



Daf In Review – Weekly Chazarah

Maseches Bava Kamma, Daf לז – Daf נ

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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V'CHEIN B'BEIN V'CHEIN B'BAS

- A Braisa says, the pasuk of “oy bein yigach oy bas yigach” teaches that one is chayuv for his ox’s killing of minors just as he is chayuv for the killing of adults. The Braisa says, this seems to be learned without the need for the pasuk, because a person is chayuv for killing a person, and a person is chayuv for his ox killing a person. Just like when the person himself kills there is no difference between the killing of minors or adults, the same should be when one’s ox kills!? Also, we have a kal v’chomer – if in the case of a person killing another person, the Torah said that a minor who kills is treated differently than an adult who kills, and yet it makes no difference if the victim is a minor or an adult, then when an ox kills, where the age of the ox makes no difference, surely we would know that the age of the victim also makes no difference!? The Braisa says, we would say that a person killing another person is different, because the person would also be chayuv in the 4 payments, and maybe that is why he is also chayuv for killing a minor. However, maybe an ox would not be chayuv for killing a minor. That is why we need the pasuk to teach that he is chayuv for the ox’s killing of a minor. The Braisa then says, the pasuk teaches regarding a muad. How do we know that a tam would also be put to death for the killing of a minor? Maybe we can say that just as there is liability for the killing of a man or woman, and there is no difference whether the animal was a tam or a muad, so too, when there is liability for a minor, there should be no difference whether the animal is a tam or a muad. Also, we can learn this from a kal v’chomer – if regarding adult men and women, who are responsible for the damage that they cause, yet if they are killed there is no difference if the killing animal was a tam or a muad, then minors, who are not responsible for the damage they cause, surely there should be liability for killing them whether the ox is a tam or a muad!? The Braisa says these would not be valid sources. The first attempted source requires us to learn a tam from the case of a muad. That is not a proper derivation, because the fact that we find that a muad is treated stringently does not mean that we would similarly treat a tam stringently as well. Also, the kal v’chomer is not valid either. Adults are chayuv in all mitzvos, while minors are not. Therefore, the pasuk says the word “yigach” twice, to teach that a muad is chayuv and a tam is chayuv, whether the goring killed or if it only produced damage.

MISHNA

- If an ox was rubbing against a wall and caused the wall to fall down onto a person, killing him, or if the ox intended to kill an animal and instead killed a person, or intended to kill a goy and instead killed a Yid, or intended to kill a person who was not viable and instead killed a person who was viable, he is patur.

GEMARA

- **Shmuel** said the ox is patur from being put to death, but the owner would be chayuv to pay kofer. **Rav** said the owner is even patur from kofer as well.
 - **Q:** How could **Shmuel** say the Mishna means that he must pay kofer? The Mishna is discussing a tam!?
A: We can explain the Mishna like **Rav** said elsewhere, that the case is where this animal has become a muad to rub against walls and have them fall on, and kill, people.
 - **Q:** If the case is where the animal has done this a number of times, the animal should be put to death, since it has intended to do so!? **A:** The case is where he rubbed against the wall to scratch himself, and did not intend to push it down and kill a person.
 - **Q:** How do we determine the intent of the animal? **A:** If after the wall fell and the person was killed, the animal continued to rub against it, it shows he was doing so to scratch himself.

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- **Q:** This case is a case of tzroros, and there is no liability for kofer in a case of tzroros!? **A: R' Mari the son of R' Kahana** said, the case is where the animal continued pushing the wall until it was on the person, in which case it is his direct action, and not one of tzroros.
- There is a Braisa that is a proof to **Shmuel** and refutes **Rav**. The Braisa says, there is a case where an ox that killed a person is chayuv misah and kofer (a muad that killed with intention), a case where he is chayuv kofer and not misah (a muad that killed unintentionally), a case where he is chayuv misah and not kofer (a tam that killed intentionally), and case where he is patur from both (a tam that killed unintentionally). From the second case we see clearly like **Shmuel**, and not like **Rav**.
- If an ox unintentionally damages a person, **R' Yehuda** says he would be chayuv, and **R' Shimon** says he would be patur. **R' Yehuda** learns this from kofer, for which one is chayuv even if the killing was unintentional. **R' Shimon** learns this from the putting to death of the ox, which is only done if it intentionally killed. **R' Yehuda** doesn't learn from misah, because he rather learn a case of payment from a case of payment. **R' Shimon** doesn't learn from kofer, because he rather learn the liability of the ox from a case of liability of the ox (damages from misah, which are both caused by the animal's actions) and not from kofer which is liability of the owner (it is caused by his not properly guarding the ox).

NISKA VEIN LAHAROG ES HABIHEIMA V'HARAG ES HA'ADAM...

- The Mishna suggests, that had the animal intended to kill one Yid and instead killed another Yid, the animal would be chayuv misah. The Mishna does not follow **R' Shimon**, who says in a Braisa that if the ox intended to kill one person and instead killed another, he would be patur. **R' Shimon** darshens the pasuk of "hashor yisakel v'gam b'alav yumas" to teach that the liability of the ox is the same as the liability of the owner. Just as the owner would be patur if he intended to kill one person and instead killed someone else, the same holds true for the ox. He learns this halacha regarding a person from the extra words "v'arav lo" in a pasuk. **R' Yannai** explains that the **Rabanan** who argue (and say that intending to kill one and instead killing another will be chayuv) hold that these words teach that if a person throws a stone into a group of people consisting of Yidden and goyim, he would be patur (he had general intent to kill a person in that group, but because there is no intent to kill a person for who he would definitely be chayuv misah, he is patur).
 - **Q:** What is the case of this group of people? If there are mostly goyim, he should be patur based on the fact that a majority are goyim. Even if there is an equal amount of Yidden and goyim, he would still be patur, because we are lenient in matters involving capital punishment!? **A:** The case is where there are mostly Yidden. Still, even if there is only one goy, he is considered to be "kavu'ah" (set in place) and the rule is that "kol kavu'ah kimechtza ahl mechtza dami" (it is given the status of equal), and because we are lenient in cases of capital punishment, he is patur.

MISHNA

- The ox of a woman, of minor orphans, of orphans under an apitrapis, a wild ox, the ox of hekdesch, or the ox of a ger that died without heirs, which killed a person, is put to death. **R' Yehuda** said, a wild ox, the ox of hekdesch, and the ox of a ger that died are all patur from misah, because they don't have owners (and the pasuk specifically mentions the owner).

GEMARA

- A Braisa says, the Torah writes the word "shor" seven times with regard to an ox that kills a person. These 6 extra uses of the word come to include 6 cases: the ox of a woman, of minor orphans, of orphans under an apitrapis, a wild ox, the ox of hekdesch, or the ox of a ger that died without heirs. **R' Yehuda** said, a wild ox, the ox of hekdesch, and the ox of a ger that died are all patur from misah, because they don't have owners.
- **R' Huna** said, **R' Yehuda** would say that even if an ox killed and was then made hekdesch, or killed and was then made hefker, it would also be patur from misah. We can learn this from the fact that he gives two cases of hefker – the case of a wild ox and the case of the ox of the ger that died. Both of these cases are cases of hefker. Why are both given? It is to teach that even if it was made hekdesch or hefker after the killing, it is patur from misah.

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- A Braisa says this as well, and says that **R' Yehuda** learns this from the pasuk of “v'huad b'baalav...v'heimis”. This teaches that the ox must be owned at the time of the killing and the time that it stands in Beis Din.
 - **Q:** The pasuk also says “hashor yisakel”, which refers to the time of the verdict, which would suggest that the ox must be owned at that time as well, so why does the Braisa only say that it must be owned at the time of the killing and the time that it is brought to Beis Din? **A:** The Braisa should be amended to say that the ox must be owned at the time of the killing, the time it is brought to Beis Din, and the time of the verdict.

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MISHNA

- If an ox was sentenced to death and is being led to be stoned, and the owner then makes it hekdesch, it does not become hekdesch. If he shechted it then, its meat is assur. However, if it was made hekdesch before the sentence was handed down, it does become hekdesch, and if it was shechted before the sentence, the meat is mutar.
- If the owner of an ox gives it to a shomer chinam, a shoel (borrower), a shomer sachar, or a socher (renter), these people take the place of the owner and are responsible for any damage the ox causes – if the animal is a muad they pay full damages and if it is a tam they pay half damages.

GEMARA

- A Braisa says, with regard to an ox that killed a person, if before the verdict was decided the owner sold it, the sale is valid. If he was makdish it, it becomes hekdesch. If he shechted it, its meat is mutar. If it killed while in the reshus of a shomer and he returned it to its owner before the verdict, it is considered as returned to the owner. Once the verdict was handed down, the sale would not be a valid sale, the animal would not become hekdesch, if it was shechted the meat would be assur, if it was in the possession of a shomer and he returned it to the owner, it is not considered as returned to the owner. **R' Yaakov** says, even after the verdict, if the shomer gave it back to the owner at that point, it is considered to be returned.
 - **Q:** Maybe we can say that they argue regarding whether a person can take something that is assur b'hana'ah and say “here is the thing that is yours” (whether the shomer can tell the owner of the ox that has become assur b'hana'ah – here is your physical ox, although it is now assur, and I have hereby returned it to you)? The **Rabanan** say that one can't do that and **R' Yaakov** says that one can? **A: Rabbah** said, all hold that one may say this, because if they argue about this, they should argue about chametz on Pesach. Rather, the machlokes is whether Beis Din can conduct the case when the ox is not present – the **Rabanan** say that the ox must be present, and therefore the owner can tell the shomer “if you would have given the ox to me I could have hid it to prevent it from becoming assur b'hana'ah”, and **R' Yaakov** says that it need not be present, and the shomer can therefore say “in any case the ox would have become assur” and it was not the shomer's giving it to Beis Din that caused it to become assur.
 - The **Rabanan** darshen the pasuk of “hashor yisakel v'gam b'alav yumas” to teach that just as the owner could not be judged unless he was present in Beis Din, the same holds true for the ox. **R' Yaakov** says, a person must be present at his own court case so that he can put forth a defense. The ox is not capable of doing so, and therefore does not need to be there.

MISARO L'SHOMER CHINAM ULISHOEL...

- A Braisa says, there are 4 people that take the place of the owner with regard to being responsible for the damage of the ox: a shomer chinam, a shoel, a shomer sachar, and a socher. If, while under their watch the ox killed a person, if it was a tam, the animal is put to death and they are patur from paying kofer. If the animal was a muad, it must be put to death and kofer must be paid, and all but the shomer chinam would be chayuv to pay the value of the ox to the owner.
 - **Q:** What is the case? If the shomer guarded the ox, then all the shomrim should be patur. If they did not properly guard it, then even the shomer chinam should be chayuv!? **A:** The case is where they guarded it with a low level guarding, but not with a high level guarding. For a shomer chinam that is considered sufficient and he is patur. For the others, it is insufficient and they are therefore chayuv.

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- **Q:** Whose view does the Braisa follow? If it follows **R' Meir**, who says that a muad must be watched with a high level of watching, and that a socher is treated like a shomer chinam, then the Braisa should say “if the animal was a muad, it must be put to death and kofer must be paid, and all but the shomer chinam *and the socher* would be chayuv to pay the value of the ox to the owner”!? If the Braisa follows **R' Yehuda**, who says that a low level watching suffices for a muad, then the Braisa should say that if it is a muad all the shomrim are patur from kofer (because the Braisa is discussing where a low level watching was done)!? **A:** **R' Huna bar Chinina** said, the Braisa follows **R' Eliezer**, who says that the only way to guard a muad is to shecht it (there is no way to guard a muad), and regarding a socher he holds like **R' Yehuda** that a socher is treated like a shomer sachar. **Abaye** said, the Braisa can even follow **R' Meir**, and we will follow the view of **R' Meir** according to **Rabbah bar Avuha**, who said that **R' Meir** is the one who said that a socher is like a shomer sachar, and **R' Yehuda** was the one who said it is like a shomer chinam.
- **R' Elazar** said, if a person gave his ox to a shomer chinam and the ox then damaged, the shomer is chayuv. If the ox was damaged by others, the shomer is patur.
 - **Q:** What is the case? If the shomer accepted responsibility for its damages, then he should be chayuv in the second case also. If he didn't, then he should be patur in the first case also!? **A:** **Rava** said, the case is that he accepted responsibility for its damages, but the shomer realized that this ox had a tendency to gore. In such a case we can assume that the shomer accepted responsibility for the ox damaging others, but not for others damaging the ox, because he believes the other animals will be afraid of this ox and will not damage it.

MISHNA

- If the owner tied his ox with a rein, or locked a gate properly in front of it, and the animal got loose and damaged, **R' Meir** says the owner would still be chayuv, whether the animal is a tam or a muad. **R' Yehuda** says, if the animal is a tam, the owner would be chayuv, but if it is a muad, he would be patur, because the pasuk regarding a muad says “*v'lo yishmirenu b'alav*”, and this person did guard the muad. **R' Eliezer** says, the only way to guard a muad is to shecht it.

GEMARA

- **Q:** What is the reasoning of **R' Meir**? **A:** He holds that an ordinary ox is not in a state of being guarded, and the pasuk says that a tam is chayuv, which would teach that a low level of guarding should suffice for a tam. The pasuk regarding a muad then says “and the owner did not guard it”, which teaches that it needs a high level of guarding. We then learn from a gezeirah shava on the word “negicha” that just as a muad needs a high level of guarding, a tam does as well.
 - **R' Yehuda** holds that an ordinary ox is in a guarded state. Therefore, when the Torah says that a tam must pay, it is teaching that the tam must be watched with a high level watching. When the pasuk by muad says “and the owner did not guard it”, it is again teaching that a high level watching is needed, which is something that was already taught, and therefore must be coming to limit the halacha regarding a muad, and teach that a muad requires a lesser level of watching. Although **R' Meir** used a gezeirah shava to teach that it should apply to a tam as well, **R' Yehuda** will say that the pasuk says “and the owners did not watch *it*”, which teaches to apply this leniency only to a muad.
- A Braisa says, **R' Eliezer ben Yaakov** says, if an animal was a tam or a muad, and it was guarded even with a lesser level guarding, he is patur.
 - His reasoning is that he holds like **R' Yehuda** that a lesser guarding is sufficient for a muad, and he also holds of the gezeira shava which compares tam to muad.
- **R' Ada bar Ahava** said, **R' Yehuda** said he is patur with a lesser guarding only with regard to the muad part of the ox. However, the tam part remains and he would be chayuv for that.
 - **Rav** said, a muad for goring with the right horn is not a muad for goring with the left horn.
 - **Q:** Who does this follow? He cannot follow **R' Meir**, because **R' Meir** says that a tam and a muad need the same level of watching, so what would be the difference as to which horn is a muad

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(he is not teaching regarding payment for tam vs. payment for muad, because that has been taught numerous times already)? He cannot be following **R' Yehuda**, and teaching that if he did a lesser guarding he would be patur for damage of the muad horn and chayuv for damage of the tam horn, because he would still be chayuv for the tam portion of the muad horn!? **A:** He is following **R' Yehuda**, but he argues on **R' Ada bar Ahava**, and holds that the only way we can find a single animal possessing characteristics of a tam and muad is if it is a tam with one horn and a muad with the other. However, an animal that is a muad with both horns will not have any part of a tam in it.

R' ELIEZER OMER EIN LO SHMIRAH ELAH SAKIN

- **Rabbah** said, **R' Eliezer's** view is based on the pasuk of “v'lo yishmirenu”, which teaches that this ox can no longer be properly guarded.
 - **Q: Abaye** asked, according to this we should similarly darshen the words “v'lo yichasenu” written regarding a bor, to mean that it can no longer be properly covered, and this would not be correct, because a Mishna says that a bor that is properly covered will be patur!? **A:** Rather, **Abaye** said, the reason of **R' Eliezer** is like **R' Nosson** of a Braisa, who says that “v'lo sasim damim biveisecha” teaches that a person may not keep a vicious dog or a rickety ladder in his house. Similarly here, the “v'lo yishmirenu” means it should not be kept and therefore should be shechted.

HADRAN ALACH PEREK SHOR SHENAGACH DALED V'HEY

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PEREK SHOR SHENAGACH ES HAPARAH -- PEREK CHAMISHI

MISHNA

- If an ox gored a cow and we find a dead fetus from the cow at its side, and we don't know whether this miscarriage happened before the goring or as a result of the goring, the owner of the ox must pay half damages for the cow and ¼ damages for the offspring.
- Similarly, if a pregnant cow gored an ox and we find the baby by the cow, but we don't know if the baby was born before the goring (in which case the baby was not involved in the goring), or if it was born after (in which case it too was involved in the goring), the nizek may collect half damages from the body of the cow and ¼ damages from the body of the baby.

GEMARA

- **R' Yehuda in the name of Shmuel** said, the Mishna follows the view of **Sumchos**, who says that when there is a safek as to the ownership of money, it is divided. However, the **Rabanan** say this is a major rule regarding judgment – “hamotzi meichaveiro alav haraya” (“HMAH”).
 - **Q:** Why do they use the phrase “this is a major rule regarding judgment”? **A:** This teaches that even if the nizek says he is certain of the facts and the mazik says that he is not absolutely certain, we would still say HMAH. **A2:** It was said for the case when a person buys an ox and finds that it is a goring ox. **Rav** says the sale may be voided, and **Shmuel** says the seller may say “I sold it to you to be shechted”, and the only way the buyer can void the sale is if he can *prove* that he bought the ox for plowing (and not to be shechted).
 - **Q:** Why don't we just look to see why this buyer normally buys oxen? If he normally buys for plowing, we should assume that this ox was also purchased for plowing, and if he normally buys for shechting, then this should be assumed to have been bought for shechita!? **A:** The machlokes between **Rav and Shmuel** is in a case where the person buys oxen for both purposes.

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- **Q:** Why don't we look at the price that was paid for the ox, and see if it is a price paid for plowing oxen or for oxen used for slaughter? **A:** The machlokes is in a case where the price of meat increased to the point that both these animals were equal in price.
- **Q:** **Rav** seems to say that the animal must be returned even if the seller does not have the money to return to the buyer. In that case why wouldn't we say that the buyer can keep the animal in lieu of the money? **A:** The case is where the seller does have money, and that is why the animal is returned.
- **Rav** says the sale becomes void because we follow the majority, and since most people buy oxen for plowing, we assume that the buyer wanted to do so as well. **Shmuel** says the seller can say, "I sold you an animal for slaughter", because we don't follow the majority. We only follow majority regarding questions of issur. However, when dealing with questions of money, we say HMAH.
- A Braisa clearly says that the case of our Mishna would be subject to the machlokes between **Sumchos and the Rabanan**.
- **R' Shmuel bar Nachmeini** said, the source for the halacha of HMAH is from the pasuk where Moshe said, whoever has a complaint "yigash aleihem" (should come to them). Using the word "yigash" instead of the more typical "yavo" teaches that the people should come with proof, thus teaching HMAH.
 - **Q:** **R' Ashi** asked, why is a pasuk needed to teach this? It is logical that the one looking to take something must bring proof to allow him to take it!? **A:** Rather, the pasuk is needed for the halacha of **R' Nachman in the name of Rabbah bar Avuha**, who says that the pasuk teaches that when a plaintiff comes with a claim and the defendant refuses to pay because he has a different claim against the plaintiff, we must first deal with the claim of the plaintiff, and can then later deal with the claim of the defendant.
 - **Nehardai** said, if the defendant is going to lose money because of depreciation of his assets if his claim is not dealt with quickly, we will first deal with his claim and then with the claim of the plaintiff.

V'CHEIN PARAH SHENAGCHAH ES HASHOR...

- **Q:** Does the Mishna mean that he collects half of the damage and then an additional quarter of the damage? Since we are dealing with a tam, there should only be a total of one half of the damages paid!? **A:** **Abaye** said, that when the Mishna says half the damages it means that $\frac{3}{4}$ of the damages are collected from the body of the cow, and when it says $\frac{1}{4}$ is collected from the baby, it means that $\frac{1}{8}$ is collected from the body of the baby.
 - **Q:** If the cow and the baby belong to the same person, the nizek should be able to tell the owner – in either case you owe me for half the damages!? **A:** The case is where the cow belonged to one person and the baby belonged to another person.
 - The Gemara says, the nizek can go first to the owner of the cow and tell him "you must pay me for the full half damages unless you can prove that there is someone else partially responsible" (i.e. the baby). Therefore, the Mishna must be dealing with the case where the nizek first went to the owner of the baby for payment, and the owner can tell the nizek, "you obviously feel that there is another partner in the damages, therefore I need only pay you for half of the half damages". **Others** say that even if the nizek first went to the cow's owner, this owner can tell him, "I have a chazakah that the cow was still pregnant at the time that it gored, and therefore a chazakah that there is another responsible party in these damages". Therefore, the cow owner would only have to pay for half of the half damages.
 - **Q:** **Rava** asked, the Mishna uses the terms "half the damage" and "1/4 of the damage", so how can **Abaye's** explanation be correct!? **A:** Rather, **Rava** said, the Mishna is discussing where the cow and the baby belong to one person, and the Mishna is saying, if the cow is present to collect from, the nizek may collect the entire half damages from the cow, but if the cow is not available for payment, the nizek may collect $\frac{1}{4}$ payment from the body of the baby.
 - This seems to suggest that if we knew for sure that the cow was pregnant when it gored, **Rava** would hold that the entire half damages could be collected from the baby as well. This is

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because **Rava** holds the baby is like any other part of the body of the mother. However, if a chicken did damage, one could not collect from its egg, because a chicken's egg is not considered to be part of its body.

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- **Rava** said, when an ox gores a pregnant cow and we are determining damages, we do not assess the value of the cow by itself and the baby by itself, rather, we assess the value of the cow while it was pregnant with the baby, because giving them separate values will result in a higher value and greater damages, which will disadvantage the mazik. We find the same thing when one cut off the arm of another's slave (we assess the value based on the difference between his value with the arm and his value without the arm, but not the value of the arm itself and how much a master would demand to allow for his slave's arm to be cut off). We find the same concept regarding damage done to someone's field (we don't value the damaged produce, rather we value the entire field with the produce and then without the produce, and use that difference in value).
 - **Q: R' Acha the son of Rava** asked **R' Ashi**, if the halacha is that the mazik should pay the higher amount, why would we say that he should pay a lesser amount so that he shouldn't be "disadvantaged"? **A: R' Ashi** said, it is because the mazik can say, "I damaged a pregnant cow and should therefore pay based on an assessment of a pregnant cow".
- It is obvious that if the cow belongs to one person and the baby to another person, the payment for the fattening that the cow had goes to the owner of the cow. With regard to the payment for the enlargement of the body due to the pregnancy, **R' Pappa** says it goes to the owner of the cow, and **R' Acha the son of R' Ika** says it is divided between the owner of the cow and the owner of the baby.
 - The Gemara paskens that it is divided between the owner of the cow and the owner of the baby.

MISHNA

- If a potter brought his pots into someone's chatzer without permission and the animal of the chatzer's owner broke the pots, he is patur. If the animal was damaged by the pots, the potter is chayuv. If he had brought in the pots with permission (and the animal broke the pots), the owner of the chatzer would be chayuv.
- If a person brought his produce into someone's chatzer without permission and the animal of the chatzer's owner ate the produce, he is patur. If the animal was damaged by the produce, the owner of the produce is chayuv. If he had brought in the produce with permission (and the animal ate the produce), the owner of the chatzer would be chayuv.
- If a person brought his ox into someone's chatzer without permission and the animal of the chatzer's owner gored that animal, or his dog bit that animal, he is patur. If the animal of the trespasser gored the animal of the chatzer's owner, the trespasser is chayuv. If the ox fell into a water pit of the chatzer and spoiled the water, the trespasser is chayuv. If the owner of the chatzer's father or son was in the pit (and was killed by the falling ox), the trespasser would be chayuv to pay kofer. If he had brought in the ox with permission (and the animal was damaged by the other animals), the owner of the chatzer would be chayuv.
- **Rebbi** says, in all these cases the owner of the chatzer would not be chayuv (even if the item was put in the chatzer with permission), unless he accepted responsibility to guard the item.

GEMARA

- **Q:** The Mishna seems to say that the potter is chayuv for damaging the animal only because it was brought in without permission. This suggests that when it is brought in with permission he would not be chayuv for damaging the animal. This seems to follow the view of **Rebbi**, who says that unless responsibility is explicitly accepted, there is no responsibility. The Mishna then says that if the pots were brought in with permission and the animal of the chatzer's owner damaged it, he would be chayuv. This seems to follow the view of the **Rabanan**, who say that there is responsibility even without explicit acceptance. The Mishna at the end then brings the shita of **Rebbi**. Must we say that the beginning and end follow the view of **Rebbi**, and the middle follows the view of the **Rabanan**? **A: R' Zeira** said, it must be that the different parts of the Mishna were said by

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different people. **A2: Rava** said, the first two parts follow the **Rabanan**, and even they hold that the owner of the chatzer will become responsible when he gives permission for the item to come into his chatzer, because by giving permission he has accepted to become a shomer chinam on the items.

HICHNIS PEIROS AV LACHATZAR BAAL HABAYIS...

- **Rav** said, the owner of the produce is chayuv only when the animal injured itself by slipping on the produce. However, if it was damaged by eating the produce, he would be patur, because the person can say that the animal should not have eaten it.
 - **Q: R' Sheishes** said, I think **Rav** was sleeping when he said this, because a Braisa says, if someone puts poison in front of an animal (who then eats it and dies), he would be patur to pay in this world, but would be chayuv under the laws of Heaven. This suggests that it is by poison that the person is patur, because it is not normal for an animal to eat poison. However, with regard to produce, which is normal for an animal to eat, he would even be chayuv to pay as well. Now, according to **Rav** he should be patur because he can say that the animal should not have eaten it!? **A: Rav** could say that the Braisa could hold that even for produce he would be patur from paying. The chiddush of the Braisa is that even in the case of poison, he will be chayuv under the laws of Heaven. We can also answer that the case of poison is talking about a poisonous type of produce, and we see that he is patur when the animal is damaged by eating produce.
 - **Q:** A Braisa says, if a woman went into someone's property without permission to grind wheat, and the owner's animal ate the wheat, he is patur from having to pay for the wheat. If the animal was damaged, the woman would be chayuv. Now according to **Rav** she should be patur!? **A:** Just as we explained the Mishna as dealing with where the animal slipped on the produce, the same can be said for the Braisa.
 - The one who asked thought that the Mishna used the phrase "the animal was damaged *by it*", which lends itself to mean that he slipped on it. This Braisa says "it was damaged", which suggests that it was damaged through eating.
 - **Q:** A Braisa says, if a person brought his ox into a chatzer without permission, and the ox ate produce of the chatzer and got sick and died, the owner of the chatzer is patur. However, if the ox was there with permission, the owner of the chatzer would be chayuv. Now, according to **Rav** he should be patur, because he can say that the animal should not have eaten it!? **A: Rava** said, you can't ask from a case where it was there with permission to **Rav's** case, where it was there without permission. When he is given permission, the owner of the chatzer accepts all responsibility.
- **Q:** If the owner of a chatzer accepted responsibility for an item that is put into his chatzer, does he mean to only be responsible to guard against himself doing damage, or even to guard against other people doing damage?
 - **Q:** Maybe we can bring a proof from a Braisa taught by **R' Yehuda bar Simon**, which says, if a person put produce into a chatzer without permission, and an ox came from somewhere else and ate it, he is patur. However, if the produce was put there with permission, he is chayuv. Now, who is the "he" that is patur in the first case and chayuv in the second case? Presumably it refers to the owner of the chatzer, and we see that he accepts responsibility even to guard from damage of other people!? **A:** It may mean that the owner of the ox is patur and chayuv. The reason he is patur in the first case is that since the produce had no right to be there, it is not considered to have been eaten in the chatzer of the nizik, and shein in the reshus harabim is patur. When it is there with permission, it is considered to be the reshus of the nizik for this purpose, and therefore he would be chayuv for shein.
 - **Q:** Maybe we can bring a proof from a Braisa which says, if a person put an ox into a chatzer without permission, and another ox came from somewhere else and gored it, he is patur. However, if the ox was put there with permission, he is chayuv. Now, who is the "he" that is patur in the first case and chayuv in the second case? Presumably it refers to the owner of the chatzer, and we see that he accepts responsibility even to guard from damage of other people!? **A:** It may mean that the owner of the other ox is patur and chayuv. The Braisa is following the view of **R' Tarfon**, who says that one is chayuv full damages for keren when it is done in the reshus of the nizik. Therefore, when the ox was there with permission, it is considered to be the reshus of the nizik and he is chayuv full damages. When it was there without permission, it is considered to be the reshus harabim, and therefore he is only chayuv for

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half damages, and when the Braisa says he is patur, it means he is patur from full damages, but chayuv for half damages.

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- A woman went into a person's house to bake bread there with permission. The goat of the owner of the house came, ate the dough, and died. **Rava** said the woman must pay for the goat.
 - **Q:** Should we say that **Rava** argues with **Rav**, who said earlier that the person can tell the animal owner "your animal should not have eaten it"? **A:** In **Rav's** case the person had entered the chatzer without permission, and therefore in no way accepted responsibility to guard the animals of the owner, and can therefore make that claim. In this case, the woman had permission, and therefore accepted responsibility to guard the animal from damage.
 - **Q:** The Gemara earlier brought a Braisa that told of a woman who went to grind wheat in someone's property, and that Braisa implied that if she had gone in with permission and the owner's animal ate it and was damaged, she would be patur!? **A:** When grinding wheat there is no issue of tznius if the owner were to remain in his chatzer, and he therefore does not need to leave and must therefore guard his animals on his own. However, when baking, the woman must roll up her sleeves. Therefore, the owner leaves to give her privacy. By doing so, she takes on the responsibility to guard the animals.

HICHNIS SHORO LACHATZAR BAAL HABAYIS

- **Rava** said, if a person brought an ox into someone's chatzer without permission, and the ox dug a ditch in the chatzer, the owner of the ox must pay for the damage done to the chatzer, and the owner of the chatzer must pay for any damage done by the bor. Even though the pasuk says "ki yichreh ish bor", which comes to exclude a bor dug by an animal, since the owner of the chatzer should have filled the bor before making the property hefker, and he did not, he is chayuv as if he dug it himself.
- **Rava** also said, if a person brought an ox into someone's chatzer without permission and the ox damaged the owner of the chatzer, or he was damaged by tripping over the animal, the owner of the ox is chayuv. If the ox damaged something by dropping down (e.g. laying down on something) he is patur.
 - **Q:** Just because he damaged by dropping down, he should be patur? **A:** **R' Pappa** said, "dropping down" means it let out wastes which went onto keilim and ruined them. The wastes are considered to be a bor, because a person usually makes animal waste hefker and it is therefore a bor even according to **Rav** who says that only something that is hefker can be a bor, and a bor is not chayuv for damaging keilim.
- **Rava** also said, if a person went into someone's chatzer without permission and damaged the owner of the chatzer, or the owner was damaged by tripping over the trespasser, the trespasser is chayuv. If the owner damaged the trespasser, he is patur.
 - **R' Pappa** said, the owner is only patur for damaging the trespasser if he didn't know that the trespasser was there. However, if he knew he was there he would be chayuv, because the trespasser can tell him "You have a right to expel me from your property, but you have no right to damage me".

NAFAL L'BOR V'HIVISH MEIMAV CHAYUV

- **Rava** said, he is only chayuv when the ox spoiled the water at the time he fell into it. However, if he fell in and only afterwards caused the water to spoil, he is considered to be a bor that did damage, and the water is viewed as being keilim, in which case he would be patur.
 - **Q:** That makes sense according to **Shmuel** who says that anything can be a bor. However, according to **Rav**, who says that only something that is hefker can be a bor, how is this ox considered to be a bor!? **A:** Rather, **Rava** must have meant that he is only chayuv if his body caused the water to spoil. However, if it was the smell of the animal that spoiled the waters, it is considered to be a grama (indirect damage), and he would therefore be patur.

HAYA AVIV OY BINO L'TOCHO MISHALEM ES HAKOFER

- **Q:** We are presumably discussing an ox that is a tam, so why would the owner have to pay kofer!? **A:** **Rav** said, the case is where the ox is a muad to fall on people in boros and kill them. If so, the ox should have been killed

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after its first killing!? **R' Yosef** explained, that the ox fell unintentionally each time while trying to get food from the bor. Therefore it was not put to death and now became a muad. **A2: Shmuel** said the Mishna is following **R' Yose Haglili**, who says that a tam pays for half the kofer payment. **A3: Ulla** said, the Mishna follows **R' Yose Haglili**, and also holds like **R' Tarfon**, who says that a tam pays full damages for keren when it is done in the reshus of the nizik. That is why in this case he actually pays the full kofer.

- **Q:** According to **Ulla** it makes sense why the Mishna used the example of “his father or his son”, because that is a case of people there with permission, and is therefore considered a case of reshus of the nizik. However, according to **Shmuel**, why limit the ruling to the father and the son? **A:** The Mishna uses an example of people who are typically found there, but does not mean to limit it to anybody.

V'IHM HICHNIS BIRSHUS BAAL CHATZER CHAYUV...

- **Rav** said, the halacha follows the **T”K**, and **Shmuel** said the halacha follows **Rebbi**.
- A Braisa says, if the owner of a chatzer tells someone “Bring in your ox, but you guard it”, the halacha is that if the ox does damage in the chatzer he is chayuv, and if the ox gets damaged the owner of the chatzer is patur. If the owner of the chatzer said “Bring in your ox and I will guard it”, the halacha is that if the ox was damaged the owner of the chatzer is chayuv, and if the ox did damage, its owner is patur.
 - **Q:** The first case implies that if he did not expressly reject responsibility the owner of the chatzer would be chayuv for damage to the ox, and the owner of ox would be patur for damage to the chatzer. The second case implies that if he not expressly accept responsibility the owner of the chatzer would be patur and the owner of the ox would be chayuv!? The first case seems to follow the **Rabanan** and the second case seems to follow **Rebbi**!? **A: R' Elazar** said, whoever taught the first case is the not the same person as the one who taught the second case. **A2: Rava** said, the entire Braisa follows the **Rabanan**, and since in the first case he had to say “but you guard it” (because that is the only case that he the owner of the chatzer would be patur), he says in the next case “and I will guard it”. **A3: R' Pappa** said, the entire Braisa can follow **Rebbi**, who also holds like **R' Tarfon**. Therefore, when he specifically tells the owner of the ox that he must watch the ox, he is telling him that he has no rights in the chatzer. Therefore, when the ox damages the chatzer, it is considered to be in the reshus of the nizik, and the owner of the ox must pay for full damages. In the second case, he is telling the owner of the ox that he is giving him rights to the chatzer. Therefore, the damage is considered to be done not in the reshus of the nizik, and he would only be chayuv for half damages.

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MISHNA

- If an ox intended to gore another ox, but instead gored a pregnant woman and caused her to miscarry, the owner is patur from paying for the babies. If a person intended to hit another person and instead hit a pregnant woman and caused her to miscarry, he is chayuv to pay the husband for the value of the babies.
 - How does one pay for the value of the babies? They assess the value of the woman before losing the babies, and her value after losing the babies. The difference is what must be paid to the husband. **R' Shimon ben Gamliel** says, if so, a woman increases in value after she gives birth!? Rather, we assess the babies to see how much they are worth.
 - The payment is given to the husband. If he had died, the payment is given to the husband's heirs. If she was a freed slave who had married a freed slave, or if she and her husband with both geirem (in both these cases there are no heirs), the person is patur from making the payment.

GEMARA

- **Q:** The Mishna seems to say that the owner of the ox is patur from having to pay for the babies only because the ox intended to gore another ox. This suggests that if it had intended to gore the woman, he would be chayuv to pay for the babies. This refutes **R' Ada bar Ahava**, who says that an ox is not chayuv to pay for this even if he intended to gore the woman!? **A: R' Ada bar Ahava** will say, the Mishna would agree that even if the ox intended to gore the woman, he would be patur. The reason the Mishna spoke in terms of intention for another

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ox is because it wanted to give that case regarding a person – where he intended for one person and ultimately hit the woman – because that is how that case is given in the pasuk.

- **R' Pappa** said, if an ox gored a maidservant, causing her to miscarry, the owner of the ox must pay for the value of the babies to the owner of the maidservant, because this is no different than if the ox would have damaged a pregnant donkey of another person, in which case he would have to pay.

KEITZAD MISHALEM DMEI VLADOS

- **Q:** This shouldn't be referred to as the value of the babies, it should also be referred to as the increase to the value of the woman because of the babies!? **A:** That is what the Mishna means – this assessment gets us the value of the babies and of the appreciation to the woman because of the babies.

AMAR R' SHIMON BEN GAMLIEL IHM KEIN MISHEHA'ISHA YOLEDES MASHBACHAS

- **Rabbah** explained, **R' Shimon ben Gamliel** is saying that a woman who is not pregnant is worth more than a woman who is pregnant because of the danger involved in pregnancy. If so, assessing in this way will not result in any payment!? Rather, we must assess the value of the babies and give that amount to the husband. A Braisa explains in this way as well. **Rava** explained, **R' Shimon ben Gamliel** is saying that (as stated earlier) there are two parts to the payment – the value of the babies, and the value of the appreciation of the woman through the pregnancy. The value of the babies should go to the husband, but why does the appreciation to the woman not go to her at all? Rather, we must say that the payment for the appreciation to the woman is split between the woman and the husband. A Braisa explains this way as well.
 - **Q:** The two Braisos contradict each other!? **A:** The first Braisa is discussing a woman pregnant with her first child, who is not yet known to be able to survive childbirth, and therefore loses value during pregnancy. The second Braisa is discussing a woman who has already had other children.
- **Q:** Why do the **Rabanan (T"K)** hold that even the appreciation to the woman is given to the husband? **A:** They say that the extra word "harah" (pregnant) in the pasuk teaches that this appreciation is also paid to the husband. **R' Shimon ben Gamliel** darshens this to teach the halacha of **R' Eliezer ben Yakov**, that the person is only chayuv if he hit the woman at the place of the womb.
 - **R' Pappa** said, this means if he hits her anywhere on her torso – which means to exclude if he hits her on her arms or legs.

HUYSA SHIFCHA V'NISHTACHRIRA OY GIYORES PATUR

- **Rabbah** said, this is only if the woman was hit while her husband was still alive and he then died. Since he was alive, it belonged to him, and once he dies, because he has no heirs, the mazik acquires it from the ger. However, if he hit her after her husband died, since she acquires the babies at the time of her husband's death, the payment must be given to her. **R' Chisda** said, babies are not bundles of money that are acquired like that! Rather, if the husband is alive when the babies are lost, the Torah says the payment is given to him. If the husband is not alive and has no heirs, the payment is not made at all.
 - **Q:** A Braisa says, if a person hit a woman and caused her to miscarry, he must pay her for the nezek and the tzaar, and must pay the value of the babies to the husband. If the husband is not alive, the payment goes to his heirs. If the woman is not alive, her payment goes to her heirs. If she was a freed slave who was married to freed slave, or if she and her husband were geirem, and the husband died with no heirs, the mazik is koneh the payment. This refutes **Rabbah**!? **A:** In the same way that we explained the Mishna to be discussing a case where she was hit while the husband was alive and then the husband died, we can explain this Braisa as discussing the same case. **A2:** The Braisa could even be discussing where she was hit after her husband (the ger) died, and we must read the Braisa as saying that "she" acquires the payment.
 - **Q:** Maybe we can say that the machlokes between **Rabbah and R' Chisda** is actually a machlokes among Tanna'im. A Braisa says, if a Yisraelis marries a ger, and a person hits her and causes her to miscarry, if this happened while the husband was alive, the payment for the babies goes to him. If it happened after he died, one Braisa says he is chayuv to pay and another Braisa says that he is patur. Presumably they argue in the machlokes between **Rabbah and R' Chisda**!? **A:** It may be that the first Braisa follows **R' Shimon ben Gamliel**, and the second Braisa follows the **Rabanan**.

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- **Q:** If it follows **R' Shimon ben Gamliel**, even if the husband did not die the woman is entitled to part of the payment!? **A:** If he is still alive she is entitled to half the payment for her appreciation due to the pregnancy. If it happened after he died, she gets that entire payment.
- **A2:** We can say that both Braisos even follow **R' Shimon ben Gamliel**. The Braisa that says he is chayuv is talking about payment for the appreciation to the woman, and the Braisa that says he is patur is talking about payment for the babies.
- **Q:** If the wife takes over the husband's position with regard to the other half of the payment for her appreciation, then **R' Shimon** would also hold that she takes over his position with regard to the payment for the babies!? Also, if **R' Shimon** says that she steps into his position for the other half of the payment, we should say that the **Rabanan** would agree in principle and say that she steps into his shoes for the entire payment!? If so, how can we give these two answers to explain the contradiction of the Braisos? **A:** It may be that she only steps into the husband's place to collect something that she was partially collecting beforehand. Therefore, she would not be entitled to any payment for the babies according to **R' Shimon**, and she would not be entitled even to payment for her appreciation according to the **Rabanan**.
- **R' Yeiva Saba** asked **R' Nachman**, if a person grabs the documents of a ger after he died, is he koneh the paper? When a person grabs the document does he only mean to use that as a means to be koneh the land mentioned in the deed (the document), and therefore he doesn't intend to, and will not, be koneh the paper. Or, maybe he has in mind to be koneh the paper as well? He answered, does he need the paper to act as a cover for a pitcher (he surely did not intend to be koneh the paper)!? **R' Yeiva** said, "Yes, maybe he was koneh it to use for that purpose"!
- **Rabbah** said, if a ger had a mashkon from a Yid, and the ger died, and another Yid came and made a kinyan on this mashkon, we take it away from him and give it back to the Yid who owns it, because upon the death of the ger, the lien is removed from the mashkon. On the other hand, if a Yid had a mashkon from a ger and the ger dies, and another Yid came and made a kinyan on the mashkon, the lender (the Yid who had the mashkon) keeps the mashkon to the extent needed to cover his loan, and the other Yid is koneh any remaining amount.
 - **Q:** Why isn't his chatzer automatically koneh the entire mashkon for him, because we have learned that **R' Yose bar Chanina** says a chatzer is koneh even without intent of the owner!? **A:** The case is where the lender was out of town. In that case, his chatzer won't be koneh for him, because it is only koneh for him when he could have made his own kinyan had he wanted to.
 - The Gemara paskens that **Rabbah's** ruling only applies where the mashkon was not in the lender's chatzer at the time of death of the ger. If it was, he would be koneh the entire thing.

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MISHNA

- If a person digs a bor in the reshus hayachid and then makes the opening in the reshus harabim, or if he digs a bor in the reshus harabim and makes the opening in the reshus hayachid, or if he digs a bor in one reshus hayachid and makes the opening in another reshus hayachid, he is chayuv.

GEMARA

- A Braisa says, if a person digs a bor in the reshus hayachid and makes the opening in the reshus harabim, he is chayuv for damage that it causes. **R' Yishmael** says, this is the case of bor that is meant in the pasuk. **R' Akiva** says the case of bor in the pasuk is where one digs a pit in his property and is mafkir the land around the pit, but not the pit itself.
 - **Rabbah** said, with regard to a bor in the reshus harabim all would agree that he is chayuv, based on the pasuk of "ki yiftach" and "ki yichreh", which teaches that a person is chayuv for opening and digging a bor even if it is not in his property. The machlokes is regarding a bor in his own reshus. **R' Akiva** says he would be chayuv for that as well, as the pasuk refers to the "baal habor", which shows there can be an owner of the bor, and **R' Yishmael** says that he would be patur, and "baal habor" refers to the one who creates the damage by digging the bor.

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- **Q:** Based on this, what does **R' Akiva** mean in the Braisa when he says “this is the case of bor in the pasuk”? We see that he holds that all cases of bor are chayuv!? **A:** He means that this is the case of bor that the Torah mentions first when it begins to discuss liability for payment.
- **R' Yosef** said, all agree that a bor dug in the reshus hayachid will be chayuv, as the pasuk refers to “the owner of the bor”. The machlokes is regarding a bor in the reshus harabim – **R' Yishmael** says he would be chayuv, as can be learned from the pasuk of “ki yiftach” and “ki yichreh”, whereas **R' Akiva** uses these phrases for other drashos, and therefore says that one is only chayuv when he digs the bor in his property.
 - **Q:** Based on this, what does **R' Yishmael** mean in the Braisa when he says “this is the case of bor in the pasuk”? We see that he holds that all cases of bor are chayuv!? **A:** He means that this is the case of bor that the Torah mentions first when it begins to discuss damages.
 - **Q:** A Braisa says, if one digs a bor in the reshus harabim with its opening in the reshus hayachid, he is patur, even though he may not do this because one may not dig underneath the reshus harabim. If one digs a bor in the reshus hayachid with its opening in the reshus harabim, he is chayuv. If one digs a bor in the reshus hayachid which abuts the reshus harabim, as a foundation for his house, he is patur. **R' Yose the son of R' Yehuda** says he is chayuv unless he makes a wall 10 tefachim high around the bor, or unless he keeps the bor at least 4 tefachim away from the place where people walk. Now, the Braisa seems to say that he is patur only because he dug the bor for a foundation, but otherwise he would be chayuv for digging a bor in his own reshus. This contradicts the beginning of the Braisa that says that he is patur if he digs a bor in his own reshus!? Now, according to **Rabbah** we can say that the first case follows **R' Yishmael** and the later case follows **R' Akiva**. However, according to **R' Yosef**, we can say that the later case follows all views, but who would the first case follow!? **A:** **R' Yosef** will answer, the entire Braisa can follow all views, and the first case is where the person was not mafkir his property or the bor, and that is why he is patur.
 - **R' Ashi** said, now that you have said that according to **R' Yosef** the entire Braisa can follow all views, we should also say that according to **Rabbah** the Braisa should be interpreted as not following different views. Rather, just as the first case follows **R' Yishmael**, the next case follows **R' Yishmael** as well, and the case is where he dug the bor wide enough that it was in the reshus harabim as well. It is only in that case that he is patur if it was done for purposes of a foundation.
 - **Q:** A Braisa says, if one digs a bor in the reshus hayachid with its opening in the reshus harabim, he is chayuv. If he digs it in the reshus hayachid next to the reshus harabim he is patur. Now, according to **Rabbah** we can say that the entire Braisa follows the view of **R' Yishmael**, however, according to **R' Yosef**, although we can say that the first case follows **R' Yishmael**, the last case will seem to follow neither view!? **A:** **R' Yosef** will say that the last case is discussing a case of digging for a foundation, and therefore follows all views.
- A Braisa says, if one dug a bor, left it open, and gave it to the public to use, he is patur for any damage that it causes. If he dug it, left it open, and did not give it to the public, he would be chayuv. It was the practice of Nechunya the bor digger, to dig, open, and then give it to the public to use. The **Chachomim** said, this person has fulfilled the halacha.
 - A Braisa says, the daughter of Nechunya the well digger once fell into a large well. When they told this to **R' Chanina ben Dosa**, he eventually told them that she would be fine. It turned out that she was fine. They asked him how he knew this. He said, it cannot be that the child of the tzaddik would be harmed with the thing that this tzaddik did for the sake of the people.
 - **R' Abba** said, even so, Nechunya's son died of thirst (because he too was a tzaddik, and Hashem deals strictly with tzaddikim).
 - **R' Chanina** said, whoever says that Hashem disregards aveiros should have his life disregarded.

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- **R' Chana or R' Shmuel bar Nachmeini** said, the pasuk says Hashem is “Erech Apayim” (which is written in the plural form) to say that Hashem is patient in giving reward to tzadikim and in giving punishment to the resha'im.
- A Braisa says, a person may not clear stones from his reshus into the reshus harabim. It once happened that there was a person who did so, and a certain chossid saw him and said “Empty person! Why are you taking stones from someplace that does not belong to you and putting it someplace that does belong to you!?” The person laughed at him. A short time later this person lost his possessions and had to sell his field. He walked by that place in the reshus harabim and tripped over the stones that he threw there. He said, that chossid told me a smart thing.

MISHNA

- If a person digs a bor in the reshus harabim and an ox or donkey falls into it, he is chayuv. He is chayuv no matter what type of ditch he digs. If so, why does the pasuk specify with the word “bor”? Just like a standard bor is 10 tefachim deep, which is deep enough to kill the animal, so too for any other ditch he is chayuv if it is 10 tefachim deep. If the bor was less than 10 tefachim deep and an ox or donkey fell into it and died, he would be patur. If the animal fell into it and was injured, he would be chayuv.

GEMARA

- **Rav** said, a person is chayuv for his bor because of the injury caused by the bad air in the bor, and not because of the damage from the impact of the fall. We see from here that **Rav** holds that the impact was done by the ground, and for that the person would not be chayuv. **Shmuel** said he is chayuv because of the bad air *and* certainly because of the impact of the fall. It must be that he is chayuv for the bad air as well, because the Torah makes a person chayuv for all cases of a bor, which even includes where the bor is lined with soft wool, when there is no injury from impact.
 - The machlokes between them would be where a person elevated a piece of the reshus harabim, and an animal fell off that and died. According to **Rav** he would be patur, because there is no bad air above ground. According to **Shmuel** he would be chayuv.
 - **Rav's** view is based on the word “v'nafal” in the pasuk, which suggests that the animal fell in head first into the deepest part of the bor, which is where the bad air is found. **Shmuel** says that “v'nafal” suggests falling in any way, even feet first, in which case the animal would not be in a place of bad air.
 - **Q:** The Mishna said, we learn from “bor” that “so too for any other ditch...”. According to **Shmuel** the “so too” comes to include the case of where he raised an area in the reshus harabim. However, according to **Rav**, what is this coming to include? **A:** It comes to include ditches other than a bor, which it states and then explains explicitly in the Mishna.
 - **Q:** Why did the Mishna have to mention 5 different types of ditches? **A:** If it would only say “bor” we would say that a bor has bad air at 10 tefachim because it is small and round, but a “si'ach”, which is long, maybe doesn't have bad air. If we would only say si'ach, we would say that it has bad air because it is narrow, but a “me'arah”, which is square, does not have bad air. If we would only say me'arah we would say that it has bad air because it has a roof, but “charitzin”, which don't have a roof do not have bad air. If we would only say charitzin, we would think that it has bad air because it is not wider on top than on the bottom, but “ne'itzin”, which is, does not have bad air. That is why all these cases are needed.
 - **Q:** The Mishna says, if the bor was less than 10 tefachim and an animal fell in and died, he is patur, but if the animal was damaged, he is chayuv. Now, presumably he is patur because the impact at that height is not enough to kill him, even though there is bad air there. We see that he is chayuv for the impact!? **A:** When it is less than 10 tefachim deep, there is no bad air.
 - **Q:** If there is no bad air, why is chayuv if the animal was damaged? **A:** The air is bad enough to damage an animal, but not bad enough to kill an animal.