

# Bava Kama Kitzur Notes #3

## Shiur 38 (17b-18a)

1. Were dinnim learned thru 13 middos already known before they were darshined?  
**Geonim:** Yes. **Rambam Intro to PHM:** No. New dinnim are being נתחדש.  
  - a. **Rosh Chullin 1st Prek:** New Dinnim derabanan are only chal ולהבא מכאן, but don't impact things למפרע. What about by new dinnim deoraisah? **Chazon Ish:** Mikan Ulehaba.
2. What's the problem with Rambam's "complete" list of מהל'מ? a) **Chavos Yair:** Many things are left out, such as tzroros, and he says there's no machlokes but our gemara by tzroros has an explicit Machlokes?! **Kismas Ha'emek:** Rambam thinks הלכתא גמירי לה doesn't mean a HLM, but a tradition whose source we've forgotten.
3. Is the klal of חצ'ינ משלם חצ'ינ טמא או שבוז אינו טמא davka? **Tosfos 17b:** No -- קנה בקומטו של זב --  
**[Rashba:** Yes, that case is meshunah and would therefore be חצ'ינ as well.]
4. Does a Zavah need מים חיים like a Zav? **Geonim:** Yes. **Explicit Tosefta:** No.
5. How do we know tum'ah is only transferred/removed based on מקומות שבגלוי? Pasuk says מים שטף במים -- וידין לא שטף במים -- learned out from hands which are galui.
6. Is דין דאורי' או דרבנן by mikvah a ראווי לביאת מים? **Tosfos Kiddushin 25b:** Deoraisah.  
**Ritva:** Derabanan.
7. Do we hold בטר מטיקרא או בטר סוף? Rava: Mesupak. Rabbah: Certain by מראש כלי זורק. Which way is Rabbah certain? **Rashi + Most Rishonim:** בטר, מעיקרא פטור, so the 2nd is pattur. **Milchamos (based on Rif):** בתר תבר מנא; even the first one is pattur. The 2nd person is pattur either way since he broke something which had no value the moment it was destroyed.
  - a. What's the machlokes Rashi + Ramban whether it's shayach to be mechayev the 2nd person? **Ramban:** Value is always assessed by למכור בשוק, and a falling kli is worth 0. **Rashi:** We don't assess based on this specific kli, but assess based on other keilim of the same type in the shuk. Halacha ignores the fact that the kli is moving/falling.
  - b. **Prof. Kanarfogel:** If so, **Rashi 83b** is difficult since he says we assess a nizak based on what he'd sell as an Eved Ivri since he happens to be a Jew, and we can't sell him as an Eved Kenani. **[Rosh there disagrees.]** Why can't we look at the "comparable value" of selling a similar non-Jewish person? *(He answers that Rashi really holds there like the Rosh that you pay the value of a Eved Kenani and that which Rashi wrote Eved Ivri was just to tell you that a person has a Shavyus Haguf which allows him to be evaluated. But Ein Hachi Nami Rashi holds you pay the value of Eved Kenani.)*
    - i. How do we assess value of דמי עלי? **Brisker Rav:** Talui on above machlokes Rashi/Rosh. **Tosfos Kiddushin** says like Rosh, and **Rashi** says עבד עברי, leshitaso.

8. What was gemara's question of לצרורות? **Rashi** quotes two pshatim whether this gemara is about normal tzroros or צרורות בשינוי. **Machlokes Acharonim** which pshat he likes more. **Tosfos** ends up saying he was asking both questions at once

Shiur 39 (18a)

9. Do all hidden parts have to be ראוּי לביאת מים by mikvah? **RAE Hilchos Niddah**: Those areas so much בּסתר that they're never seen are called בלוע and don't need to be ראוּי.
10. Do we say Bassar Me'ikara even when damaging through an intermediary? **Tosfos 17b**: No. **Ketzos 390:1** points out **Rosh Siman 2 + Nimmukei Yosef 22a** (by starting a fire on ער״ש) and the **Tur** disagree.
- a. Why isn't one chayav for having a fire lit throughout shabbos? **Nimmukei Yosef**: The entire burning is מתייחס to the sha'as ma'aseh when I lit it since בּתר מעיקרא אַזלינן. **Nesivos + Chemdas Shlomo**: Even though בּתר סופו, there's no issur melacha on Shabbos בשב ואל תעשה. [See **Rashi Sanhedrin 66**]
11. **Tosfos 25a** asks how we can have a concept of dayo, if that would ruin every kal vechomer. **Tosfos HaRosh** explains we cannot change an already existing din through a kal vechomer. But to make a new din would be possible. [See inside – not pashut.]
12. **Rashi 18b**: If an animal is הטיל גללים, why is it considered tzroros and not shen considering there was הנאה להיזקה? Either 1) Since it was משלשלת and had no hana'ah, or 2) Since all הטילה גללים is automatically Regel and not Shen, since שן is only shayach by hezeka degufa, and not once it's separate from the animal. [Cf. Tosfos 17b]

Shiur 40 (19a-19b)

1. If beheimah moves an Eitz Aroch in רה״ר, which damages in רה״י, is he chayav? **Rosh beda'as HaRif**: No, since אורחיה. **Rosh beshem Ri**: Yes, like מרה״ר לרה״י צרורות

Shiur 41 (20a)

1. To what extent is an אדם המזיק chayav on Onsim? **Tosfos 27b**: Pattur on אונס גמור and חייב for אונס כעין גניבה. **Ramban end of BK + BM 82b**: Chayav even on אונס גמור unless there's פשיעת הניזק. **Rambam**: Pattur on אונס גמור but chayav on the rest.
2. What's pshat in פטור בו פטור? **Rebbe**: Peshias hanizak is a פטור
- a. Do we apply the above klal to אדם הזיק? **Tosfos 27b + 32a**: No.
3. What's the din of משלמת מה שנהנית based on? **Ketzos 391:8 + Shu"t Harashba 4:13**: Based on ממוני גבך, that it's a form of halva'ah which needs to be repaid; not midin mazik. Big nafka minah that you don't pay from Iddis but זיבורית [no issue of תנעול] (דלת) (*The Shu"t Harashba disagrees with the Ketzos and says that here you would also pay בינוני. The Chazon Ish says that the Rashba holds its a Lo Plug [see F.N. on Ketzos].*)
- a. Unclear why one isn't chayav on **101a** by monkey dipping garment in paint.
4. How do we paskin re: חזותא מילתא היא, e.g. nonkosher food coloring? **Rema**: Muttar. **Pri Chaddash**: Assur. **Darkei Teshuva beshem חת"ס תלמידי**: Since it's a safek in the gemara, we go lechumrah on deoraisahs and lekula on derabanans.
5. What's the case of מתגלגל? **Rashi**: Animal dragged it from one reshus to the other and ate it -- in which reshus do we assess the היזק? **Tosfos**: No - gemara 21b says explicitly to follow the מקום האחרון; rather, animal ate a rolling item before it rolled into the 2nd reshus. Do we consider it as if it were already in the 2nd reshus?

6. **Gemara BM:** By Sechirus Po'alim, the Torah imposes the chiyuv on the boss to pay even if there's no hischayvus mida'as. Same with שכירות בתים.

### Shiur 42 (20b)

1. What's gemara's question by זנוזל"ח? **Rebbe:** Is there an institution of תשלומין when there's no hefsek whatsoever, or only when there's a loss -- למלא את החסרון?
2. How could Rami Bar Chama have Rav Chisda be משמש him if **Yerushalmi** says קדושת כהונה שבמקדש בגדי כהונה while he's wearing כהונה? **Mishnah Lemelech Avadim 3:8:** it's only a problem if the kohen isn't being paid, but Rav Chisda was "getting paid" through Torah he was being taught. **Rebbe** based on **Aruch Hashulchan OC 128:67 + Rav Soloveitchik** (based on **Rabbeinu Tam** quoted in **Mordechai Gittin 461**): The issur of המשתמש בכהן is only while he's wearing כהונה since that's a din in שבמקדש.
3. Which walls are we talking about? **Rashi:** Inner fence. **Tosfos:** Outer wall.
4. In which cases is מבריה ארי chayav? **Tosfos Kesubos 107b-108a** [see also BK 58a] has two shitos: a) Whenever it's an אומדנא דמוכח that one would have wanted to pay for the shevach (that's the sevarah behind the answer that the damage is definite). b) Whenever there's שבח בעין.
  - a. **Rema CM 364:4** paskins like the first shitah, but Rav Baruch Ber (ברכ"ש ב"מ כ"ו) quotes **Reb Chaim** as thinking the other answer was correct since in that case you have a partial ownership in the land.
  - b. **Reb Chaim Malveh 21:** Only when there's a stirah between ארעי אשבח and that the creator of the שבח should own the item do we say they become shutfin and the owner has to pay off the creator some minimal amount. But by planting in a שדה של הפקר, it's pashut that the creator of the שבח owns it all. That's why **Yerushalmi** says if one plants in a שדה של הפקר, it's חייב בתרו"מ, since the planter owns the peiros midin משביח. He disagreed with **פני משה** who thought the planter was koneh the land with קנין חזקה, since chazaka only works if there's a ta'anah along with the chazaka, and there's no ta'anah here.
  - c. Our gemara reads better if you learn it's based on אומדנא דמוכח and not שבח בעין.
5. What are the two types of Meilah? **Tosfos Kiddushin 56a:** של הנאה + של הוצאה. It's only מעילה של הוצאה with יוצא לחולין.
6. Can a kattan be koneh mideoraisah? **Tosfos 68b:** Yes if there's דעת מקנה. **Shach** doesn't like this based on **Yerushalmi**, but we assume like Tosfos based on the **Bavli**.
7. Why is the giver of hekdeshe mo'el and not the receiver? **Rebbe** explaining **Ran Nedarim 35a beshem Tosfos:** Since da'as koneh wasn't needed since there was da'as makneh (like **Tosfos Sanhedrin 68b**).

### Shiur 43

1. **Nimmukei Yosef** quotes **Ramah** (who is really quoting **BK 97a**) that a ganav doesn't need to pay tashmishin for the item he stole.
2. Which kinyanim are koneh shelo mida'ato? **Ketzos:** יד + חצר, but not משיכה + הגבהה.

3. Is a kinyan geneivah necessary to be chayav in Onsin? **Pashtus from 79a**: Yes. **Tosfos Yom Tov ibid.** shows **Rambam Gneivah 2:16** might disagree.
4. Nafka Minas of whether גנב did a Kinyan Gneivah: a) Is he chayav be'onsim? b) Is he chayav kefel? c) **Bava Kama 97a** - He won't be chayav for tashmishin he does with it. d) According to **Rashi Chullin 40a ד"ה רבוצה**, the Ganav can be osser the item by bowing down to it (**Tosfos** disagrees)
5. Karka Eina Nigzeles. Does that mean this doesn't violate לא תגזול? **Tosfos BM**: Yes. **Rashi + Rambam**: No -- you still violate לא תגזול, based on **Sifrei**.
6. Why isn't the gizbar mo'el when he puts a beam on his skylight? **Tosfos**: He had no intent to steal it. **Rebbe beda'as Rashi**: a gizbar is inherently different since he's כיד הקדש, like Gizbar Shel Aniyim on **36b**.
7. Can you do a מעמד שלשתן through zachin if the mekabel isn't around? **Pashtus** is not, but **Shach** thinks you can.

#### Shiur 44 (21a)

1. When do we look at the net benefit/gain and when don't we? **Tosfos Chullin 8a**: By hana'ah from AZ, we look at net benefit, while by issurei Shabbos, we don't care if it's a net loss so long as the act is inherently one of benefit (e.g. shechita).

#### Shiur 45 (21a-b)

1. **BK 29b**: Two dinnim that aren't birshuso but are considered as if they are: 1) Chametz on Pesach and 2) Bor Birshus HaRabbim.
2. When do we say Chachamim can be Oker Davar Bekum Va'asseh? a) למגדר מילתא. b) By mamonos, based on הפקר ב"ד הפקר. c)
3. Why is kofetzes chayav? **Rashi + Ba'al Hame'or**: It's משונה (chayav only חצ"י). **Rif, Ramban + others**: It's reshus hanizak if you need to jump/climb to access it.

#### Shiur 46

1. When/to whom does the din of יום או יומיים apply? Only to the owner of the עבד. **Rambam** is mechadesh the petur only applies when you beat him to start working for you; he sounds like he's against **BK 90a** though.
2. What was the gemara's הו"א for why המדליק את הגדיש is pattur when the eved is tied up? **Pashut pshat/Rashi**: קלב"מ. **Griz + Chiddushei Haran in Sanhedrin**: Pattur on the *value of the person* due to דבי חזקיה.
3. Does משום חצ"י apply to just Nezikin or other dinnim (e.g., Rotzeach) as well? **Chiddushei HaRan ibid., Gra 418**: Only Nezikin. **Tosfos Sanhedrin 77, Rashi here, Nimmukei Yosef here**: All Dinnim. **Rebbe**: We assume like Rashi/Tosfos lishmah on machine-manufactured items.
  - a. [**R' Moshe Soloveitchik** thought there was no need to insist on hand-made Shmurah matzos. **Rebbe** thought there's a hiddur to fulfill the Ran + Gra.]
4. When can we say קלב"מ even when it's not at the exact same moment? **Kesubos 31a**: Machlokes Amoraim whether the kove'a is that it's מעשה חד or that it's בעידנא of the מחייב. **Tosfos 22b** assumes like the amarah that מעשה חד.
  - a. **Shu"t Halichos Eliyahu (R' Eliyahu Feinstein)** argues the 2nd opinion would only be potter by חץ זורק if it was within the 4 amos of the zorek.

5. How did Chazal know קלבי"מ applies to במחותרת בא where the nidon won't ever end up getting the death penalty? **Afikei Yam: The Mechilta** dashins אין לו דמים to mean the rodef isn't chayav mamon.
6. If an arsonist lights a fire, and killing him won't help the victim, does he currently have a din rodef and subsequent petur of קלבי"מ? **Rashba**: Yes, based on our gemara.
  - a. Is one allowed to kill a Rodef who is killing ע"י גרמא despite that he won't be chayav misah for his act? **Minchas Chinuch** isn't sure.

#### Shiur 47 (22b)

1. What are the two types of צער בע"ח? **Rebbe**: a) Actively causing pain to animals is pashut deoraisah. b) An owners responsibility to help his animal when it's in pain is the discussion in **BM 32b**.
2. How did Chazal know that the עדי"ז payment goes to the נידון they were trying to harm? **Yereim**: לאחיו ועשיתם לו כאשר זמם לעשות, לאחיו. **Rebbe**: This explains why עדי"ז's death penalty is considered "מיתה לזה" and not למיתה לשמים, since it's "owed" to the נידון.
3. Will Eidim Zomemin get malkus if they *succeeded* in giving someone malkus? What's the machlokes based on? **Rambam Eidus 20:2** -- Yes. **Ra'avad**: No.
  - a. **Rogotchover (+Radvaz?)**: Ra'avad learned the petur of עשה כאשר was based on אעמה"ד, and that it applies to malkus. Rambam learned the general petur of עשה is just based on בזמן שאחיו קיים — לעשות לאחיו (since the punishment has to be "paid" to the defendant). By malkus, he's still kayam, so they get malkus.
4. Is a murderer's death penalty considered למיתה להרוג או מיתה לשמים? **Rebbe Rivam** thought it was למיתה לזה, which is why he had to give the answer of Rodef. **Rabbeinu Tam** thought it was למיתה לשמים, so was pattur without coming onto Rodef. [see main notes]

#### Shiur 48 (22b-23a)

1. If someone murders a baby within 30 days, he's pattur since it's a safek nefel.-- why don't we say that רוב וולדות aren't nefalim and he's chayav Misah? **Maggid Mishnah Yibum 1:5**: This takana was originally meant to be a chumrah, that if a baby died within 30 days, the woman would need chalitzah, since Chachamim treated baby as a נפל ספק. To be consistent, they had to introduce this kula by Retzicha as well.
2. How did Tannaim know a Jew isn't chayav misah for killing an עובר? **Meiri + R' Shlomolle Vilna**: Torah is מחייב דמי וולדות and we don't say קלבי"מ.
3. What level issur is abortion? **Some**: Muttar. **Others**: Derabanan. **Tosfos**: Issur of Chavala. **Rambam**: Issur Retzicha. Nafka Minah for when it's medically recommended.
4. If קלבי"מ, should one still pay שמים ידי שמים? **Rashi/Tosfos 70b**: Yes. **Panim Yaffos**: אסון in lashon of pasuk that it's just not בפלילים when there's an אסון מדוייק.
5. When dmei vlados go to ba'al, is it that the ba'al gets to take peiros entitled to his wife, or that the dmei vlados go straight to the husband? **Rambam based on BK 49a**: Woman is entitled to collect. **Ra'avad** disagrees.
  - a. **Rebbe**: Tosfos assumes Ba'al is entitled directly, since he calls it מיתה לזה וממון לזה

#### Shiur 49 (23a)

1. Are Koach Gavra and Ma'aseh Adam the same thing? **Tosfos 4b + Dvar Avraham** assumed yes, such that nezikin שני בכח שני would be pattur and שני כח שני would prevent issue of המקבל טומאה. **Chazon Ish + Reb Chaim Shcheinim 11:1** disagree.
2. Does כח שני apply when it isn't המונע? **Dvar Avraham**: Yes. **Kozhoglover + Chazon Ish CM 1:5 based on MA in Netillas Yadayim**: No.
3. Do our sefarim have קדושת ספרים? **Tosfos Shabbos 115b** has an opinion that paper has the status of a sefer. **Taz YD 271:8 + MA OC 284** both assume printing press sefarim may have a din of sefarim. **Chazon Ish + Rav Soloveitchik**: No -- the pages aren't connected to each other and the text is on two different sides of the page.
4. What are all inyanei kedusha based on? **Rav Chaim Velozhiner**: Pesukim in תנ"ך
5. If an animal does a hezek in a meshuneh way, is it's subsequent אכילה considered normal שן או משונה? **Rashi**: קרן. **Rosh 2:3**: Shen.
6. What would the owner pay for the חררה if אצל כלב? **Rashi**: חצי"ג since the digging is meshuneh. **Rosh + Tosfos (Iefi Maharsha)**: פטור מכלום; it's גמור אונס

#### Shiur 50 (23b)

1. Why would we think כחצר המזיק דמי? **Rebbe**: Like a human's יד is always כחצרו to effect a יד, קנין יד, even in the חצר המוכר.
2. Why doesn't a goy pay for stealing? **Rashi (eiruvim?)**: קלבי"מ since he'll be killed. **Tosfos**: Torah wasn't mechadesh a chiyuv tashlumin for goyim in these cases.
3. Do we assume a nizak has to fence his fields for the mazik to be chayav? **Rav Yosef + Rif**: No. **Abayei + Rabbeinu Chananel**: Yes.

#### Chazara Shiurim

1. Definition of chayah or beheima is talui on the shape of the horns. **Shach** writes we don't eat cheilev of a chayah without a mesorah, since it's difficult to know what's a chayah and wants a בהמה.
2. **Rambam** and **Ramban** have a machlokes whether dinnim deoraisah are nichlal in pasuk of לא תסור (see **Brachos 19b**). Nafka Minah "of life and death" for whether someone is a zaken mamre when he argues against a din derabanan; **Ramban** disagrees לשיטתו since it's not לא תסור. בכלל לא תסור. He thinks the real mekor is ויגדך ושאל אביך. This is difficult since that pasuk sounds like an eitzah more than a mitzvah. **Rav Elchanan** explains in קונטרס דברי סופרים that the real source for dinnim derabanan is a sevarah that it's the ratzon haTorah. Once someone has a hekef of the entire law, they can teach you what the Ratzon HaTorah is. The pasuk in שיר השירים מ"א כי טובים דודיך מ"א is learned by the gemara to teach that the fulfillment of dinnim derabanan are more chaviv to HKBH than the Torah itself! From our perspective as well, we like תורה שבע"פ more than תורה שבכתב since we develop it ourselves.
3. **Rebbe**: The reason Ramban thinks the thrower wouldn't have to pay anything is because he didn't do מעשה היזק, and this is like שאינו ניכר היזק.
4. Koach Kocho in Kol Hatorah Kula: By Shabbos, **Rashi** learns it's a melacha of disha when you do so through כח שני. One could say this כח שני is different than כח שני when it's המונע. By Galus, one isn't chayav for כח שני. Have to figure out what's the rule and what's the exception.

5. **Tosfos** asks why the monkey case on **101a** doesn't have to pay for the hana'ah. But we don't really understand the answer.
6. **Rambam** doesn't count returning Ribbis as a Mitzvah, and **Ramban Mitzvah Sheshachach 17** says he forgot this and it *is* a mitzvah. Megillas Ester defends Rambam that he thinks Ribbis is a form of Gezel, so is subsumed in והשיב את הגזילה. [Rebbe said Ritva disagrees I think, but I missed exactly what he said.]
7. **Meiri quoting others**: א קלבי"מ התחייבות מדעת isn't negated by קלבי"מ. We don't paskin this way.
8. **Rambam** paskins a non-Jew can't do sirus or harkavas ha'ilan, but they aren't chayav misah.
9. Some were possel an אתרוג המורכב since it's a מה"ב; **R' Elchaim Margalyos** disagreed and thought it wasn't a מה"ב since there's no new dinnim that's chal on the peiros, unlike other cases.