



Daf In Review – Weekly Chazarah

Maseches Bava Kamma, Daf ן – Daf ן

Daf In Review is being sent l'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen,

A"H vl'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

-----Daf ן--51-----

- There was an ox that fell into an irrigation ditch that was one amah (6 tefachim) deep. The owner immediately shechted it. **R' Nachman** said that the animal is a treifah based on the fall. **R' Nachman** said, had the owner been wise, he would have asked and learned that had he waited to allow the animal to live for 24 hours, the animal would have been mutar to eat. We see that **R' Nachman** holds that even less than 10 tefachim is enough of a fall to kill an animal.
 - **Q: Rava** asked **R' Nachman**, our Mishna says that less than 10 tefachim is not enough of a fall to kill an animal!? **A:** There is enough for the impact of the fall to kill, and not enough to create bad air, and a person is only chayuv for damage done by the bad air, not by the impact of the fall.
 - **Q:** If so, why is he chayuv for damage done? **A:** There is not enough bad air to kill, but there is enough to do damage.
 - **Q:** A Mishna says, that when killing someone with skila, we push the person off a height that is 3 times the height of a person. Now, if even less than 10 tefachim can kill by impact, why do we need such a high place? **A:** According to you, why not use a height of 10 tefachim? Rather, like **R' Nachman in the name of Rabbah bar Avuha** said, we use a greater height so that the killing be as painless as possible.
 - **Q:** Why not use even a greater height? **A:** That would cause the body to become disgusting upon impact, and we don't want to do that.
 - **Q:** A Braisa says that the obligation to put a fence around one's roof is when his roof is at least 10 tefachim off the ground. Now, if even less than 10 tefachim can kill with its impact, why is a fence only needed when the roof is 10 tefachim high? **A:** The Torah requires a roof on a "house", and a structure less than 10 tefachim high is not a "house".
 - **Q:** If so, if the house is 10 tefachim tall from the outside, it is less than that from the inside, so it is also not a "house"!? **A:** The case is where the earth inside the house was dug out so that it is 10 tefachim tall on the inside as well.
 - **Q:** If so, even if it is less than 10 on the outside, it can be a "house" when it is 10 on the inside!? **A:** Rather, the reason **R' Nachman** held that the animal was a treifah was because from the stomach of the animal to the ground was 4 tefachim. The depth of the irrigation ditch was 6 tefachim. Altogether, the animal fell a depth of 10 tefachim.
 - **Q:** If so, why does the Mishna say that the bor has to be 10 tefachim to kill an animal? Six tefachim should be enough!? **A:** The Mishna is discussing the case where the animal was lying on the ground and rolled into the pit.

MISHNA

- If there is a pit of two partners, and the first one passed by and did not cover it, and then the second one passed by and did not cover it, the second one is chayuv.

GEMARA

- **Q:** How can a bor be said to belong to partners? This makes sense according to **R' Akiva** who says that the case of bor can be when it is dug in one's reshus and he is then mafkir the area around the bor, but not the bor itself, because the case could be where the bor was dug in the reshus of the partners and they were mafkir the area around. However, if we hold that one is patur for a bor in his reshus, the only way to be chayuv for bor is in the reshus harabim, so how can we have a bor that belongs to partners!? It can't be that they both made a shaliach to dig a bor, because we hold that there is no valid shaliach for an aveirah, and the responsibility would

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therefore not go back to them!? It also can't be where the first one dug 5 tefachim and the second one dug the next 5, because only the second person is chayuv in that case!? It can make sense according to **Rebbi**, with respect to a case of damage (but not death), but in a case of death according to **Rebbi**, and in a case of death or damage according to the **Rabanan**, how can we have a case of a bor of partners? **A: R' Yochanan** said, the case is where there was a bor that was 9 tefachim deep, and they together pulled out a clump of earth that then made it 10 tefachim deep.

- **Q:** What is the machlokes (mentioned) between **Rebbi and the Rabanan**? **A:** A Braisa says, if one person dug a bor of 9 tefachim, and a second person made it 10 tefachim deep, the second person is chayuv for any and all damage. **Rebbi** says, the second person is chayuv if an animal dies falling in. If an animal is only damaged, both people are chayuv.
 - The **Rabanan** hold that the words of “ki yichreh” in the pasuk are extra (if we are told one is chayuv for opening a bor, surely he is chayuv for digging a bor), and therefore come to teach that when a second person digs after a first, only the second person is chayuv. **Rebbi** said these words are needed for a different drasha.
 - It may be that **Rabanan** also say this is needed for the other drasha. Rather, they say the pasuk of “ki yichreh *ish bor*” teaches that only one person is chayuv, not two. **Rebbi** says this is needed to teach that an ox would not be chayuv for digging a bor. The **Rabanan** say the pasuk says “ish” twice. **Rebbi** says it was written twice to be consistent, not for a drasha.
 - **Q:** According to the **Rabanan**, why is it that the second person is chayuv? Maybe the first person should be chayuv? **A:** The pasuk says “v’hameis yihiyeh lo”, which teaches that the one who makes the bor deep enough to cause death is the one who is chayuv.
 - **Q: Rava** used this pasuk for a different drasha!? **A:** Both drashos can be learned from this pasuk.
- **Q:** A Braisa says, if a person digs a bor 10 tefachim deep, and another person extends that to 20 tefachim deep, and third person makes it 30 tefachim deep, they are all chayuv. However, another Braisa says, if a person digs a bor 10 tefachim deep, and a second person comes and plasters the walls, making the air worse, the second person is chayuv!? Should we say that the first Braisa follows **Rebbi** and the second follows the **Rabanan**? **A: R' Zvid** said, both Braisos can follow the **Rabanan**. The **Rabanan** put sole responsibility on the second person only when the first person didn't make it capable of killing. However, when the first person did, they would agree that both people would be chayuv.
 - **Q:** The case of the person who plastered the walls is a case where the first person created a bor that can kill, and yet the Braisa says that only the second person is chayuv!? **A:** That case is talking about where bor was built wide, and therefore there was not enough bad air to kill an animal. When the second person came and added the plaster, it was he who created an atmosphere of bad air that was capable of killing an animal.
 - **Others** say that **R' Zvid** said, both Braisos can follow **Rebbi**, and the reason only the second person is chayuv in the second case is because the bor was constructed in a way that there was not even enough bad air to cause damage, and certainly not to kill. It was the second person alone who created that atmosphere.
- **Rava** said, if there was a bor that was 9 tefachim deep, and a person placed a stone at the mouth of the bor, which created a combined depth of 10 tefachim, the liability of the people involved would be subject to the machlokes between **Rebbi and the Rabanan**.
 - **Q:** This seems obvious!? **A:** We would think that when one adds depth to the bottom of the pit is when we say that his bad air caused the death, and that is why he would be chayuv, but when he adds “depth” from above, he should be patur.
- **Q: Rava** asked, if the second person, who made the 9 tefach bor into a 10 tefach bor, came and filled up a tefach, or removed his stone from the outside, do we say that he has negated whatever he had done and will be patur, or do we say that his original action made the entire bor to be considered as his and he therefore remains chayuv? **TEIKU**.

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- **Rabbah bar bar Chana in the name of Shmuel bar Marsa** said, if a person digs a bor 8 tefachim deep, with the bottom two tefachim being of water, and an animal falls into it and dies, he would be chayuv. The reason is that each tefach of water creates bad air like two tefachim of dry land. Therefore, it is like a 10 tefach bor.
 - **Q:** What if it is a 9 tefach bor with one tefach of water? Do we say that there is less water and therefore less bad air, or do we say that since it is actually 9 tefachim deep, even one tefach of water is enough to kill? **Q2:** What if the bor is 7 tefachim deep and has 3 tefachim of water? Do we say it creates enough bad air, or since the depth is less, maybe it does not? **TEIKU.**
- **R' Shizbi** asked **Rabbah**, what is the halacha if the second person made the bor wider, but not deeper? **Rabbah** said, this person has lessened the bad air, and certainly would not be chayuv! **R' Shizbi** said, but he has increased the size of the bor, making it more likely for an animal to fall in!? **R' Ashi** said, we look and determine – if the animal died because of bad air, the second person is patur, and if the animal died from the impact of the fall, the second person is chayuv. **Others** say that **R' Ashi** said we look and determine – if the animal fell from the side that the second person had expanded, he is chayuv. If not, he is patur,.
- We have learned, if a bor has a depth equal to its width, **Rabbah and R' Yosef** both said in the name of **Rabbah bar bar Chana** who said in the name of **R' Mani** – one said that there is always bad air unless the width is more than the depth, and the other said there is only bad air if the depth is more than the width.

AVAR ALAV HARISHON V'LO KISAHU

- **Q:** At what point does the first person become patur? **A: Rabbah and R' Yosef** both said in the name of **Rabbah bar bar Chana** who said in the name of **R' Mani** – one said that it is from the time that the second person used the bor, and the other said it is from the time that he gave the cover to the second person.
 - We find that this is actually a machlokes in a Braisa between the **Rabanan** (who say it is from the time the second person used the bor) and **R' Eliezer ben Yaakov** (who says it is from the time he gives the cover). The machlokes is, that **R' Eliezer ben Yaakov** holds of breirah, and therefore use by the second person is not use of the first person's bor (he takes only his own water) and therefore does not become responsible for the first person's portion of the bor until he is given the cover. The **Rabanan** don't hold of breirah.
 - We find that they argue in this same way regarding partners entering their shared chatzer after they made a neder not to have hana'ah from each other, in which case the **Rabanan** say they may not enter the chatzer, and **R' Eliezer ben Yaakov** says they may.
- **R' Elazar** said, if one sells a bor, as soon as he gives the buyer the cover, the buyer is koneh the bor.
 - **Q:** What is the case? If he is paying money, he should be koneh with the money!? If he is making a chazakah, he should be koneh with the chazakah!? **A:** He is making a chazakah. Typically, the seller must tell the buyer to make a chazakah, and the buyer can then be koneh. **R' Elazar** is teaching that giving over the cover is the equivalent of telling him to go and make a chazakah.
- **R' Yehoshua ben Levi** said, if one is selling a house, when he gives over the keys, the buyer is koneh.
 - **Q:** What is the case? If he is paying money, he should be koneh with the money!? If he is making a chazakah, he should be koneh with the chazakah!? **A:** He is making a chazakah. Typically, the seller must tell the buyer to make a chazakah, and the buyer can then be koneh. **R' Yehoshua ben Levi** is teaching that giving over the keys is the equivalent of telling him to go and make a chazakah.
- **Reish Lakish in the name of R' Yannai** said, if someone sells a herd of animals, as soon as he gives the “mashkuchis” (the thing that the herd follows) to the buyer, the buyer is koneh.
 - **Q:** What is the case? If he is making meshicha, he should be koneh with that, and if he is making mesirah, he should be koneh with that!? **A:** He is making a meshicha. Typically, the seller must tell the buyer to make a meshicha, and the buyer can then be koneh. He is teaching that giving over the mashkuchis is the equivalent of telling him to go and make a meshicha.
 - **Q:** What is a mashkuchis? **A:** In Bavel they said it is a bell. **R' Yaakov** said it is the goat that leads the herd.

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MISHNA

- If the first person covered the pit and the second person came and found it uncovered (the wooden cover rotted and crumbled), and he didn't cover it, the second person would be chayuv.
- If a person covered a bor properly and an animal fell into it and died, he is patur. If it wasn't covered properly, he would be chayuv.
- If an animal fell forward into a bor because of the noise of someone who was hired to widen a bor, he is chayuv. If he fell backward into the bor, he is patur.
- If an ox with its keilim, or a donkey with its keilim, fell into the bor and the keilim were damaged as well, he is only chayuv for the animal, and not for the keilim. If an ox that is a cheireish, shoteh, or young fell into a bor, the one responsible for the bor would be chayuv. If a young boy or girl, or a slave or maidservant fell into a bor and died, he would be patur.

GEMARA

- **Q:** Until when is the first person patur? **A: Rav** said, until enough time passed for him to know that it became uncovered. **Shmuel** said, until enough time has passed so that people can tell him that the bor is uncovered. **R' Yochanan** said, until enough time has passed so that people can tell him that the bor is uncovered, and for him to hire workers, to cut down cedar trees to make a cover, and to then cover it.

KISAHU KARA'UY V'NAFAL L'TOCHO SHOR OY CHAMOR UMEIS PATUR

- **Q:** If it was truly covered properly, how did an animal fall into it? **A: R' Yitzchak bar Chana** said, the case is where the cover became wormy and then broke under the weight of the animal.
- **Q:** What if he covered it with a cover strong enough to carry an ox, but not strong enough for camels, and a camel came and weakened it by standing on it, and an ox then went on it and fell through? Would he be chayuv for the damage to the ox?
 - **Q:** What is the case? If it is normal for camels to be there, he is negligent for not making it strong enough to hold them! If it is not normal for camels to be there, he is an oneis!? **A:** The case is where camels come from time to time. If they do come, the question is, do we consider that an oneis or that he was negligent?
 - **Q:** Maybe we can answer from our Mishna. The Mishna gives the case where the bor was covered properly, but an ox fell in. If it was covered properly for oxen and camels, how did an ox fall in!? It must be that it was covered properly for oxen, and not for camels in a place where camels only come from time to time, and a camel came and weakened the cover, which then caused the ox to fall through when he later stood on it, and the Mishna says that he is patur! **A:** This is no proof. It may be that it was made strong enough for camels as well. The reason the ox fell through was because the cover was rotted and eaten by worms.
 - **Q:** The Mishna said, if it was not covered properly and an ox fell into it, he is chayuv. This can't mean that it wasn't a proper cover for any animal (even oxen), because that would be obvious that he would be chayuv. Rather, it must be that it was covered properly for oxen, and not for camels, in a place where camels only come from time to time, and a camel came and weakened the cover, which then caused the ox to fall through when he later stood on it, and the Mishna says that he is chayuv! We see he is considered to be negligent! **A:** It may be that the case is where it was proper for oxen and not for camels, and the place was one where camels are often found, which is why he is considered negligent and is chayuv. Although this seems obvious, the reason this case is mentioned is because it gave the case of where it was covered properly and therefore now gave the case of where it was not covered properly.
 - **Some** say that even in a case where camels only come from time to time, if he doesn't make the cover strong enough for camels, he is considered to be negligent. The question is where the cover was only strong enough for oxen in a place where camels are common. However, a camel did not go on the cover, but the cover became wormy and rotted, causing it to weaken and break under the weight of an ox. The

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question is, do we say that since he was negligent for camels, he is also considered negligent for rotting, or maybe we don't say that?

- **Q:** Our Mishna said, if it was covered properly and an ox fell in and died, he is patur. **R' Yitzchak bar bar Chana** explained that the cover became wormy and rotted. Now, what is the case? If it was proper for oxen and camels and it became wormy, of course he would be patur! Rather, it was proper for oxen and not for camels, in a place where camels were common, and it became wormy (which caused the ox to fall in), and yet the Mishna says he is patur! We see that we don't say that since he was negligent with regard to camels he is considered negligent with regard to wormy rotting as well! **A:** The case may be where it was proper for camels and oxen, and became wormy. We would think that maybe he had the responsibility to check on the cover from time to time to make sure it was still strong and intact. The Mishna therefore teaches that this is not so.
- **Q:** The Mishna said, if it was not covered properly and an ox fell into it, he is chayuv. This can't mean that it wasn't a proper cover for any animal (even oxen), because that would be obvious that he would be chayuv. Rather, it must be that it was covered properly for oxen, and not for camels. Now if camels were common, he is negligent and it is obvious that he is chayuv! If camels are not common, he is an oneis and should be patur!? Rather, the case must be that camels were common, but the cover became wormy, and the Mishna says he is chayuv. We see that we say, that since he is considered negligent with regard to camels he is also considered negligent with regard to it becoming wormy! **A:** The case can be where it was proper for oxen and not for camels, and is a place where camels are common. Although this seems obvious that he is chayuv, because he is negligent, the reason this case is mentioned is because it gave the case of where it was covered properly and therefore now gave the case of where it was not covered properly.
- We can bring a proof from a Braisa, which says if an ox that is deaf, insane, young, blind, or walking at night, fell into an open bor, he is chayuv. If the ox was intelligent and was walking by day and fell in, he would be patur. Why don't we say that since he was negligent for the first category of animal, he is also considered to be negligent for the second category? It must be that we don't say "since" in this way! **HEMA MINAH.**

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NAFAL LEFANAV...

- **Rav** said, "forward" means it literally fell on its face (and died from the bad air), and "backward" means it literally fell on its back, and both cases are referring to where the animal fell into a bor (and teaches that one is only chayuv if the animal died from the bad air, not from the impact of the fall). This follows the view of **Rav** that one is only chayuv from death caused by the bad air. **Shmuel** said, if the animal fell into a bor, he is chayuv whether the animal fell forward or backward. This follows **Shmuel's** view that one is chayuv for death caused by the bad air and certainly if caused by the impact.
 - **Q:** According to **Shmuel**, what is the case of falling backward that the Mishna says he is patur? **A:** The case would be where the animal fell into the pit, but hit itself on the ground outside the pit and died from that impact.
 - **Q:** A Braisa says, in an animal falls into a pit, whether it fell forward or backward, the owner of the bor is chayuv. This refutes **Rav**!? **A:** **R' Chisda** said, the Braisa is discussing where the bor is in the digger's reshus, and **Rav** agrees that in that case he is chayuv, because whether due to the bad air or due to the impact on the ground, they are both the property of the digger and he is therefore chayuv. **A2: Rabbah** said, the case is where the animal fell head first and turned midair to its back. In that case, since it fell head first, the bad air had an effect on it and is what caused it to die. **A3: R' Yosef** said, the Braisa is discussing the damage done by the ox to the water in the bor. In that case he is chayuv, whether the ox fell in head first or backward.

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- **R' Chananya** taught a Braisa that supports **Rav**. The Braisa says, the word “v'nafal” in the pasuk teaches that if an animal falls into a bor from the sound of the digging, if it falls forward the owner of the bor is chayuv, and if it fell backward he would be patur.
- **Q:** Why don't we say that the one who made the noise should be chayuv, since he was the one who caused the animal to fall into the bor!? **A:** **R' Simi bar Ashi** said, the Mishna follows **R' Nosson**, who says that when two people caused damage and the nizek can't collect from one of them, he collects it all from the other. Therefore, since he can't collect from the one who made the noise (it was only a grama) he collects from the owner of the bor.
 - We see that he holds that they are both chayuv, because he says in a Braisa, if an ox pushed another ox into a bor, they each pay half the damage (the **Rabanan** say that the owner of the ox is chayuv for the entire damage). Now, in another Braisa he says that the owner of the bor pays $\frac{3}{4}$ of the damage? That Braisa must be talking about where the ox was a tam, and **Rava** explains that **R' Nosson** holds that each party is chayuv for the entire damage. Therefore they each pay half (you don't pay for more than the damage). The owner of the tam can say, I would anyway have to pay for only half, so I should only pay $\frac{1}{4}$ now! Since he only pays for $\frac{1}{4}$, the owner of the bor must pay for $\frac{3}{4}$, because where one party is patur from paying, the other must pay, as **R' Nosson** said above. We can also say that **R' Nosson** really holds that each is only responsible for half the damage, which means that the tam (who pays for half his damage) must only pay $\frac{1}{4}$ of the damage. The reason why the owner of the bor must pay for the missing $\frac{1}{4}$ is because the owner of the dead ox can tell the owner of the bor, “I found my ox at the bottom of your pit, which shows that you killed it. I will collect whatever I can from the other ox, but you will have to make up the difference”.
 - **Rava** said, if someone puts a rock near a bor and an ox trips on the rock and falls into the bor, it would be subject to the machlokes between **R' Nosson and the Rabanan**.
 - **Q:** This seems obvious!? **A:** We would have thought that in the case where the ox pushed the other ox the owner of the bor can say, if my bor wasn't there your ox would have killed the other ox anyway, and therefore you are at least partially chayuv. However, in the case with the rock, we would think that the owner of the rock can say, if your bor wouldn't have been there, the animal would have tripped and stood back up, so you should be chayuv for the entire damage! **Rava** therefore teaches that he can tell the owner of the rock, if not for your rock the ox would never have fallen into the pit.
- We have learned, if a regular ox and an ox that became passul to be used as a korbon after being designated as such, gored another animal, **Abaye** says the regular ox is chayuv half damages, and **Ravina** says he is chayuv $\frac{1}{4}$ of the damages.
 - We can say that both agree that the case is where the ox was a tam, but **Ravina** holds like the **Rabanan** and **Abaye** holds like **R' Nosson**. We can also say that both follow the **Rabanan** and **Ravina** is talking about a tam and **Abaye** is talking about a muad.
 - **Others** say that **Abaye** says the ox is chayuv half damages and **Ravina** says he is chayuv full damages. We can explain that all are discussing where the animal was a muad, and **Abaye** follows the **Rabanan**, and **Ravina** follows **R' Nosson**. We can also say that they both follow **R' Nosson**, but **Ravina** is talking about a case of muad and **Abaye** is talking about a case of tam.
- **Rava** said, if an ox and a person push something into a bor, then with regard to damages all of them are chayuv. If they pushed a person into the bor, then with regard to payment the 4 payments and paying for the babies if they caused a miscarriage, the person would be chayuv, but the ox and bor would be patur. Regarding kofer and paying 30 shekalim (if they killed a slave), the ox would be chayuv and the person and bor would be patur. Regarding damage to keilim and an ox that became passul for a korbon, the person and the ox would be chayuv, and the bor would be patur. A bor is patur for damage done to such an animal, because the pasuk says “v'hameis yihiyeh lo”, and this animal cannot be said to belong to the person.
 - **Q:** We find that **Rava** was unsure whether the owner of a bor is chayuv when such an animal falls into the bor!? **A:** At first he was unsure, but later he was sure.

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- **Q:** If we use “v’hameis yihyeh lo” to teach that, how do we know the halacha that the owner of the dead ox must deal with the carcass? **A:** We learn it from the pasuk of “v’hameis yihyeh lo” written with regard to an ox that damages.
 - **Q:** Maybe we should say that we learn that from the pasuk by bor, and the pasuk by an ox instead teaches that an ox is patur when it damages an animal that became passul as a korbon!? **A:** Since we find that a bor is patur if it damages keilim, it is logical that it is patur from this as well.
 - **Q:** It is more logical to say that an ox is patur, because he only pays half damages as a tam!? **A:** We never find that an ox is fully patur. Therefore, it makes more sense to apply the exemption to bor.

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NAFAL L'TOCHO SHOR V'KEILAV V'NISHTABRU...

- Our Mishna does not follow **R' Yehuda**, who says in a Braisa that the owner of a bor is chayuv for damage done to keilim.
 - The **Rabanan** who say that bor is patur for damage to keilim darshen the pasuk of “v'nafal shama shor oy chamor” to teach “shor” but not damage to a person, and “chamor” but not damage to keilim. **R' Yehuda** says the word “oy” comes to include damage done to keilim. The **Rabanan** say “oy” is needed to separate and teach that the bor need not damage an ox *and* a donkey to be chayuv. **R' Yehuda** says the word “nafal” is singular, and therefore “oy” is not needed for that. The **Rabanan** say “v'nafal” can refer to many instances of falling.
 - **Q:** Why don't we say that “v'nafal” is a klal, and “shor and chamor” are a prat, and therefore say that the only thing included in the halacha is the prat of an ox or a donkey, but nothing else!? **A:** The words “baal habor yishalem” is another klal, which therefore makes a “kla, prat uklal”, in which case anything similar to the prat is included in the klal, and just like an ox and donkey are living beings, anything that is a living being will be included in the klal.
 - **Q:** We should say that just like an ox and donkey are animals whose carcasses give off tumah by touching and by carrying, so too only such living beings should be included, which would exclude birds from the klal? **A:** If that was true, the pasuk should have only given one example of a prat. The extra prat therefore teaches that even birds are included as well.
 - **Q:** Neither of these two examples in the pasuk are extra. If it would only have said an ox, we would say that only things that can go on the Mizbe'ach are included, and if it would only say a donkey we would say that only animals whose firstborns have kedusha are included. Therefore, both are needed and cannot come to include birds, so how do we know to include even birds as well!? **A:** The pasuk of “v’hameis yihyeh lo” teaches that anything that can die is included in the pasuk.
 - **Q:** Keilim cannot die, so why do the **Rabanan** need a pasuk to exclude it, and how does **R' Yehuda** actually include it in the klal? **A:** The breaking of a keili is considered its “death”.
 - **Q:** According to **Rav**, who says one is only chayuv for bor when the bad air is what causes the death, a keili is not affected by bad air, so why do the **Rabanan** need a pasuk to exclude it, and how does **R' Yehuda** actually include it in the klal? **A:** The pasuk is discussing new earthenware keilim, which can break when exposed to bad air.
 - **Q:** This pasuk is used by **Rava** for a different drasha of bor!? **A:** The pasuk of “kesef yashiv l'baalav” teaches that a bor is chayuv for anything that has an owner.
 - **Q:** If so, bor should be chayuv for damage to a person and keilim as well!? **A:** The drasha of “shor” and not a person, and “chamor” and not keilim” teaches that bor is patur.
 - **Q:** According to **R' Yehuda**, what does the word “chamor” come to teach? **A:** **Rava** said, the word “chamor” according to **R' Yehuda**, and the word “seh” written regarding lost items according to everybody, are difficult to explain.

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NAFAL L'TOCHO SHOR CHEIREISH SHOTEH V'KATAN CHAYUV

- **Q:** What does this mean? If it means the ox belonging to a cheireish, etc., this would suggest that if the ox of a regular person falls into a bor the owner of the bor would be patur!? **A: R' Yochanan** said, the Mishna is referring to an ox that is a cheireish, etc.
 - **Q:** This would mean that if the ox that is not a cheireish, etc., the bor would be patur!? **A: R' Yirmiya** said, the Mishna means to say, not only if the ox is a regular, healthy ox would the bor be chayuv, rather even if it is a cheireish, etc., where one can say that his deficiency attributed to his falling into the bor, still, the bor is chayuv.
 - **Q: R' Acha** asked **Ravina**, a Braisa says that if an “intelligent one” fell into a bor, the bor is patur. Presumably this refers to an ox that is not deficient!? **A:** He said, this refers to a person, and the category of people are referred to as the “intelligent one”.
 - **Q:** A Braisa says if an ox that is intelligent falls in the bor, it is patur!? **A: Rava** said, bor is only chayuv when a deficient animal falls in, but if an intelligent animals falls in it would be patur, because the animal should have looked where he was going. In fact, a Braisa says this as well.

MISHNA

- The halachos apply to an ox and to any beheima, with regard to the halachos of bor, of separating from Har Sinai by the giving of the Torah, for the paying of “keifel” if one steals them, with regard to returning them if they are found to be lost, with regard to the mitzvah of unloading an animal, with regard to the issur of putting a muzzle on an animal, with regard to kilayim, and with regard to not doing work with them on Shabbos. The same applies to chayos and birds as well. If so, why does the Torah specify “shor” and “chamor” in many of these instances? Only because that is the typical case.

GEMARA

- We learn that each of these halachos apply to all animals and birds, as follows:
 - Bor – from “kesef yashiv l'baalav”.
 - Separation by Har Sinai – “ihm beheimah ihm ish”, and a chaya is included in the term “beheimah”, and “ihm” comes to include birds.
 - For “keifel” payment – “ahl kol dvar pasha” comes to include anything that is stolen.
 - For “hashavas aveidah” – “l'chol aveidas achicha” comes to include everything.
 - For the mitzvah of unloading an animal – we learn a gezeirah shava from Shabbos on the word “chamor”.
 - For the issur of using a muzzle – we learn a gezeirah shava from Shabbos on the word “shor”.
 - For the issur of klayim – for the klayim of plowing with two different species of animals, we learn it with a gezeirah shava from Shabbos on the word “shor”. For the kilayim of mating animals of different species, we learn it from a gezeira shava from Shabbos on the word “bihemticha”.
 - For Shabbos – a Braisa says, **R' Yose in the name of R' Yishmael** said, in the first Aseres Hadibros it only says “bihemticha”. In the second set of Aseres Hadibros it says “shorcha, chamorcha, v'chol bihemticha”. Now ox and donkey are already included in “animals”. They are singled out to teach that just like “ox and donkey” mentioned here include chayos and birds, so too all laws that mention them include chayos and birds as well.
 - **Q:** Maybe we should say that “biheima” of the first Dibros is a klal, “shor and chamor” of the second Dibros is a prat, and should therefore teach that only an ox and donkey are included in these halachos!? **A:** The words “v'chol bihemticha” of the second Dibros is another klal, which makes a klal, prat, uklal, and teaches that all living creatures are included.
 - **Q:** We should say that just like an ox and donkey are animals whose carcasses give off tumah by touching and by carrying, so too only such living beings should be included, which would exclude birds from the klal? **A:** If that was true, the pasuk should have only given one example of a prat. The extra prat therefore teaches that even birds are included as well.

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- **Q:** Neither of these two examples in the pasuk are extra. If it would only have said an ox, we would say that only things that can go on the Mizbe'ach are included, and if it would only say a donkey we would say that only animals whose firstborns have kedusha are included. Therefore, both are needed and cannot come to include birds, so how do we know to include even birds as well!? **A:** The words “v'chol bihemticha” is an inclusionary term, which includes all the other types of animals.
 - **Q:** We find that “kol” is used as a klal uprat uklal, and not as an inclusionary term (as is taught regarding maaser in a Braisa), so how do we say it is inclusionary here!? **A:** The word “b'chol” (which is what it says regarding maaser) is a klal, but the word “kol” (as stated regarding Shabbos) is simply an inclusionary word. **A:** Even if “kol” is normally a klal, in this case, since the second Dibros added the word “kol” (which is not stated in the first Dibros), it can be darshened as being an inclusionary term.
 - **Q:** Now that we say “kol” in an inclusionary term, what do the “bihemticha” of the first Dibros and the “shor and chamor” of the second Dibros come to teach? **A:** They are used for the gezeira shavas listed above.
 - **Q:** If the issur of klayim is learned from Shabbos, then just as a person may not work on Shabbos, a person should be included in the issur of klayim and should not be allowed to pull a plow along with an animal, and yet a Mishna says that he may!? **A: R' Pappa** said that **R' Acha bar Yaakov** said, the pasuk of “l'maan yanuach avdicha va'amascha kamocha” teaches that slaves (people) are compared to animals only with regard to resting on Shabbos, and not with regard to other halachos (like klayim).

-----Daf 71-----55-----

- **R' Chanina ben Agil** asked **R' Chiya bar Abba**, why is it that in the first Dibros the word “tov” is not mentioned, but in the second Dibros it is (regarding the mitzvah of kibud av v'eim)? He responded, “I don't even know if the word “tov” is written there at all. Go to **R' Tanchum bar Chanilai** who would learn by **R' Yehoshua ben Levi**, who was an expert in Aggadah, and he should be able to answer you.” He went to him and **R' Tanchum** said, “I didn't hear anything from **R' Yehoshua ben Levi**, but **Shmuel bar Nachum**, the uncle (or grandfather) of **R' Acha the son of R' Chanina** said, since the first Dibros were destined to be broken, the word “tov” wasn't written in them.
 - **Q:** Why would this be a reason not to write tov in them? **A: R' Ashi** said, that would have seemed as if “tov” was being taken away from the Yidden, so it wasn't written there at all.
- **R' Yehoshua ben Levi** said, if one sees the letter “tes” in a dream, it is a good sign.
 - **Q:** Presumably this is because the letter tes can be understood as standing for the word tov. However, there is a word “teiteisaha”, which refers to punishment, which also begins with a tes!? **A:** That word has two letter tes, and we were discussing someone who sees one letter tes.
 - **Q:** The word “tumasa” (written regarding the destruction of Yerushalayim) is written with one tes!? **A:** We were discussing someone who sees a tes and a beis (which are both contained in the word tov).
 - **Q:** The word “tavu” (written regarding the destruction of Yerushalayim) is written with a tes and a beis!? **A:** A letter tes is a good sign, because the first time that the letter tes is used in the Torah is for the word “tov”.
 - **R' Yehoshua ben Levi** said, if one sees the word “hesped” in a dream, it is a sign that Heaven has redeemed him from his troubles. However, this is only if he sees the word written.

V'CHEIN CHAYA V'OF KAYOTZEI BAHEN...

- **Reish Lakish** said, **Rebbi** taught here that a chicken, a “tavus” and a “pasyuni” are considered klayim one to the other.
 - **Q:** This seems obvious!? **A: R' Chaviva** said, these species all live together, which would lead us to think that they are considered of one species.
- **Shmuel** said, a goose and a wild goose are klayim one to the other.

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- **Q: Rava bar R' Chanan** asked, what is the reason for this? If it is because one has a long beak and one has a short one, then we should also say that a Persian camel and an Arabian camel are different species, because one has a thick neck and one has a thin neck, and yet we don't consider them to be separate species!? **A: Abaye** said, the reason the geese are klayim is because one has his "beitzim" outside the body and the other has them inside the body. **R' Pappa** said, one lays only one egg at a time, whereas the other can lay multiple eggs at one time.
- **R' Yirmiya in the name of Reish Lakish** said, if one mates two different species of sea animals he gets malkus. **R' Adda bar Ahava in the name of Ulla** explained, this is learned from a gezeira shava on the word "limineihu" from land animals.
 - **Q: Rachva** asked, if someone has his wagon pulled by a goat and a fish (he is travelling at the water's edge), is this a problem of klayim? Maybe we say that since the goat doesn't go into the water and the fish doesn't go onto the dry land, it is not considered that they are doing this together, and therefore there is no problem, or maybe we say that it is still assur?
 - **Q: Ravina** asked, this seems similar to the case where someone takes a grain of wheat and a grain of barley and plants one just in EY and one just outside of EY – will you say he is chayuv? The same should therefore be in the case of the fish and the goat!? **A:** It is not a good comparison. With regard to the planting, EY is obligated in klayim and outside EY is not. With regard to the fish and goat, they are both in a place of klayim obligation, and therefore maybe there is a klayim problem.

HADRAN ALACH PEREK SHOR SHENAGACH ES HAPARAH!!!

PEREK HAKONEIS -- PEREK SHISHI

MISHNA

- If a person brought his sheep into a fenced in area and locked the gate properly in front of it, and the animal escaped and did damage, he is patur. If he did not lock the gate properly and it escaped and damaged, he is chayuv.
- If the fence was breached at night, or was breached by robbers, and the sheep escaped and did damage, he is patur. If the robbers took it out, the robbers are chayuv.
- If the sheep was left in the sun, or if he gave it to a cheireish, shoteh, or katan to watch, and it escaped and damaged, he is chayuv. However, if he gave it to a shepherd, the shepherd steps into his place.
- If the animal fell into a garden and benefitted from the produce there, he must pay for the amount that he benefitted. If the animal went down into the garden in its usual way (it didn't fall in) and did damage, he must pay for what was damaged.
 - How does one pay for what was damaged? We appraise how much a "beis se'ah" in that field was worth before it was damaged, and how much it is worth after it was damaged, and he pays the difference. **R' Shimon** says, if the animal ate ripe produce, he must pay for the value of the ripe produce – if it ate a se'ah, he pays for a se'ah, if it ate 2 se'ah, he pays for 2 se'ah.

GEMARA

- A Braisa says, what is called "properly" and what is "not properly"? A gate that can withstand a normal wind is called "properly". If it cannot, it is called "not properly".
 - This is a low level guarding (the gate can only withstand a normal wind). **R' Mani bar Patish** said, the Mishna must be following **R' Yehuda**, who is the one who holds that a low level watching is enough for a muad (the Mishna is discussing cases of shein and regel, which are always a muad), as we find in a Mishna. The Mishna says, 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,

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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.

- The Gemara says, our Mishna can even follow **R’ Meir**, because shein and regel are different, as we find that the Torah reduced the required level of guarding needed for shein and regel. We find that **R’ Elazar**, or a Braisa, says, there are 4 things for which the Torah reduced the level of guarding needed: bor, fire, shein, and regel. Regarding bor the Torah says he is patur by simply covering it, without having to refill it. Regarding fire we learn from the pasuk that he is only chayuv if he was negligent. Regarding shein we learn from the pasuk that he is only chayuv if he was negligent. Regarding regel we learn from the pasuk that he is only chayuv if he was negligent. From here we learn, that as long as he was not negligent he would be patur.
- **Rabbah** said, our Mishna also suggests that it is only talking about shein and regel, and not keren, because we have always been discussing an ox. Why is it that we now switch to discuss a sheep? It is because we are only discussing shein and regel, and not keren. And, we can learn that with regard to the muad of shein and regel, the Torah teaches that a lesser guarding suffices.

-----Daf 71--56-----

- A Braisa says, **R’ Yehoshua** says, there are 4 things that if a person does them he is patur from paying in this world, but is chayuv under the laws of Heaven: one who breaches a fence in front of his friend’s animal; one who bends his friend’s grain toward a fire; one who hires false witnesses to testify; and one who knows testimony for his friend and doesn’t testify.
 - **Q:** What is the case of the one who breaches the fence? If it is talking about a strong fence, he should certainly be chayuv to pay for breaking a strong fence!? **A:** Rather, we must say it is talking about a weak fence (which must anyway be taken down).
 - **Q:** What is the case of bending the grain towards the fire? If by bending it the fire was able to reach it even with a normal wind, he should even be chayuv to pay!? **A:** We must say that by bending it the fire was able to reach it with an abnormally strong wind. **R’ Ashi** said the case is where he covered over the grain, in which case the one who lit the fire becomes patur.
 - **Q:** What is the case of one who hires false witnesses? If he hired them to gain money for himself, he should have to pay back the money!? **A:** The case is that he hired them for the benefit of someone else.
 - **Q:** What is the case of the person who didn’t testify? If there was someone else who would testify with him, it is obvious that he is chayuv under the laws of Heaven, because there is an issur in the pasuk to hold back testimony – “ihm lo yagid v’nasa avono”!? **A:** The case must be where he would be a single witness.
- **Q:** The Braisa seems to say that there are no other cases that one would be patur in this world and chayuv under the laws of Heaven, but there seem to be many more!? There is the case of one who does work with the parah adumah water (making it passul) or with the parah adumah itself (making it passul); there is the case of one who puts poison in front of another’s animal, and the animal eats it and dies; there is the case of one who gives a fire to a cheireish, shoteh, or katan; there is the case of someone who scares another person and thereby injures him; there is the case of one whose pitcher broke in the reshus harabim and he did not pick up the pieces, or of one’s camel that fell and he did not pick it up, and they do damage, and in all these cases the halacha is that the person is patur from paying and chayuv under the law of Heaven!? **A:** It is true that there are many others. However, the Braisa focused on these four, because we would think that in these 4 cases he is not even chayuv under the laws of Heaven, so the Braisa teaches that he is. In the case of the breached fence, we would think that since this fence must anyway come down, he should be patur under the laws of Heaven as well. In the case of bending the grain towards the fire, we would think that he had no reason to think that an abnormal wind would come and he should therefore be patur from Heaven. According to **R’ Ashi**, who says the case is where he covered the grain, we would think to say that he can say he was trying to protect the grain by covering it and should therefore be patur. In the case of hiring false witnesses, we would think he can say the witnesses should not have listened to me, and he should therefore be patur even by Heaven. In the case of failing to testify, we would think that he can say, even if I would have testified (causing the other person to have to swear), maybe

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the other person would have sworn falsely, and I therefore didn't cause any loss of money, and should therefore be patur from Heaven as well. The Braisa therefore teaches that even in these four cases he is chayuv under the laws of Heaven.

NIFRITZA BALAYLA OY SHEPARTZUHA LISTIM...

- **Rabbah** said, the owner is patur only when the animal escaped by digging under the wall.
 - **Q:** Is this to mean that if it did not dig its way out he would be chayuv? What is the case? If it was a strong wall, why should he be chayuv? What else was he to do? Rather, you will say the case is where it was a weak wall. If so, why would he be patur if it dug its way out? This is a case that began with negligence (the weak wall) and ended with an oneis (the digging). This makes sense according to the view that in such a case the person is patur, but according to the view that he is chayuv, why would he be patur in this case!? **A:** Our Mishna is discussing a case of a strong wall, and the owner would be patur even if the animal did not dig under it. **Rabbah** made his statement on the end of the Mishna, where the Mishna said, if the owner left the animal in the sun or gave it to an incompetent person and it then escaped and damaged, he would be chayuv. On this, **Rabbah** said he is chayuv even if the animal escaped by digging under the wall, because the entire escape is due to his negligence. Leaving an animal out in the sun forces it to use any means to escape.

HOTZI'UHA LISTIM LISTIM CHAYAVIN

- **Q:** This is obvious!? Once they take it out, it is considered to be in their reshut for all purposes!? **A:** The case is that they didn't actually remove the animal. Rather, they stood in front and blocked its path, forcing it to exit in the direction that they wanted it to go. **Abaye** told **R' Yosef**, the case can also be where the robbers hit the animal with sticks until it went to where they wanted it to go.

MISARA LIRO'EH NICHNAS HARO'EH

- **Q:** Whose place does the shepherd take over? It can't mean to say that he takes the place of the owner, because that was already taught in a previous Mishna, where it says that all shomrim take the place of the owners!? **A:** It is talking about a case where the owner gave it to a shomer, who then gave it to a shepherd (who is a second shomer), and is teaching that the shepherd becomes fully responsible for the animal.
 - **Q:** This means that the first shomer becomes patur, which refutes **Rava**, who says that the first shomer in this case remains chayuv!? **A:** **Rava** would say, the case is that the first shomer, who was a shepherd, gave the animal to his apprentice. In that case all agree that the first shomer is patur, because an owner knows that when he gives an animal to a shepherd it is normal for him to pass it along to his apprentice.
 - **Others** say as follows. Since the Mishna singles out giving over to a shepherd, and not giving over to "someone else", it must mean that only in the case of giving it to a shepherd is he patur, because it is expected that he would give it to his apprentice. This supports **Rava**, who says that typically the first shomer remains chayuv.
 - The Gemara says, this is no proof. It may be that the Mishna spoke in terms of a shepherd because that is a usual case, but in truth the same halacha would apply to any shomer.

-----Daf 57-----

- With regard to the shomer of a lost object, **Rabbah** says he has the status of a shomer chinam, because he is not getting any benefit for watching the object, and **R' Yosef** says he has the status of a shomer sachar, since he becomes patur from doing other mitzvos while he is busy watching the item, and would therefore not have to give tzedaka to a poor person at that time. **Others** say that **R' Yosef** says he is like a shomer sachar, because the Torah requires him to watch it even against his will.
 - **Q:** **R' Yosef** asked **Rabbah**, a Braisa says, if a shomer aveida returns the item to a place where the owner will see it, he is not chayuv if anything happens to it at that point. If it is stolen or lost, he is chayuv. Now, presumably the Braisa means that if the item was lost or stolen from the finder's house he is chayuv, and this proves that he is treated as a shomer sachar!? **A:** It means that it was stolen or lost from the place that he returned it to.

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- **Q:** That can't be, because the Braisa said that he is not chayuv anymore if he puts it there!? **A:** The Braisa is discussing two cases. The first case is where he returned it to that place in the morning, and he can therefore be sure that the owner will see it, and that is why he is patur. The second case is where he put it back there in the evening, when it is not likely that the owner will find it, and therefore he remains chayuv.
- **Q:** A Braisa says, the shomer aveidah is always chayuv until the item is returned to the owner's reshuv. Now, what is meant by "always"? Presumably it means that he is chayuv even when it is stolen from his house, and this is a proof for **R' Yosef**!? **A: Rabbah** said, he would agree that when an animal is found, since they move and try to escape, the shomer aveidah is obligated to perform a higher degree of watching.
- **Q: Rabbah** asked **R' Yosef**, a Braisa says, the word "hasheiv" in the pasuk would teach that the finder must return the item to the house of the owner. How do we know that he may even return it to the owner's garden or ruin? The word "tishiveim" teaches that it may be returned in any manner. Now, we must be referring to a garden that is not watched, because if it is, it would be the same as his house! This proves that he may return it to an unguarded place and not be chayuv, which is like a shomer chinam!? **A: R' Yosef** answered, the Braisa is referring to a guarded garden. Although this seems to be the same as his house, it teaches that the owner does not have to be aware that the item was returned, which is as **R' Elazar** says.
- **Q: Abaye** asked **R' Yosef**, **R' Chiya bar Abba in the name of R' Yochanan** said, if a shomer aveidah falsely claims that the item was stolen from him, he must pay keifel to the owner. Now, if he is treated like a shomer sachar, when he makes that claim he must pay for the item anyway, so why would he then have to pay keifel!? It must be that he is treated like a shomer chinam!? **A: R' Yosef** said, **R' Yochanan** was referring to where he claims it was stolen by armed robbers, in which case even a shomer sachar would be patur (it is considered to be an oneis). Although, armed robbers are considered to be a "gazlan" (as opposed to a "ganav"), which doesn't pay keifel, since they hide from people, they are considered to be a ganav.
 - **Q:** A Braisa says that a shomer chinam is more stringent than a shomer sachar in that it pays keifel. Now, according to this answer this is not a stringency, because a shomer sachar pays keifel by armed robbers as well!? **A:** The Braisa meant the stringency that a shomer chinam pays keifel for all types of theft, whereas a shomer sachar only pays keifel when he makes a false claim of armed robbery.
 - **Q:** A Braisa says, we learn that a borrower is chayuv to pay for a stolen or lost item from a kal v'chomer from shomer sachar – if a shomer sachar, which is patur if the item breaks or dies, is chayuv if it is stolen, then a borrower, which is chayuv if the item breaks or dies, will surely be chayuv if it is lost or stolen. Now, according to the above answer, we should ask that a shomer sachar is different because it pays keifel when he makes a false claim of armed robbery!? **A:** The Tanna of this Braisa holds that paying for the principle amount without swearing is considered more stringent than one who pays keifel only after swearing falsely.
 - **Q:** Maybe we can bring a proof that an armed robber is considered a ganav. A Braisa says, if someone rents a cow and it was stolen, and he says that he will pay instead of swearing that it was stolen, and the ganav is then found, the ganav must pay keifel to the renter. Now, it was presumed that the Braisa is following **R' Yehuda**, who holds that a renter is like a shomer sachar. The Braisa seems to say that if the renter would have sworn he would be patur. The only case he would be patur would be if armed robbers stole it. We see that armed robbers must pay keifel, and therefore see that they are considered as a ganav! **A:** This is no proof, because the Braisa may be following **R' Meir**, who holds that a renter is like a shomer chinam, and the case is that it was stolen by a true ganav (not armed robbers). Or, we can say that the Braisa follows **R' Yehuda**, but it follows the version of **R' Yehuda** where he is the one who says that a renter is like a shomer chinam. **R' Zeira** said, the case may be where the renter claimed that it was stolen by

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armed robbers, but it was later determined to have been stolen by unarmed robbers, who are clearly given the status of “ganav” and must therefore pay the keifel.