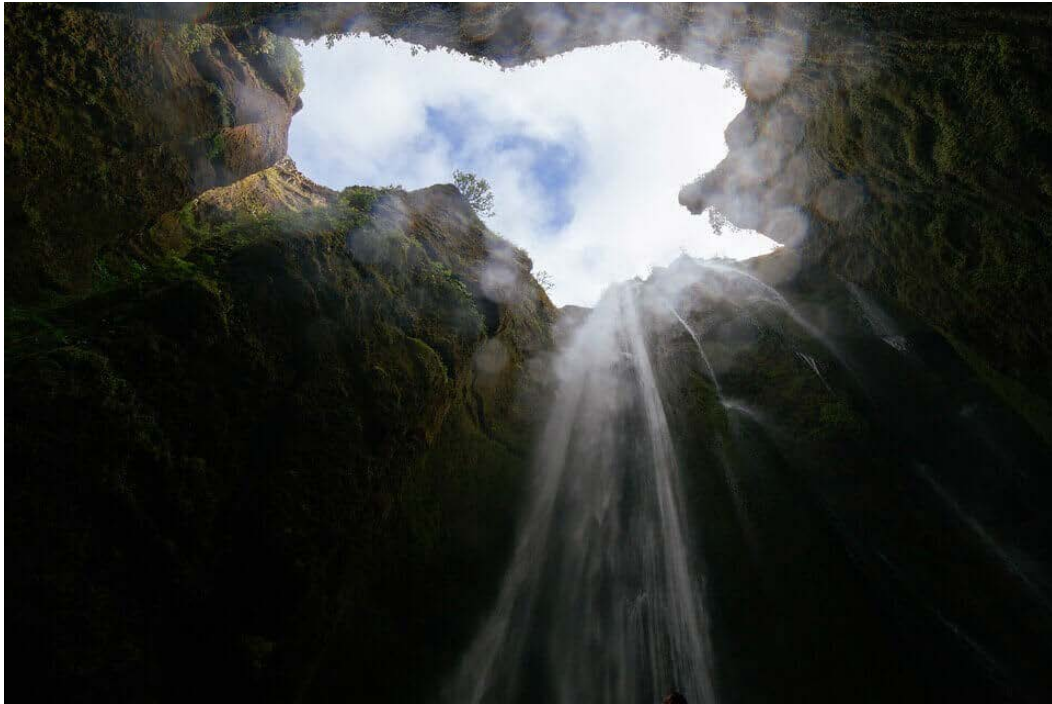


## זְכוֹר נְשֵׁי רַחֲלִים בְּזִמְנֵן לִי: Daf Ditty Bava Kamma 50



תְּנוּ רַבָּנָן: מַעֲשֵׂה בְּבֵתוֹ שֶׁל נְחוּנְיָא חוֹפֵר שִׁיחִין שְׁנַפְלָה לְבוֹר גָּדוֹל,  
בָּאוּ וְהוֹדִיעוּ אֶת רַבִּי חֲנִינְא בֶן דּוּסָא. שָׁעָה רִאשׁוֹנָה אָמַר לָהֶם:  
שְׁלוֹם. שְׁנֵיָה אָמַר לָהֶם: שְׁלוֹם. שְׁלִישִׁית אָמַר לָהֶם: עָלְתָה.

Having mentioned the deeds of Neḥunya, the Gemara relates that **the Sages taught: An incident** occurred **involving the daughter of Neḥunya the ditchdigger, where she fell into a large cistern** and no one could extricate her from it. **They came and informed Rabbi ḥanina ben Dosa** so that he would pray on her behalf. When **the first hour** had passed from the time of her fall, **he said to them:** She is at **peace** and unharmed. After the **second** hour, **he said to them:** She is at **peace**. After the **third** hour, **he said to them: She has ascended** from the well, and indeed this was the case.

אָמְרוּ לָהּ: מִי הֶעֱלָךְ? אָמְרָה לָהֶם: זָכַר שֶׁל רַחֲלִים גִּזְדָּמָן לִי, וְזָקֵן  
אֶחָד מִנְהִיגוֹ. אָמְרוּ לוֹ: נְבִיא אַתָּה? אָמַר לָהֶם: "לֹא נְבִיא אָנֹכִי, וְלֹא  
בֶן נְבִיא אָנֹכִי", אֲלָא כִּךְ אָמַרְתִּי: דָּבַר שְׂאוֹתוֹ צְדִיק מְצַטְעֵר בּוֹ –  
יִפְשֵׁל בּוֹ זְרַעוֹ?

**They said to her: Who brought you up out of the well? She said to them: A male sheep, i.e., a ram, happened to come to me, and a certain old man, i.e., Abraham, was leading it, and he pulled me out. They said to Rabbi ḥanina ben Dosa: Are you a prophet? How did you know she had ascended? Rabbi ḥanina ben Dosa said to them:**

יד והצתי אש בחומת רבבה, ואכלה ארמנותיה; בתרועה ביום מלקמה, בסער ביום סופה. 14 So will I kindle a fire in the wall of Rabbah, and it shall devour the palaces thereof, with shouting in the day of battle, with a tempest in the day of the whirlwind;

**"I am no prophet, neither am I a prophet's son" (Amos 7:14), but this is what I said to myself: Shall the offspring of Nehunya stumble by means of the very matter which distressed that righteous man?**

אָמַר רַבִּי אַחָא: אַף עַל פִּי כּוֹ, מִתּ בְּנֵוּ בְּצָמָא. שְׁנַאֲמַר: "וּסְבִיבִיו  
נִשְׁעָרָה מְאֹד" – מְלַמֵּד שֶׁהַקְּדוֹשׁ בְּרוּךְ הוּא מְדַקְדֵּק עִם סְבִיבִיו  
אֲפִילוֹ כְּחוּט הַשְּׁעָרָה. רַבִּי נְחוּנְיָא אָמַר מֵהָכָא: "אַל נַעֲרֵץ בְּסוּד  
קְדָשִׁים רַבָּה, וְנוֹרָא עַל כָּל סְבִיבִיו".

**Rabbi Aḥa says:** Although Nehunya ensured that others would have water, even so, his son died of thirst, fulfilling that which is stated:

ג יבא אלהינו, ואל יחרש: אש-לפניו תאכל; וסביביו, נשערה מאד. 3 Our God cometh, and doth not keep silence; [N] a fire devoureth before Him, and round about Him it stormeth mightily.

**"And around Him it storms [nisara] mightily" (Psalms 50:3).** This teaches that the Holy One, Blessed be He, is scrupulous with those around Him, i.e., the righteous, even to the extent of a hairsbreadth [hasa'ara], so that even minor transgressions elicit a severe punishment.

**Rabbi Neḥunya says:** The same idea may be learned **from here**, in the following verse:

ח אל נִעְרָץ, בְּסוּד-קִדְשִׁים רַבָּה; וְנוֹרָא, עַל-כָּל-סְבִיבָיו. 8 A God dreaded in the great council of the holy ones, and feared of all them that are about Him?

**"A God dreaded in the great council of the holy ones, and feared by all those that surround Him"** (Psalms 89:8), indicating that God is most careful and exacting with those that surround Him, i.e., the righteous.

אָמַר רַבִּי חֲנִינְא: כָּל הָאוֹמֵר הַקְּדוֹשׁ בְּרוּךְ הוּא וְתָרַן הוּא, יִתְרוֹ תִּיּוֹ, שְׁנֵאָמַר: "הַצּוֹר תָּמִים פְּעֻלוֹ, כִּי כָל דְּרָכָיו מְשֻׁפָּט". אָמַר רַבִּי חֲנָא וְאִיתִּימָא רַבִּי שְׁמוּאֵל בַּר נַחֲמָנִי, מַאי דְכָתִיב:

**Rabbi Ḥanina says:** Anyone who states that **the Holy One, Blessed be He, is forgiving [vateran]** of transgressions, **his life will be relinquished [yivatru]**, as it is stated:

ד הַצּוֹר תָּמִים פְּעֻלוֹ, {ס} כִּי כָל-דְּרָכָיו מְשֻׁפָּט: 4 The Rock, His work is perfect; for all His ways are justice; a God of faithfulness and without iniquity, just and right is He.

**"The Rock, His work is perfect, for all His ways are justice"** (Deuteronomy 32:4). In other words, God does not waive heavenly justice. **Rabbi Ḥana says, and some say that Rabbi Shmuel bar Naḥmani says:** **What** is the meaning of that **which is written**.

"אָרְךָ אִפִּים" – וְלֹא כָתִיב "אָרְךָ אֵף"? אָרְךָ אִפִּים לְצַדִּיקִים וְלְרָשָׁעִים.

in the verse that recounts the thirteen attributes of mercy:

ו וַיַּעֲבֵר יְהוָה עַל-פָּנָיו, וַיִּקְרָא. יְהוָה יְהוָה. אֵל רַחוּם וְחַנוּן-- אָרְךָ אִפִּים, וְרַב-חֶסֶד וְאֱמֶת. 6 And the LORD passed by before him, and proclaimed: 'The LORD, the LORD, God, merciful and gracious, long-suffering, and abundant in goodness and truth;

**"Long-suffering [erekh appayim]"** (Exodus 34:6), using the plural form, **and it is not written as erekh af**, in the singular? In order to teach that He

is **long-suffering** for both **the righteous** and **for the wicked** and does not punish them immediately for their transgressions.

מִתְנַיִי כִּי־הַחֹפֵר בּוֹר בְּרֵה"ד וְנָפַל לְחֹב  
שׁוֹר אוֹ חֲמוֹר חַיִּיב לְאֵדֵי הַחֹפֵר בּוֹר שִׁיחַ  
וּמְעָרָה חֲרִיצִין וְנַעֲרִיצִין חַיִּיב אִיכּ לְמָה נֹאמֵר  
בוֹר \*יִמָּה בּוֹר שִׁישׁ בּוֹ כִּדִּי לְהַמִּית עֵשְׂרָה  
טַפְחִים אִף כֹּל שִׁישׁ בּוֹ כִּדִּי לְהַמִּית עֵשְׂרָה  
טַפְחִים יְהִיוּ פְחוּתִין מֵעֵשְׂרָה טַפְחִים וְנָפַל  
לְחֹב שׁוֹר אוֹ חֲמוֹר וּמָת פְּטוֹר וְאִם הִזְק  
בּוֹ חַיִּיב: גְּכֹל \*אִמֵּר רַב בּוֹר שְׁחִיבָה

מִלְכָּה

הַחֹפֵר בּוֹר בְּרֵה"ד  
וְנָפַל לְחֹב שׁוֹר אוֹ חֲמוֹר  
**חַיִּיב**  
Regardless of whether the pit was a  
חֲרִיצִין, שִׁיחַ, בּוֹר, or מְעָרָה

And the Torah mentions בּוֹר only to teach  
מָה בּוֹר שִׁישׁ בּוֹ כִּדִּי לְהַמִּית טַפְחִים  
אִף כֹּל שִׁישׁ בּוֹ כִּדִּי לְהַמִּית טַפְחִים

הִיוּ פְחוּתִין מֵעֵשְׂרָה טַפְחִים  
וְנָפַל לְחֹב שׁוֹר אוֹ חֲמוֹר . . .

וְאִם הִזְק בּוֹ	וּמָת
<b>חַיִּיב</b>	<b>פְּטוֹר</b>
Because	Because
יֵשׁ בּוֹ כִּדִּי לְהַמִּית	אֵין בּוֹ כִּדִּי לְהַמִּית

מִתְנַיִי הַחֹפֵר בּוֹר בְּרִשּׁוֹת הָרִבִּים, וְנָפַל לְתוֹכוֹ שׂוֹר אוֹ חֲמוֹר –  
 חַיִּיב. אֶחָד הַחֹפֵר בּוֹר, שֵׁיחַ וּמְעָרָה, תְּרִיצִין וְנַעֲיִצִין – חַיִּיב. אִם כֵּן  
 לְמָה נֶאֱמַר "בוֹר"? מָה בּוֹר שֵׁישׁ בּוֹ כְּדֵי לְהַמִּית – עֲשָׂרָה טַפָּחִים;  
 אִף כֹּל שֵׁישׁ בּוֹ כְּדֵי לְהַמִּית – עֲשָׂרָה טַפָּחִים. הֵיוּ פְּחוּתֵינִי מֵעֲשָׂרָה  
 טַפָּחִים, וְנָפַל לְתוֹכוֹ שׂוֹר אוֹ חֲמוֹר, וּמַת – פְּטוֹר. וְאִם הוּזַק בּוֹ –  
 חַיִּיב.

**MISHNA:** In the case of **one who digs a pit in the public domain and an ox or a donkey fell into it**, he is **liable**. The *halakha* is the **same** for **one who digs** either **a pit; a ditch**, which is narrow and long; **or a cave**, which is rectangular and roofed; **trenches and water channels**. In all these cases he is **liable**. **If so, why is the verse stated** as referring to **a pit**, as it states:

לֹג וְכִי-יִפְתַּח אִישׁ בּוֹר, אוֹ כִי-יִכְרֶה אִישׁ בֵּר-וְלֹא יִכְסֶנּוּ: 33 And if a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or an ass fall therein, וְנָפַל-שָׂמָּה שׂוֹר, אוֹ חֲמוֹר.

**"And if a man shall open a pit"** (Exodus 21:33)? To teach that **just as a pit that has sufficient depth to cause death** when falling into it is at least **ten handbreadths** deep, **so too, any other excavations that have sufficient depth to cause death** may be no less than **ten handbreadths**. If any of the types of excavations **were less than ten handbreadths** deep, **and an ox or a donkey fell into one of them and died**, the digger of the excavation is **exempt**. **But if it was injured in it**, not killed, he is **liable** to pay damages.

*The Gemara cites a מחלוקת רב ושמואל*

*שמואל says:*

**להבלו  
וכל שכן  
לחבטו**

✓

*להבלו:*  
*ואצ"ע דפבלא מחילא אתי איב*  
*Even though he indirectly  
created the foul air*

✓

*לחבטו:*  
*דאיבו צבד איב חבטפ*  
*He directly caused it  
to cause damage upon impact  
by digging the pit*

**{ הבלו חבטו  
ממילא בידיים }**

*רב says:*

**בור שחייבה  
עליו תורה  
להבלו ולא לחבטו**

✓

*להבלו:*  
*דצבד איב פבל אבזר*  
*He directly  
created the פבל*

✓

*ולא לחבטו:*  
*קרקץ צולמ פוא דמצקא איב*  
*He indirectly caused  
the ground to damage the ox*

**{ הבלו חבטו  
בידיים ממילא }**

גמ' אָמַר רַב: בּוֹר שְׁחַיִּיבָה עָלָיו תּוֹרָה – לְהַבְּלוֹ, וְלֹא לְחַבְּטוֹ.  
אֲלֵמָּא קְסָבֵר: חֲבָטָה – קְרַקַּע עוֹלָם הוּא דְמַזְקָא לֵיהּ.

**GEMARA: Rav says:** Damage by **Pit for which the Torah obligates one** to pay is referring specifically **to** damage caused by the pit’s lethal **fumes**, i.e., suffocation, **but not to** damage caused by **the impact** of hitting the ground, for which the digger of the pit is exempt from paying compensation. The Gemara continues to explain: **Apparently**, it can be inferred that Rav **maintains** that with regard to the **impact** of hitting the bottom of the pit, **it is merely the ground that injures him**. The digger of the pit does not own the ground, so it is not a case where his property caused damage. Therefore, he does not bear responsibility for the damage.

ושמואל אָמַר: לְהַבִּילוֹ, וְכָל שֶׁפֶן לְחַבְּטוֹ. וְאִם תֹּאמַר: לְחַבְּטוֹ אָמַרָה  
תּוֹרָה, וְלֹא לְהַבִּילוֹ – הַתּוֹרָה הַעֵדָה עַל הַבּוֹר, וְאִפִּילוּ מִלֵּא סְפוּגִין  
שֶׁל צֶמֶר.

**And Shmuel says:** The Torah renders one liable for damage caused **by its lethal fumes, and all the more so for** damage resulting from **the impact**. Shmuel adds: **And if you say** that the **Torah spoke** only **about** liability for **its impact and not for its** lethal **fumes**, one could respond that **the Torah testifies about a pit** without specifying for which type of pit one is liable, **and** this includes **even** a pit **full of woolen sponges [sefogin]**, which would completely absorb the impact.

מַאי בִּינְיֵיהוּ? אִיכָּא בִּינְיֵיהוּ דְעֵבֵד גּוֹבָה בְּרִשּׁוֹת הָרַבִּים; לְרַב –  
אֲגוּבָה לָא מִיחְיִיב, לְשִׁמוּאֵל – אֲגוּבָה נְמִי מִיחְיִיב.

The Gemara asks: **What** is the difference **between** the opinions of Rav and Shmuel, given that falling into any pit involves injury due to both the lethal fumes and the impact? The Gemara answers: The practical difference **between them** is in the case **where** one **fashioned a mound** with a height of ten handbreadths **in the public domain** without digging, and an animal fell from this raised platform and died. **According to Rav**, the one who fashioned the mound **is not liable for** damage by Pit in the case of **a mound**, since there are no fumes, as the animal fell to the level ground. By contrast, **according to Shmuel, he is also liable for** damage by Pit in the case of **a mound since** there is nevertheless an impact when hitting the ground.

*The Gemara explains...*

*Rav and Shmuel derive their opinions from their different understanding of the Pasuk*

**וְנָפַל שָׂמָּה שׁוֹר אֹו חֲמוֹר**

<p><i>Rav says:</i></p> <p><b>וְנָפַל</b></p> <p><b>כל דהו משמע</b></p> <p><i>Any way it fell in, and it will not die from הבלו but from חבטו</i></p> <p><b>להבלו</b></p> <p><b>וכ"ש לחבטו</b></p>	<p><i>Rav says:</i></p> <p><b>וְנָפַל</b></p> <p><b>עד שיפול דרך נפילה</b></p> <p><i>The animal fell in head first, and face is at the bottom where הבלו is strong and will cause it to die</i></p> <p><b>להבלו</b></p> <p><b>ולא לחבטו</b></p>
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מאי טעמא דרב? דאמר קרא: "וְנָפַל" – עד שיפול דרך נפילה. ולשמאל, "וְנָפַל" – כל דהו משמע.

The Gemara asks: **What is** the source for **the reasoning of Rav**, that one is not liable in that case? The Gemara answers: **Since the verse states:**

לג וכי יפתח איש בור, או כי יכרה איש בר-- ולא יכסנו; ונפל-שמה שור, או חמור. 33 And if a man shall open a pit, or if a man shall dig a pit and not cover it, and an ox or an ass fall therein,

**"And an ox or a donkey fall therein"** (Exodus 21:33), indicating that there is no liability for damage by Pit **unless** the animal **falls** in the **normal manner of falling**, but not where it first climbed onto an elevated surface and then fell from there to the level ground. **And according to Shmuel**, the term: **"And an ox or a donkey fall,"** indicates any manner of falling, regardless of whether the animal fell into a hole or fell to the ground from an elevated surface.



## Summary

3) **MISHNAH:** The Mishnah continues to elaborate on the conditions necessary for liability of digging a בור >

### 4) Liability for digging a בור

Rav asserts that liability for digging a בור is due to the הבל but not for the impact of the fall whereas Shmuel maintains that liability is from the הבל and certainly for the impact of the fall.

The practical difference between these two positions is identified.

Rav presents the rationale for his position and the Gemara records Shmuel's response to that source.

Rav's position is unsuccessfully challenged.

The Gemara explains why it was necessary for the Mishnah to mention different varieties of pits.

The Gemara unsuccessfully challenges both Rav's and Shmuel's positions. A related incident is cited.

## Mishnah Bava Kamma 5:5<sup>1</sup>

**One who digs part of a pit on private property and opens its entrance in the public domain or digs a pit in the public domain and opens its entrance on private property or digs a pit on private property and opens its entrance on another person's private property, is liable** for damage caused by the pit in each case. In the case of **one who digs a pit in the public domain and an ox or a donkey fell into it**, he is **liable**. The *halakha* is the **same** for **one who digs** either **a pit; a ditch**, which is narrow and long; **or a cave**, which is rectangular and roofed; **trenches and water channels**. In all these cases he is **liable**. **If so, why is** the verse **stated** as referring to **a pit**, as it states: "And if a man shall open a pit" (Exodus 21:33)?

To teach that **just as a pit that has sufficient depth to cause death** when falling into it is at least **ten handbreadths** deep, **so too, any** other excavations **that have sufficient depth to cause death** may be no less than **ten handbreadths**. If any of the types of excavations **were less than ten handbreadths** deep, **and an ox or a donkey fell into** one of **them and died**, the digger of the excavation is **exempt**. **But if it was injured in it**, not killed, he is **liable** to pay damages.

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<sup>1</sup>[https://www.sefaria.org/Bava\\_Kamma.50b.4?lang=bi&with=Mishnah%20Bava%20Kamma&lang2=en](https://www.sefaria.org/Bava_Kamma.50b.4?lang=bi&with=Mishnah%20Bava%20Kamma&lang2=en)

**If a man dug a pit in a private domain and opened it into the public domain, or if he dug it in the public domain and opened it into a private domain, or if he dug it in a private domain and opened it into another private domain, he is liable [if any is injured by the pit].<sup>2</sup>**

**If he dug a pit in the public domain and an ox or ass fell into and died, he is liable.**

**No matter whether he digs a pit, trench, or cavern, or ditches or channels he is liable. If so, why does it say, "a pit" (Exodus 21:33)? Just as a pit which is deep enough to cause death is ten handbreadths deep, so anything is deep enough to cause death if it is ten handbreadths deep.**

**If they were less than ten handbreadths deep and an ox or an ass fell in and died, the owner is not liable; but if it was damaged, he is liable.**

In the first mishnah of the tractate we learned that there are four archetypal causes of damage. Our mishnah and the two mishnayoth that we will learn tomorrow are concerned with the second cause of damage, namely the pit.

Exodus 21:33-34 state: "When a man opens a pit, or digs a pit and does not cover it, and an ox or an ass falls into it, the one responsible for the pit must make restitution; he shall pay the price to the owner but shall keep the dead animal." Our mishnah deals with several details concerning damages done by a pit.

**Sections one and two** emphasize that the pit which is described in the Torah is a pit dug almost anywhere. The only exception would be a person who dug a pit on his own property and another person came onto his property without his permission and fell in the pit. In this case the owner would not be liable since the ox entered without his permission.

**Section three** states that one is obligated not only for damages caused by a pit but damages caused by any hole dug into the ground. There are many types of holes a person might dig for various reasons and they all have different names. The mishnah emphasizes that one is obligated not just for pits but for other holes as well. Section 3a asks a follow-up question. If the Torah meant to say that a person is obligated for any hole he dug in the ground or uncovered, why did it specifically mention pit? The answer is that a pit is an example of how deep something has to be for it to be normal for it to cause the death of an animal that fell in. Ten handbreadths (=about one yard)

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<sup>2</sup>[https://www.sefaria.org/Bava\\_Kamma.50b.4?lang=bi&p2=Mishnah\\_Bava\\_Kamma.5.5&lang2=bi&w2=English%20Explanation%20of%20Mishnah&lang3=en](https://www.sefaria.org/Bava_Kamma.50b.4?lang=bi&p2=Mishnah_Bava_Kamma.5.5&lang2=bi&w2=English%20Explanation%20of%20Mishnah&lang3=en)

is such a normal depth. Therefore we can conclude that any hole which is ten handbreadths deep is considered to be similar a pit and if an animal falls in and dies, the person who dug or uncovered the hole will be liable.

**Section four** is a follow-up to section three. If a person dug a hole or uncovered a hole less than ten handbreadths he does not, according to the mishnah, fit into the category mentioned in the Torah. Therefore if an animal does fall in and die, he is not liable. However if the animal is injured, he is liable since a hole less than ten handbreadths is likely to cause injury.

## **SUMMARY<sup>3</sup>**

Rabah says that according to R. Akiva a Bor is Chayav whether it is in Reshus ha'Rabim or Reshus ha'Yachid, while R. Yishmael holds that only a Bor in Reshus ha'Rabim is Chayav.

R. Yosef says that R. Akiva holds that only a Bor in Reshus ha'Yachid is Chayav, while R. Yishmael holds that a Bor is Chayav whether it is in Reshus ha'Rabim or Reshus ha'Yachid.

It is forbidden to dig in the Reshus ha'Rabim even if the Bor is opened into the Reshus ha'Yachid.

The Tana Kama of the Beraisa states that someone who digs a foundation in Reshus ha'Yachid next to a Reshus ha'Rabim is Patur.

Rebbi Yosi says that he is Chayav unless he puts up a fence of ten Tefachim or digs the foundation at least four Tefachim away from where people and animals walk.

If someone digs a Bor in a Reshus ha'Yachid and is not Mafkir his Reshus or the Bor everybody agrees that he is Patur.

If someone digs a well in Reshus ha'Rabim for the use of the Rabim and he

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<sup>3</sup> <https://www.dafyomi.co.il/memdb/revdaf.php?tid=21&id=50>

gives it over to the public he is Patur, but if he does not give it to the Rabim he is Chayav.

The daughter of Nechemyah Chofer Sichin fell into a great well and R. Chanina promised that she would be pulled out because it is impossible that a Mitzvah that her father was involved in would cause her death. (1)

Anyone who says that Hashem Yisbarach will overlook his Aveiros will have his life overlooked.

Hashem Yisbarach delays from repaying the deeds of both Tzadikim and Resha'im. (2)

A person should not move stones from his own Reshus into the Reshus ha'Rabim.

A person who digs any kind of a Bor in Reshus ha'Rabim is Chayav if an animal falls in and dies as long as it is at least ten Tefachim deep.

If a Bor is less than ten Tefachim deep and an animal falls in and dies he is Patur, but if the animal is injured, he is Chayav.

Rav holds that a person is only Chayav for the damage that is caused by the vapor of the Bor, but not for damage that is caused by impact from the impact of the Bor.

Shmuel says that a person is also Chayav for the damage that is caused by the impact of the Bor. (3)

According to Rav the person who dug the Bor is only Chayav if the animal fell in face first, while Shmuel holds, he is Chayav even if it fell in backwards. (4)

If an animal falls from a height and cannot stand up if it survives 24 hours it is Kosher and if not, it is a Tereifah. (5)

R. Nachman holds that even if the animal fell into an irrigation canal that is six Tefachim deep it is enough to make the animal into a Tereifah.

## Notes:

(1). Even so his daughter died from thirst because Hashem Yisbarach is exacting with Tzadikim like the width of a hair.

(2). Hashem Yisbarach delays rewarding Tzadikim for their Mitzvos and punishing Resha'im for their Aveiros.

(3). According to Rav if a person makes a mound in Reshus ha'Rabim and an animal falls off the mound he is Patur because there is no vapor aboveground.

(4). Since according to Rav he is only Chayav for the vapor the animal only breathes in the vapor if it falls in face first.

(5). If it stands up and takes steps it is Kosher even if it is Shechted within 24 hours.

## DAUGHTER OF A TZADIK

The daughter of Nechemyah Chofer Sichin fell into a great well and R. Chanina promised that she would be pulled out because it is impossible that a Mitzvah that her father was involved in would cause her death. The daughter said that a ram with a Zaken leading it pulled her out of the Bor and Rashi explains that it was the ram of Yitzchak Avinu that was led by Avraham Avinu.

The Pnei Yehoshua explains that it was already decreed from Heaven that she will die and therefore it was no longer possible for her to be saved without someone else dying in her place.

Therefore when R. Chanina Ben Dosa prayed that she would live it was decreed that someone else must die in her place. This concept is hinted to with the ram of Akeidas Yitzchak: the ram was brought in place of Yitzchak on the Mizbe'ach. Yitzchak's life could not have been spared if the lamb would not have been brought instead of him.

## A BOR OF THE RABIM

If someone digs a Bor in Reshus ha'Rabim for the needs of the Rabim and he gave over the cover to the Rabim and he notified Beis Din that he wishes to give over control of the Bor to them he is Patur if he originally dug the Bor in a place that he has the right to do so. (Shulchan Aruch CM 417:1)

Even in Reshus ha'Rabim one may not dig a Bor for the needs of the Rabim unless he dug the Bor in a place that is not a passageway for the Rabim. (Sma)

**Rav Avrohom Adler** writes:<sup>4</sup>

### MISHNAH:

If a man digs a pit in a private domain and opens it to the public domain, or if he digs it in a public domain and opens it to a private domain, or again, if he digs it in a private domain and opens it to the private domain of another, he becomes liable [for any damage that may result].

Our Rabbis taught in a Baraisa: If a man digs a pit in a private domain and opens it to the public domain, he becomes liable, and this is the pit of which the Torah speaks; these are the words of Rabbi Yishmael.

Rabbi Akiva, however, says: When a man abandons his premises without, however, abandoning his pit, this is the pit of which the Torah speaks. Rabbah thereupon said: In the case of a pit in a public domain there is no difference of opinion that there should be liability. What is the reason? — Scripture says: If a man Shall uncover or if a man shall dig.

Now, if for mere uncovering there is liability, should there not be so all the more in the case of digging? [Why then mention digging at all?] Scripture must therefore mean to imply that it is on account of the act of uncovering and on account of the act of digging that the liability is at all brought upon him. A difference arises only in regard to a pit on his own premises.

Rabbi Akiva maintains that a pit in his own premises should also involve liability, since it says: The owner of the pit, which shows that the Merciful One is speaking of a pit which has an owner; Rabbi Yishmael, however, maintains

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<sup>4</sup> [https://dafnotes.com/wp-content/uploads/2016/07/Bava\\_Kamma\\_50-1.pdf](https://dafnotes.com/wp-content/uploads/2016/07/Bava_Kamma_50-1.pdf)

that this simply refers to the master of the obstacle. - But what then did Rabbi Akiva mean by saying, '[When a man abandons his premises without, however, abandoning his pit] — this is the pit stated in the Torah'? — [He meant that] this is the pit with reference to which Scripture first began to lay down the rules for compensation [in the case of pit].

Rav Yosef said: in the case of a pit in a private domain, there is no difference of opinion that there should be liability. What is the reason? The Merciful One says: the owner of the pit, to show that it is a pit having an owner with which we are dealing.

They differ only in the case of a pit in a public domain. Rabbi Yishmael maintains that a pit in a public domain should also involve liability, since it says, 'If a man uncovers . . . and if a man digs . . .' Now, if for mere uncovering there is liability, should there not all the more be so in the case of digging?

Scripture therefore must mean to imply that it is on account of the act of uncovering and on account of the act of digging that the liability is at all brought upon him. —

And Rabbi Akiva? [He might reply that] both terms were required to be explicitly mentioned. For if the Merciful One had said only 'If a man uncovers' it might perhaps have been said that it was only in the case of uncovering that covering up would suffice [as a precaution], whereas in the case of digging, covering up would not suffice, unless the pit was also filled up.

If [on the other hand] the Merciful One had said only: If a man digs, it might have been said that it was only where he dug it that he ought to cover it, as he actually made the pit, whereas where he merely uncovered it, in which case he did not actually make the pit, it might have been thought that he was not bound even to cover it.

Hence it was necessary to tell us [that this was not the case but that the two actions are on a par in all respects]. — But what then did Rabbi Yishmael mean by saying: [If a man digs a pit in a private domain and opens it to the public domain, he is liable] and this is the pit of which the Torah speaks? —

This is the pit with reference to which Scripture opens the rules concerning damage [caused by pit]. An objection was raised [from the following Baraisa]: If a man digs a pit in a public domain and opens it to a private domain there is no liability, in spite of the fact that he has no right to do so, as a cavity must not be made underneath a public domain. But if he digs pits, ditches or caves in a private domain and opens them to the public domain, there would be liability. If, again, a man digs pits in a private domain abutting on a public

domain, such as e.g., workmen digging foundations, there would be no liability.

Rabbi Yosi the son of Rabbi Yehudah, however, says there is liability unless he makes a partition of ten tefachim in height or unless he keeps the pit away from the place where people walk as well as from the place where animals walk at a distance of at least four tefachim. - Now this is so only in the case of foundations, but were the digging made not for foundations there would apparently be liability. In accordance with whose view is this?

All would be well if we follow Rabbah since the opening clause would be in accordance with Rabbi Yishmael and the later clause in accordance with Rabbi Akiva. But if we follow Rav Yosef, it is true there would be no difficulty about the concluding clause, which would represent a unanimous view, but what about the prior clause, which would be in accordance neither with Rabbi Yishmael nor with Rabbi Akiva? 1 —

Rav Yosef, however, might reply: The whole text represents a unanimous view, for the prior clause deals with a case where the man abandoned neither his premises nor his pit.

Rav Ashi thereupon said: Since according to Rav Yosef, you have explained the text to represent a unanimous view, so also according to Rabbah, you need not interpret it as representing two opposing views of Tannaim. For as the prior clause was in accordance with Rabbi Yishmael, the later clause would also be in accordance with Rabbi Yishmael; and the statement that this ruling holds good only in the case of foundations whereas if the digging is not for foundations there would be liability, refers to an instance where e.g., the digging was widened out into an actual public domain. 2

An objection was [again] raised: If a man digs a pit in a private domain and opens it to a public domain, he becomes liable, but if he digs it in a private domain abutting on a public domain, he would not be liable. No difficulty arises if we follow Rabbah, since the entire text is in accordance with Rabbi Yishmael.

But if we follow Rav Yosef, no difficulty, it is true, arises in the prior clause, which would be in accordance with Rabbi Yishmael, but what about the concluding clause, which would be in accordance neither with Rabbi Yishmael nor with Rabbi Akiva? — He might reply that it deals with digging for foundations, in regard to which the ruling is unanimous.

Our Rabbis taught in a Baraisa: If a man dug [a well] and left it uncovered, but transferred it to the public, he would be exempt,<sup>3</sup> whereas if he dug it and left it uncovered without dedicating it to the public, he would be liable. Such



also was the custom of Nechunya the digger of wells, ditches, and caves; he used to dig wells and leave them uncovered and dedicate them to the public. When this matter became known to the Sages they observed: This man has fulfilled this halachah. - Only this halachah and no more? — Read therefore 'this halachah also'.

Our Rabbis taught in a Baraisa: It happened that the daughter of Nechunya the digger of wells once fell into a deep pit. When people came and informed Rabbi Chanina ben Dosa [about it], during the first hour he said to them, "She is well," during the second he said to them, "She is still well," but in the third hour he said to them, "She has by now come out [of the pit]." They then asked her, "Who brought you up?" — Her answer was: "A ram came to my help with an old man leading it."

They then asked Rabbi Chanina ben Dosa, "Are you a prophet?" He said to them, "I am neither a prophet, nor the son of a prophet. I only exclaimed: Shall the thing to which that pious man was distressed about (on account of the public) become a stumbling block to his child?" —

Rabbi Acha said: Nevertheless, his son died of thirst, as it is stated: And His surroundings are extremely turbulent, which teaches us that the Holy One, Blessed be He, is particular with those who surround Him, even to the extent of a hairsbreadth. Rabbi Nechunya derived the same lesson from the verse: God is dreaded in the great council of the holy and is awesome over all who surround Him.

Rabbi Chanina said: If a man says that the Holy One, Blessed be He, is lax in the execution of justice, his life shall be disregarded, for it is stated: He is the Rock, His work is perfect; for all His paths are justice. Rabbi Chana, or as others read Rabbi Shmuel bar Nachmani, said: What is the meaning of that which is written: Erech apayim<sup>4</sup>, and not erech aph? [It must mean] He is slow [in showing a jubilant] face to the righteous,<sup>5</sup> and [He is slow in showing an angry face] to the wicked.<sup>6</sup>

Our Rabbis taught in a Baraisa: A man should not clear stones from his domain into a public domain. A certain man was clearing stones from his domain to a public domain when a pious man found him doing so and said to him, "Empty one, why do you clear stones from a domain which is not yours to a domain which is yours?"

The man laughed at him. Some days later he had to sell his field, and when he was walking in that public domain, he stumbled over those stones. He then said, "How fittingly did that pious man say to me, "Why do you clearing stones from a domain which is not yours to a domain which is yours?"

## **MISHNAH:**

If a man digs a pit in a public domain and an ox or a donkey falls into it, he becomes liable. Whether he dug a pit, or a ditch, or a cave, trenches, or wedge-like ditches, he would be liable. If so, why is pit mentioned [in scripture]? [It is to teach that] just as a pit can cause death, being ten tefachim [deep], so also all [other similar obstacles] must be such as can cause death, [i.e.] ten tefachim [deep]. Where, however, they were less than ten tefachim [deep], and an ox or a donkey fell into them and died, there would be exemption. If they were only injured by them, there would be liability.

Rav stated: The liability imposed by the Torah in the case of pit is on account of the foul air, but not for the impact of the fall into it. It could hence be inferred that he held that so far as the impact was concerned, it was the ground of the public that caused the damage. Shmuel, however, said: For the foul air, and, certainly on account of the impact. And should you say that it was on account of the impact only that the Torah imposed liability but not for the foul air, (you have to bear in mind that) for the Torah a pit is a pit, even where it is full of wads of wool.

What is the practical difference between them? — There is a practical difference between them where a man made a mound in a public domain: according to Rav there would in the case of a mound be no liability,<sup>7</sup> whereas according to Shmuel there would in the case of a mound also be liability. What is the reason of Rav?

Because Scripture says: And [an ox or a donkey] shall fall, [implying that there would be no liability] unless where it fell in the usual way of falling. Shmuel [on the other hand maintained that the words]: And it shall fall implies anything [which is like falling (- including a mound)]. We have learned in our Mishnah: If so, why is pit mentioned [in scripture]? [It is to teach that] just as a pit can cause death, being ten tefachim [deep], so also all [other similar obstacles] must be such as can cause death, [i.e.] ten tefachim [deep].

Now, this creates no difficulty if we follow Shmuel, since the phrase 'so also all' would imply mounds also. But according to Rav, what does the phrase 'so also all' imply? — It was meant to imply trenches and wedge-like ditches. - But are trenches and wedge-like ditches not explicitly stated in the text? — They were [first] mentioned and then the reason for them explained.

What need was there to mention all the things specified in the text? — They all required [to be explicitly stated]. For if only a pit had been explicitly

mentioned, I might have said that it was only a pit where in ten tefachim [of depth] there could be [sufficient] foul air [to cause death] on account of its being small and circular, whereas in the case of a ditch, which is long, I might have thought that [even] in ten tefachim of depth there would still not be [sufficient] foul air [to cause death].

If [again] only a ditch had been mentioned explicitly, I might have said that it was only a ditch, where in ten tefachim [of depth], there could be [sufficient] foul air [to cause death] on account of its being small, whereas in a cave, which is square, I might have thought that [even] in ten tefachim of depth there would still not be [sufficient] foul air [to cause death]. Again, if only a cave had been mentioned explicitly, I might have said that it was only a cave, where in ten tefachim [of depth] there could be [sufficient] foul air [to kill] on account of its being covered, whereas in the case of trenches, which are uncovered, I might have thought that [even] in ten tefachim [of depth] there would still not be [sufficient] foul air [to cause death].

Further, if only trenches had been stated explicitly, I might have said that it was only trenches where in ten tefachim [of depth] there could be [sufficient] foul air [to cause death] on account of their not being wider at the top than at the bottom, whereas in wedge-like ditches, which are wider at the top than at the bottom, I might have said that [even] in ten tefachim [of depth] there would still not be [sufficient] foul air [to cause death].

It was therefore necessary to let us know [that all of them are on a par in this respect]. We have learned in our Mishnah: Where, however, they were less than ten tefachim [deep], and an ox or a donkey fell into them and died, there would be exemption. If they were only injured by them, there would be liability.

Now, what could be the reason that where an ox or a donkey fell into them and died there would be exemption? Is it not because the impact was insufficient [to cause death]? — No, it is because there was no foul air there. But if so, why where the animal was merely injured in such a pit should there be liability, seeing that there was no foul air there? — I might reply that there was not foul air there sufficient to kill, but there was foul air there sufficient to injure.

“Something in which a tzaddik is involved will not be a cause of suffering to him.” As taught in a Baraisa on our daf, this is how Rabbi Dosa explained how he was certain that Nechunya, the well-digger’s daughter, was not dead from having fallen into a well. After her falling in the pit, her father went to Rabbi Dosa to pray for her welfare. After the first and second hours passed, he told the father that she was still alive.

After that, when it would be impossible to survive in the pit any longer, Rabbi Dosa announced that she had been taken out of the pit alive. When asked if he was a prophet, he replied, "I am not a prophet nor am I the son of a prophet, but something which a tzaddik is involved in will not be a cause of suffering to him." The Gemara continues with a statement from Rabbi Abba, "Nevertheless, his (the well-digger's) son died from thirst." This was despite the fact that the father dedicated his work to dig wells to provide water for those who came to Jerusalem (Rashi).

Rabbi Abba cites another rule that G-d is "extremely exacting in judgment with the righteous", as taught in various verses. Although we don't see any change in the righteousness of Rabbi Nechunya the well-digger, his daughter survived the pit and his son did not survive a lack of water, which the pits were dug in order to store.

Why the difference? One explanation is that the daughter was in danger from being in a pit, something that her righteous father was involved in making. The son, however, did not die as a result of the pit — his father's work — but due to a lack of water (*Tosefos as explained by the Bach; Rabbi Moshe Newman – Ohr Samayach*).

Avrohom and Lot We are taught that Lot was saved from Sodom where the smoke of the earth arose like the smoke of a lime pit. The Gemara tells a story that the daughter of Nechunya (Nechunya dug cisterns along the roads for rainwater so that there would be abundant water for those who made the pilgrimage to Yerushalayim for Yom Tov) fell into a large cistern.

She emerged safely from the pit since that which a Tzadik, Nechunya, occupied himself with, his child won't stumble upon. The Chasam Sofer applies this idea here as Avraham knew that Lot would be saved since his father Haran honored Hashem by the furnace, thereby making it impossible that his son would suffer from the fire by Sodom. So, Lot was saved in the merit of his father.

Mashal Our Gemara relates a story that took place with the daughter of Nechunya the well-digger. Nechunya would be hired to dig water wells for people, and one day his daughter fell into one of these pits. The townspeople rushed to Rabbi Chanina ben Dosa and asked to daven for her to be safely pulled out of the pit. The first hour he said "shalom", the second hour he said "shalom", the third hour he said, "she has emerged safely". The people asked her, who saved you?

She answered, “an elderly man leading a ram”. They people understood this to be Avraham Avinu leading the Ram that was brought in place of Yitzchak by the Akeidah. This perhaps can be used as a parable. The daughter of Nechunya is a reference to Klal Yisroel who have fallen into a deep pit; the tragedies that have befallen us of late.

The townspeople went to ask Rebbi Chanina ben Dosa to daven, since Bnei Yisroel’s power is its mouth, it’s prayer. The first two hours he said shalom; in other words, he justified the midas hadin. The third hour he said she has emerged; Klal Yisroel have been redeemed from their galus. The savior was a man leading a ram; in the merit of the Akeidah of Yitzchok and Avraham Avinu.

<sup>1</sup> For they both according to Rav Yosef maintain liability for pit in a private domain.

<sup>2</sup> But if the digging was not widened out into an actual public domain, there would be no difference as to the purpose of the digging, for there would be exemption in all cases.

<sup>3</sup> As it became communal property.

<sup>4</sup> In the plural form.

<sup>5</sup> By not rewarding them in this world for their good deeds.

<sup>6</sup> By not punishing them in this world for their wicked deeds.

<sup>7</sup> As no foul air was created and the impact was given by the public domain.

## **Public and Private Pits; Liability When There Are Changes After the Fact<sup>5</sup>**

The Gemara considers whether or not a person is liable for damages incurred because s/he uncovered a pit if s/he did not actually create the pit. Is the action of 'uncovering' enough to warrant damages? Or is the action of digging the pit a requirement? What about an ownerless pit? And what about a pit that is on private property but its entrance is in the public domain? What about when a pit is created to lay foundation? And what about when a pit is widened? Who is responsible for damages that are incurred in this larger pit?

The rabbis then speak about people who transferred wells to the public domain to be used as a well for water. Stories are told of people falling into those cisterns. This is a wonderful lead-in to a discussion about ways in which we are told of G-d's compassion and care for us.

Before we begin a new Mishna, the rabbis tell us about a man throwing stones

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<sup>5</sup> <https://dafyomibeginner.blogspot.com/2016/07/>

into the public domain. A rabbi chastises him for this behaviour, but in an unusual manner - this story focuses on the ridiculousness of throwing stones into the public domain.

A new Mishna teaches us that if an ox and a donkey fall into a pit, the owner of the pit is liable. This is the case if the pit takes the form of a ditch, a cave, a trench, or a channel. The pit must be at least 10 handbreadths deep; enough to kill an animal. We are reminded that if an animal is killed, the owner of the pit is exempt. However, if the animal is injured, the owner is liable.

The Gemara discusses how the pit might injure or kill an animal. Were there lethal fumes held in the pit? Was the ground hard enough to kill the animal(s) upon impact? Does the size and shape and depth and length of a pit determine its lethality? How might these factors affect the liability of the pit's owner? And what if the animal were compromised - for example, what if the animal becomes a treifa because of its fall and thus it must be killed within twelve months? Should that affect the liability of the pit's owner?

It is difficult to imagine such cases happening frequently. It is simple to imagine other cases, though, where responsibility, liability and ownership are key factors. These more bizarre and unusual cases allow the rabbis to understand protocol in much more complicated and ubiquitous cases.

## **HASHEM EXACTS JUSTICE FROM THE RIGHTEOUS**

**Rav Mordechai Kornfeld** writes:<sup>6</sup>

The Gemara relates that the daughter of Nechunya "Chofer Shichin" (the digger of water wells) fell into a deep water cistern. News of the tragedy was brought to Rabbi Chanina ben Dosa. After the first hour, he said, "Shalom." After the second hour, he said, "Shalom." After the third hour, he said, "She has arisen [from the pit]." When the people asked him whether he is a prophet, he replied that he is not a prophet, but that he knew that Nechunya's daughter would emerge unharmed because it is not possible that "the matter in which the Tzadik excels should cause his offspring to suffer." The Gemara adds that despite this axiom, Nechunya's son died of thirst. Even though Nechunya dedicated his life to providing water to the people who came to Yerushalayim during the festivals (Rashi), his son died of thirst because Hashem is "exact in justice with those who are close to Him." When a person

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<sup>6</sup> <https://dafyomi.co.il/bkama/insites/bk-dt-050.htm>

has perfected himself in an area of Avodas Hashem, Hashem demands from him more exacting standards.

If Hashem does not punish a Tzadik with the same thing in which he excels in his service of Hashem, as Rebbi Chanina ben Dosa expressed and as the first incident demonstrates, why did Hashem allow Nechunya's son to die of thirst?

(a) **TOSFOS** here and in Yevamos (121b) explains that the death of Nechunya's son by thirst is not considered a form of justice with the same matter with which Nechunya excelled. His son suffered from a *lack* of water, while Nechunya excelled in *providing* water. In contrast, if his daughter would have died by drowning in a water cistern, that decree would have been carried out with the same action in which Nechunya excelled -- the provision of water. Hashem does not punish a person in such a way.

Alternatively, although Nechunya dug wells, he did not provide the water to fill them. The water came naturally through rainfall. Consequently, it was possible for his son to die from a lack of *water*, while it was not possible for his daughter to die in the pit of a *well*. (*This is the explanation of **RASHI** here (DH Chofer Shichin), according to the understanding of the **ETZ YOSEF**. This explanation does not conform with the Yerushalmi's description that "he honored his Creator with water."*)

(b) The **SHITAH MEKUBETZES** here suggests that there is no such rule that Hashem does not exact justice from a person with the object of the Mitzvah in which he excels. Hashem has His own considerations based on His infinite wisdom which mortals cannot comprehend.

When Rebbi Chanina ben Dosa said that it is not possible that "the matter in which the Tzadik excels should cause his offspring to suffer," he was not explaining why Nechunya's daughter suffered no harm, but rather he was describing his *prayer* to Hashem on behalf of Nechunya's daughter.

(c) The **MISHNAS ELIYAHU** explains that the axiom that Hashem does not permit harm to befall a person from the object of the Mitzvah in which he excels applies only to a person who performs the Mitzvah entirely *I'Shem Shamayim*, for the sake of Hashem, with no other motives. No harm befell Nechunya's daughter when she fell into the water cistern because Nechunya's motivation for providing water for the visitors to Yerushalayim was purely *I'Shem Shamayim*. Perhaps, however, at a later time the purity of his motivation was compromised in a small way and he did not do the Mitzvah solely for the sake of Hashem. As a result, Hashem was "Medakdek k'Chut ha'Se'arah" with the righteous, and Nechunya's son died of thirst.

## THE DAUGHTER OF NECHUNYA, THE WELL-DIGGER

The Gemara relates that the daughter of Nechunya "Chofer Shichin" (the digger of water wells) fell into a deep water cistern. News of the tragedy was brought to Rebbi Chanina ben Dosa. After the first hour, he said, "Shalom." After the second hour, he said, "Shalom." After the third hour, he said, "She has arisen [from the pit]."

People asked the daughter of Nechunya, "Who rescued you from the pit?" She replied that a ram being led by an elderly man saved her. Rashi explains that this was the ram of Yitzchak being led by Avraham Avinu.

When the people asked Rebbi Chanina whether he is a prophet, he replied that he is not a prophet, but that he knew that Nechunya's daughter would emerge unharmed because it is not possible that "the matter in which the Tzadik excels should cause his offspring to suffer."

What is the significance of the ram which Nechunya's daughter saw?

The **PNEI YEHOSHUA** explains the significance of the ram of Yitzchak which saved Nechunya's daughter. The fact that she fell into a pit indicated that there was a Divine decree that the daughter of Nechunya must die. The prayer of Rebbi Chanina was effective to suspend the decree. However, there is a principle that once a decree is issued, it cannot be annulled. The ram of Yitzchak hinted that someone else was taken instead of Nechunya's daughter, in the same way that the ram was offered instead of Yitzchak Avinu.

The Pnei Yehoshua cites other examples of this principle. The Gemara in Chagigah (4b) relates that the Malach ha'Maves told Rav Bibi that he once killed the wrong woman. Rav Bibi asked him, "What did you do with the years that she was supposed to live?" The Malach ha'Maves answered that those years were given to young Torah scholars who were forgiving of those who slighted them.

The Pnei Yehoshua adds in the name of the Zohar that this redirecting of a Divine decree is the source for the custom of Kaparos on Erev Yom Kippur (see **REMA OC** 605:1, and **MAGEN AVRAHAM** there). The slaughter of the chicken is designated as an atonement for the person if there was a decree issued that he should die.

The Pnei Yehoshua also explains that this is the reason why the people asked Rebbi Chanina if he was a prophet only after Nechunya's daughter revealed what had happened. When the people heard about the ram, they realized that there indeed had been a decree that Nechunya's daughter should die, and that



she was saved from the decree only because someone or something else took her place.

Once the people knew that there had been a Divine decree, they asked Rabbi Chanina why he was so certain that his prayer to annul the decree would be accepted. Rabbi Chanina replied that since Nechunya had done the Mitzvah of digging wells for the people who ascended to Yerushalayim at the time of the festival, he was certain that Hashem would not have allowed Nechunya's own daughter to drown in a well. (D. Bloom)

## **THE DAMAGE CAUSED BY A PIT: THE BAD AIR OR THE BLOW?**

The Gemara cites a dispute between Rav and Shmuel. Rav maintains that when the Torah obligates a person to pay for damage caused by his Bor, it refers to the damage the Hevel (bad air) does to the thing that fell in, but not to the damage caused by the Chavatah (the blow the object received upon impact with the bottom of the Bor). Shmuel maintains that one is liable for both the damage caused by the Hevel and the damage caused by the Chavatah.

The Mishnah states that when an ox or donkey falls into a Bor less than ten Tefachim deep and dies, the owner of the Bor is exempt from liability because a Bor less than ten Tefachim deep is not capable of killing. However, if the animal did not die but was merely damaged, the owner must pay for the damage. The Gemara suggests that the reason why he is exempt if the animal dies is that the Chavatah of such a small Bor cannot kill. The Gemara rejects this proof and explains that the reason why he is exempt is that a Bor less than ten Tefachim deep does not have Hevel.

What is the Gemara's attempted proof? Is it an attempt to prove the opinion of Rav or the opinion of Shmuel?

(a) **RASHI** (DH Lav) explains that the Gemara is asking a question on both Rav and Shmuel. The Gemara understands at this stage that although a Bor less than ten Tefachim deep indeed contains bad air, the owner is exempt because under ten Tefachim the Chavatah is not powerful enough to kill. Rav and Shmuel agree that one is liable for Hevel. Accordingly, the Mishnah is a challenge to both of them, as the Mishnah implies that a person is not liable to pay for damages caused by the Hevel in his Bor. The Gemara answers that a Bor less than ten Tefachim does not contain enough Hevel to kill, and that is why the owner is not liable.

The **PNEI YEHOSHUA** notes that the Gemara could have answered, according to Shmuel, that the Mishnah refers to a Bor that does not contain Hevel. An example of such a Bor is one whose width is greater than its depth, as the Gemara later (51b) discusses. If a Bor is ten Tefachim or deeper, the owner is liable because of the Chavatah. This implies that the Gemara's question is directed solely at Rav's opinion. However, Rashi understands from the fact that the Gemara does not specify whose position is being questioned that the Gemara is challenging *both* opinions. The Gemara asks its question on both opinions because it does not want to assume that the Mishnah refers specifically to a Bor whose width is greater than its depth.

The Pnei Yehoshua explains Rashi's next comment (DH Lo) as well. Rashi writes that when the Gemara answers that the Bor under ten Tefachim deep does not contain Hevel, it means that it certainly does not contain the ability to kill with Chavatah. The Pnei Yehoshua explains that, consequently, the Mishnah -- which exempts one from liability in the case of a Bor under ten Tefachim -- is not a challenge to Shmuel who maintains that the owner is liable only for Chavatah of more than ten Tefachim.

(b) The **RASHBA** suggests that the Gemara's question is directed only at Rav's opinion. The Rashba cites **RABEINU CHANANEL** (see also Tosfos to 51a, DH Amri) who explains that when the Gemara originally suggests that the owner of a Bor of less than ten Tefachim is exempt when the Bor kills because there is not sufficient Chavatah to kill, the Gemara knows that the Bor has sufficient Chavatah to *damage*. However, at this stage the Gemara assumes that a Bor under ten Tefachim possesses no damaging *Hevel* at all. (This approach differs from that of Rashi (DH Lav), who says that a Bor under ten Tefachim also possesses Hevel.)

According to this approach, the Gemara's question was directed only at Rav. The Gemara originally assumes that in a Bor of less than ten Tefachim there is not sufficient Hevel even to damage. Consequently, when the Mishnah states that the owner is liable for damage, but not for death, caused by his Bor of less than ten Tefachim, it must be because the Torah states that one is liable for the Chavatah of his Bor, and not for Hevel. The Gemara concludes that the same distinction applies also for Hevel; in a Bor of less than ten Tefachim there is not enough Hevel to kill but there is enough to damage. Hence, the Mishnah does not contradict Rav. (See also **TOSFOS RABEINU PERETZ.**) (D. Bloom)

## The Ditch Digger

**Steinsaltz (OBM)** writes:<sup>7</sup>

Although digging a hole, ditch or cistern in the public thoroughfare ordinarily will make the person who dug responsible for any damage that befalls someone who trips or falls in it, the *baraita* in our Gemara teaches that if it is given to the public for their use, he will not be held liable. In fact, this was the practice of Nehunia *Hofer Borot, Shihin u'Me'orot*, who dug cisterns and handed them over for public use, for which he received the approbation of the Sages. The reason for this ruling is fairly straightforward – if the cistern was dug for the community, he was never the *ba'al ha-bor* – the owner of the cistern – to be held responsible for it.

According to the Mishna in *Massekhet Shekalim* (5a) Nehunia *Hofer Shihin* – whose name literally means “Nehunia the ditch digger” – was one of the appointed workers in the Temple, whose official position was to be responsible for water for Jerusalem generally, and specifically for the pilgrims coming to the Temple during the holidays. The Gemara tells that Nehunia was an expert in choosing the correct place to dig wells, thus he was able to fill cisterns not only from the collection of rainwater, but from underground reservoirs, as well.

The Gemara brings a *baraita* that tells the story of Nehunia *Hofer Shihin's* daughter who fell into a cistern (some manuscripts have “the great cistern,” which would be a reference to a particular cistern that was in the Temple precincts).

When the report reached Rabbi Ḥanina ben Dosa, he reported that all was well, and after a time that she had been saved. When questioned about it, Rabbi Ḥanina ben Dosa said that throughout the ordeal he was certain that

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<sup>7</sup> <https://steinsaltz.org/daf/bavakamma50/>

Nehunia *Hofer Shihin*'s daughter was safe because she would not be punished with the very object that her father devoted his life to.

*God does not overlook merit, and He does not overlook sin*  
אמר רב חנינא כל האומר הקב"ה ותרן הוא יותרו חייו שנאמר הצור  
תמים פעלו

As the Jewish people entered Eretz Yisrael, there was a great danger that they would forget that it was only in the merit of Torah and good deeds that they had conquered it.

It was only through continual loyalty to God and to His Torah that they would be worthy of remaining there. They could not abandon Torah and do as they please, for it was not in their own merit that they were there.

The following generations committed many sins, but God overlooked them as long as they did not abandon the Torah. Even the three worst sins - idolatry, murder, and adultery - were overlooked.

However, for abandoning the study of Torah, the land was destroyed and they were sent into exile. Yet how can we say that God overlooked their sins? We have been told that God does not overlook anything. Even to mention that He overlooks something is considered blasphemy.

Our Gemara states in no uncertain terms: "If a person says that God overlooks sins, God will overlook his very life." The justice of God is perfect, and to overlook anything would be a flaw and a perversion of justice. In fact, God overlooks nothing.

Sometimes, however, even if a person is sinful, God does not punish him. This can be compared to a fine musician who became the favorite of a king.

This musician was really a wicked man, and the king's servants complained that he should be punished. But the king enjoyed listening to his music, so, although he knew about the musician's evil deeds and offensive qualities, he refused to punish him. One day, however, the musician got into a fight and

lost his hand. When the king saw that the musician no longer could play music, he immediately had him hanged.

In the same way, a person is sometimes not punished even though he persists in his wickedness and does not repent. God refrains from punishing him because of some good deed that he is doing. He values the man's good deed and does not want him to stop.

At the same time, God does not erase the sins, for as long as the sinner has not repented, he continues to bear them, even though he is not punished.

However, if the time comes that this person neglects that good deed, he may suddenly be punished for all his other sins as well. So it was with the Jewish people at the time of the Beis HaMikdash. They committed many serious transgressions and deserved to be sent into exile.

As long as they studied Torah, however, God refrained from punishing them, for there was hope that through the Torah they might come to repent and mend their ways. When they abandoned the study of Torah there was no longer hope and they incurred the punishment of exile.

***How long can a person survive underwater?***

שעה ראשונה ... שניה ... שלישית וכו'

***The first hour ... the second ... the third [hour] etc.***

Rivash (1) writes that it is possible for a person to live up to three hours in water and still survive.

Teshuvos Seder Elya Rabba (2) writes that our Gemara would seem to be the source for this ruling. When the daughter of Nechunyah, the pit digger, fell into a pit the Gemara relates that when they informed R' Chanina ben Dosa about the tragedy during the first hour he told them that she was fine.

They came and told him during the second hour that she still has not emerged and again he assured them that she was fine and it wasn't until the third hour that he assured them that she had already emerged.

Rashi (3) explains that this was based on his understanding that she could not survive three hours under water.

Maharit (4) argues that proof cannot be drawn from our Gemara since it is possible that the term "hour" should not be understood literally that an hour passed; rather it refers to the number of times they came to express their concern to R' Chanina ben Dosa.

Proof to this assertion can be found in a Tosafos in Sotah.

Tosafos (5) writes that when the Gemara relates that Miriam stood for an "hour" to see what would happen to Moshe it should not be understood as though she stood there for a full hour since the term "hour" is not meant literally and may even refer to a third or a quarter of an hour.

Another reason our Gemara is not proof to this principle is that it is possible that Nechunyah's daughter may have had a ledge to stand on or a rock to hold her above the water and thus there is no proof that a person could survive submerged for three hours under water.

Ginas Veradim (6) follows Maharit by noting that most people cannot hold their breath for even an hour and certainly when people are panicking, they lose their presence of mind and open their mouths and immediately lose air and swallow water.

Chasam Sofer (7) also agrees with Maharit and adds that this discussion is limited to assessing how long a person may survive while submerged in water that is calm but a person who falls into strong running water will have a shorter time frame to emerge from those waters.

1. שו"ת ריב"ש סי' תט"ז
2. שו"ת סדר אליה רבה סי' י"ב
3. רש"י לסוגייתנו ד"ה שלישית
4. שו"ת מהרי"ט אהע"ז סי' כ"ו
5. תוס' סוטה י"א ד"ה מרים המתינה
6. גנת ורדים כלל ג' סי' ה'
7. שו"ת חת"ס אהע"ז ח"א סי' ס"ה ■

## *The kindness in limits*

כל האומר הקב"ה ותרן יותרו חייו

The Alter of Kelm, zt"l, spent a great deal of time wandering from town to town with the intent of discovering the weaknesses of various communities so that he could help correct them.

While on such a journey, a certain very clever cheder boy once asked the Alter of Kelm, zt"l, "In Bava Kama 50 we find that that whoever says that Hashem overlooks sins for which he does not repent, his life will be overlooked. But why doesn't Hashem overlook sins, even if one fails to repent?"

After all, does it not say that Hashem is full of mercy and compassion?" "I will explain this to you with an actual occurrence at which I was present," the Alter replied. "In the city of Vilna, a certain poor man approached one of the wealthier members of the community and requested a loan so that he could purchase food.

The wealthy man put his hand into his pocket and counted out seventy five kopeks into the poor man's hand. The pauper was clearly affronted by the small amount he had received. "They say that you are a good person. Why are you so miserly when it comes to lending me money?"

The wealthy man replied, "My dear friend. If I was as generous as you seem to believe appropriate, I would definitely be unable to provide you with even this meager sum.

Every kopek that I own would surely have already been in the hands of other people who asked for loans or donations before you! It is only because I limit what I give that am able to give to all of the many people who request assistance."

The Alter then returned to the child's original question, "Do you understand, my child? If Hashem has mercy on all the cutthroats, swindlers, and other unrepentant sinners without limit, there would be an endless supply of such unscrupulous people.

This would make the world a very difficult place to live in. Hashem's limits on His mercy is in itself the ultimate mercy! (1)

1. מובא במכתב מאליהו חלק ג עמ' 336

## Are you a Prophet?

**Rabbi Elliot Goldberg** writes:<sup>8</sup>

On *our daf*, we learn in a *beraita* (early rabbinic teaching):

**If someone dug or opened a well and transferred it to the public for their use, he is exempt from damage caused by the well. If he dug or opened a well and did not transfer it to the public, he is liable.**

If you dig a well and keep it for yourself, you assume liability for any damage that it causes. But if you dig a well and transfer it to the public, you are exempt. Making the well available for public use serves the community in two ways. First, and most obviously, it provides the community with a source of water. Second, it makes the public aware of the well's existence, reducing the likelihood that someone will fall into it. For both these reasons, the person who labors to dig it is exempt from liability.

Digging a well is back-breaking work. Who would devote time to such a project only to gift the well away to the public? The Talmud tells us that Nehunya was known for doing exactly this: digging not only public wells but also cisterns and pits — all manner of water systems. And whenever he dug one, he transferred it to the public. Three cheers for Nehunya!

**When the sages heard about the matter, they said: This individual has fulfilled this halakhah.**

Did that sound like lukewarm praise? The *Gemara* amends this accolade:

**He even fulfilled this halakhah.**

Nehunya was an impressive figure who devoted a lifetime to public service. The *Gemara* now tells a story about him. Once, we learn, Nehunya's daughter fell into a large cistern and no one could get her out. The locals went to Rabbi Hanina ben Dosa to pray for her rescue, and meanwhile an old man with a sheep found a way to get her out. Before she returned to town, Rabbi Hanina ben Dosa — who was possessed of not only great wisdom but also supernatural powers — informed the townspeople that she had survived and emerged from the cistern. How did he know?

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<sup>8</sup> Talmud from my Jewish learning



## **They said to Rabbi Hanina ben Dosa: Are you a prophet?**

**Rabbi Hanina ben Dosa said to them: "I am no prophet, neither am I a prophet's son" (Amos 7:14), but this is what I said to myself: Shall the offspring of Nehunya stumble by means of the very matter which that righteous man troubled himself?**

Though the rabbis attribute extraordinary powers of intercession with heaven to him, Rabbi Hanina ben Dosa didn't use them to rescue this girl or even to determine that she was safe. Rather, he knew she would be safe because of his certainty about how the world works. There is no way, posits Rabbi Hanina ben Dosa, that a person who digs wells and cisterns and transfers them to the public could suffer the loss of a child in this manner. The merit of Nehunya's actions protect him, and his children, from such a tragedy.

Rabbi Hanina ben Dosa's worldview is comforting: the idea that our merit provides protection to our family. But we know this is not how the world always works — and so does the Talmud. While the rescue of Nahunya's daughter gives credence to this worldview, the fate of his son shows it to be naive.

### **Rabbi Aha says: Even so, his son died of thirst.**

Nahunya is upheld as a great man by the Talmud. He lived a life of meritorious deeds, including his public works projects that provided water for others. For this he is honored, and yet his own son died for lack of water.

We don't hear from Nahunya himself in his story. I hope that he took great pride in his work and understood that the merit of a good deed is intrinsic to the act itself. And I hope that the irony in the manner of the death of his son did not add to his grief, or stop him from digging public wells.

### **Rabbi Johnny Solomon** writes:<sup>9</sup>

Today is the fast of Assarah B'Tevet which commemorates the chain of calamities, beginning with the siege of Jerusalem (see Melachim II Ch. 25), that eventually led to the destruction of the First Beit HaMikdash. And why do we fast? As the Rambam explains (in his Hilchot Ta'anot 5:1), it is to stir our hearts to inspire us to repent while, at the same time, recalling how it was the failure to repent which led to the calamities that befell our nation.

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<sup>9</sup> [www.rabbijohnnysolomon.com](http://www.rabbijohnnysolomon.com)

This point is made particularly clearly in the Yalkut Shimoni (Eicha 1) where we are taught that, 'when the wicked Nebuchadnezzar came to Jerusalem with his allies, he thought that he would conquer the city quickly. However, God strengthened the residents of Jerusalem until the third year of the siege with the hope that they would repent...However, the sins of the city continued, and so, eventually, the wall of the city were breached'.

This suggests that though God patiently hoped for the people to take stock of their spiritual errors and repent, they sadly failed to do so. Consequently, the lack of merit of the nation in this tense moment of divine judgement meant that the impending calamity was allowed to occur. Accordingly, we fast and stir our hearts to inspire us to repent today, because our ancestors did not seize the opportunity to repent in the past.

But the question we should ask is why did God not simply forgive the people? Why did God not 'turn the other cheek'? To answer this question, we must look to the opening chapters of Sefer Bereishit.

When the Torah describes the creation, we note that the first chapter of Bereishit only uses the divine name of א-להים which we are taught represents מידת הדין, meaning God's judgement of the world. But then, from Bereishit 2:4 onwards, the name י-הוה א-להים is used, which blends God's trait of judgement (מידת הדין) with God's mercy towards the world (מידת הרחמים). As Rashi explains (in his commentary to Bereishit 1:1), 'in the beginning it was God's intention to create the world purely through מידת הדין. However, God recognized that by doing so, the world as we know it would not be able to exist. Accordingly, God incorporated the trait of מידת הרחמים in creation and did so in a manner that it preceded מידת הדין as evident from Bereishit 2:4.'

What this tells us is that while God incorporated mercy into the world, the world cannot exist on mercy alone. Instead, for the sake of justice and the rule of law, there is also a need for מידת הדין (nb. on this point see the Or HaChayim on Bereishit 1:1, section 3).

Having understood these points we can now turn to today's daf (Bava Kamma 50a) where we encounter a teaching of Rabbi Chanina which states: 'Whoever says that the Holy One, Blessed be He, overlooks [sin], then their life will be overlooked, as it says: "The Rock! Perfect is His work, for all His paths are justice" (Devarim 32:4)'.

On first glance this teaching sounds very harsh. But as Rabbi Baruch Halevi Epstein notes (in his Torah Temimah commentary to Devarim 32:4) while referencing Michah 7:18, while it is true that God 'forgives iniquity and passes over the transgression of the remnant of His heritage', this grace is only

provided alongside our heeding of God's broader demand that we act justly. Moreover, as Rabbi Chaim of Volozhin explains in his Nefesh HaChaim (Gate 2 Ch. 8), just as it would be reckless to overlook someone who is ingesting foods which are damaging or poisonous to them, so too, God cannot overlook certain things that are damaging or poisonous to our nation.

So while God shows us much grace, and while God prioritizes מידת הרחמים over מידת הדין, God does not 'turn the other cheek' when we transgress. This is because doing so, as the Nefesh HaChaim explains, is not an act of love but rather an act of indifference which can, as a result, enable evil. And so we fast today on Assarah B'Tevet is to stir our hearts to inspire us to repent, and in so doing, to demonstrate our absolute commitment to building a society where there is justice and the rule of law, rather than moral indifference which thereby fosters evil.



**Peasant Children with Donkeys by Edgar Bundy**

## **Donkey Falls into a Pit (Torts)**

**Mark Kerzner** writes:<sup>10</sup>

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<sup>10</sup> [https://talmudilluminated.com/bava\\_kamma/bava\\_kamma50.html](https://talmudilluminated.com/bava_kamma/bava_kamma50.html)

If one digs a pit in the public domain and an ox or a donkey falls into it, he is liable to pay the damages.

Whatever shape one digs, he is liable to pay for the damage his excavation causes. If so, why is specifically a pit mentioned in the Torah? Just as a standard pit has sufficient depth to cause death, being ten handbreadths deep, one is liable for any obstacle that has sufficient depth to cause death.

One is not liable for the death of a donkey in a pit less than 10 hand-breadths but is liable for the injury.



## The Tale of Nechunya the Ditch-Digger (Part I)

**Rav Dr Yonatan Feintuch** writes:<sup>11</sup>

We will deal with torts for opening a *bor* (pit), as discussed in Tractate *Bava Kama*.

The *Mishna* there (5:5) states:

If one digs a pit in a private domain and opens it into the public domain, or if one digs a pit in the public domain and opens it into a private domain, or if one digs a pit in a private domain and opens it into another's private domain, one is liable for the ensuing damages.

The *gemara* on this in the Babylonian Talmud (49b-50b) is comprised of four parts, each of which opens with, "Our Rabbis taught."

- A) The dispute between the *Tanna'im* R. Yishmael and R. Akiva in the *baraita* regarding liability or exemption therefrom.[1] The *Amora'im* Rabba and R. Yosef argue regarding the correct interpretation of this *baraita*, which the *sugya* explains as a dispute about what makes one liable for damages caused by falling into the pit (the indemnifier, so to speak): ownership of the pit or creation of the pit (either by digging it or by removing its cover). After citing the Amoraic dispute, the redactors of the *gemara* cite two *baraitot* that seem to challenge R. Yosef's position, but both challenges are answered.
- B) The law exempting someone who digs or opens a pit but then dedicates it to the public.
- C) The *aggada* of Nechunya the Ditch-Digger.[2]
- D) The law of removing stones from private property to the public domain, as well as the story of the pious man and the man removing stones.

The debate in the first *baraita* (between R. Yishmael and R. Akiva) and the subsequent Amoraic dispute (between Rabba and R. Yosef as to the indemnifier for damages caused by a pit) tie in directly to the *mishna*: Both

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<sup>11</sup> <https://etzion.org.il/en/talmud/studies-gemara/midrash-and-aggada/tale-nechunya-ditch-digger-part-i>

deal with pits in various domains, and both fundamentally analyze a topic that deserves to be the Talmudic opening for dealing with the torts of *bor* in this tractate.

The *baraita* subsequently cited by the *gemara*, discussing one who digs a pit and dedicates it to the public, is also naturally interwoven into this debate. This is another case of indemnifying the owner for the damage caused by a pit.[3] The *baraita* cites the case of Nechunya the Ditch-Digger to present an example of one who excavates, opens, and hands over a *bor* to the public. Since Nechunya the Ditch-Digger's name comes up, the third *baraita* is cited, which contains a narrative about that character.

There is an almost identical parallel to the Nechunya narrative elsewhere in the Babylonian Talmud, in *Yevamot* 121b, in a *sugya* dealing with a woman who cannot remarry because her husband's death has not been verified. The sixteenth and final chapter of *Yevamot* deals with a long list of such cases, and the Nechunya narrative is cited to illuminate R. Meir's statement in the fourth *mishna*:

R. Meir says: It once happened that a man fell into a large cistern and rose to the surface three days later.

Below, we will examine the relationship between the parallels and the ramifications of this relationship on the interpretation of the *aggada* in *Bava Kama*.

This is the *aggada* of Nechunya, preceded by the *baraita* dealing with an excavating a *bor* and handing it over to the public domain:

Our Rabbis taught: If one digs [a well] and leaves it open, but transfers it to the public, one is exempt, whereas if one digs it and leaves it open without dedicating it to the public, one is liable. Such also was the custom of Nechunya the digger of wells, ditches, and caves; he used to dig wells and leave them open and dedicate them to the public. When this matter became known to the Sages, they observed: This man has fulfilled this law. Only this law and no more? Read, therefore, "this law also."

1. Our Rabbis taught: It happened that the daughter of Nechunya the Ditch-Digger fell into a deep pit.
2. People came and informed R. Chanina ben Dosa.

3. During the first hour, he said to them, "She is well." During the second, he said to them, "She is still well." But in the third hour, he said to them, "She has by now come out [of the pit]."
4. They then asked her, "Who brought you up?"
5. Her answer was, "A ram came to my help with an old man leading it."
6. They then asked R. Chanina ben Dosa, "Are you a prophet?"
7. He said to them, "I am neither a prophet nor the son of a prophet.
8. "I only said to myself: Shall his seed stumble over the thing to which that righteous man has devoted his labor?"[4]
9. R. Acha, however, said: Nevertheless, his son died of thirst, as it says, "And it shall be very tempestuous round about Him," which teaches that the Holy One, blessed be He, is particular with those round about Him[5] even for matters as light as a single hair.
10. R. Nechunya[6] derived the same lesson from the verse, "God is very daunting, in the secret counsel of His holy ones, and awesome over all surrounding Him."
11. R. Chanina said: Whoever says that the Holy One, blessed be He, is yielding in the execution of justice, that one's life is yielded,[7] for it is stated, "He is the Rock, His work is perfect; for all His ways are justice."
12. But R. Chana,[8] or as others read R. Shemuel bar Nachmani, said: Why is it written, "Long of sufferings," and not, "Long of suffering"? [It must mean,] "Long of sufferings" to both the righteous and the wicked.

## Literary Analysis

The *aggada* of Nechunya the Ditch-Digger in the Babylonian Talmud can be split into two parts. The first eight lines tell the story of Nechunya's daughter

and her rescue from precisely the type of cisterns that her father would dig for the public welfare.

This part ends with R. Chanina ben Dosa dramatic declaration: "Shall his seed stumble over the thing to which that righteous man has devoted his labor?"

This declaration is meant to explain R. Chanina ben Dosa's confidence that nothing bad will befall the daughter of Nechunya in a well that he dug for the public welfare.

However, in a sharp transition, the second part (the last four lines) opens with R. Acha's statement about Nechunya's son dying of dehydration. This statement would seem to contradict the message of the previous story; indeed, this transition is marked with qualifiers: nevertheless, however.

The statement of R. Acha raises other similar examinations of theodicy and the doctrine of reward and punishment.

This *aggada*, with its different sections, has a parallel in Tractate *Shekalim* of the Jerusalem Talmud (5:1,48d). We will compare these parallels directly.



Babylonian Talmud	Jerusalem Talmud, <i>Shekalim</i>
<p>Our Rabbis taught: It happened that the daughter of Nechunya the Ditch-Digger fell into a deep pit.</p> <p>People came and informed R. Chanina ben Dosa.</p> <p>During the first hour, he said to them, "She is well." During the second, he said to them, "She is still well." But in the third hour, he said to them, "She has by now come out [of the pit]."</p> <p>They then asked her, "Who brought you up?" Her answer was, "A ram came to my help with an old man leading it."</p> <p>They then asked R. Chanina ben Dosa, "Are you a prophet?"</p> <p>He said to them, "I am neither a prophet nor the son of a prophet.</p> <p>"I only said to myself: Shall his seed stumble over the thing to which that righteous man has devoted his labor?"</p>	<p>Nechunya the Ditch-Digger, who would dig ditches and caves, knew under which rock a water source could be found and under which rock it was bone-dry, how far down the rock went and how far down the dryness went.</p>
<p>R. Acha, however, said: Nevertheless, his son died of thirst, as it says, "And it shall be very tempestuous round about Him," which teaches that the Holy One, blessed be He, is particular with those round about Him even for matters as light as a single hair.</p> <p>Rabbi Nechunya derived the same lesson</p>	<p>R. Acha, however, said: Nevertheless, his son died of thirst.</p>

<p>from the verse "God is very daunting, in the secret counsel of His holy ones, and awesome over all surrounding Him."</p>	
<p>R. Chanina said: Whoever says that the Holy One, blessed be He, is yielding in the execution of justice that one's life is yielded, for it is stated, "He is the Rock, His work is perfect; for all His ways are justice."</p>	<p>R. Chanina said: Whoever says that the Holy One, blessed be He, is yielding in the execution of justice, that one's innards will be yielded; rather, He is long-suffering and claims what He is owed.</p> <p>R. Acha said: As it says, "And it shall be very tempestuous round about Him," which teaches that He is particular with them even for matters as light as a single hair.</p> <p>Said R. Yosa: This is not the source, but rather, "And awesome over all surrounding Him" – the fear of Him is more on those who are close than those who are far.</p>
<p>But R. Chana, or as others read R. Shemuel bar Nachmani, said: Why is it written, "Long of sufferings," and not, "Long of suffering"? [It must mean,] "Long of sufferings" to both the</p>	<p>R. Chaggai in the name of R. Shemuel bar Nachman says: It happened that a pious man would dig cisterns, ditches, and caves for the passers-by. Once his daughter was crossing the river to be married, and she was swept away.</p> <p>All the people came to console him, but he refused to accept their condolences. R. Pinchas ben Ya'ir came to console him, but he refused to accept his condolences.</p> <p>[R. Pinchas ben Ya'ir said], "This is what you call a pious man?"</p> <p>They said to him, "Rabbi, this is what he did, and</p>
<p>righteous and the wicked.</p>	<p>that is what happened to him."</p> <p>He said, "Could it be that he honored his Creator with water and he brings him up short with water?"</p> <p>Suddenly, a tumult was heard in the town and the daughter of that man arrived. Some say she clung to a branch and climbed up; others say an angel came down, with the appearance of R. Pinchas ben Ya'ir, and saved her.</p>

## The Parallel in the Jerusalem Talmud

In a comparative reading of the parallel narratives, what is most notable is that in the Jerusalem Talmud, unlike the Babylonian Talmud, the *aggada* consists of two separate tales, each of which stands on its own.[9] At first, Nechunya the Ditch-Digger is described,[10] being cited in the *sugya* because of his appearance in the list of Temple officeholders in the *mishna*; the *gemara* therefore expands on his story. The statement of R. Acha about the son's tragic death from dehydration is a continuation of the exploration of Nechunya's background.

From here, the Jerusalem Talmud moves on to a series of theological-exegetical statements about the Attribute of Justice, which are similar or identical to those in the Babylonian Talmud. Afterwards, R. Chagga cites in the name of R. Shemuel bar Nachman a separate story about a pious man and his daughter that is quite similar to that of Nechunya and his daughter in the Babylonian Talmud, albeit with certain distinctions in the details of the plot (which we will address further on). In the mouth of R. Pinchas ben Ya'ir, who fills in this narrative the role of R. Chanina ben Dosa in the Babylonian version,[11] we find the theological axiom that rejects the idea that God would punish a person through the same matter in which that person fulfilled a *mitzva* or a good deed.

Thus, after the brief description in the Jerusalem Talmud about Nechunya, three statements are cited. First, R. Chanina comments that God does not yield, but merely waits to collect what He is owed. It may be that citing R. Chanina's words immediately after those of R. Acha[12] alludes to the fact that Nechunya deserved a heavy punishment (for an unknown sin), but it was delayed and fulfilled by the death of his son.[13]

The next two statements, those of R. Acha and R. Yosa, represent different viewpoints. According to their words, the Attribute of Justice is more exacting when it comes to those who are closest to the Divine, "those rounds about Him." If their words in the *sugya* are directed (by their authors or by its redactors) towards Nechunya as well, then their declarations indicate that this individual's intimacy with and closeness to God engenders a harsh sentence, perhaps for some minor transgression that is unknown to us, for some misstep by "those round about Him" that demands a severely punitive response.[14]

In truth, we cannot be sure that the three theological statements were formulated in repose to the case of Nechunya the Ditch-Digger, as these statements appear elsewhere as well. One of these places is in

Tractate *Beitza* in the Jerusalem Talmud (3:8, 62b), in which the context for these statements is quite different:

It has been taught: There was a story of the son of R. Elazar son of R. Tzadok and of Abba Shaul ben Botnit, who were shopkeepers in Jerusalem. They would fill their measures before the festival and give them to customers on the festival.

R. Chanina ben Akavya says that they would also do this on the intermediate days of the festival, in order to saturate the utensils with oil.

R. Elazar son of R. Tzadok also gathered three hundred barrels, and his friend gathered three hundred barrels. The Sages said to them: You did not need to do this, but since you were stringent on yourselves, the money should be used for public needs.

Once, Abba Shaul became sick and the Rabbis entered to visit him. Abba Shaul: Have you seen my right hand that would always measure honestly [but is nevertheless in pain]?

R. Chanina said: Whoever says that the Holy One, blessed be He, is yielding in the execution of justice, that one's innards will be yielded; rather, He is long-suffering and claims what He is owed.

R. Acha said: As it says, "And it shall be very tempestuous round about Him," which teaches that He is particular with them even for matters as light as a single hair.

Said R. Yosa son of R. Bon: This is not the source, but rather, "And awesome over all surrounding Him" — the fear of Him is more on those who are close than those who are far.

It is difficult to conclusively determine the source of these statements: Were they associated with one story, with the other story, or with some text which we no longer have, after which they were edited into the Jerusalem Talmud and juxtaposed with these narratives?[15] Moreover, we should be dubious about matching up the statements of R. Acha and R. Yosa to the character of Nechunya as presented in Tractate *Shekalim*.

Unlike the righteous figures in *Beitza*, whose impeccable morals are well-established in the narrative there, the Jerusalem Talmud does not necessarily present Nechunya as a paragon of virtue or ethics. His hydrological activity is part of his occupation as an officeholder in the Temple, not of some philanthropic endeavor for the public benefit. This is strikingly clear when we

contrast his description with the description of the protagonist of R. Chagga's story, which appears further on in the *sugya*. This protagonist is identified as a "pious man" looking out for the interests of the "passersby," and R. Pinchas ben Ya'ir says of him that "he honored his Creator with water."

Moreover, the fact that Nechunya is a Temple officeholder does not prove anything about him conclusively, as the beginning of that *sugya* (48c) lists a number of such bureaucrats in order to severely criticize their actions with the imprecation, "The name of the evil shall rot." Although Nechunya does not appear on that list explicitly, the very fact that the list exists indicates that based on his status as a Temple officeholder alone, there is no reason to consider him a virtuous man.

Taking all of this into account, it is reasonable to assume that these three statements were copied, as a set, from another source that we do not have. The redactors of the Jerusalem Talmud then integrated them into each of the two *sugyot* in Tractates *Shekalim* and *Beitza*.

## Conclusion

Whatever the case may be of how these *sugyot* came into their present form, we have two divergent descriptions: Nechunya's son dies of thirst while the daughter of the pious man is saved from drowning, and there need not be any tension between these cases.

We may read the *sugya* here as dealing first with Nechunya, who commits a sin (of a major or minor variety) that we know nothing about, and the punishment for this sin is stayed until the death of his son. On the other hand, the pious man, who digs cisterns for the public's benefit in order to perform a *mitzva*, is rewarded *midda ke-neged midda*, as his daughter is saved from drowning. Her death by drowning would have been a slap in the face, a theological inconceivability in light of her father's praiseworthy enterprise.[16]

In contrast, in the Babylonian Talmud, we have the two stories as one joint narrative, causing some tension between Nechunya's virtue and the catastrophe that befalls him. We will analyze this phenomenon in the next *shiur*.

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[1] 49b-50a, from "Our Rabbis taught: One who digs a pit" until "He might reply that it deals with digging for foundations, in regard to which the ruling is unanimous."

[2] Henceforth we will use the phrase "the *aggada* of Nechunya" to refer to the entire aggadic section dealing with Nechunya the Ditch-Digger, while "the Nechunya narrative" or "the narrative" will be used to refer solely to the tale of his daughter's falling into a cistern and being rescued, excluding the statements following it in the *sugya*.

[3] In the Tosefta as well, a *baraita* such as this appears juxtaposed to the *baraita* that parallels our *mishna* (Tosefta *Bava Kama* 6:5, Lieberman edition, pp. 21-22).

[4] This expression requires some explanation. Stumbling here could be a reference to receiving a punishment, and if so, it is unclear if Nechunya's "seed" is sinful in some way or if Nechunya is the transgressor. On the other hand, stumbling might be a reference to sinning itself, naturally incurring a punishment, in which case it would be the seed who are sinful in some manner. However, there may be a double meaning in our case, as stumbling may have a physical component in this instance, as we are talking about falling into a pit. Below, when Nechunya's son is mentioned and it is noted that he died of thirst, the implication is that Nechunya himself had sinned; R. Chanina's statement discusses the son's death as a delay of punishment, while other statements discuss being "round about Him" — a reference to Nechunya's relationship to God, as Nechunya is "that righteous man." It appears that the *gemara* considers the death of the son to be a punishment for the bereaved father. In the Jerusalem Talmud as well (see below), this is implied, whether concerning the son or the daughter, as R. Pinchas ben Ya'ir says, "Could it be that he honored his Creator with water and he brings him up short with water?" The focus is clearly on Nechunya, as his work is discussed and contrasted with the "wrong" of his daughter's death. It appears that the storytellers in both Talmuds simply accept the fact that a child could die for a parent's sin, in order to punish the parent; conversely, the righteousness of the parent should prevent the death of the child, as a reward to the parent. However, we cannot make sweeping conclusions about such a worldview in the Talmuds, as the matter requires a more thorough survey and analysis, which is beyond the scope of this series.

[5] Reliable manuscripts have, "over those surrounding him," which would be more in keeping with the verse cited subsequently, "God is very daunting, in the secret counsel of His holy ones, and awesome over all surrounding Him."

[6] Reliable manuscripts have R. Chanina instead here.

[7] Reliable manuscripts have, "That one's innards will be yielded; rather, He is long-suffering and claims what He is owed."

[8] Reliable manuscripts have R. Chagga. See below, where we compare this to its parallel in the Jerusalem Talmud.

[9] This is supported, if not outright established, by the fact that the Jerusalem Talmud elsewhere (*Demai* 1:3, 21d) cites a parallel story to that of the pious man, without mention Nechunya at all. This parallel is interesting for another reason: The *sugya* in the Jerusalem Talmud in *Shekalim* that we are discussing here talks about various officeholders in the Temple. At the beginning of the discussion, the *gemara* tells the story of R. Pinchas ben Ya'ir and his donkey; to continue this theme, in connection with mentioning Nechunya the Ditch-Digger, it cites the above-mentioned story of the pious man. These two stories about R. Pinchas ben Ya'ir are part of a larger collection of stories about the sage, who appears in the above-mentioned *sugya* in Tractate *Demai* of the Jerusalem Talmud. It may be that this collection or a similar collection is the source for both stories in the *sugya* in *Shekalim*.

[10] There is some variation between the Talmuds as to the spelling of Nechunya's name: the Jerusalem Talmud has a double *yud* followed by a *hei* at the end, while the Babylonian Talmud has one *yud* followed by an *alef*.

[11] There is at times a phenomenon of these two pious men being interchangeable characters, even in the above-mentioned *sugya* of the Jerusalem Talmud. It may be that beyond the normal interchangeability of these two characters in this case, when it comes to the rescue story about the daughter of Nechunya, who lived at the end of the Second Temple Era, it makes sense to switch out R. Pinchas ben Ya'ir for Rabbi Chanina ben Dosa, who could be a contemporary of Nechunya.

[12] If this R. Chanina were the one from the first generation of *Amora'im* from the Land of Israel (see Albeck, *Mavo La-Talmidim*, p. 155), he could not have been reacting to the words of R. Acha, from the fourth generation (Albeck, *ibid.* p. 316). However, as Albeck notes (p. 155), in many places in the Jerusalem Talmud, it is difficult to determine with certainty which R. Chanina is meant.

[13] See *supra* fn. 4.

[14] As we will note below, Nechunya is not described as a righteous person. Nevertheless, as an officeholder in the Temple, he may be considered to be in proximity to God, in a more physical sense than a spiritual one; because his profession brings him near to the Divine Presence in the Temple, he may be considered close to God, and thus subject to a more exacting standard.

[15] It may be that an ancient source for some of these *derashot* can be found among the *Tanna'im*, namely in *Mekhilta De-Rabbi Yishmael, Shira*, ch. 8: "Another explanation: 'Awesome in praises' — the nature of flesh and blood is that one is feared more by those who are far than those who are close, but the Holy One, blessed be He, is not like this: Those who are close to him fear him more than those who are far, as it says, 'With those who are near to me, I will be sanctified,' and it says, 'And it shall be very

tempestuous round about Him,” and it says, ‘God is very daunting, in the secret counsel of His holy ones, and awesome over all surrounding Him,’ and it says, ‘Lord, God of Hosts, who is like You? Lord, you are potent, and your faithfulness is round about you.’”

[16] It is worth noting that the *Sheyarei Korban* ad loc. points to a contradiction between the events. However, as stated above, there is no necessary contradiction between the matters, Nechunya being on his own terms and the pious man on his own terms. If, after all this, the reader still feels a tension between the descriptions concerning the death of Nechunya’s son in a manner that evokes his profession, the *sugya* may be read as a theological dispute between the *Amora’im*, who relate to the death of Nechunya’s son, on the one hand, and the tradition of R. Chagga in the name of R. Shemuel bar Nachman about the daughter of the pious man, on the other.

, full\_html, in this shiur, we will begin to explore the aggada of Nechunya the ditch-digger, as presented in Tractate Bava Kama, comparing this story to the version that appears in the Jerusalem Talmud.

## The Tale of Nechunya the Ditch-Digger (Part II)

**Rav Dr. Yonatan Feintuch** writes:<sup>12</sup>

Above, we saw the story of Nechunya the Ditch-Digger’s daughter (Babylonian Talmud, *Bava Kama* 50a-b) and its parallel in the Jerusalem Talmud (*Shekalim* 5:1, 48d). Now we return to the Babylonian Talmud’s narrative in order to observe its structure, as compared to the version in the Jerusalem Talmud.

To make it easier for readers, we will consider both versions side-by-side:

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<sup>12</sup> <https://etzion.org.il/en/talmud/studies-gemara/midrash-and-aggada/tale-nechunya-ditch-digger-part-ii>

Babylonian Talmud, <i>Bava Kama</i>	Jerusalem Talmud, <i>Shekalim</i>
<p>Our Rabbis taught: It happened that the daughter of Nechunya .the Ditch-Digger fell into a large cistern .People came and informed R. Chanina ben Dosa</p> <p>During the first hour, he said to them, "She is well;" during the second, he said to them, "She is still well;" but in the third hour, he .said to them, "She has by now come out [of the pit]"</p> <p>"?They then asked her, "Who brought you up Her answer was, "A ram came to my help with an old man leading ".it</p> <p>"?They then asked R. Chanina ben Dosa, "Are you a prophet .He said to them, "I am neither a prophet nor the son of a prophet I only said to myself: Shall his seed stumble over the thing to "?which that righteous man has devoted his labor</p>	<p>Nechunya the Ditch-Digger, who would dig ditches and caves, knew under which rock a water source could be found and under which rock it was bone-dry, how far down the rock went and how far down the dryness .went</p>
<p>R. Acha, however, said: Nevertheless, his son died of thirst, as it says, "And it shall be very tempestuous round about Him," which teaches that the Holy One, blessed be He, is particular with those .round about Him even for matters as light as a single hair</p> <p>R. Nechunya derived the same lesson from the verse, "God is very daunting, in the secret counsel of His holy ones, and awesome ".over all surrounding Him</p>	<p>R. Acha said: His son died .of thirst</p>



<p>R. Chanina said: Whoever says that the Holy One, blessed be He, is yielding in the execution of justice that one's life is yielded, for it is stated, "He is the Rock, His work is perfect; for all His ways are justice</p>	<p>R. Chanina said: Whoever says that the Holy One, blessed be He, is yielding in the execution of justice, that one's innards will be yielded; .rather, He is long-suffering and claims what He is owed</p> <p>R. Acha said: as it says, "And it shall be very tempestuous round about Him," which teaches that He is particular with them even for matters as .light as a single hair</p> <p>Said R. Yosa: This is not the source, but rather, "And awesome over all surrounding Him" – the fear of Him is more on those who are close than .those who are far</p>
<p>But R. Chana, or as others read R. Shemuel bar Nachmani, said: Why is it written, "Long of sufferings," and not, "Long of suffering"? [It must mean,] "Long of sufferings" to both the righteous and righteous and .the wicked</p>	<p>R. Chaggai in the name of R. Shemuel bar Nachman says: It happened that a pious man would dig cisterns, ditches, and caves for the passersby. Once his .daughter was crossing the river to be married, and she was swept away</p> <p>All the people came to console him, but he refused to accept their condolences. R. Pinchas ben Ya'ir came to console him, but he refused to .accept his condolences</p> <p>"?This is what you call a pious man" :[R. Pinchas ben Ya'ir said] They said to him: "Rabbi, this is what he did, and that is what happened to ".him</p> <p>He said: "Could it be that he honored his Creator with water and He brings "?him up short with water</p> <p>Suddenly, a tumult was heard in the town and the daughter of that man arrived. Some say she clung to a branch and climbed up; others say an angel came down, with the appearance of R. Pinchas ben Ya'ir, and saved her</p>

## Nechunya's Narrative in the Babylonian Talmud

In the Jerusalem Talmud, there are two traditions dealing with two separate characters: Nechunya and an anonymous pious man. In the version of the Babylonian Talmud, these two characters are conflated in the personality of Nechunya the Ditch-Digger.

Such a blending of traditions, particularly when we are talking about ascribing an anonymous tradition to a known personality, is a phenomenon that exists in the Babylonian Talmud in a number of contexts. Y. Heinemann explores this phenomenon, described as “focusing of the plot.”<sup>[1]</sup>

Aside from the distinction concerning the blending of these traditions, the Babylonian Talmud’s version is distinguished from that of the Jerusalem Talmud in a number of additional details, which may be less noticeable to the reader:

- A. **Circumstances of the Accident:** The Jerusalem Talmud tells of drowning in a river, and the connection between this catastrophe and the profession of digging cisterns is more generalized.<sup>[2]</sup> In the Babylonian Talmud, on the other hand, the child falls into a large cistern (*bor gadol*), a manmade device for collecting and holding rainwater, making the connection much more pronounced. Such circumstances for the accident are more appropriate for the *sugya* in the latter source, which is from Tractate *Bava Kama* and which deals with the tort of *bor* and the damages resulting from falling into one, rather than the *sugya* from the Jerusalem Talmud, which is from Tractate *Shekalim* and which does not address issues of damage and liability. Thus, we may observe how the Babylonian Talmud in *Bava Kama* fine-tunes the narrative so it will be a fitting accompaniment to the halakhic discussion there. This point is very significant when we consider how the Babylonian Talmud integrates narrative into various *sugyot*.

However, in this case, interestingly, there is some ambiguity, as there may be another reason to change the scene of the action from a raging river to a giant pit of rainwater. As we noted in the previous *shiur*, a *mishna* in the final chapter of *Yevamot* includes the following statement:

R. Meir says: It once happened that a man fell into a large cistern and rose to the surface three days later.

The *gemara* analyzes this statement (121b), as R. Meir and the Sages argue about this case, the former maintaining that it was a natural event, while the latter hold that only divine intervention could have allowed it:

“R. Meir says: It once happened that a man fell into a large cistern” — But it was taught in a *baraita*: They said to R. Meir, “We do not mention miraculous events.”

What miraculous events? If it was the lack of food and water, does not the verse say, “Fast on my behalf, neither eating nor drinking [for three days]”? (*Esther* 4:16)

Rather, it was because he could not have slept, as R. Yochanan said that one who vows not to sleep for three days receives lashes [for swearing falsely] and may go to sleep right away.

What then would R. Meir argue? R. Kahana explained: There were outcroppings over outcroppings.

What then would the Rabbis argue? [The outcroppings] would have been [as smooth as] marble.

What then would R. Meir argue? It is inconceivable that he could not have curled himself up to doze a bit.

Our Rabbis taught: It happened that the daughter of Nechunya the Ditch-Digger fell into a large cistern...

Analyzing this parallel, we must come to the conclusion that is altogether feasible that the circumstances of this accident — at least as the Babylonian Talmud chooses to formulate them — are specifically connected to R. Meir's account in the *mishna* there of a man who fell into a *bor gadol*, as well as the debate he has with his colleagues about the natural or supernatural facts of the man's survival.[\[3\]](#)

**B. Identity of the Rescuer:** The Jerusalem Talmud (in the miraculous account) identifies the rescuer as an angel wearing the face of R. Pinchas ben Yair, a central character in the narrative. The Babylonian Talmud recasts the role: "A ram came to my help with an old man leading it." The appearance of such a character is unprecedented, as far as we know, in the literature of *Chazal*. This wondrous figure[\[4\]](#) does raise some biblical associations, as the aged Avraham takes a ram to replace his son at the Binding of Yitzchak, saving the young man from being a human sacrifice.[\[5\]](#) Arguably, in the Nechunya narrative, this image may represent the Attribute of Divine Mercy, particularly as manifested in the relationship between a father and his imperiled child.[\[6\]](#)

In the Babylonian Talmud, R. Chanina ben Dosa takes the place of R. Pinchas ben Yair. This may be because R. Chanina ben Dosa is famous for praying for others, as in the *mishna* in *Berakhot* 5:5[\[7\]](#) and the corresponding *gemara* (34b),[\[8\]](#) where the following line appears: "They said to him: 'Are you a prophet?' He replied: 'I am neither a prophet nor the son of a prophet.'"

C. The Babylonian Talmud's expression of theodicy is a key sentence in the narrative,[\[9\]](#) and it is quite different from that of the Jerusalem Talmud. Respectively, they read:

Shall his seed stumble over the thing to which that righteous man has devoted his labor?

Could it be that he honored his Creator with water and He brings him up short with water?

First of all, the Jerusalem Talmud offers a much more casual connection between the pious man's activity and the accident that befalls his family, which fits with the plot details there. In the Babylonian Talmud, on the other hand, the comparison is more exact and more focused on the action of the righteous man: Digging cisterns is his profession and his daughter falls into just such a cistern, and this intensifies the paradox that R. Chanina ben Dosa highlights.[\[10\]](#)

**D. Order of the Statements Following the Incident:** In the Jerusalem Talmud, immediately after the statement that Nechunya's son died of thirst, we have a number of formulations of the idea that God is no pushover. The sequence creates a sense in the reader that Nechunya is a sinner. In the Babylonian Talmud, at first some statements are cited in the matter of God's exacting standards with "those rounds about him."[\[11\]](#) These statements better explain the death of the son of "that righteous man," Nechunya. Only after R. Acha and R. Yosa[\[12\]](#) have had their say does R. Chanina weigh in: "Whoever says that the Holy One, blessed be He, is yielding in the execution of justice..."[\[13\]](#) If the rearranging of these statements in the Babylonian Talmud is purposeful, this is likely tied to the more positive character of Nechunya in the Babylonian Talmud, created by the blending of these narratives. If Nechunya is a righteous man, the statements about those surrounding God, for whom His standards are so much more exacting, are more fitting than R. Chanina's statements, whose proximity to the narrative is likely to indicate that Nechunya committed a grievous but unknown sin.

**E. The Final Statement:** The statement, "R. Chana [Chagga], or as others read, R. Shemuel bar Nachmani," in the Babylonian Talmud seems to parallel what we find in the Jerusalem Talmud as "R. Chaggai in the name of R. Shemuel bar Nachman." The Babylonian Talmud attributes another statement to this sage,[\[14\]](#) but the Jerusalem Talmud has no parallel in *Shekalim*. In *Ta'anit* (2:1, 65b), however, the Jerusalem Talmud does record such a statement, juxtaposed with that of R. Chananya:

**R. Shemuel bar Nachman says in the name of R. Yonatan: It is not written, "Long of suffering," but rather, "Long of sufferings" — he is long-suffering with the righteous and long-suffering with the wicked.**

R. Acha and R. Tanchum Be-Rabbi Chiya say in the name of R. Yochanan: It is not written, "Long of suffering," but rather, "Long of sufferings" — He is long-suffering before He claims what He is owed, and He is long-suffering as He claims what He is owed.

R. Chanina said: Whoever says that the Holy One, blessed be He, is yielding in the execution of justice, that one's innards will be yielded; rather, He is long-suffering and claims what He is owed."[\[15\]](#)

## The Contrasting Viewpoints of the Two Talmuds

These points indicate that if the narrative in the Babylonian Talmud had a source from the Land of Israel similar to that in the Jerusalem Talmud, this tradition underwent a number of alterations, which apparently appeared at different stages of its being passed down in Babylonian until it was integrated into the *sugya* in the Babylonian Talmud. Two separate narratives about two different characters in the tradition of the Land of Israel are united in the Babylonian Talmud into one story about one character. Some of the plot details have been altered, and it appears that even the statements and *derashot* that appear following the stories have themselves been subjected to a certain amount of processing, which is difficult to conclusively ascribe to certain people or times. Furthermore, we have seen that it may be that the context of the narrative in the Babylonian Talmud in *Yevamot* influenced part of the plot.

What of the version in the Babylonian Talmud? Some of the differences in its narrative appear to emanate from literary format considerations, to polish the story, to make it coherent, and to make it flow better. However, in other points, the Babylonian processing expresses itself in the different shape of the character of Nechunya. The Jerusalem Talmud presents him as the consummate professional, a Temple officeholder, and — as noted above — the description is totally neutral. The Jerusalem Talmud tells us that his son died of thirst, and if we add to this R. Chanina's statement about how uncompromising God is, we may understand that he sinned in some unknown manner. The man whose daughter is rescued due to his actions is not Nechunya, but a certain pious man.

In the Babylonian Talmud, on the other hand, Nechunya is "that righteous man" whose life's work is digging cisterns for the public, and therefore his daughter is saved from drowning. However, because the Babylonian Talmud has a unified story, there is an interesting phenomenon in it that does not exist in the Jerusalem Talmud. On the one hand, we find R. Chanina ben Dosa wondering, "Shall his seed stumble over the thing to which that righteous man has devoted his labor?" and the rescue of Nechunya's daughter; on the other

hand, we have the tragedy of his son's death from dehydration.<sup>[16]</sup> It appears that the Babylonian Talmud is aware of this tension, prefacing the latter with, "R. Acha, however, said: Nevertheless, his son died of thirst," while the Jerusalem Talmud does not.

It appears that the position of Rabbi Acha and his colleagues, at least as it is presented in the Babylonian Talmud, is that when push comes to shove, the Holy One, blessed be He, is particular with those closest to Him even for matters as light as a single hair. This overwhelms the objection, "Shall his seed stumble over the thing to which that righteous man has devoted his labor?" This is at least true when the righteous are themselves guilty of some misstep.<sup>[17]</sup>

### **The Message in *Bava Kama***

What, then, is the message of Nechunya's narrative in the *sugya* of the Babylonian Talmud? The broader context there is the tort of *bor*. In the context of this debate, the law of exemption for one who digs a cistern and hands it over to the public is raised. This is a statement on the legalistic plane, and Nechunya the Ditch-Digger exemplifies such a practice.

However, immediately afterward, the *gemara* cites the story of Nechunya's daughter falling into a *bor*, which seems to indicate that the message here is not merely on the legalistic plane. Digging a cistern and turning it over to the public is more than a legal loophole excusing one from liability should any passersby fall into that pit. This is not a neutral act, but rather a *mitzva*, demonstrating concern for the public welfare.

Thus, it may be that there is an attempt to allude to a more general statement: When we are talking about the public domain, there is more to discuss than liability and exemption, damage, and indemnification — despite the fact that deep into Tractate *Bava Kama*, one might get that impression, as its main preoccupation is torts and damages. The public domain is the sphere in which one may contribute to the welfare of the community. However, as one embarks on such endeavors, there are hazards, as exemplified by the story of Nechunya's daughter. This danger may lead one to be dissuaded from digging cisterns to benefit the public. Therefore, the narrative comes to emphasize that there are limits when it comes to how cautious one should be about potential damage resulting from one's activity in the public domain.

In other words, the legal side of the tractate stresses to a great extent the obligation to be circumspect in the public domain, to avoid any activity that may endanger another's person or property. However, over-cautiousness of this sort could neuter any attempt to take positive action for the public

welfare, due to the concern that one might cause damage. This is true not only for physical activities, such as digging cisterns, but any activities, such as taking a leadership role or contributing in any manner to the community. Therefore, the discussion about digging and handing over to the public, together with the Nechunya narrative, stresses that even if some damages were to occur, it is not only that the excavator would be exempt from liability, but the actions of such an individual should guarantee protection from any damages likely to result from such activity.

In the *sugya*, there is a general call not to hesitate to follow the example of Nechunya, who digs for the public welfare and acts correctly from a legalistic or halakhic point of view. Such a message is certainly more emphasized in the context of the narrative in the Babylonian Talmud, which deals directly with the tort of *bor*, than in the context of *Shekalim* in the Jerusalem Talmud, which deals with a totally different topic, that of the officeholders in the Temple.

However, as one continues reading in the *sugya* in the Babylonian Talmud, it appears that the picture is, in fact, more complex. As we noted, the *aggada* of Nechunya is composed of two parts, with a certain dialectic between the segments. The story of his daughter's rescue from the cistern indicates that a person's positive actions are supposed to keep tragedy from befalling that person or that person's family — at least, catastrophes directly tied to the good acts performed. However, in the second part, which is composed of Amoraic statements, another direction is indicated, that of the Attribute of Justice (*Midat Ha-Din*), as due to its exacting nature, the son of "that righteous man" dies of thirst even though his father spent his life bringing water to the nation. In other words, even when there is a general link between the domains, this is not enough to provide absolute protection for a good actor, due to other considerations taking precedence.

Indeed, based on the way the sequence of events differs between the Babylonian Talmud and the Jerusalem Talmud, it does not appear that the son dies due to Nechunya's sin, certainly not a major transgression. His son dies in spite of his father's righteousness and activity, not because of them. However, here another principle comes into play, the one mentioned in the Babylonian Talmud immediately after the narrative: God's exacting standards for his intimates. Here, the Babylonian Talmud demonstrates an additional principle that presents its own opportunity and its own cost. The righteousness of Nechunya apparently brings him very close to God. There is a danger inherent in this intimacy that is quite reminiscent of standing on the edge of a *bor*. Such closeness is absolutely necessary in order to drink of its waters, as one who does not draw near cannot hope to quench his thirst. However, the closer one comes, the greater the danger of falling in. Therefore, those

who come closest must exercise the highest degree of caution, more so than others.

These deep and complex messages are created by the Babylonian Talmud by combining two separate tales found in the Jerusalem Talmud into a unified but complex whole.<sup>13</sup>

[1] Y Heinemann, *Darkhei Ha-Aggada*, pp. 28-30.

[2] Essentially, the only connection between these two elements is that both are water sources.

[3] Indeed, the similarity between the stories is reinforced by the element of time: Nechunya's daughter is rescued after **three** hours, while this man climbs out after **three** days.

[4] Indeed, the insertion of this savior figure may also be influenced by the *sugya* in *Yevamot*, as the discussion there is about what constitutes a miraculous event; introducing a clearly fantastical figure emphasizes and intensifies the idea of a supernatural event (although there is a miraculous event in the version from the Land of Israel as well).

[5] Rabbeinu Chananel and Rashi ad loc. both explain the term in this way, although rather than *ayil* (ram), the *gemara* uses the unusual term "*zakhar shel recheilim*," literally meaning "a male of the ewes." Cf. *Arukh, Zakhar II (Arukh Ha-Shalem, Vol. III, p. 291)*. There may be something shared by the two stories of Nechunya and of Avraham; a father almost loses his child, but divine intervention saves the latter at the last moment. On the other hand, there are many important distinctions, as in Avraham's case, God is the one who tests him by ordering him to bring Yitzchak up on the altar in the first place, while in Nechunya's case, it may be a divine punishment, one which ultimately is carried out through the death of his son by dehydration.

[6] Rashi states that Nechunya's daughter was protected by the merit of the Binding of Yitzchak. As the Maharsha ad loc. explains, this is based on the midrashic tradition that the Binding of Yitzchak "will be seen" throughout the generations to forgive Israel (*Bereishit Rabba* 56:10). Another possibility is that this ram recalls Amos, who was both a shepherd and a prophet, as the declaration which R. Chanina ben Dosa makes, "I am neither a prophet nor the son of a prophet, comes from his book (7:14-15): "I am neither a prophet nor the son of a prophet, but I am a shepherd, and I also tend sycamore-fig trees. But the Lord took me from tending the flock and said to me, 'Go, prophesy to my people Israel.'"

[7] It was said of R. Chanina ben Dosa that he used to pray for the sick and afterwards declare: "This one shall live, but that one shall die."

They asked him: "How could you know such a thing?"

He replied: "If my prayer is fluent in my mouth, I know that it is accepted; if it does not, I know that it is rejected."

[8] Our Rabbis taught: Once the son of Rabban Gamaliel fell ill, so he sent two scholars to R. Chanina ben Dosa to ask that he pray for him.

When he saw them, he went up to an upper chamber and prayed for him.

When he came down, he said to them: "Go, the fever has left him."

They said to him: "Are you a prophet?"

He replied: "I am neither a prophet nor the son of a prophet, but I learned this from experience. If my prayer is fluent in my mouth, I know that it is accepted; if it does not, I know that it is rejected."

[9] A similar phrase appears on *Megilla* 16a and *Nidda* 52a; however, I have not found a meaningful thematic connection between the Nechunya narrative and those descriptions.

[10] Although we are not compelled to say that the cistern the daughter falls into is one of Nechunya's projects, the connection is still strong enough.

[11] The Babylonian Talmud combines the two statements of R. Acha, one about the death of Nechunya's son and one about God's exacting standards for His intimates, which are separated in the Jerusalem Talmud. It may be that this is a purposeful juxtaposition, placing the biographical fact about the tragic end of Nechunya's son next to the principle of divine retribution, thus strengthening the impression that Nechunya, described in the Babylonian Talmud as righteous, belongs in the category of

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<sup>13</sup> Translated by Yoseif Bloch



those who are “round about” God. The death of his son would therefore indicate an exacting punishment for a minor offense. On the other hand, it may be that the Babylonian Talmud sees the tradition from R. Acha as an inseparable whole.

In the Jerusalem Talmud as well, the reader is left in some doubt. Ostensibly, it appears that the Jerusalem Talmud takes R. Acha’s two statements as independent, but it may be that its redactors were the ones to interrupt R. Acha’s words with those of R. Chanina, juxtaposing his statement about God’s unyielding nature to the report of the son’s death, indicating a severe transgression, more so than having R. Acha’s two statements together, which would allude to attributing the death of Nechunya’s son to a minor offense that God takes seriously because of the sinner’s proximity to the Divine Presence, as mentioned above.

[12] Cited in the name of R. Chanina (this is what reliable manuscripts have, although it is R. Nechunya who appears in the printed version; this may be an interpolation from the name of the protagonist of the narrative).

[13] To this the *gemara* adds a verse from *Devarim* 32 (which does not appear in the parallel source; its exact role in this context requires further analysis).

[14] This may be because the narrative of the pious man had already been blended with that of Nechunya.

[15] In *Pesiketa De-Rav Kahana* (24:11, Mandelbaum Edition, Vol. II, p. 363), these statements appear with some variations in which *Amora’im* offer each.

[16] The Tosafists (s.v. *davar*) already take note of this, and they explain that the son does not die due to the exact same thing that the righteous man so exerted himself for – i.e. he does not fall into a *bor*. Nevertheless, it does not sit well that a man who dedicated his life to making sure others did not go thirsty should have his son die of thirst. Cf. *Torat Chayim*, ad loc. s.v. *af*.

[17] It may be that according to the Babylonian Talmud, the righteous man has not yet sinned when his daughter falls into the water, so God does not treat him in an exacting manner.

, full\_html, in this shiur, we will continue to compare and contrast the narratives about Nechunya the Ditch-Digger that appear in the Babylonian and Jerusalem Talmuds, and we will discuss the lesson that the Babylonian Talmud wishes to convey through its presentation of a narrative made up of combined elements.

## The Tale of Nechunya the Ditch-Digger (Part III) The Postscript of the Mesakkel

**Rav. Yonatan Feintuch** writes:<sup>14</sup>

In the previous two *shiurim*, we studied the story of Nechunya the Ditch-Digger in the context of the laws of *bor*, a pit or cistern. This time, we will examine an additional story in the same *sugya*, Tractate *Bava Kama* 50b in the Babylonian Talmud, and this will conclude our examination of the aggadic aspects of the topic of *bor*.

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<sup>14</sup> <https://www.etzion.org.il/en/talmud/studies-gemara/midrash-and-aggada/tale-nechunya-ditch-digger-part-iii-postscript-mesakkel>

## The Story of the *Mesakkel*

1. Our Rabbis taught: A person should not remove rocks from one's domain on to the public domain.
2. A certain person was removing rocks (*mesakkel*) from his domain on to the public domain.
3. When a pious man found him doing so, he said to him,
4. "Vacuous one, why do you remove rocks from a domain which is not yours to a domain which is yours?"
5. The man scoffed at him.
6. Some days later he had to sell his field,
7. And when he was walking in that public domain, he stumbled over those rocks.
8. He then said, "How well did that pious man say to me,
9. 'Why do you remove rocks from a domain which is not yours to a domain which is yours?'"

## The Context in the *Sugya*

The first connection of the *mesakkel* to the *sugya* of *bor* seems less natural than that of the Nechunya narrative. In the sixth chapter of *Bava Kama*, the *bor* discussed is a classic *bor* – a pit, a cistern, or a hole in the ground that people or animals might fall into unwittingly. Other hazards in the public domain (which recall many of the characteristics of classic *bor*) occupy the first part of the third chapter of the tractate. Indeed, for the sake of comparison, consider that in the Tosefta, the issue of clearing stones appears among the list of hazards in the public domain. The sequence in the Tosefta [\[1\]](#) flows logically, as the previous law deals with a *mesakkel* in the field or on the road, defining his legal status and liability:

Rocks may be removed by way of the public domain, according to R. Yehoshua...

If one removes rocks, one must bring them out to the sea, to a river or to a quarry...

One who removes rocks must take them from the middle and place them on the sides. If another comes by and is injured by them, the one who removed the rocks is liable, even though they said that this is like one who removes rocks from before animals and places them before people...

If one removes rocks by taking them from one's field and putting them in the public domain, and another comes and is injured by them, the one who removed them is liable, even though they said that this is like one who

removes rocks from that which is not one's [property] to that which is one's [property].

A certain person was removing rocks from his field on to the public domain. A pious man was pursuing him and said to him, "Why do you remove rocks from that which is not yours to that which is yours?" He laughed at him. Time passed, and that man found he had to sell his field, and he was walking in that place and tripped. He then said: "How well did that man say to me, 'Look, you are removing rocks from that which is not yours to that which is yours!'" The narrative in the Tosefta has an interpretative role. It explains the sentence that concludes the previous law: "even though they said that this is like one who removes rocks from that which is not one's [property] to that which is one's [property]."

This line is extremely vague, as the law finds one who discards rocks in the public domain to be liable, and the public domain would appear to be an area that is not one's property. In addition, the narrative in the Tosefta serves as an aggadic sign-off, as in the next chapter the Tosefta takes up a new topic: damages caused by one's ox (*shor*). The topic of the tale of the *mesakkel* is identical to the previous topic in the preceding laws in the Tosefta; thus, the story is a fitting summation of this issue.

In the Babylonian Talmud, the story of the *mesakkel* does not conclude the topic of *bor*, the discussion of which continues through the following *sugyot*. In fact, the appropriateness of the narrative as a conclusion for the halakhic topic discussed prior is difficult to understand, since it does not deal with the exact same issue. The integration of the *baraita* with the story of the *mesakkel* in the *sugya* of *bor* requires some elucidation.

We may explain the connection between the *baraita* of the *mesakkel* and the *sugya* by way of a conceptualization of the tort of *bor*, of which all hazards in the public domain are subcategories. This conceptualization is mentioned in another chapter by the *stam* (anonymous layer) of the Gemara (see *Bava Kama* 3a-b), and it is possible that this reflects the position of the redactors of the tractate. On the other hand, the *baraita* of the *mesakkel* is the **only** mention of hazards in the public domain in all the *sugyot* analyzing the primary tort of *bor* in the fifth chapter.

## The Story of the *Mesakkel*: Literary Analysis

From a chronological standpoint, the story of the *mesakkel* may clearly be split into two segments with a similar structure. The first part describes the removal of the stones and the rebuke (lines 1-5); the second part takes place

sometime later, as the one-time landowner stumbles over the stones and comes to his realization (lines 6-9).

The parallel between the two parts is emphasized by the way the *aggada* presents the *mesakkel's* dawning realization, in which he quotes the words of the pious man verbatim.

In the first part, the pious man rebukes the *mesakkel* for taking stones from his field and placing them in the public domain, creating a hazard, while the *mesakkel* mocks the pious man. The derision on the part of the *mesakkel* emerges from the fact that the pious man's statement seems to be an inversion of reality. At this stage, the reader as well may be perplexed, as the idea of the public domain's belonging to the *mesakkel* while his own field is really another's confusing. Indeed, the logic of the pious man's warning is revealed only in the second half of the story, once the reality has changed.

"Domain" (*reshut*) is a key term, appearing seven times in the story itself (as well as twice in the introduction), and thus we may see it as a leitmotif. The leitmotif *reshut* draws the reader's attention to the relationship of the characters to the various domains as a central theme in the narrative.

The *mesakkel's* derision teaches us that his conceptualization of the public domain is opposed to that of the pious man. He thinks of the public domain as an area that is not his at all. Although this view is not explicitly expressed, it is indirectly indicated by what the story tells us about him; casting stones into the road shows absolute indifference to that domain, even though it is apparently considered acceptable for even owners of private property to make use of the public thoroughfare. In this case, the *mesakkel* removes himself, at least in a symbolic manner, from the public thoroughfare and from the society of those who pass through it. If he had felt himself to be a member of the community and a partner in the public domain, he would not have impinged on it.

As stated above, the pious man expresses the *mesakkel's* worldview in the following way: "Why do you remove **rocks from a domain which is not yours to a domain which is yours?**" This sentence presents the domains as diametrically opposed. The response of the *mesakkel* indicates, indirectly, the same concept, but with the poles reversed; in his view, it is the public thoroughfare that is decidedly not his property.

In the second part of the story, which is set apart from the first chronologically, two circles from the prior segment are closed: the circle of moral reprobation and the circle of oratory – namely, the pious man's obscure statement. On the ethical plane, the *mesakkel* – who mocked the pious man's rebuke and created a hazard in the public domain – finds himself injured by

that very object, fulfilling the admonition of *Kohelet* (10:8), "Whoever digs a ditch shall fall in it." For this purpose, it would have sufficed to briefly describe a scene in which the *mesakkel* is walking in the public domain, for whatever reason it might be, and stumbles over a rock. However, this narrative digs deeper. The *mesakkel* finds himself in dire financial straits and must sell his field, leaving him with no land that he can call his own, save the public domain itself. This turn of events justifies the pious man's warning in the first part of the tale. The wheel of fortune has turned; now the property that he once considered an essential part of his identity is no longer his, while the domain he would not spare a thought for is now the only place to which he may still lay claim.

Thus, the pious man's admonition displays, as it turns out, foresight and keen observation. This perception allows him to see that the connection between a piece of private property and its owner is more fleeting than we might think, as the land that is one's possession for now may become another's in the long term. The only domain that one can truly claim on a permanent basis is the public domain, as this is not based on one's economic situation or proprietary right, but rather on one's membership in the public. This status is inalienable, even if one may at times forget it, as the *mesakkel* indeed does.

The *gemara* tells the story of the reversal of fortune for the *mesakkel* and his resulting enlightenment with irony, as the one-time landowner falls over the very rocks he once cast into the public thoroughfare. This irony also allows the circle to be complete, as all the constituent elements of the story come together. The *mesakkel*, who was so dismissive in the first part, understands the irony in the second part; really, he was laughing at himself the whole time. The pious man's admonition includes a double message – a philosophical point and a resulting ethical point. On the philosophical plane, his declaration demands that people reconsider their relationship to their property as a temporary association that may be less stable than it appears at the moment. On the contrary, the more durable connection to the public domain, which a person of considerable means may perceive as weak, is in fact the link that stands the test of time.

On the ethical plane, the pious man's words contain a message about the relationship between the individual and the collective, beyond any trivial statement about creating a hazard to public health and beyond any simple observation about retribution, as one who creates such a hazard will ultimately be injured by it in unforeseen circumstances. The individual's position as part of the collective is a non-negotiable fact, even though the individual may sometimes forget this temporarily in an attempt to live a life apart from this connection to the community.

At the first stage, the pious man attempts to impart this message to the *mesakkel* through verbal rebuke. It is conceivable that the *mesakkel* could have saved himself from financial disaster had he listened to the admonition. However, he refuses, in a highhanded manner.

Instead, he must learn the lesson the hard way, as the wheel of fortune turns and compels him to confront the reality that he is a member of the collective and the public domain is the only land that really belongs to him — or to be more precise, he belongs to. As part of the collective he mocked and from which he disassociated himself, he stumbles over a rock, which he saw as imperiling only the general public, a group that he considered himself not be a member of.

### **Comparison to the Parallel in the Tosefta**

The Tannaitic parallel in the Tosefta is very similar to the Babylonian Talmud's version of the story. The differences are slight and fine; ostensibly, these deviations do not actually change the basic plot and structure. However, if we examine these precise details, particularly in the context of the *sugya* of *bor* in the *gemara*, we reveal that these distinctions are more than circumstantial variations. Some of the words that define the version of the Babylonian Talmud are prominent and central in the *sugya*.

It appears that the narrative in the *sugya* has been lightly processed from the original version in the Tosefta — or another Tannaitic source with which the editors of the Babylonian Talmud were familiar — in order to modify it for the *sugya*, as we may see in the table below:

Babylonian Talmud, <i>Bava Kama 50b</i>	Tosefta <i>Bava Kama 2:13</i>
<p>Our Rabbis taught: A person should not remove rocks from one's <b>domain</b> on to the public <b>domain</b>.</p> <p>A certain person was removing rocks from his <b>domain</b> on to the public <b>domain</b>.</p> <p>When a pious man found him doing so, he said to him, "Vacuous one, why do you remove rocks from a <b>domain</b> which is not yours to a <b>domain</b> which is yours?"</p>	<p>A certain person was removing rocks from his field on to the public domain.</p> <p>A pious man was pursuing him and said to him, "Why do you remove rocks from that which is not yours to that which is yours?" He laughed at him.</p>
<p>The man scoffed at him.</p> <p>Some days later, he had to sell his field, and when he was walking in that public <b>domain</b>, he <u>stumbled</u> over those rocks. He then said, "How well did that pious man say to me, 'Why do you remove rocks from a <b>domain</b> which is not yours to a <b>domain</b> which is yours?'"</p>	<p>Time passed, and that man found he had to sell his field, and he was walking in that <b>place</b> and tripped. He then said: "How well did that man say to me, 'Look, you are removing rocks from that which is not yours to that which is yours!'"</p>

In the Talmud, it reads: "A certain person was removing rocks from his **domain** on to the public **domain**." In the Tosefta, it reads: "A certain person was removing rocks from his field on to the public domain" (line 2). In the Talmud, we find, "Vacuous one, why do you remove rocks from

a **domain** which is not yours to a **domain** which is yours?" (line 4). This formulation recalls the language of the *mishna*: "If one digs a pit in a private domain and opens it into the public domain..." Generally speaking, the matter of the two domains is stressed, which is the topic of the *sugya*. Later on as well, we find an emphasis on the domain: "when he was walking in **that public domain**, he stumbled **over those rocks**" (line 7) — this reinforces the aspects of *midda ke-neged midda*, a theme which also comes up in the previous tale, in the words of R. Chanina ben Dosa.

Moreover, we should note the variation in the verb used to describe the comeuppance of the *mesakkel*: "he stumbled (*nikhshal*) over those rocks" in the Talmud vs. "and he was walking in that place and tripped" in the Tosefta. This mirrors the concept of *midda ke-neged midda* in the previous tale: "I only said to myself: Shall his seed stumble (*yikashel*) over the thing to which that righteous man has devoted his labor?" Indeed, "tripped" would have been the more appropriate term for the Babylonian Talmud to use in Tractate *Bava Kama* for hazards in the public domain,<sup>[2]</sup> and indeed this is what the Tosefta uses for the *mesakkel*, so we may assume that the use of the rarer "stumbled" in the former is not mere happenstance.

### Story of the *Mesakkel*: Relationship to the *Sugya*

As we saw above, the word "domain" occupies a central thematic role in our *mishna* and *gemara*, which is essentially interested in the status of a *bor* in various domains. The many appearances of this word in central points of the story of the *mesakkel*, from the introduction to the admonition of the pious man to the reprise at the conclusion, make it a keyword or leitmotif. Its presence, which characterizes the story in the *sugya* in the Babylonian Talmud, as opposed to its parallel in the Tosefta, links this narrative to the *mishna* and the *gemara* in a prominent manner.

Based on a literary analysis of the story, the matter of the domains and the reiterations of the term *reshut* form a strong connection between the story and the *sugya*, both in vocabulary and in content.

As mentioned above, the story of the *mesakkel* examines the connection of a person to various domains, in particular to the public domain. This question is central in the halakhic section of the *sugya* as well, in which it is considered in the legalistic plane. Ownership of a *bor* is one of the parameters for being liable for the damages it causes, so both the *mishna* and the *gemara* consider different cases of excavation in different domains. Some views in this halakhic debate find that the one who digs the *bor* is not liable for resulting damage, because the digger's ownership over the *bor* is incomplete.



The story of the *mesakkel* relates to the *sugya* in another way, beyond the issue of domains. As stated above, there is a thematic and literary link to the story of Nechunya the ditch-digger, the immediately preceding story. In both of these tales, a pious man appears to highlight the theological or ethical principle or moral of the story. There is a thematic common denominator: a person being intimately harmed — either through his body or through his family — by his own handiwork. In the case of Nechunya, it is his daughter who falls into a *bor* he dug. She is saved due to considerations of *midda ke-neged midda*; it is inconceivable for harm to befall the offspring of such a virtuous man in a cistern, as he has dedicated his life to the *mitzva* of providing for the community by digging cisterns. Conversely, the yardstick of *midda ke-neged midda* demands that the *mesakkel*, who created a hazard in the public domain, ultimately be injured by the very obstacle he introduced.<sup>[3]</sup>

## Conclusion

To summarize, when we read this narrative in the context of the *sugya*, the literal connection to the term *reshut* combines with the thematic connection to the topic of domains, together contributing an ideological message to the *sugya*: emphasizing the ethical prohibition of creating a “*bor*” in the public domain, particularly in light of the problematic nature on the formal-legalistic plane of holding the creator of the *bor* liable for hazards in the public domain, due to the deficiencies in the element of ownership.

This ideological or ethical viewpoint that the narrative grants the *sugya* may have no practical halakhic ramifications. However, the discussion of this question expands and enriches the picture by confronting the reader with basic human truths and important moral messages that at times accompany the halakhic reality. Moreover, the narrative alludes to the fact that even one who is “exempt by human law” because the court cannot find him legally liable may still be punished by the Heavenly Court — as, indeed, happens to the *mesakkel*.

How does the story of the *mesakkel* relate to that of Nechunya, which precedes it? There is an obvious thematic and literal link, as we observed above. The *sugya* tells us that Nechunya would absolve himself of formal responsibility for every *bor* he dug by handing it over to the public. In light of the explanation given above to the story of the *mesakkel*, we might have read the story of Nechunya as his building another psychological barrier between him and the public. Indeed, like the *mesakkel* who stumbles over the stones he removed, the ditch-digger’s daughter falls into a *bor* of her father’s creation. However, unlike the *mesakkel*, the daughter is rescued.

The words of the pious R. Chanina ben Dosa explain this rescue as the result of Nechunya's pure intentions and dedication to the public good. Unlike those of the *mesakkel*, the actions performed by Nechunya display no alienation from the public, but rather the opposite – acting on their behalf. The message that arises from the words of the pious man is that on the plane of divine retribution, which we become aware of in the narrative of the *mesakkel*, it is not the formal act or his legal status that saves Nechunya's daughter, but the religious-moral intent of the actor and his relationship to the public.

Just as the exemption from payment for digging a *bor* in the public domain does not take away from that act its serious moral weight and does not save the digger from heavenly punishment, handing over the *bor* to the public in itself, which exempts the digger on a formal legalistic plane, does not suffice from a moral aspect. If after handing over the *bor* Nechunya had exhibited some alienation from the public, as the *mesakkel* displays, it is possible that his daughter would not have been saved after falling into one of his cisterns.<sup>15</sup>

[1]Tosefta, *Bava Kama* 2:12-13, p. 9 in the Lieberman edition.

[2] See Mishna *Bava Kama* 3:1 and 3:4, as well as the *gemara* ad loc.; *gemara* 28b-29a, 48b, 50a. In contrast, "stumbled" appears only here and in the *derasha* on 16b.

[3] The one exception to the rule of *midda ke-neged midda* in the *sugya* is Nechunya's son, who dies of dehydration. This is considered quite perplexing, and a number of theological statements are presented in order to resolve this paradox, as we dealt with at length in the two previous *shiurim*.

, full\_html, in this shiur, we conclude our discussion of the aggada of Nechunya the ditch-digger with an analysis of the story that closes it, which describes what happens to a man who removes stones from his property and places them in the public domain. What is the connection of this story to the *sugya*, and what can we learn from the differences between it and other versions of it?

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<sup>15</sup> Translated by Yoseif Bloch



## Catching Up On The Daf

**Rabbi Avrohom Sebrow** writes:<sup>16</sup>

There is a worrying epidemic called “high-rise syndrome” that affects many New York families. Cases are more prevalent in the summer months. One New York City hospital reported three to five new cases a week in the summer. The sad part is that, according to experts, it is almost entirely preventable. The

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<sup>16</sup> <https://www.5tjt.com/catching-up-on-the-daf/>

good news is that the survival rate for high-rise syndrome can be as great as 90 percent. What exactly is this malady? It is the phenomenon of cats falling out of windows that are more than two stories high.

What leads to the high survival rate for high-rise syndrome? For starters, whereas the so-called terminal velocity (maximum falling speed) of a man in free-fall is about 130 mph, that of a falling cat is about 60 mph. This is due in part to their small size, light bone structure, and thick fur. Further, a cat may spread out its body mid-fall to increase drag and slow its descent. Another trick in the cat's arsenal is the ability to right itself while it is falling. A cat can orient itself to land on its feet, preventing cat-astrophe.

There was an interesting study done in 1987 and published by the Journal of the American Veterinary Medical Association. Two veterinarians examined 132 cases of cats that had fallen out of high-rise windows and were brought to the Animal Medical Center, a New York veterinary hospital, for treatment. On average the cats fell 5.5 stories, yet 90 percent survived. (Many did suffer serious injuries.) When the vets analyzed the data, they found that, as one would expect, the number of broken bones and other injuries increased with the number of stories the cat had fallen up to seven stories. Above seven stories, however, the number of injuries per cat sharply declined. In other words, past a certain height, the farther the cat fell, the better its chances of escaping serious injury.

The authors explained this by saying that after falling five stories or so, the cats reached terminal velocity. Thereafter, they hypothesized, the cats relaxed and spread themselves out and assumed the best position for impact, minimizing injuries.

(Some have disagreed with the vets' interpretation, pointing out that the study is only based on cats brought to the hospital. Cats that fall from above seven stories will either be in somewhat good shape with a decent chance of survival or will be in an obvious cat-atonic state, in which case they wouldn't be brought to the hospital at all. This skews the statistics.)

The ability to assume the most beneficial position for impact mid-fall is not limited to cats. It can apply to bulls, as well. (But I would not want to see the result of a 1,000-pound bull falling from the seventh floor of a high-rise.)

The Gemara in Bava Kama (50b) discusses the liability of one who digs a pit, in a public thoroughfare (reshus ha'rabbim), that is at least 40 inches (10 tefachim) deep. If an ox falls into the pit and dies, the one who dug the pit must pay damages. (There are many conditions; I am just discussing general rules.) Rav said that one is responsible only for damage caused by the noxious air commonly found in a pit. Shmuel says that one is also held liable for damage caused by the physical impact with the bottom of the pit.

The Gemara says that the practical difference between the two opinions is in a case where one made a 40-inch hill with a cliff in middle of a public thoroughfare. If an ox walked up the hill and fell off the cliff, Shmuel would say the creator of that hill must pay damages for the ox, whereas Rav would say the creator is exempt. The reason is that since we are discussing an above-ground fall, there is no noxious air present. According to Rav, the Torah does not obligate the creator of an obstacle in reshus ha'rabbim to pay for damage that came about because of an impact with the ground and is only obligated for damage due to the noxious air that he caused to be present by

the digging of a pit. But in Shmuel's opinion, the creator of the hill is liable for the damage caused by the impact.

Rashi asks the obvious question: Why didn't the Gemara say the practical difference between Rav and Shmuel is where an ox fell into a pit and broke its bones? Obviously, the breaking of the bones was caused by the impact of the fall and not by noxious fumes. Wouldn't Rav say that the one who dug the pit is absolved from responsibility for the broken bones, since they were not caused by the fumes? Shmuel, on the other hand, who holds that the digger of a pit is liable even for damage caused solely by impact, would say that the digger must pay.

The answer, according to Rabbeinu Peretz, is that we generally assume that the noxious air in a pit plays a role in any injuries sustained by the falling animal. If not for the fumes breathed in by the animal, the animal would have better positioned itself and avoided injuries. Even in mid-fall, the ox could have reoriented itself somewhat to avoid major injuries if not for the hindrance to its mental faculties caused by the fumes. Although the fumes are only a contributing factor and we can't be certain that the fumes did indeed play a role, nevertheless the digger of the pit is obligated to pay. For if not so, according to Rav there would never be an obligation for the digger of a pit to pay any damages. He could always claim that the damage was not caused by fumes. How could we refute him?

Yet we know that the Torah does indeed obligate the creator of a pit to pay damages in at least some cases. It must be that if it is possible that the fumes played a role in the injuries sustained by the ox, the Torah obligates the digger of the pit to pay. So, even according to Rav, the creator of a pit must pay for

all physical injuries to the animal, because we can argue that the fumes stopped the animal from taking preventive measures.

This article barely scratches the surface of the cat-egory of damages called bor, but hopefully it was enough of a cat-alyt to make you crave meore.



**Adam Kirsch** writes:<sup>17</sup>

Most legal systems are drawn up in the form of elaborate codes, with sections covering every technicality and eventuality that might occur. Biblical law, however, is very different: It usually takes the form of brief, concrete examples, miniature narratives. Take the case of the goring ox from Exodus, which has been at the foundation of Tractate Bava Kamma.

It implies a basic principle of fairness, which is that the owner of livestock is obligated to take reasonable precautions to prevent them from causing damage or injury. But the principle is only implied, not stated. It is up to the rabbis of the Talmud to make the implication explicit, and in the process to supply *halakhah* with the abstract principles needed to give the law flexibility and consistency.

One such principle familiar from American law is “burden of proof.” Nothing like this expression can be found in the Bible, but it is bound to come up in many kinds of civil disputes. Take, for instance, the case in the mishna in Bava

<sup>17</sup> <https://www.tabletmag.com/sections/belief/articles/daf-yomi-173>

Kamma 46a: An ox kills a cow, and when the carcass is discovered, there is a dead newborn calf by its side. There are two possibilities: either the calf was born before the mother was gored and it just happened to die, or the cow was pregnant when it was gored, and the fetus was killed and born dead. If the latter happened, then the owner of the ox is liable for the price of both the cow and the calf since his ox killed them both. If it was the former, then the owner of the ox is liable only for the price of the cow, not the calf. But who has the burden of proof? Is it up to the cow's owner to prove that the cow was still pregnant, or is it up to the ox's owner to prove that the calf had already been born and then died for some other reason?

The answer comes in the Gemara, where the rabbis lay down the standard for burden of proof in civil cases. "The Rabbis say this is the significant principle of law: The burden of proof rests upon the claimant." Since the owner of the cow is the one claiming compensation, he is the one who must prove the facts of the case. The same principle applies, the Gemara goes on to explain, in a case where there is a dispute about the sale of an ox who turns out to be a goring ox. In this case, the buyer might come to court demanding that the transaction be canceled, since a goring ox cannot be used for field work (it might gore one of the other oxen).

But the seller might then reply that the buyer never intended to use the ox for labor; rather, it was sold to be slaughtered for its meat, and for that purpose a goring ox is acceptable. Who has the burden of proof? The Gemara goes back and forth through several possible answers but ends up reiterating the same principle: The burden of proof rests upon the claimant, which in this case means the buyer.

Another set of issues concerning oxen is raised in the next mishna, which addresses a case in which a visitor to another's home has his property destroyed by his host's ox. Say, for example, a vendor of pots enters a courtyard in which there is an ox, and the ox breaks his pots. Is the owner of the ox liable, since his ox did the damage, or is the vendor liable, since he voluntarily entered a private domain where he knew there was an ox?

The answer here turns out to depend on permission. If the homeowner gave the vendor permission to enter, then he assumes the responsibility to safeguard his ox. If, on the other hand, the vendor entered uninvited, then he assumes the risk, and if the pots are broken it, is his own fault. This example reminded me of the now-legendary case of *Bodine v. Enterprise High School*, in which a burglar sued a school for injuries he sustained when he fell through a skylight while robbing it. That case, from 1982, became a notorious example of criminal *chutzpah*, though the burglar, Bodine, never actually prevailed in court. In Talmudic law, there seems to be no doubt that Bodine would have



lost: Because he didn't have permission to enter the school, the school never assumed liability for his injuries.

Or perhaps that case would have fallen under a different category of Jewish law: not *Ox*, which deals with injuries caused by a living creature, but *Pit*, which deals with injuries caused by stationary objects. *Pit* cases came to the fore in Chapter Five of *Bava Kamma*, as the rabbis once again used a basic biblical premise to deduce more abstract principles. According to Exodus, if a man digs an open pit and a donkey falls in it, the digger must pay damages to the donkey's owner, since he created a public hazard. But this raises some obvious questions: For instance, how do you define a pit? How deep does a hole have to be before it becomes a dangerous pit? The answer the rabbis give is 10 handbreadths (*tefachim*). Since a *tefach* is about 3.5 inches, this means a pit has to be 3 feet deep to qualify as a lethal danger.

This seems straightforward enough, but the rabbis, as always, find ingenious ways to test the rule. If you are liable for digging a pit 10 *tefachim* deep, what about if you build a mound 10 *tefachim* high and a cow falls off it? In this case, you are still responsible for causing a cow to fall the same distance, only it is falling above ground, not below ground. Is this a legally salient distinction? The answer turns out to depend on what the actual cause of death is when a cow falls in a pit. If it is killed by the sheer impact, then a mound should be as culpable as a hole. This is the position held by Rav in the Gemara on *Bava Kamma* 50b.

But Rav's great antagonist, Shmuel, has an alternative explanation, based on what seems to be unsound premodern science. A cow that falls in a pit, Shmuel says, is actually killed by the "lethal fumes" that gather at the bottom of the pit—exhaled, presumably, from the bowels of the earth. In this case, then, a mound is not as dangerous as a pit, because the mound does not produce lethal fumes. The theory of fumes, in turn, generates another set of complications, having to do with the presence of water in the pit. Ordinarily, according to Rabba bar bar Chana, a handbreadth of water is considered to be equivalent to two handbreadths of depth, for the purpose of calculating risk: Thus, a pit that is only 8 *tefachim* deep but contains 2 *tefachim* of water is considered sufficiently deep so as to be deadly. But if it is the fumes that are responsible for killing, does this still hold? Does a pit of 8 *tefachim* release the same amount of fumes as one of 10 *tefachim*? Here the rabbis throw up their hands, using the formula *teiku*, "it shall stand unresolved."

Another kind of complication has to do with a pit that is dug by two different people. Say the first person digs a pit that is only 9 *tefachim* deep, but then a second person comes along and digs another *tefach* at the bottom, rendering it a legal hazard. If an ox falls in and dies, which of the diggers is responsible?

One might think that they should share the liability; perhaps the first digger should bear 90 percent of the cost, since he dug 90 percent of the pit.

But this is not the Talmudic response. On the contrary, the Talmud assigns the entire liability to the second digger, since he was the one who converted a legally innocent hole into a legally culpable pit. After all, the Biblical verse says, "if a man shall open a pit"—"one man but not two," the Gemara explains, suggesting that only one person can be responsible. Yet this principle does not seem to hold in another hypothetical case. If one man digs a pit 10 *tefachim* deep, and a second man comes and digs it deeper so it is now 20 *tefachim* deep, who is responsible for it? One might think that, by the same logic, the first man is wholly responsible, since he is the one who created a legal hazard; after all, if a pit is already considered deadly, it shouldn't become any more deadly if it gets deeper. But the Gemara says the opposite: In such a case, both diggers share liability.

And what if a pit is 9 *tefachim* deep, and then someone comes along and raises the rim of the pit by 1 *tefach*, so that it is now 10 deep? Who is liable in that case? And what if a pit is covered, but the cover rots from the inside? And what if the cover is strong enough to keep out oxen, but then a camel stands on it and falls in? So the discussion goes on, one hypothetical following the next, in a way that the Bible writers probably never anticipated. It is a pleasure to see the Rabbis of the Talmud draw so much water from the Torah's narrow well.



**Ten Tefachim to Death**

Jeremy Brown writes:<sup>18</sup>

משנה, בבא קמא נ, ב

החופר בור ברה"ר ונפל לתוכו שור או חמור חייב אחד החופר בור שיח ומערה חריצין ונעיצין חייב א"כ למה נאמר בור מה בור שיש בו כדי להמית עשרה טפחים אף כל שיש בו כדי להמית עשרה טפחים היו פחותין מעשרה טפחים ונפל לתוכו שור או חמור ומת פטור ואם הזק ב חייב

***If a man digs a pit on public ground and a bull or a donkey falls into it, he is liable for damages. Whether he dug a pit, or a ditch, or a cave, trenches, or wedge-like ditches, he is liable for damages that his digging caused. If so, why is pit mentioned in the Torah? It is to teach the following: just as a standard pit can cause death because it is ten tefachim [handbreadths] deep, so too for any other excavation to have sufficient depth to cause death, it must be ten tefachim deep. Where, however, they were less than ten tefachim deep, and a bull or a donkey fell into them and died, the digger would be exempt. But if then animal was only injured by falling into them, the digger would be liable. (Mishnah, Bava Kamma 50b.)***

## THE HIGHEST FALL SURVIVED (WITHOUT A PARACHUTE)

According to *The Guinness Book of Records*, Vesna Vulovic holds the world record for the highest fall survived without parachute. And how high was that? Really, really high:

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<sup>18</sup> <https://www.talmudology.com/jeremybrownmdgmailcom/2016/7/19/ten-tefachim-and-death>

*Vesna Vulovic (Yugoslavia) was 23 working as a Jugoslavenski Aerotransport hostess when she survived a fall from 10,160 m (33,333 ft) over Srbsk, Kamenice, Czechoslovakia (now Czech Republic), on 26 January 1972 after the DC-9 she was working aboard, blew up. She fell inside a section of tail unit. She was in hospital for 16 months after emerging from a 27 day coma and having many bones broken...She never suffered any psychological trauma as a result of the incident, and never experienced any fear of flying. She is still alive today, and flies with some regularity. However, Vulovic does not consider herself lucky. Thirty years after the crash, in an interview she said: "I'm not lucky. Everybody thinks I am lucky, but they are mistaken. If I were lucky I would never have had this accident and my mother and father would be alive. The accident ruined their lives too."*

In my years as an emergency physician I saw countless patients with injuries from falls. Most injuries were relatively minor, but several of my patients died. Is there a minimum height below which a fall would result in a trivial, or at least a non-fatal injury? Based on my experience, the answer is an unequivocal *no*. A fall from *any* height, however low, can result in a serious or fatal injury, and that includes a fall from standing. But that's just my experience. What does the medical literature say? Does it agree with the assertion of the *Mishnah* that a fall below 10 *tefachim* (about 76 cm or 30 inches) cannot result in a fatal injury? Let's take a look...

At autopsy, classic findings in falls from height include aortic lacerations and vertebral compression fractures, as well as ring fractures of the skull base...Severe head injuries most frequently occurred in falls from heights below 10m and above 25m, whereas in the group that fell from 10 to 25m, few head injuries were seen and they rarely were the cause of death.

— Turk, EM. Tsokos, M. American Journal of Forensic Medical Pathology 2004;25: 194–199

## **THE EPIDEMIOLOGY OF FALLS**

Falls are very common. In the US they make up about a third of the injuries that lead to an ED visit in the each year - that's close to eight million visits. In keeping with my experience, national data shows that only about 1% of all fall injuries that come to the ED are profound. And here's another interesting finding that is in keeping with my own clinical experience: it's close to impossible to predict what kind of injury a person will have based on the height

of the from which the victim falls. In a paper that examined over six-hundred fatal falls that occurred in Singapore, the authors noted that.

*...there was much variability in the injury severity scores, in relation to the height of fall... Thus, a subject who had fallen through a height of 10 m, with primary feet impact, could have sustained complete traumatic transection of the thoracic aorta, with haemorrhage into the pleural cavities but little else by way of serious injury; while another, similar, subject could have fallen through 20 m and had sustained multiple head, thoracic and abdominal injuries...*

In fact these authors had a very hard time coming up with a model that describes the height of fall and indicators of injury severity other than to give this rather useless nugget: "Our findings suggested that the height of fall was significantly associated with ... the extent of injury." Well thanks. But it's one thing to fall 10m or more (that's over 30 feet for those if you not on the metric system). What about falls from less lofty heights?

## **FALLS DOWN THE STAIRS, AND FALLS FROM STANDING**

Let's start with falls down the stairs. German forensic pathologists published a paper in *Forensic Science International* that addressed this aspect of falls in 116 fatal cases. The most frequent victim was a man between 50 and 60 years old, and brain and skull injuries were the most common cause of death. About 8% broke their spines as they fell and (shocker) many were intoxicated. So stairs can kill.

What about falls from standing? Well back to the German forensic pathologists, who this time published a retrospective analysis of 291 fatal falls. Of these, 122 -that's 42% - were falls from *standing*. About 80% of these ground-level falls were not immediately fatal, and the victim survived anywhere from three hours to almost a year post injury. Almost 60% of the men and 11% of the women who sustained a fatal ground-level fall were (shocker again) intoxicated. So there we have it. The medical literature demonstrates that falls from standing can certainly be lethal. Especially after kiddush.

Causes of death in ground-level falls.

	No alcoholisation (n=68)	Alcoholisation (n=54)
Craniocerebral injury (included cases of subdural haematoma)	30 (12)	37 (13)
Pneumonia	11	5
Pulmonary embolism	6	0
Exsanguination	4	6
Others	17	6

From Thierauf A. et al. Retrospective analysis of fatal falls. *Forensic Science International* 2010. 198. 92–96. Forgive the English. It wasn't their first language.

The US federal government has also weighed in on the matter. OSHA, the Occupational, Safety and Health Administration has a ruled that a duty to erect fall barriers to protect employees only applies when the fall will be more than 6 feet (1.8m).

Each employee who is constructing a leading edge 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, or personal fall arrest systems.

— 29 CFR 1926.501

## BACK TO THE MISHNAH

The *Mishnah* rules that only a pit more than 30 inches (ten *tefachim*) deep is lethal should someone - or some animal - fall in. We have seen that this has no medical validity. But that doesn't really matter for a legal system.

Consider the legal limit for alcohol allowed when driving. In my home state of Maryland, it is 0.08%, (though of course your ability to drive safely is impaired at levels considerably lower). So what happens if a driver is stopped and his blood alcohol content is 0.07%? Well, it's simple: he is not legally impaired and so may continue to drive. Is this an indictment of the Maryland drunk driving laws? Not really. Maryland, like all other states, sets its blood alcohol limit; if a driver is close, but below the limit, no penalty follows.

Jewish law too, has to set limits and measures, below which legal penalties do not apply. The *Mishnah's* ruling that a pit is only fatal if it is more than 30 inches deep is a *legal* one - not a medial one. It works to set limits and insure public safety. A person who digs a pit only 9.5 *tefachim* deep is not *legally* liable, and a pit that is a full 10 *tefachim* deep is certainly rarely lethal if a person accidentally falls in. But for the sake of public safety a ruling - arbitrary though it is - had to be made. So be careful when you dig your pit in a public thoroughfare.

# Avoiding Pitfalls

**Rabbi Sender Haber** writes:<sup>19</sup>

The Gemara in Bava Kammah (50a) speaks about digging pits. It is illegal to dig a pit and leave it uncovered and accessible. If there are any damages, the digger is liable. However, if the person digging the pit donates the pit to the public, he is free of all responsibility. This was the practice of Nechuniah Chofer Boros. He would dig wells and donate them for public use. The rabbis praised Nechuniah for his actions, despite the danger that they potentially posed.

One day Nechuniah's daughter fell into a pit that he had dug. The people ran to Rav Chanina ben Dosa and asked him to pray for her. "Don't worry", he said, "she's fine". An hour passes and the girl hadn't been rescued so they came to Rav Chanina again. "Don't worry", he said, "she's fine". Another hour

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<sup>19</sup> <https://yaacovhaber.com/rsh/avoiding-pitfalls/>

passed and again the people returned. "Don't worry", he said, "they just pulled her out".

Indeed, the people raced back to the pit to find the girl safe and sound. She explained that an old man with a ram had come by and rescued her from the pit.

Terribly impressed by Rav Chanina ben Dosa, the people began to call him a prophet. "I'm not a prophet", he corrected them, "it was just obvious to me that the girl would not be harmed by a pit that had been so generously and meticulously dug and donated by her father. How could the daughter come to suffer from a mitzvah that her father has done".

The story could end here with a beautiful thought about the reward and protection that comes from fulfilling mitzvos, but it does not. The Gemara is painfully honest. Rav Acha shares with us that although Nechuniah's daughter was saved miraculously from a well, his son actually died of thirst. This is to teach us that Hashem protects those who do mitzvos, but he is still very exacting in his judgement.

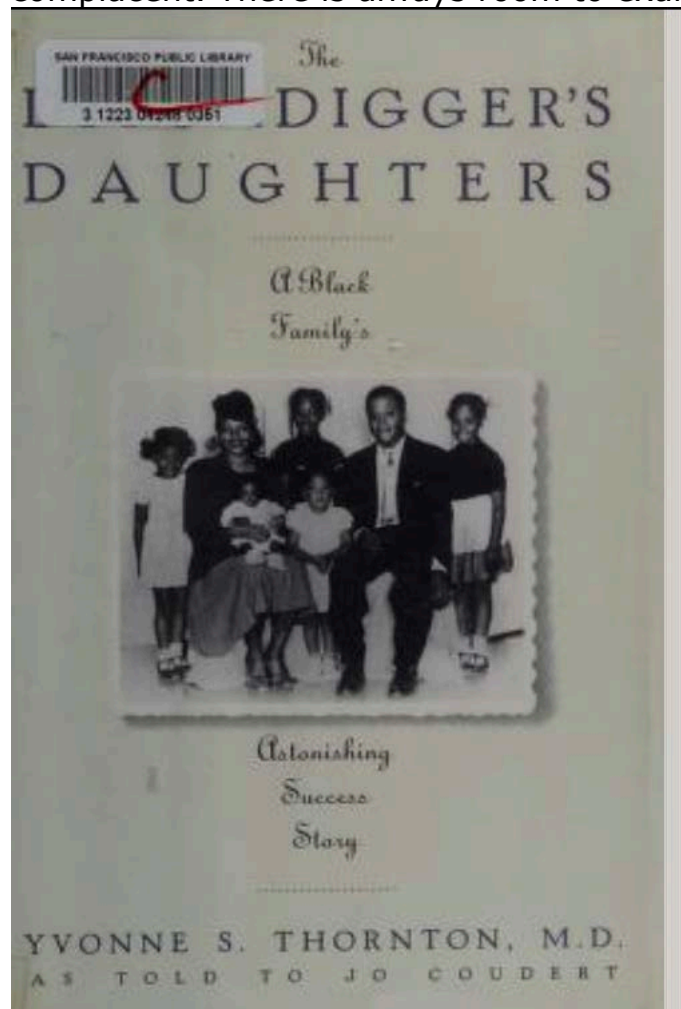
The commentaries struggle to reconcile the confidence of Rav Chanina ben Dosa and the fate of Nechuniah's son, but I think that the lesson here is very simple:

We hear and experience many wonderful stories about people who are saved as a direct result of their good deeds. We ourselves do many good deeds. Still, we do not have a license to sit back and relax. We need to constantly examine and re-examine our actions.



Nechuniah had dug wells around the whole Yerushalayim. He had rabbinic endorsement and blessing. He even had a miracle to back him up. Still, he was not immune. Even as he was out digging wells, his own son died of thirst. Something went wrong.

We are in a period of mourning for the students of Rabbi Akiva. They were sages, scholars, and righteous men. Yet they were punished all the same. We can never be complacent. There is always room to examine and to grow.



***As resonant now as it ever was, this inspiring portrait by a loving daughter of a father whose pervasive common sense, folk wisdom, and untutored but right-on insights gave his children their road map to a better life is ready for a new generation of readers.***

**"I LOVE YOU BETTER THAN I LOVE LIFE . . ."**

*"But I'm not always gonna be around to look after you, and no man's gonna come along and offer to take care of you because you ain't light-skinned. That's why you gotta be able to look after yourselves. And for that you gotta be smart."*

It was the 1950s, and Donald Thornton's words to his six daughters weren't spoken out of despair, but out of the fiercest love. Donald Thornton, a hard-working laborer, had set his heart on an improbable notion: that all his girls would grow up to become doctors. From one of those daughters, Dr. Yvonne Thornton, comes this family biography that is as moving as it is inspiring.

Here is the true story of a determined, wise, and prescient man who dared to dream that his Black daughters would achieve seemingly impossible goals in the face of seemingly impossible odds. Working two full-time jobs—and with the help of his equally remarkable wife, who worked as a cleaning woman—Donald Thornton even formed his bright and talented girls into a rhythm-and-blues band, at the same time ensuring that each one completed her education.

With his common sense and untutored but right-on insights, Donald Thornton gave his daughters the strength to transcend the obstacles of color and gender to fulfill their potential—ultimately guiding them from the tenements of East Harlem to the footlights of the Apollo Theatre—to the halls of an Ivy League medical school.

## **An American Dream Realized<sup>20</sup>**

The early 1950s was not an era of opportunity for African Americans in New Jersey. Neighborhoods were segregated, and banks refused loans to black families seeking homes in white neighborhoods. Blacks lived in inferior housing and attended schools that did not prepare them for the possibility of higher education. They worked largely in menial and repetitive jobs with little hope of advancement. What kind of a future could a black child, especially a girl with dark skin, expect? Race almost certainly determined class.

Nevertheless, in 1950s Long Branch, New Jersey, Donald Thornton, a black ditchdigger at Fort Monmouth, made an outrageous claim. After being teased

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<sup>20</sup> <https://networks.h-net.org/node/14785/reviews/16356/drach-weidmann-thornton-ditchdiggers-daughters-black-familys>

by his fellow workers for having five daughters and no sons he declared that all of his children would become doctors and wear "scripperscraps" (stethoscopes), around their necks (p. 4). Thornton and his wife Tass worked at whatever jobs they could get to support their daughters' education and even built a house in a white neighborhood with their own hands when a bank refused them a mortgage. Though the Thorntons struggled to purchase music lessons and instruments for their daughters, the family formed a band, the Thornton Sisters, that performed at colleges throughout the Northeast to help support the family (p. 140). Donald kept his daughters studying and off the streets. The family had one goal--to educate their children to do valuable, respectable work.

Ten years ago, in *Ditchdigger's Daughters*, Yvonne S. Thornton, M.D., with writer Jo Coudert, chronicled her parents' efforts to launch the professional lives of their daughters in Long Branch. Living in a project apartment in Seaview Manor, Donald Thornton managed to enroll his daughters in Garfield, the local white school, instead of the segregated school in their own neighborhood. After they graduated, Donald kept his daughters close to home. They matriculated at Monmouth College, even though they were accepted to other schools, including Howard and Barnard. Yvonne, the third daughter, was the first to become a doctor, graduating from Columbia University's College of Physicians and Surgeons in 1973.

Thornton's readable, fast-paced memoir was chosen to be New Jersey's One Book choice for its inspirational message and accessibility to many different age groups. Thornton and Coudert's writing is compelling and perfect for older children and teens who might not otherwise find themselves reading. Although her story is uplifting, Thornton does not hesitate to portray the sacrifices endured by her parents and sisters during the 1950s and '60s. While Donald and Tass worked several jobs, the children put off socializing, dating, and making friends to devote themselves to study and musical rehearsals. In the end, two of Donald and Tass Thornton's daughters became doctors, one a dentist, one a court stenographer, one head of a science department in a private school, and one (a foster daughter) a nurse. While Thornton might have portrayed her family's relationship to their white teachers and classmates in greater detail, overall this is an inspiring and well-written portrait of an American family.



<https://www.youtube.com/watch?v=bWxGaoPIBSM>