was makdish the property. According to **R' Yishmael** it would not become kodesh, and according to **R' Akiva** it would.
 - **Q:** **Rava** asked **R' Nachman**, according to **R' Yishmael**, what would the halacha be if the mazik sold the ox? Since he says that the mazik is a debtor, he still owns the animal and could therefore sell the animal, or maybe we should say that since the nizek has a lien on the animal, the mazik cannot sell it!? **A:** **R' Nachman** said, the animal would not be sold.
 - **Q:** A Braisa says that it will be considered as sold!? **A:** It is sold, but the nizek can go and take it back from the buyer for payment of the damage.

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- **Q:** If he can take it back, then in what respect is it considered as sold? **A:** If the buyer used the ox before it was taken back, he does not have to pay for that use.
- **Q:** This seems to suggest that we collect moveable items that were sold by the debtor!? **A:** This case is different, because it is considered as if the ox is made an “apotiki” for payment of the damages, in which case it may be taken back even though it is moveable property.
- **Q:** We have learned that **Rava** said that a slave can be used as an apotiki, but an ox cannot!? **A:** The reason a slave may be used for an apotiki is because it becomes public knowledge. This ox, which has gored, also becomes public knowledge because of its goring, and therefore can also be used as an apotiki.
- **R’ Tachlifa** of EY taught a Braisa in front of **R’ Avahu** that said, if he sold the live ox, the sale is not effective, but if he was makdish the ox, it does become hekdesch.
 - **Q:** Who sold the ox? If the mazik is the one who sold it, the Braisa must follow **R’ Akiva**, who says that the ox is no longer his to sell, and the part of the Braisa that says he can make it hekdesch must follow **R’ Yishmael**!? If we say it is the nizik who sold it, then when we say the sale is not effective it follows **R’ Yishmael**, and when it says the hekdesch is effective it follows **R’ Akiva**!? **A:** The Braisa refers to where the mazik sold it, and even **R’ Yishmael** agrees that the sale is not effective, because the nizik has a lien on the ox. Also, the hekdesch will be effective even according to **R’ Akiva** as a gezeira of **R’ Avahu**, who says that we are goizer so that people shouldn’t say that hekdesch went out to chullin without first being redeemed. Therefore, although it is truly not hekdesch, a minimal amount would have to be given as redemption.
- A Braisa says, if an ox that is tam does damage, then before the ox is taken to Beis Din: if it is sold, the sale is effective; if it is made hekdesch, it becomes hekdesch; if it was shechted or given away as a gift, what was done was done. However, once the ox was taken to Beis Din, if it is sold, the sale is not effective; if it is made hekdesch, it does not become hekdesch; if it was shechted or given away as a gift, it is not effective. If creditors of the mazik came and collected the ox for their debt, whether the debt happened before the damage or visa-versa, the creditor may not keep the ox, because the damage is only paid from the body of the ox. If an ox that is a muad damaged, whether it was already brought to Beis Din or not, if it is sold, the sale is effective; if it is made hekdesch, it becomes hekdesch; if it was shechted or given away as a gift, what was done was done. If creditors of the mazik came and collected the ox for their debt, whether the debt happened before the damage or visa-versa, the creditor may keep the ox, because the damage is anyway paid from the best of the mazik’s properties (and is not limited to the body of the ox).
 - When the Braisa says that the sale of the tam ox before it goes to Beis Din is a valid sale, it follows **R’ Yishmael** and means that the nizik will be allowed to take it back from the purchaser, but if the purchaser used the ox when he had it, he will not have to pay for that use. When the Braisa says that the hekdesch is effective, it means that a minimal amount will have to be given for its redemption, on the basis of the gezeirah of **R’ Avahu**.
 - **Q:** The Braisa said, if it was shechted or given as a gift, what was done was done. Now, the gift being effective is teaching that the recipient of the gift does not need to pay for any use that he had before it is taken from him by the nizik. However, the case of it being shechted, why can’t the meat just be taken by the nizik as payment? **A:** **R’ Shizbi** said, this is teaching that the nizik must bear the loss from any depreciation to the value of the animal due to the shechita.
 - **R’ Huna the son of R’ Yehoshua** said, from here we can learn that if someone damages the lien of another, he is patur.
 - **Q:** This seems obvious from the Braisa, so why does **R’ Huna** have to say that? **A:** We would think that in the case of the shechita he can tell the nizik, “I didn’t do anything except take away the breath (the life) of the animal”, and that is why he is patur. However, in a case when he did real damage to property subject to a lien, maybe he should be chayuv. **R’ Huna** therefore teaches that he is not chayuv.
 - **Q:** **Rabbah** has already taught this, when he said that if someone burns the documents of another (preventing him from having the ability to collect his debts) he is patur!? **A:**

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We would think that in that case he is patur because he only damaged paper that is the *evidence* of a lien, but not the property of the lien itself. The Braisa teaches that even when he damages the property of the lien he is not chayuv.

- **Q:** The Braisa said, if creditors of the mazik came and collected the ox for their debt, whether the debt happened before the damage or visa-versa, the creditor may not keep the ox, because the damage is only paid from the body of the ox. Now, if the damage took place before the debt, this would make sense. However, if the debt was incurred before the damage, why can't the creditor keep the ox as payment for his debt? Even if the debt happened after the damage, since the debtor seized the ox, he should be allowed to keep it!? Are we to learn from here that when a later creditor seizes an asset he must return it in favor of an earlier creditor!? **A:** Typically, once an asset is seized, he may keep it. However, in this case, because the payment for damages is limited to the body of the ox, the nizik has a stronger lien. Therefore, in this case he is able to demand the return of the ox for payment of the damages.

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- A Braisa says, if an ox worth 200 gored an ox also worth 200 and caused it damage (a decrease in value) of 50, and the value of the injured ox then rose to 400, but had it not been injured the value would have risen to 800, the mazik must still pay half the damage as it was at the time of the damage (half of 50). If after the injury the injured ox's value continued to decrease, the mazik must pay half of the decrease of its value at the time that the ox is brought to Beis Din. If the value of the damaging ox rose, the mazik still only pays half of the damage as it was at the time of the injury (and the nizik can't say that he effectively owns 1/8 of the animal (it was worth 200 and he was owed 25 from it) and should therefore share in 1/8 of the increase of value (this seems to follow **R' Yishmael**, who says that the nizik has no rights of ownership in the damaging animal). If the value of the damaging party decreased, the mazik only pays based on its value at the time that it is brought to Beis Din (this seems to follow **R' Akiva**, who says that the nizik becomes an owner of the damaging ox).
 - **Q:** Shall we say that in the last half of the Braisa, the first part follows **R' Yishmael** and the last part follows **R' Akiva**? **A:** The entire thing can follow **R' Akiva**. The reason the nizik does not share in the appreciation of value is because the case is discussing where the mazik spent money fattening the ox, resulting in the increase of value. Since it was all at the mazik's expense, only the mazik benefits from the appreciation.
 - **Q:** If this is the case (that the owner fattened it and brought about the increase in value), then in the first half of the Mishna, why does the Mishna say that if the injured ox increased in value the mazik must still pay for the decrease that he initially caused? The increase is only because the nizik spent money to fatten it, so of course the mazik may not benefit from that!? **A: R' Pappa** said, the first half of the Mishna can be talking about where the nizik fattened the animal, or where the animal's value appreciated on its own. The chiddush is, that even where it happened on its own the mazik must still pay for the initial decrease. The end of the Braisa can only be discussing the case of where the mazik fattened his animal.
 - **Q:** The Braisa said that if the value of the injured ox continued to depreciate, the mazik must pay based on its value when it stands before Beis Din. Why did it depreciate further? If it was due to work, why would the mazik have to pay for that!? **A: R' Ashi** said, the case is where it continued to depreciate because of the injury it suffered from the mazik's ox.

MISHNA

- If an ox that is worth 200 gored an ox that is also worth 200, killing it, with the carcass being worthless, **R' Meir** says, this is the case that the pasuk is referring to when it says "they shall sell the live ox and divide the money". **R' Yehuda** said, it is true that that is the halacha, but that can't be what is meant by the pasuk, because the pasuk continues and says "and they should also divide the dead one", which in this case does not apply. Rather, the pasuk is referring to the case where an ox worth 200 gored an ox also worth 200, killing it, and the carcass is worth 50. In this case the nizik and the mazik each take half of the live ox and half of the dead ox.

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GEMARA

- A Braisa says, if an ox worth 200 gored an ox also worth 200, killing it, and the carcass is worth 50, the nizek and the mazik each take half of the live ox and half of the dead ox. **R' Yehuda** says, this is the case that is referred to by the pauk in the Torah. **R' Meir** says this is not the case. Rather the case is where an ox that is worth 200 gored an ox that is also worth 200, killing it, with the carcass being worthless. That is the case regarding which the pasuk says “they shall sell the live ox and divide the money”. If so, how are we to understand the next part of the pasuk that says “and they should also divide the dead one”? It means to teach that half of the depreciation of the animal between the time it was alive and the time that it was killed is paid to the nizek from the value of the live animal.
 - **Q:** According to **R' Meir and R' Yehuda**, the nizek and mazik are ending up with the same amount of money, so what is the difference between them? **A: Rava** said, the machlokes is who must bear the loss for further depreciation of the carcass after the time of death. **R' Meir** says that is the loss of the nizek, and **R' Yehuda** says that the mazik must bear half that loss.
 - **Q: Abaye** asked, if that is true, that would mean that according to **R' Yehuda** a tam is being treated more stringently than a muad, because a muad does not bear any of the loss of further depreciation of the carcass!? Although we find that **R' Yehuda** has a higher standard of guarding a tam than a muad, with regard to payment **R' Yehuda** clearly says in a Braisa that it must be that a tam is treated more leniently than a muad!? **A:** Rather, **R' Yochanan** said, the machlokes between **R' Meir and R' Yehuda** is regarding a case where the carcass appreciates in value after the time of death. **R' Meir** holds that appreciation is totally for the benefit of the nizek, and **R' Yehuda** says that the mazik is entitled to benefit from half that increase.
 - In fact, we find that **R' Yehuda** holds this way, because in a Braisa he states that one would possibly think that a mazik can make money off the damage if the value of the carcass is more than the value that the animal was worth when alive. However, we will not allow a mazik to make money from his damage, and a pasuk teaches this as well. Now, the basis for even thinking to say that a mazik could make money if the carcass increases the value dramatically is only because **R' Yehuda** holds that the mazik shares half of the increase in the value of the carcass when that reduces his payment.
 - **Q: R' Acha bar Tachlifa** said to **Rava**, according to **R' Yehuda**, who says that they must split the value of the live and dead ox, it is possible that the tam would pay more than half the damage, and this can't be right, because we know from the pesukim that a tam only pays half the damage!? **A: R' Yehuda** would agree with **R' Meir** that the Torah means that the nizek is only entitled to half the damage, which is gotten from the sale of the tam ox. He learns this from the pasuk of “v'gam es hameis yechetzun”. Although **R' Yehuda** previously darshened this pasuk differently, he would say that the extra word “v'gam” teaches that the payment is limited to half the damage, and the pasuk can also teach that the mazik shares in the appreciation of the carcass (as learned previously).

MISHNA

- There is a person who is chayuv for the action of his ox, but is patur when the action is his own, and a person who is patur for the action of his ox, but is chayuv when the action is his own.
 - How is this so?
 - If one's ox embarrassed someone, the owner is patur, but if he himself embarrassed someone, he is chayuv. If his ox blinded his slave or knocked out the tooth of his slave, he would be patur, but if he himself did that, he would be chayuv (to let him free).
 - If one's ox wounded the owner's father or mother, he would be chayuv to pay, but if he himself did so, he would be patur (because he would be chayuv misah). If his ox set a pile of grain on fire on Shabbos, he would be chayuv, but if he himself did so, he would be patur, because he would be chayuv misah.

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GEMARA

- **R' Avahu** taught a Braisa in front of **R' Yochanan**, if someone does any destructive act on Shabbos he is patur, except for someone who wounds somebody or burns something. **R' Yochanan** said, this is not a correct Braisa, because a person would even be patur for wounding and burning. The only reason one would be chayuv for these actions would be if he wounded because he needed the blood for his dog, or if he burned because he needed the ashes.
 - Q: Our Mishna compared the cases of an ox burning a pile of grain on Shabbos and a person doing so. Presumably, just as the ox didn't burn it because it needed the ashes, the person didn't burn it for its ashes either. Still, the Mishna says that the person is patur to pay, because he is chayuv misah for burning on Shabbos, which would not be the case if he burned it for a reason other than needing the ashes!? **A:** The Mishna means to compare the case of the ox to the person, that just as the person burned it for the ashes, the animal burned it for the ashes as well. **R' Avya** explained, the Mishna is discussing a very smart ox that has a bite on its back and wants the ashes so that it can roll on it to heal the bite. We know this is the ox's intent in burning the grain, because we actually see that he rolls around in the ashes after burning it.
 - We find cases of intelligent animals like this, as we find that **R' Pappa's** ox had a toothache, and went and removed the cover from a barrel of beer so that it could drink the beer and heal the toothache.
 - **Q:** The **Rabanan** asked **R' Pappa**, we can't say that the case of the ox is like the case of the person in this way, because that would mean that in the first case of the Mishna the ox intended to embarrass someone, and that is something an animal is not capable of doing!? **A:** The case would be where the ox intended to damage. As a Braisa says, that if a person intends to injure he would chayuv for boshes even if he did not intend to embarrass the victim.
 - **Rava** said, the Mishna does not refute **R' Yochanan**, because the Mishna is discussing a case of shogeg, and **Chizkiya** has taught that even when one is not chayuv misah because an act (of killing, or of chilul Shabbos) was done b'shogeg, he is still patur from having to pay.
 - **Q:** The **Rabanan** asked **Rava**, the Mishna says the reason he is patur is because he is chayuv misah!? **A:** The Mishna means, that since if it is done b'meidid it would carry the death penalty, therefore, even when it is done b'shogeg he is still patur from having to pay.

MISHNA

- If an ox was chasing another ox, and the chased ox was later found to be damaged. The owner of the chased ox says the damage was done by the chasing ox, and the owner of the chasing ox said the damage was done from a rock when it was scratching itself against it, the halacha is "hamotzi meichaveiro alav haraya".
- If 2 oxen were chasing a third ox, and it is clear that the chased ox was damaged by one of the oxen, and the owner of each chasing ox blames the damage on the other chasing ox, they are both patur (because they can each lay blame on the other).
 - If both of the chasing oxen belonged to the same person, both of them are chayuv. If the chased ox owner says it was the larger one that did the damage (the oxen were each a tam, and therefore only pay from the body of the damaging animal, therefore a larger animal would have the ability to pay a larger amount towards the half damages) and the chasing oxen owner said it was the smaller one, or if one of the chasing oxen was a tam and the other was a muad, and the chased ox owner says it was the muad that did the damage and the chasing oxen owner said it was the tam, the halacha is "hamotzi meichaveiro alav haraya".
- If two oxen belonging to one owner were being chased by two other oxen who also belonged to one owner, and one of the chasing oxen were large and the other was small, and one of the chasing oxen damaged one of the chased oxen, and the other damaged the other, and the nizek says that the large ox damaged the large ox and

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the small one damaged the small one, and the mazik says that the large damaged the small and the small damaged the large, or if one of the damaging oxen was a tam and the other was a muad, and the nizik says that the muad damaged the large animal and the tam damaged the small animal, and the mazik says the reverse is true, again, the halacha is that “hamotzi meichaveiro alav haraya”.

GEMARA

- **R’ Chiya bar Abba** said, from our Mishna we see that the **Rabanan** argue on **Sumchos**, who says that when there is doubt about ownership of money (when the doubt is based on the circumstances, even without their claims) the money is divided (the first case of our Mishna is that type of safek, and we see that the **Rabanan** say “hamotzi meichaveiro alav haraya”). **R’ Abba bar Mamal** asked **R’ Chiya bar Abba**, did **Sumchos** say his halacha even when both parties make claims of certainty (which is the case of our Mishna)? **R’ Chiya** said, yes.
 - **Q:** How do we know that the Mishna is a case of where they make claims of certainty? **A:** The Mishna says the nizik says “your ox damaged my ox” and the mazik responded “not so, rather your ox was damaged scratching itself on a stone”. Those are claims of certainty (“bari”).
 - **Q: R’ Pappa** asked, if the beginning of the Mishna is discussing claims of bari, that means the end of the Mishna (the nizik says the large animal did the damage, or the muad did the damage, and the mazik says it was the small animal, or the tam) must be discussing the same. Now, in that case the Mishna said “hamotzi meichaveiro alav haraya”, which suggests that if no proof is brought the nizik would collect, but only according to the level admitted to by the mazik. This seems to refute **Rabbah bar Nosson**, who says that if a person claims that someone owes him wheat, and the defendant says he owes barley, not wheat, the defendant would be patur from having to pay anything at all (and would not even pay the barley that he admits to)!? Rather, in order to understand the Mishna without refuting **Rabbah bar Nosson**, you will have to say that the Mishna is instead discussing a case where one party made a claim of bari and the other made a claim of uncertainty (“shema”), which is not the way the Mishna was explained by **R’ Chiya bar Abba**? **A:** The Mishna can’t be discussing a case where one party made a claim of bari and the other made a claim of shema, as can be proven. If the case is where the nizik made a claim of bari and the mazik made a claim of shema, that would still refute **Rabbah bar Nosson**, because according to him he should still be entirely patur! Rather, you will say that the nizik made a claim of shema and the mazik made a claim of bari, which would mean that the beginning of the Mishna is discussing that case as well. If that is true, our Mishna would not be arguing with **Sumchos**, because **Sumchos** would agree in that case that we don’t say the money is divided!
 - **R’ Pappa** said, we can say that the end of the Mishna is discussing the case where the nizik has a claim of shema and the mazik has a claim of bari, and the beginning of the Mishna is where the nizik has a claim of bari and the mazik has a claim of shema.
 - **Q: R’ Pappa** had refuted **R’ Chiya bar Abba’s** understanding of the Mishna, because that would lead to the different parts of the Mishna referring to different cases. However, according to **R’ Pappa** the Mishna is still referring to different cases in the different sections!? **A:** According to **R’ Chiya bar Abba**, one part would have to be dealing with two claims of bari, and the other part would have to be dealing with one claim of bari and one of shema. That is considered to be two very different cases, and cannot be the proper understanding. According to **R’ Pappa**, one part deals with the nizik making a bari and the mazik making a shema, and the other part is reversed. That is still considered to be one case, and can be the proper understanding of the Mishna.
- We have stated previously, **Rabbah bar Nosson** says, if a person claims that someone owes him wheat, and the defendant says he owes barley, not wheat, the defendant would be patur from having to pay anything at all (and would not even pay the barley that he admits to).
 - **Q:** What is his chiddush? This is stated explicitly in a Mishna!? **A:** If we would only have the Mishna, we would think that when the Mishna says he is “patur” it means that he does not need to pay him the

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value of wheat, but would still have to pay for the barley. The Mishna therefore teaches that he is even patur from having to pay for barley.

- **Q:** Our Mishna said in its last case, “If two oxen belonging to one owner were being chased by two other oxen who also belonged to one owner, and one of the chasing oxen were large and the other was small, and one of the chasing oxen damaged one of the chased oxen, and the other damaged the other, and the nizek says that the large ox damaged the large ox and the small one damaged the small one, and the mazik says that the large damaged the small and the small damaged the large”, and ultimately said that “hamotzi meichaveiro alav haraya”, which suggests that the mazik would have to pay according to his own claim. However, according to **Rabbah bar Nosson** he should not have to pay anything at all!? **A:** The Mishna means that if the nizek brings proof he will be able to collect payment, but until he does, he will actually collect nothing at all.
 - **Q:** A Braisa on our Mishna explicitly says that the nizek is paid according to the claim of the mazik!? **A:** The Braisa is referring to where the nizek seized the oxen. That is the only time he would collect.
- **Q:** Our Mishna said in its last case, “if one of the damaging oxen was a tam and the other was a muad, and the nizek says that the muad damaged the large animal and the tam damaged the small animal, and the mazik says the reverse is true, again, the halacha is that hamotzi meichaveiro alav haraya”, which suggests that the mazik would have to pay according to his own claim. However, according to **Rabbah bar Nosson** he should not have to pay anything at all!? **A:** The Mishna means that if the nizek brings proof he will be able to collect payment, but until he does, he will actually collect nothing at all.
 - **Q:** A Braisa on our Mishna explicitly says that the nizek is paid according to the claim of the mazik!? **A:** The Braisa is referring to where the nizek seized the oxen. That is the only time he would collect.

HAYU SHNEYHEM SHEL ISH ECHAD SHNEYHEM CHAYAVIM

- **Q: Rava MiParzika** asked **R' Ashi**, this seems to suggest that if one of 2 tam oxen damaged, the nizek may collect payment from whichever animal he wants!? **A:** This case is where the animals are both a muad (in which case payment is not limited to the body of the damaging ox, so it makes no difference which one he uses for payment).
 - **Q:** If the Mishna is discussing where they are both a muad, why does the next part of the Mishna say that when one animal was large and the other is small and the nizek and mazik each claim that a different animal did the damage, that the halacha is hamotzi meichaveiro alav haraya? If they are anyway a muad, the mazik must pay for the full damage, irrespective of the value of the damaging ox!? **A: R' Ashi** said, the end of the Mishna is discussing where the oxen are each a tam, and the earlier part of the Mishna is discussing where they are a muad.
 - **Q: R' Acha Saba** asked **R' Ashi**, if the Mishna is discussing a case of muad, why does it say “they are chayuv” (presumably referring to the oxen)? It should say “the owner is chayuv”!? Also, why does the Mishna say “they are *both* chayuv”!? **A:** We must say that the Mishna is discussing where they are each a tam, and the Mishna is following **R' Akiva**, who says that the mazik and the nizek become partners in the damaging animal. The Mishna is saying the mazik only pays if both oxen are present. However, if one is lost, the mazik can tell the nizek, bring proof that the remaining ox is the one that did the damage and then I will pay you.

HADRAN ALACH PEREK HAMANI'ACH!!!

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PEREK SHOR SHENAGACH DALED V'HEY -- PEREK REVI'I

MISHNA

- If an ox gored 4 or 5 oxen one after another, while still a tam (the goring happened without any pattern, for example it gored the first, third and seventh animals that it saw), **R' Meir** says, the last animal damaged is the

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first one to be paid by the tam. If there is money left over after that half payment, the second to last animal to be gored gets paid, and so on. The later to be gored is the earlier to be paid. **R' Shimon** says, if an ox worth 200 gores and kills another ox worth 200, and the carcass is worthless, the nizek gets 100 of value and the mazik gets 100 of value. If this same ox then went and gored and killed another ox worth 200, and the carcass is worthless, the new nizek gets 100, and the first nizek and the mazik each get 50 each (he holds like **R' Akiva**, which means that the first nizek became a partner in the ox after the killing of his ox, and therefore he was responsible to make sure that this ox didn't gore again, and since it did, he must bear half of the responsibility). If the ox went and gored and killed yet another ox worth 200, and the carcass is worthless, the new nizek gets 100, the second nizek gets 50, and the first nizek and the mazik each get 25.

GEMARA

- **Q: R' Meir** seems not to follow **R' Yishmael** or **R' Akiva**!? According to **R' Yishmael**, who holds that a nizek is a creditor of the mazik, the earlier nizek should collect first, as does an earlier creditor!? And, according to **R' Akiva**, any excess of payment should be split among all those who were damaged, and should not just go to the next in line, as explained by **R' Shimon**!? **A: Rava** said, the case is where following each goring, the nizek of that goring seized the ox, thereby making him responsible to prevent it from goring again. When it did gore again, the nizek must take responsibility, which is why the payment goes to the last nizek, and if there is leftover it goes to the second to last, etc.
 - **Q:** If this is the case, any goring after the first one is solely the responsibility of the nizek who seized it, and not of the original owner. If so, the original owner should never have to give up the value that he retained in the animal after the payment to the first nizek!? **A: Ravina** said, the original owner does keep whatever he had left after the first payment. The Mishna is saying that if the payment to the later nizek is less than the payment to the earlier nizek, the earlier nizek keeps that difference.
 - We find that **Ravin** said that **R' Yochanan** also explained the Mishna like **Rava**.
 - **Q:** According to **Rava**, the beginning of the Mishna is following **R' Yishmael**. However, the next part of the Mishna (the view of **R' Shimon**) cannot follow **R' Yishmael** and must follow **R' Akiva**. Can we say that the two parts of the Mishna follow two different shitos? **A:** Yes, that is the way it is. In fact, we find that **Shmuel** once told **R' Yehuda** that a Mishna can be following **R' Yishmael** in the earlier part, and **R' Akiva** in the later part.
- A Mishna says, if someone bangs near someone else's ear, he must pay him a selah for embarrassment (besides any other payment for damage, pain, etc.). **R' Yehuda in the name of R' Yose Haglili** said he must pay a maneh. When dealing with such a case in practice, **R' Tuvia bar Masna** asked **R' Yosef** whether this refers to the selah of Tzuri (which is equal to 4 zuzim) or the selah medinah (which is only worth ½ zuz)? **R' Yosef** said, we can learn from our Mishna that when a Mishna refers to a selah, it refers to the Tzuri selah. The Mishna gives the case of multiple gorings, with each earlier nizek getting less and less. The Mishna stops with the case where the first nizek and the mazik each get 25 zuz. Now, if the selah referred to in a Mishna is equal to half a zuz, the Mishna should have added another layer onto the case, which would result in the first nizek and the mazik each getting 12 and ½ zuz! The reason it didn't do so is because there is no full currency equal to half a zuz. **R' Tuvia** said, that is no proof. It may be that the reason the Mishna doesn't give another case with an added layer is only because it already showed its point and does not need to give additional cases.
 - **Q:** What is the halacha regarding this matter? **A:** They answered this from the statement of **R' Yehuda in the name of Rav**, that anytime that "kesef" is mentioned in the Torah it refers to Tzuri currency, and anytime it is mentioned by the **Rabanan**, it refers to kesef medinah. Based on this, when the Mishna mentions a selah, it refers to selah medinah.
 - When the man involved in the case that was brought to **R' Tuvia** heard that he would only be receiving a half zuz, he said "I don't want it, rather give it tzedakah". He then changed his mind and said that he wants to take it himself to spend it on himself. **R' Yosef** told him it is too late to change his mind, because the poor people have already acquired the money, because **R' Yosef** was in charge of the tzedakah fund, and was therefore koneh for the poor people.

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- **Chanan** the bad person once hit near someone's ear and was therefore chayuv to pay the half zuz. He only had a full zuz and couldn't get change for it. He therefore went and hit by the person's ear again, and then gave him the full zuz for the two occurrences.