



## Daf In Review – Weekly Chazarah

### Maseches Bava Kamma, Daf 71 – Daf 70

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

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#### NAFLA L'GINAH V'NEHENEIS MISHALEMES MAH SHENEHENEIS

- **Rav** said, the Mishna is talking about a case where the animal fell on the produce, which cushioned its fall and saved it from injury.
  - **Q:** Does this mean that **Rav** would hold that if the animal ate the produce it would not even have to pay for what it benefitted? He should have to at least pay for the amount of the benefit (he saved the expense of having to feed the animal a meal)!? Should we say that **Rav** is following his logic elsewhere where he says that if an animal became sick from overeating the owner of the food is not chayuv, because he can tell the owner of the animal “your animal should not have eaten the food”? Similarly, in this case the owner of the animal can be patur using this claim? **A:** This claim can only be used when it is the animal that was injured from eating, not when the animal does damage by eating. Rather, what **Rav** means to say is that of course if the animal eats after falling in the owner must pay the amount that is benefitted. The chiddush is that even for the amount of damage caused by falling on it, he must also pay, and we don't say that the produce owner has an obligation to save the animal from damage and therefore is not paid for the damage.
    - **Q:** Maybe we should say that he actually shouldn't be paid since he does have the obligation to prevent damage to another's possessions? **A:** That obligation is only when one knowingly acts to save the animal. **A2:** We can also say that that obligation is only where it doesn't make him lose money.
- **Q:** The Mishna considers the animal's fall to be unavoidable. How did the animal fall? **A:** **R' Kahana** said it slipped on its urine. **Rava** said another animal pushed it.
  - **Rava** would agree with **R' Kahana**, that slipping on urine is something that the owner did not have to protect against. **R' Kahana** would not agree with **Rava**, because he would say that a person should take steps to avoid his animal being pushed by another animal.
- **R' Kahana** said, when the Mishna says that when it falls and eats it only pays for the amount it benefitted (not what it damaged), that is only where it ate from the row on which it fell. However, if it ate from another row, he must pay for the amount of the damage. **R' Yochanan** said, even from a different row, and even if it remained there and ate all day, he only pays for the amount of the benefit. Once it leaves the field and returns with the owner's knowledge, he would then pay for the amount of the damage for what it ate upon its return.
  - **R' Pappa** said, **R' Yochanan** does not mean that the animal must leave with the owner's knowledge and return with his knowledge. Rather, once it left with his knowledge, even if it returned without his knowledge, he would be chayuv to pay for the amount of the damage. This is because we tell him that the animal now has seen that it can eat in that field and will return there when the opportunity arises. Therefore, the owner must take greater measures to guard it from doing that.

#### YARDA K'DARKA V'HIZIKA MISHALEMES MAH SHEHIZIKA

- **Q:** **R' Yirmiya** asked, what if the animal went into the field and damaged produce by giving birth on the produce, rather than by eating it, would he be chayuv? According to the view that when something begins with negligence and ends with an oneis the person is chayuv, in this case he would surely be chayuv. The question is according to the view that the person would be patur – is this called an oneis at the end, or do we say that since he knew she was close to giving birth he should have guarded her more? **TEIKU.**

#### KEITZAD MISHALEMES MAH SHEHIZIKA...

- **Q:** How do we know that we assess the damage in this way? **A:** **R' Masna** said, the pasuk says “ubi'eir bisdei acher”, which teaches that we assess the value using another field.

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- **Q:** This pasuk is needed to teach that one is patur for shein and regel in the reshus harabim!? **A:** To only teach that the pasuk could have said “sdei chaveiro” or “sdei acher”. Instead, the pasuk says “bisdei acher”, which teaches this method of assessment.
- **Q:** Maybe we should say that the pasuk should only be used to teach the method of assessment, and if so, how do we learn that shein and regel are patur in the reshus harabim? **A:** If that was true, this pasuk should have been written among the pesukim that discuss payment. The fact that it is written regarding the pesukim of damages teaches that both drashos should be made.
- **Q:** How do we evaluate the beis se’ah? **A:** **R’ Yose bar Chanina** said, we look at the price of 60 beis se’ah, take a sixtieth of that, and then see how the produce that was damaged would effect this price. **R’ Yanai** said, we look at the price of 60 “tarkav” (a tarkav is ½ of a beis se’ah), take a sixtieth of that and double it to get to the value of a beis se’ah, and then see how the produce that was damaged would effect this price. **Chizkiya** said we assess a stalk based on 60 stalks (we look at the damaged area, assess a field that is 60 times the size of that area, and then see how the produce that was damaged would effect this price).
  - **Q:** A Braisa says, if an animal ate a kav or 2 kavs of produce, we don’t make the owner pay their value, rather we view the produce as it is a small row and evaluate it like that. Presumably this means we evaluate it on its own!? **A:** It means we then evaluate that area based on 60 times the size (each Amora will explain the Braisa according to his own view).
- A Braisa says, we do not evaluate a kav, because that would profit him, and we don’t evaluate a beis kor, because that would hurt him.
  - **Q:** What does this mean? **A:** **R’ Pappa** said, it means we don’t evaluate a kav by looking at a field of 60 kav, because that would benefit the mazik (by reducing the value of the damage), and we don’t evaluate a kor by looking at 60 kor, because that would be detriment to the mazik.
    - **Q:** **R’ Huna bar Mano’ach** asked, if that is what the Braisa meant, it should say “and not a kor”. Why did it say a “beis kor”? **A:** Rather, **R’ Huna bar Mano’ach in the name of R’ Acha the son of R’ Ika** said, the Braisa means, we don’t evaluate a kav on its own, because that would benefit the nizik, and we don’t evaluate a kav in proportion to a beis kor, because that would detriment the nizik. Rather, we evaluate a kav in a field 60 times the size of the damaged area.
- A person cut down someone’s palm tree. The Reish Galusa told him, this tree was from a set of three trees that were together worth 100 zuz. Therefore, go and pay 33 and 1/3 zuz. He went to **R’ Nachman**, who told him we must evaluate this in relation to 60 trees. **Rava** said, this method of evaluation was said for when someone’s property does damage, but not for when the person himself does damage!?
  - **Abaye** said to **Rava**, you think that when a person does the damage himself we do not evaluate in relation to 60 times, because a Braisa that speaks of the person doing damage to a vineyard simply says we look at how much the vineyard was worth before the damage and how much after the damage, without any mention of 60. However, a Braisa that discusses the damage of an animal says the exact same thing!? You will say that the Braisa regarding the animal means that we look at the damage and evaluate in relation to 60 times. The same way, we will say that the Braisa regarding the person who did damage also means that we evaluate in relation to 60 times.

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- The Gemara quoted a Braisa in which **R’ Yose Haglili** said that if a person damages unripe grain, he must pay what it would be worth at the time of harvest, had it been allowed to get to that stage. **Abaye** said, **R’ Yishmael** says this in a Braisa as well, where he says that the pasuk of “meitav sadeihu u’meitav karmo yishalem” teaches that the mazik must pay based on the best field of the nizik. **Abaye** said, this can’t mean (as others explain) that he pays for more than the value is known to be, because the nizik would have to prove the amount of his damages. Rather, **R’ Yishmael** means that if the mazik damaged unripe produce, he must pay based on the value of the produce when it would have been ready to harvest.
- The Gemara quoted a Braisa earlier in which **R’ Shimon ben Yehuda in the name of R’ Shimon** said, the only time we evaluate the damaged produce along with the land is when the animal ate produce at a very earlier

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stage of the produce's development. However, if it ate half-ripe produce, the mazik would have to pay based on the value of this produce when fully ripe.

- **Q:** The produce goes through a stage in its development called “smadar”. This stage is more developed than the early stage referenced above, and less developed than the “half-ripe” stage. Now, from the first statement it would seem that this smadar is not to be evaluated along with the land, and from the second statement it seems that it would be! **A: Ravina** said, the Braisa should be written as stating that smadar are included in the class of half-ripe produce.
  - **Q:** If so, **R' Shimon** is saying the same thing as **R' Yehoshua** (who says that the mazik pays for damaged smadar as they would be worth when they were ready to be picked)!? **A:** The difference between them is whether we offset the amount of the damage with the value saved by not having the produce on the vine for the longer amount of time and thereby weakening the vine. However, we can't tell who would hold what.
    - **Abaye** said, we can prove that it is **R' Shimon ben Yehuda** who holds that we do take into account the future benefit, because he says in a Braisa in the name of **R' Shimon ben Menasya** that a rapist will not pay for the pain inflicted on a besula, since she would anyway undergo that pain with her husband. We see that he looks at the future benefit that the woman has by not going through the pain with her husband.
    - **Abaye** said that others hold like this as well. A Braisa says that if someone causes a woman to miscarry, **R' Yose** says he offsets the payment with the money that would have been spent for a midwife. **Ben Azzai** says he offsets the money for the extra food she would have needed to carry the pregnancy to full term.
- The Gemara earlier told of an incident where someone cut down another person's palm tree. There was a machlokes between the Reish Galusa and **R' Nachman** with regard to how to pasken in that case. The Gemara now says that **R' Pappa and R' Huna the son of R' Yehoshua** paskened in practice like **R' Nachman**, that we assess the damage in relation to sixty trees. The Gemara itself paskens like **R' Pappa and R' Huna the son of R' Yehoshua** when dealing with a palm tree of Arma'ah, and like the Reish Galusa when dealing with a Persian palm tree.
  - **Eliezer Ze'ira** was once imprisoned by the people of the Reish Galusa, because they thought that his publicly mourning of the destruction of Yerushalayim was a sign of haughtiness. He told them that he is a talmid chachom, and therefore has a right to act in that way. He proved it to them by asking them how one would pay for damaging budding dates. When they couldn't answer, he told them it is paid for in relation to a field 60 times its size. When they corroborated this with **Shmuel**, they released him.

### R' SHIMON OMER ACHLA PEIROS GEMURIM...

- The reason for this is, that when the pasuk says “ubi'eir bisdei acher”, which teaches that the mazik pays in relation to the field, that is only for produce that still needs the field. Ripe produce no longer needs the field, and is therefore independently evaluated.
- **R' Huna bar Chiya in the name of R' Yirmiya bar Abba** said that **Rav** paskened like **R' Shimon**.

### MISHNA

- If someone places a stack of grain in another person's field without permission, and the animal of the owner of the field ate the grain, he is patur. If the animal was damaged by the stack, the owner of the grain is chayuv. However, if the grain was placed there with reshus, the owner of the field is chayuv.

### GEMARA

- **Q:** Maybe we should say that the Mishna does not follow **Rebbi**, who says that an owner of a field does not accept responsibility for something placed in his field until he explicitly accepts responsibility? **A: R' Pappa** said, the Mishna is talking about a field where the local people would store their grain and hire a guard. If a person asked this guard permission to place his grain into the field, and the guard allowed him to do so, it is the equivalent of the guard accepting responsibility to guard his grain as well.

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## MISHNA

- If someone sends a fire in the hands of a cheireish, shoteh, or katan, he would be patur in this world, but chayuv under the laws of Heaven. If he sends a fire in the hands of a competent person, the competent person is chayuv.
- If one person brought a fire and a second person brought wood and added it to the fire, the one who brought the wood is chayuv for any damage (because without him the first person could not have done damage). If a person brought wood and a second person brought fire, the one who brought the fire is chayuv (he is the cause of any damage). If another person came and fanned the fire (without which the fire could not have damaged), he would be chayuv for any damage. If the wind fanned the fire, all of them are patur.

## GEMARA

- **Reish Lakish in the name of Chizkiya** said, he is only patur in the first case of the Mishna if he gave a coal to the incompetent, who then fanned it into a fire. However, if he gave them an actual flame, he would be chayuv for any damage, because it is his action that caused the damage. **R' Yochanan** said, even if he gave them a flame he is patur, because it is the control of the incompetent that causes the damage. The person would only be chayuv if he gave the incompetent a fire and thorns and wood chips, because in that case it is clearly his doing that causes the damage.

## SHALACH BIYAD PIKEI'ACH HAPIKEI'ACH CHAYUV...

- Our Mishna used the word "libah" to mean "fan". **R' Nachman bar Yitzchak** said, use of the word "libah" is correct based on a pasuk, and use of the word "nibah" (found in other versions of the Mishna) is correct based on a pasuk as well.

## LIBATAH HARU'ACH KULAN PITURIN

- A Braisa says, if a person blew as the wind was blowing and fanned the fire, the halacha is that if his blowing was enough to fan the fire on its own, he is chayuv. If not, he is patur.
  - **Q:** Why is this different than one who winnows on Shabbos with the help of the wind, in which case he is chayuv!? **A: Abaye** said, the Braisa is discussing where he blew from one side and the wind blew from the opposite side, so he did not help the wind at all. **Rava** said the case is that he blew when a normal wind was blowing and an extraordinary wind then began to blow. **R' Zeira** said the case is where he was just breathing on the fire, not blowing it. **R' Ashi** said, regarding Shabbos he is chayuv, because it is purposeful act, for which one is chayuv on Shabbos. However, with regard to damage, this is considered to be an indirect action, and such an action is not chayuv for damages.

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## MISHNA

- If one sends a fire and it consumes wood, stones, or earth of another person, he is chayuv. This is based on the pasuk of "ki seitzei aish umatza kotzim v'nechal gadish oy hakama, oy hasadeh, shalem yishalem hamavir es habi'eirah".

## GEMARA

- **Rava** asked, why does the pasuk have to list kotzim (thorns), gadish (stacks of grain), kama (standing grain), and sadeh (field)? The reason is, that all are necessary.
  - If it would only say thorns, we would think that one is chayuv for thorns, because people are typically negligent with fire around thorns (because thorns are often burned), but with regard to stacks of grain, where people are not typically negligent, maybe he should not be chayuv. If the pasuk would only state stacks of grain, we would think he is chayuv there because the loss is significant, but thorns which do not produce a significant loss, maybe he would not be chayuv.
  - The reason the pasuk lists standing grain is to teach that just like standing grain is exposed, so too one is only chayuv for fire if it consumes something that is exposed.

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- According to **R' Yehuda** who says that one is even chayuv for concealed items, the word “kama” comes to include things that stand (like animals and trees, which based on the word “sadeh” would seem to be excluded).
  - The **Rabanan** would learn this from the word “oy”. **R' Yehuda** uses the “oy” to teach that one is chayuv for burning *any one* of these items, not only if they are all burned. The **Rabanan** learn this out from “oy hasadeh”. **R' Yehuda** says “oy hasadeh” is only written for stylistic purposes, to be consistent with the previous phrase of “oy hakama”.
- The reason the pasuk lists “sadeh” is to teach that one is chayuv if his fire burned a plowed field or stones (these items don't truly burn).
  - **Q:** Why not just state “sadeh” and then not need the others? **A:** If it would only say “sadeh” we would think that one is only chayuv for items *in* the field (i.e. the produce, but not the field itself).
- **R' Shmuel bar Nachmeini in the name of R' Yonason** said, troubles come to the world only when there are resha'im in the world, and those troubles begin on the tzaddikim. This is learned from the pasuk that the “fire” (troubles) goes out when there are “thorns” (reshaim), and “it consumed a gadish” (the tzaddikim).
  - **R' Yosef** taught a Braisa, the pasuk by the Korbon Pesach in Egypt says “you should not leave the entrance of the house until morning”. Although the Malach Hamaves was sent to kill the Mitzriyim, once it is let loose it does not distinguish between tzaddikim and resha'im, and would in fact begin with the tzaddikim as can be seen from a pasuk. **R' Yosef** cried and said, “are tzaddikim like nothing to be dealt with in this way?” **Abaye** said, we learn from a pasuk that they are punished first so that they not have to be around and witness the tragedies that will come upon the people of their generation.
  - **R' Yehuda in the name of Rav** said, we also learn from the pasuk of the Korbon Pesach that a person should always enter the inn that he will staying at while it is still light, and should leave there only after it has become light again.
  - A Braisa says, we learn from this same pasuk and two others that if there is a plague in the city, gather up your feet (stay in your house).
    - **Q:** Why do we need the other pesukim? **A:** The pasuk about Korbon Pesach only teaches that this should be done at night. The second pasuk teaches that it even applies by day. The third pasuk teaches that one should stay in his house even if there is fear of staying in the house.
    - **Rava** would seal his windows during a plague, based on the pasuk that says that death came in through the window.
  - A Braisa says, if there is a hunger in the city go to another place where there is food, as we see from the pasuk that Avrom went to Mitzrayim when there was a hunger, and another pasuk tells of the 4 metzoras, who went into the camp of Aram to look for food.
    - **Q:** Why do we need the second pasuk? **A:** We would think that one should only travel if there is no fear of mortal danger in the place that he is going to. The second pasuk teaches that they even went to the camp of Aram, which was done at a risk to their lives.
  - A Braisa says, if there is a plague in the city, one should not walk in the middle of the street, because that is where the Malach Hamaves walks, because when he is given permission to kill, he does so in the open. When there is peace in the city, one should not walk on the sides of the road, because since the Malach Hamaves wasn't given permission to kill, he hangs out on the side of the road.
  - A Braisa says, if there is a plague in the city one should not walk alone into a shul, because that is where the Malach Hamaves keeps his keilim. However, this is only if small children do not learn there and if there is no minyan that davens there.
  - A Braisa says, if dogs are howling, it means the Malach Hamaves has come to that city. If the dogs are happy, that means Eliyahu Hanavi has come to the city. However, this is only if there is no female dog with them. If there is, this behavior may be on account of her.
- **R' Ami and R' Assi** were sitting in front of **R' Yitzchak Nafcha**. One asked him to say halacha and the other asked him to say aggadah. When he began one the other didn't let him continue. He said, this situation is similar to a man with two wives – one who is old and one who is young. The young one pulls out all his white hairs and the

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old one pulls out all his black hairs, and he is left bald. **R' Yitzchak Nafcha** told them, I will tell you something that will make both of you happy. The pasuk says “when a fire will go out” which means it went out on its own, and yet the pasuk says the one who lit the fire must pay. This should be darshened as Hashem saying that He must pay for the fire that He lit when he burned down Yerushalayim, and Hashem says He will do so by building a Yerushalayim of fire. That is the aggadic teaching on this pasuk. With regard to a halachic teaching on this pasuk, the pasuk begins discussing the damage by his property (the fire went out on its own) and ends with discussing damage caused by him (the one who lit the fire must pay). This teaches that one is chayuv for fire as he is for his arrows (his force).

- The pasuk says that Dovid Hamelech asked for water from Beis Lechem and the 3 strong men went and brought water to him. The Gemara understands this to mean that Dovid had a halachic question that he was looking to get answered.
  - **Q:** What was he looking to get answered? **A: Rava in the name of R' Nachman** said he was asking whether we hold like **R' Yehuda** or the **Rabanan** regarding a concealed item that was burned. **R' Huna** said there were stacks of barley belonging to Yidden in which Plishtim were hiding, and Dovid wanted to know if was allowed to set them on fire to expose the Plishtim. He was asking whether one may save himself by destroying someone else's property. The Sanhedrin sent back that normally this may not be done, but you, as king, are allowed to break through people's fences and no one may stop you. The **Rabanan or Rabbah bar Mari** said, he was asking whether he could use the barley piles of the Yidden to feed his animals and then pay them back with the lentil piles of the Plishtim. They answered him, for a normal person it would be assur to take something even if there was intent to return it, but you, as king, are allowed to break through people's fences and no one may stop you.
    - **Q:** One pasuk speaks of the piles of barley and another speaks of the piles of lentils. This makes sense according to the last answer, but how would the earlier answer explain this? **A: R' Huna** would say that the case was that the Plishtim were hiding in piles of barley and in piles of lentils.
    - **Q:** According to the last answer, what does the pasuk mean that he saved the piles? **A:** It means that he saved them from being taken and switched.
    - **Q:** How does the first answer (that the question was regarding something that was concealed) explain the two pesukim – one with piles of barley and the other with piles of lentils? **A:** That answer will agree that he asked regarding concealed items, and about one of the other questions mentioned above.
    - **Q:** The pasuk says that Dovid wouldn't “drink the waters” (he didn't want to listen to the kula that they were giving him). This makes sense according to the last 2 answers, because it means that he did not want to be meikel on account of his being king, since it was assur for anybody else. However, if the question was regarding a concealed item, they gave him an answer that didn't permit an issur for him, so why did he not want to listen? **A:** The pasuk means that he did not repeat this halacha in the names of the mighty warriors that risked their lives to get the answer for him, because Dovid had a kabbalah from Shmuel, that we don't repeat a halacha in the name of someone who risked his life for Torah.
    - **Q:** The pasuk says that Dovid “poured it out to Hashem”. According to the last 2 answers, this means that he was machmir on himself. What does this mean according to the first answer? **A:** It means he repeated the halacha in the name of the Gemara, without identifying who said it.

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### MISHNA

- If a fire (that was lit in one's own property) crossed over a wall that was 4 amos tall (into the neighboring property), or over a public road, or over a river, he is patur from damage that the fire caused after crossing over.

### GEMARA

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- **Q:** A Braisa says that if a fire crosses over a wall 4 amos high he is chayuv!? **A: R' Pappa** said, all agree that he would be patur if it crossed over a wall of 4 amos. Our Mishna is discussing from higher to lower and says – he is patur if it was 6 amos, if it was 5 amos, until it is 4 amos (and “until” is meant to include in the category just stated). The Braisa is discussing from lower to higher and says – he is chayuv if the wall is 2 amos, if it was 3 amos, until it is 4 amos (and “until” is not meant to include in the category).
- **Rava** said, when the **Rabanan** said that he is patur if the wall is 4 amos tall, he is patur even if the fire crossed over into a field of thorns (which is more flammable).
  - **R' Pappa** said, but there must be 4 amos from the top of the thorns to the top of the wall.
- **Rav** said, they are only patur if it is a fire that rises straight up. However, if the fire is bent over, he would be chayuv even if it crossed over an area of 100 amos. **Shmuel** said, our Mishna refers to a bent fire, but in a case of a fire that goes straight up he would be patur if it crossed over even a minimal sized barrier.
  - There is a Braisa that says like **Rav**. The Braisa says, when is he patur even if the fire crosses a road? Only if the fire rises straight up. However, if it is a bent fire, and there is wood available for it to feed on, he would be chayuv even if it crossed an area of 100 mil. If a fire crossed over a river or a “shilulis” that is 8 amos wide, he would be patur.

### DERECH HARABIM

- **Rava** said, the Mishna follows **R' Eliezer**, who says in the next Mishna that if a fire crosses over an area of 16 amos, like a public road, he would be patur.

### OY NAHAR

- **Rav** said this refers to an actual river. **Shmuel** said this refers to an irrigation ditch.
  - According to **Rav**, he would be patur even if there was no water in the river. According to **Shmuel**, there would have to be water in the irrigation ditch for the person to be patur.
- A Mishna says, the following things act as a separation in a field for purposes of “peyah” (and would require that peyah be left from both sides of the separation): a river, a shilulis, a private road (that is 4 amos wide), and a public road (which is 16 amos wide).
  - **Q:** What is a shilulis? **A: R' Yehuda in the name of Shmuel** said, it is a place where rainwater collects. **R' Bibi in the name of R' Yochanan** said, it is a channel of water used for irrigation.
    - According to **Shmuel**, certainly an irrigation channel would divide a field. According to **R' Yochanan**, a place where rainwater collects would not separate a field, because they are considered to be puddles.

### MISHNA

- If someone lights a fire in his own property, how far away must he be from a neighboring field in order to be patur if the fire were to travel to a neighboring field and do damage? **R' Elazar ben Azarya** says we view him as if he is in middle of a beis kor (he needs half a beis kor in each direction). **R' Eliezer** says he needs 16 amos, like a reshut harabim. **R' Akiva** says he needs 50 amos. **R' Shimon** says it all depends on the fire.

### GEMARA

- **Q:** How can the Mishna say that **R' Shimon** holds that a person could be chayuv no matter how far the fire was? A Mishna says that **R' Shimon** does give guidelines for a person being chayuv from a fire caused by his oven!? **A: R' Nachman in the name of Rabbah bar Avuha** said, **R' Shimon** in our Mishna means that the distance needed to be patur is all dependent on the height (size) of the fire.
- **R' Yosef in the name of R' Yehuda in the name of Shmuel** said, the halacha follows **R' Shimon**. **R' Nachman in the name of Shmuel** said this as well.

### MISHNA

- If someone lit a pile of grain on fire, and there were keilim hidden in the pile that were burned along with it, **R' Yehuda** says he must pay for anything hidden in the pile. The **Chachomim** say he must only pay for the stack, whether it was wheat or barley (if it was wheat he pays for wheat, if it was barley he pays for barley).

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- If a person sets fire to a stack of grain and there is a goat that is tied to it and a slave that is next to it, and they both get burned along with the grain, he is chayuv to pay for the grain and the goat. If there is a slave that is tied to it and a goat that is next to it, and the slave and goat are killed by the fire as well, he is patur from paying for anything (because he is chayuv misah, and the principle of “kam lei b’dirabah minei” teaches that one does not pay for money damages when the same act will give him the death penalty).
- The **Chachomim** agree with **R’ Yehuda**, that if one sets fire to a mansion, he must pay for everything that is damaged in the mansion, because it is normal for people to keep things in their houses.

### GEMARA

- **R’ Kahana** said, the machlokes is when someone lit the fire in his own property and it went and burned things in someone else’s property. However, if he lit the fire in the other person’s property, even the **Rabanan** would agree that he must pay for everything that was damaged (even the hidden items in the stack of grain). **Rava** said, if that is so, when the Mishna wanted to give a case where the **Rabanan** would agree with **R’ Yehuda**, instead of giving the case of the mansion, it could have stuck to the case of the pile of grain, and given the case of where he lit the fire in the reshush of the owner of the grain!? Rather, **Rava** says that they argue in two things: they argue when a person lights a fire in his own property and it goes and damages in someone else’s property, in which case **R’ Yehuda** says he is chayuv for hidden things and the **Rabanan** say he is patur; and they also argue when someone lights a fire in someone else’s property, in which case **R’ Yehuda** holds that he would be chayuv for any hidden item, even if a wallet was hidden in a stack of grain, whereas the **Rabanan** hold that he would only be chayuv for hidden things that are normal to be hidden in the stack of grain, like the tools used in the process of growing and cutting the grain.

### -----Daf 62-----

- A Braisa says, if a person lit a pile of grain on fire, and there were keilim inside the pile that got burned along with them, **R’ Yehuda** says he must pay for whatever was hidden in the pile. The **Chachomim** say he must only pay for the pile as if it were a full pile of wheat or barley, and we view the place of the keilim as if it was filled with the grain. This is only the case if the person lit the fire in his own property and it went into someone else’s property and burned the pile there. However, if he lit the fire in the other person’s property, he would have to pay for anything hidden inside the pile as well. **R’ Yehuda** would agree that if a person lends a place in his reshush to another person to leave a pile of grain there, and the owner of the grain hid keilim in the pile, and the owner of the property then lit a fire that burned the grain and the keilim, the person would only be chayuv for the grain, and not for the hidden keilim. Also, if he gave him permission to put a pile of wheat there and he instead put a pile of barley, or if he gave him permission to put barley there and he instead put wheat, or even if he was given permission for wheat and he put wheat but put an outer layer of barley, or if he was given permission for barley and put barley there and covered it with an outer layer of wheat, and the owner of the land lit a fire and burned the pile, he would only be chayuv to pay for the value of a pile of barley.
  - **Rava** said, if a person gives a golden dinar to a woman to guard and tells her, “Be careful with this, it is a silver dinar”, if she then intentionally damages it she must pay for a golden dinar, because he can tell her that she had no right to purposely damage it. If she was negligent and that caused it to get damaged, she need only pay for a silver dinar, because she can tell him “I only accepted to watch a silver dinar, not to watch a gold dinar” (which would require a higher level of watching).
    - **R’ Mordechai** said to **R’ Ashi**, you taught this halacha in the name of **Rava**, we learned it from the Braisa (above). Just as there the owner of the field need only pay for barley, because he can say that is all I accepted upon myself to watch, so too here the woman need only pay for a silver dinar for the same reason.
- **Rav** said, I heard something regarding the shitah of **R’ Yehuda**, but I don’t remember what it was. **Shmuel** told him, you heard that according to **R’ Yehuda** who says one is chayuv when his fire burns hidden items, the **Rabanan** instituted the takanah that they instituted for the victim of theft. Just as there the victim may swear as to what was stolen, so too here, the owner of the hidden items may swear as to what was hidden and damaged.



## Daf In Review – Weekly Chazarah

- **Q: Ameimar** asked, did they also extend this takanah to one who was damaged through a “moiser” (an informer)? According to the view that one is not chayuv when his act was one of “garmi” (an indirect cause), a moiser would be patur. The question is according to the view that garmi is chayuv, would we allow the victim to swear regarding what was damaged? **TEIKU**.
- A person once kicked the money storage box of another into the river. The owner of the box claimed to have had certain items in the box. **R’ Ashi** contemplated whether the owner may swear and get paid based on that oath. **Ravina** said to **R’ Acha the son of Rava**, this seems to be answered by our Mishna, which says that the **Rabanan** agree that one would be chayuv for anything in a house that he burned down, because it is normal for people to store things in their house!? **R’ Acha** said, if the owner was claiming that he had money in the box, he would be able to swear and collect. However, the person was claiming to have had jewels in the box. The question is whether it is considered to be normal to store jewels in this type of box. **TEIKU**.
- **R’ Yeimar** asked **R’ Ashi**, what is the halacha if the owner of the house that was set on fire claims to have had a silver cup in the house? Can he swear and collect? **R’ Ashi** said, we make a determination – if he is wealthy and can afford that type of cup, or if he is trustworthy and therefore other people may have given him such a cup to watch, he may swear and collect. If not, he may not swear and collect.
- **R’ Adda the son of R’ Avya** asked **R’ Ashi**, what is the difference between a “gazlan” and a “chamsan”? He said, a chamsan gives money for the item and a gazlan does not. He asked, if he gave money, how can he be called a chamsan? **R’ Huna** has said, if someone is pressured to sell and gives in to the pressure, it is considered to be a valid sale!? **R’ Ashi** said, **R’ Huna** is referring to when the person gives in to the pressure and says he is willing to sell, whereas a chamsan is where the person never agrees to sell.

### MISHNA

- If a spark flew out from under the hammer of the blacksmith and damaged another’s property, he is chayuv.
- If a camel was carrying flax in the reshus harabim, and its flax went into a store and caught fire from a candle in the store and then burned a house down, the owner of the camel is chayuv. However, if the storekeeper had kept his flame outside the store, it would be the storekeeper who would be chayuv. **R’ Yehuda** says, if the candles left outside the store were “ner Chanukah”, the storeowner would be patur.

### GEMARA

- **Ravina** said in the name of **Rava**, from **R’ Yehuda** we can learn that ner Chanuka must be lit within 10 tefachim to the ground, because if not, the storekeeper should not be patur, because he should have put the ner Chanuka higher than any camel with its rider!
  - The Gemara says, this is no proof. It may be that it can even be put up high. The reason why he is patur even when he left it low and available for damage is because since it is done for a mitzvah, the **Rabanan** did not want to bother him to have to light it up high, since that may lead him to not do the mitzvah at all.
  - **R’ Kahana** said, **R’ Nosson bar Menyumei** darshened in the name of **R’ Tanchum**, if ner Chanuka is lit above 20 amos, it is passul, just like the case of a succah or a mavuy that is higher than 20 amos.

**HADRAN ALACH PEREK HAKONEIS!!!**

**PEREK MERUBAH -- PEREK SHEVI’I**

### MISHNA

- The halacha of keifel is more inclusive than the rule of “daled v’hey”, because keifel applies to a living item and to an inanimate object, whereas “daled v’hey” only applies to stolen sheep and oxen, as is stated clearly in the pasuk.

## Daf In Review – Weekly Chazarah

- If a ganav steals from another ganav the item that he had stolen from somebody else, the second ganav does not pay keifel to the first ganav. Similarly, if the second ganav stole from the first ganav a sheep or ox that he had stolen from someone else, and the second ganav then sells or shechts the animal, he would not be subject to “daled v’hey” payment.

### GEMARA

- The Mishna doesn’t say that keifel is also more inclusive in that it applies to a ganav and to a shomer who claimed that a ganav stole the watched item from him, and where it was found that he lied and that the item was never stolen from him (in which case he must pay keifel to the owner), whereas such a person would not pay “daled v’hey”. This seems to support **R’ Chiya bar Abba** who says in the name of **R’ Yochanan**, that such a shomer *would* pay “daled v’hey” if he made the claim about a sheep or ox, and then sold or shechted the animal.
  - Others say that the Gemara asks, shall we say that the Mishna supports **R’ Chiya bar Abba in the name of R’ Yochanan**? The Gemara says, this is no proof, because the Mishna is just giving one example, and is not meant to be an exhaustive list.

### SHEMIDAS TASHLUMEI KEIFEL NOHEGES...

- **Q:** How do we know that keifel applies to all items? **A:** A Braisa says, the pasuk regarding keifel says “ahl kol dvar pasha”, which is a klal, “ahl shor ahl chamor ahl seh ahl salma” is a prat, “ahl kol aveidah” is another klal. We have a klal, prat, uklal, which teaches to include items like the prat. Just as the prat are moveable items and have intrinsic value, so too all items that are moveable and have intrinsic value are subject to keifel payment. This excludes land, which is not moveable, it excludes servants, which are compared in the pasuk to land, and excludes documents, which have no intrinsic value. The pasuk also says that keifel is paid “l’rei’eihu”, which therefore also excludes hekdesch from being paid keifel.
  - **Q:** We should say that just like an ox, donkey, and sheep 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:** None of the pratim are extra, because each could not be learned from the other!? 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 prat of “seh” is extra, and comes to include birds as well.
    - **Q:** Maybe it only comes to include kosher birds, that give off tumah when swallowed, and in giving off some tumah are more similar to a sheep, but non-kosher birds are not included? **A:** The word “kol” in the pasuk is an inclusionary word, and teaches to include all items in the halacha of keifel, which therefore includes non-kosher birds as well.

### -----Daf 63-----

- **Q:** The Gemara initially darshened a klal, prat, uklal, and then said that the word “kol”, which was used as the first klal, should instead be understood as an inclusionary term. The Gemara now asks, 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 keifel) is simply an inclusionary word. **A:** Even if “kol” is normally a klal, in this case it is not, because we already have pesukim to darshen a klal, prat, uklal regarding keifel. Therefore, this word “ahl kol dvar pasha” must be written as an inclusionary term.
  - **Q:** Now that we have established that “kol” comes to include all items, what does each example in the pasuk (ox, donkey, sheep, garment) come to exclude? **A:** One excludes land, one excludes slaves, one excludes documents, and “garment” excludes any item that does not have a “siman”. The words “ahl kol aveidah” are needed for the drasha of **R’ Chiya bar Abba**, who said in the name of **R’ Yochanan**, that if a

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shomer aveidah falsely claims that the found item was stolen from him, he must also pay keifel to the owner.

- A Mishna says, if a person gave an item to a shomer chinam, and asked the shomer “where is the item I gave for you to watch?”, and the shomer said “I lost it” (which would make him patur from having to pay), and the owner says “I hereby make you swear that you truly lost it” and the shomer says “Amen” (which makes it as if he made the oath), and witnesses then testify that the shomer ate or used the item, the shomer must pay for the principal value. If the shomer admitted on his own that he swore falsely, he must pay for the principal, for an additional fifth, and he must bring an asham. If, when the owner asked him for the item the shomer responded “it was stolen from me”, and the owner says “I hereby make you swear that it was stolen” and the shomer says “Amen” (which makes it as if he made the oath), and witnesses then testify that the shomer ate or used the item, the shomer must pay keifel. If the shomer admitted on his own that he swore falsely, he must pay for the principal, for an additional fifth, and he must bring an asham.
  - **Q:** We see from the Mishna that the shomer only pays keifel when he claims it was stolen from him, and not when he claims to have lost it. Moreover, even if he claims it was stolen, it seems that he will only pay keifel if he had sworn falsely. How do we know these halachos? **A:** A Braisa says, the pasuk regarding a shomer claiming that the item was stolen says “ihm yimatzei haganav”. This refers to the shomer who claims the item was stolen when in fact he kept it for himself. You will suggest that maybe this is referring to a case when the item was actually stolen, but that cannot be, because the pasuk later says, “if the ganav is not found” he must pay keifel, which certainly refers to the a case of when the shomer made a false claim that the item was stolen. There is another Braisa that says, “ihm yimatze haganav” refers to a case of when it was actually stolen. You will suggest that maybe this is referring to a case of where the item was not actually stolen, but that cannot be, because the pasuk later says, “if the ganav is not found” he must pay keifel, which certainly refers to the case of when the shomer made a false claim that the item was stolen. Therefore, it must be that the earlier pasuk is referring to where it was actually stolen. We see that both Braisos hold that later in the pasuk the case being discussed is when the shomer makes a claim that the item was stolen (although it was not) and the shomer must pay keifel.
    - **Q:** How do we know this only applies when he swore? **A:** The pasuk says “the owner shall bring the shomer to Beis Din”. We learn from a gezeira shava that this refers to his making an oath.
    - **Q:** According to the second Braisa it makes sense why both pesukim are needed – one to discuss a case of an actual ganav, and one to discuss the case of a false claim of ganav. However, according to the first Braisa (where both refer to a false claim of ganav) why are 2 pesukim needed? **A:** One is needed to teach that if the shomer makes a false claim that the item was lost, he will not have to pay keifel.
      - **Q:** How will the other Braisa learn this? **A:** The pasuk could have said “ganav” and instead says “haganav”, which teaches this halacha.
      - **Q:** How will the Tanna of the other Braisa darshen the word “haganav”? **A:** He uses it for the drasha of **R’ Chiya bar Abba in the name of R’ Yochanan**, who says that a shomer who falsely claims it was stolen is subject to the halachos of keifel *and* to the halachos of daled v’hey.
      - **Q:** How will the Tanna of the second Braisa learn this? **A:** He will say, the pasuk discussing a true ganav and the pasuk discussing the shomer who made a false claim of ganav are right next to each other, which creates a hekesh between the two, teaching that all halachos of a ganav apply, and we may not refute a hekesh.
      - **Q:** According to the first Braisa, how do we know there is a halacha of keifel by a regular ganav? It can’t be learned from a kal v’chomer from a shomer, because then we should require the ganav to swear like the shomer, under the principle of “dayo”!? **A:** We learn that a regular ganav must pay keifel from the Braisa taught by **Chizkiya**. The Braisa says, the pasuk says “ihm himatzei timatzei biyado hagneiva mishor ahd chamor ahd seh chayim shnayim yishalem”. The pasuk could have just said “shor” and “gneiva” and we

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could have learned all other items from that? The Braisa says, if it would only say those 2, we would say that just as an ox is valid for a korbon, so too only other items valid for a korbon, which would have included a sheep. From the fact that the pasuk explicitly said “sheep”, the pasuk must come to include all items. If so, why didn’t the pasuk just say ox, sheep, and gneivah? We would think that only animals whose firstborn become kadosh are included. From the fact that the pasuk explicitly says “donkey”, the pasuk must come to include all items. If so, why didn’t the pasuk just say ox, sheep, donkey and gneivah? We would think that only animals are included. From the fact that the pasuk explicitly says “chayim”, the pasuk must come to include all items. This Braisa serves as the source for keifel payment by a regular ganav.

### -----Daf 70---64-----

- **Q:** The Gemara had quoted a Braisa taught by **Chizkiya**, that said, the pasuk could have said the words “shor” and “geneiva”, and we could have learned out everything else from it. Now, how can you say that the word “shor” would act as a prat, then followed by the word “gneiva” which acts as a klal, and a prat followed by a klal come to include all other items, when in fact the word “gneiva” is written before the word “shor”, which should create a klal followed by a prat, in which case all is limited to the item listed in the prat!? **A: Rava** said, the Braisa means to say that the word “chayim” later in the pasuk is a second klal, creating a klal, prat, uklal, which is why the Braisa says that all included items will have to be similar to shor.
  - **Q:** The first klal and second klal are very different (the first klal includes even inanimate objects, whereas the second klal only refers to live objects), and they therefore cannot combine into a klal, prat, uklal!? **A:** The Braisa follows the **Tanna D’vei R’ Yishmael**, who says that a klal, uprat, uklal is appropriate even in this case.
  - **Rava** continues and explains, the Braisa was asking, why do I need the word “ihm himatzei timatzei”, which includes all items, when all items are already included from the klal, prat, uklal!? The Braisa answers, that we would say only things like a shor, which can be brought on the Mizbe’ach, are included, but not other items. The Braisa then continues and explains what is taught by the words “seh”, “chamor”, and “chayim” and says that everything would have been included. That is why the Braisa has the question as to the need for the words “ihm himatzei timatzei”.
  - **Q:** Based on this explanation, the Braisa has a good question – why are the words “ihm himatzei timatzei” needed!? **A:** The second klal is the word “chayim”. That would teach that only live things are included, not other things. The words “ihm himatzei timatzei” come to include *all* items.
    - **Q:** How can the words “ihm himatzei timatzei” be used as two separate klals? They are written right next to each other, without any prat in between them!? **A: Ravina** said, it is like they say in EY, when two klals are written together, we view them as if the prats are written in between them. Therefore, we darshen as if the word shor is written between them. We can’t say that it teaches that the item must be live, because we would learn that from the word “chayim”, therefore it must come to teach that even items that are not live are included. The word chamor comes and teaches that only something with a siman is included.
    - **Q:** Based on this, what is the word “seh” coming to teach? **A:** Rather, we must say that the psukim should be darshened as a ribuy umi’at. Therefore, it comes to include all items. The prats come to exclude land, slaves, and documents, and the words “geneiva” and “chayim” teach the halacha of **Rav**, that the value of the stolen item is assessed based on the time it was stolen.
- **Q:** According to the Braisa quoted earlier that said that one pasuk about keifel discussed a regular ganav and the other pasuk referred to a shomer who claimed that the item was stolen from him, what does the Braisa darshen with the pasuk of “ihm himatzei timatzei”? **A:** It will be used for the drasha of **Rava bar Ahilai**, who says that it teaches that if a person admits to being chayuv a penalty, and then witnesses testify that he is guilty, he will be patur from having to pay the penalty.

## Daf In Review – Weekly Chazarah

- **Q:** How will the other Braisa learn this halacha? **A:** He will learn it from the pasuk of “asher yarshi’un elohim”.
  - **Q:** What does the other Braisa darshen from the pasuk of “asher yarshi’un...”? **A:** He learns from it that one who admits to being chayuv for a penalty is patur from having to pay the penalty.
    - The other Braisa will hold that if one admits to guilt for a penalty and then witnesses testify to his guilt, he would be chayuv to pay the penalty.
- **Q:** According to the Braisa that says that one pasuk is referring to a ganav and the other to a shomer, what do all the prats in the pasuk come to teach? **A:** It was all written and repeated just for the sake of the chiddush, which is that one who admits liability to a penalty is patur even if witnesses later testify to his guilt as well.
- **Q:** Why don’t we say that a ganav is only chayuv keifel if he swore that he was innocent? **A: Abaye** explained the statement of **R’ Yaakov** in a Braisa to mean that the only reason the Torah has to separately discuss a ganav paying keifel (rather than it being learned from a shomer with a kal v’chomer) is to teach that he is chayuv even if he didn’t swear.
- **Q:** A Braisa uses the pasuk of “ihm himatzei timatzei” for a different drasha!? **A:** The fact that it doesn’t say “himatzei” twice, or “timatzei” twice, and instead changed the verbiage, teaches to allow for multiple drashos.