Not All Acts Are Created Equal; A Comparative Study of the role of a *ma’ase* in creating a *Chiyuv* in *Hilchos Nezikin* and *Hilchos Shabbos* [[1]](#footnote-1)

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# Framing the discussion

In this article, I attempt to demarcate the necessary conditions for the creation of a *chiyuv* in the world of *nezikin* and to critically analyse how these conditions compare to other areas of the *halachic* system.[[2]](#footnote-2) More specifically, this paper will endeavour to examine the following questions:

1. What are the necessary conditions required for the creation of a *chiyuv* in the world of *nezikin?*
2. How do these requirements compare with other areas of the *halachic* system such as *Hilchos Shabbos*?
3. What is the nature of the *ma’ase* required?
4. What is the connection needed between the act and the outcome?

Broader discussions of the *gavra* who carries out the act lie outside the scope of this work and will only arise tangentially.[[3]](#footnote-3) In this way, it is hoped that this article will provide some clarity on one of the major themes throughout *Shas.[[4]](#footnote-4)*

The article is arranged into three distinct sections. It commences with an attempt to establish the connection required between act and outcome, drawing heavily upon the position of Rav Ashi about indirect actions. The middle section offers a brief analysis of the concept of *meleches machsheves*, with a view towards ascertaining the nature of the principle. The final section presents competing accounts of the nature of some of the *avos nezikin*.

# The act

The *Halachic* system draws distinctions between three different categories: *ma’ase, machsava* and *dibur –* act, intention and speech. While there are many *issurim* –prohibitions – which can be created through all of these categories, it is rarer to find a *chiyuv* created without a *ma’ase.* A common rule summarising this idea, albeit not without a dissenting opinion, is that a person cannot receive the punishment of lashes for carrying out a transgression devoid of an accompanying act.[[5]](#footnote-5) This is certainly the case in the world of *nezikin* where a *ma’ase nezek* is a key component of the subsequent *chiyuv.[[6]](#footnote-6)* In logical terms we can capture this rule by saying that:

For any person p in population P, p will be chayav if and only if p, or p’s property,[[7]](#footnote-7) has carried out a ma’ase nezek.

Although our remarks have been but brief until this juncture, for the purposes of this article at least, we shall assume that a *ma’ase* is required to create a *chiyuv.[[8]](#footnote-8)* Next therefore, we must attempt to establish how direct this *ma’ase* must be.

## Indirect actions

The *gemora* on *Bava Kamma* 60a notes that a person who fans a fire along with the wind is *patur*, because the resultant damages are not a direct result of the person’s actions:

“IF IT WAS THE WIND THAT FANNED IT, ALL WOULD BE EXEMPT. Our Rabbis taught: Where he fanned it [along with] the wind which also fanned it, if there was enough force in his blowing to set the fire ablaze he would be liable, but if not, he would be exempt. But why should he not be liable, as in the case of one winnowing [on Shabbos, who is liable] though the wind was helping him?  — Abaye thereupon said: We are dealing here with a case where e.g., he blew it up in one direction and the wind blew it up in a different direction. Raba said: [The case is one] where e.g., he started to blow it up when the wind was only normal, [and would have been unable to set it ablaze], but there [suddenly] came on an unusual wind which made it blaze up. R. Zera said: [The case is one] where e.g., he merely increased the heat by breathing heavily on it.  R. Ashi said: When we say that there is liability for winnowing where the wind is helping, this applies to Shabbos where the Torah prohibited any work with a definite object,  whereas here [regarding damage] such an act could be considered merely as a secondary cause, and a mere secondary cause in the case of damage carries no liability.”*[[9]](#footnote-9)*

The above passage thus adds an important requirement.[[10]](#footnote-10) A *ma’aseh* may be a necessary condition for the creation of a *chiyuv* but it is not a sufficient one. A mere act alone does not create a *chiyuv.* Rather there is an additional requirement that the act should directly lead to the outcome. In the case above where a person merely fans the flames along with the wind, the act is only considered to be a secondary cause, or *geroma* as it is more commonly known, and hence there is no *chiyuv.* We can now reformulate our rule as:

For any person p in population P, p will be chayav if and only if p, or p’s property, has carried out a ma’ase nezek and that ma’ase nezek has led directly to D, where D is any outcome of damage

The divergence between the world of *issurim* and *chiyuvim* noted earlier is once again of paramount importance here. The *gemora* in *Bava Basra,* 22b, notes that it is still forbidden to cause damage indirectly, or in the words of the *gemora* - *“gerama benizikin assur”.* The passage above is not therefore saying that one has exhibited correct behaviour or indeed that the offender will not have any judgement to give to the Heavenly Court. What the passage does indicate is that no *chiyuv* is created through indirect actions – or that *geroma benizikin patur*.[[11]](#footnote-11)

## Shabbos and Nezikin

The intriguing aspect of the *gemora*, lies in the fact that a similar case of winnowing on *Shabbos* does result in a *chiyuv* in terms of *Hilchos Shabbos* despite the fact that fanning the flames does not result in a *chiyuv* in terms of *Hilchos Nezikin.*

There are four answers brought in relation to this question. The first three responses offered by the *gemora* attempt to deflect the question and maintain the fundamental assumption that there is no disparity between the rules and requirements of the world of *Nezikin* and the world of *Shabbos.* The final answer of R’ Ashi however, introduces the possibility that there is a fundamental distinction to be found between *Hilchos Shabbos* and the rules of *Nezikin*. R’ Ashi assumes that the cases of winnowing and fanning the flames are legally equivalent and yet, for reasons which are not immediately clear, concludes that the former creates a *chiyuv* on *Shabbos* whilst the latter does not result in the same outcome for *Nezikin.*

At first glance, this is obviously difficult to understand. If the act is “considered merely as a secondary cause”, or *geroma* as it is more commonly known, then why is *geroma* not enough to avoid the *chiyuv* on Shabbos? Is a *ma’ase* not a necessary condition for a *chiyuv* on Shabbos? Or is a *ma’se* indeed a necessary condition for a *chiyuv* on Shabbos but a direct *ma’ase* is not? It seems that according to R’Ashi the nature of the act needed to create a *chiyuv* on *Shabbos* is not the same as for *Nezikin*. In order to understand the distinction, we must examine the concept of *meleches machsheves* which R’ Ashi cites as the reason why one is *chayav* in the case of winnowing on Shabbos.[[12]](#footnote-12)

# Meleches Machseves

The concept of *meleches machsheves* is a central one to the laws of *Shabbos*. Our analysis shall commence with a central problem revolving around the presentation of the principle in competing sources.

## A reason to exempt or to find liable?

The Mishna in *Chagiga 10a* says:

The laws concerning the sabbath, festal-offerings, acts of trespass are as mountains hanging by a hair, for they have scant scriptural basis but many laws.

The *gemora* goes on to question why *Shabbos* is thought to have scant scriptural basis when it is clearly written in the verses. The passage concludes on 10b by saying that it is referring to the concept of *meleches machsheves* which is not written in the verses but which is the basis for all of the laws on Shabbos. *Rashi, Tosafos* and *Rabeinu Chananel* all have their own respective ways of interpreting the flow of the aforementioned passage but the common denominator between all of their approaches is that the principle acts as a *kula -* reason to exempt*,* such that a *chiyuv* is not created until the *ma’ase* is in accordance with the rules of *meleches machsheves.*

A classic manifestation of this can be seen in a passage in the *gemora* in *Beitza,* 13b:

He who rubs ears of wheat may winnow them from one hand to the other and eat them [without tithing]; but if he winnows them and lays them on his lap he is liable. Said R. Eleazar: And it is likewise with respect to Shabbos. R. Abba b. Mamel demurred to this: And [in] the first clause, [is he liable] in respect to tithe but not in respect to Shabbos? Is there then any action which with respect to the Shabbos does not rank as the final act, whereas with respect to tithe it is regarded as the final act? To this R. Sheshes the son of R. Idi demurred: Is there not? Surely there is [the case of what constitutes] their threshing-floor in respect of tithing; for we have learnt, When is their harvesting time for tithing? In the case of cucumbers and gourds after their coils of blossom have dropped, and if they have not dropped, then as soon as they have been made a heap. And we learnt likewise of onions: [They are liable for tithing] as soon as he [their owner] sets up a heap. Yet with respect to the Shabbos the setting up of a heap does not involve culpability? Therefore, you must needs say that [with respect to the Shabbos] the Torah forbade work of craftsmanship; so also here [say] the Torah forbade work of craftsmanship.

The *gemora* finds a situation where a certain *ma’ase* creates a *chiyuv* in the world of *ma’aser.* R’ Abba was of the opinion that this would then logically extend to the world of *Shabbos,* for if the act creates a *chiyuv* in one area, it should fulfil the necessary conditions in all areas. R’ Sheshes however points out that this is not the case and that there are in fact additional requirements of *melechesmachsheves* imposed in terms of creating a *chiyuv* on *Shabbos*. This corroborates the idea introduced above in the *gemora* in *Chagiga* that the principle of *meleches machsheves* exempts certain acts which create a liability in other areas of the halachic system.

This is rather surprising in light of the original passage in *Bava Kamma*. If we cast our minds back to the flow of the passage, it seems that the very opposite is implied. Over there, the use of the principle of *meleches machsheves* is clearly acting as a *chumra* to create a *chiyuv* in the case of winnowing, even where none exists in the parallel case of fanning the flames in the world of *Nezikin.* In the passages in *Beitza* and *Chagiga*, the principle was invoked when a person was *chayav* in other areas but *patur* on *Shabbos*, whereas in our original passage the principle is invoked to explain why a person is *patur* in other areas but *chayav* on *Shabbos*!

The situation becomes even more surprising in light of the list of cases presented on *Bava Kamma*, 26b. A number of events there are listed in which a person is liable for *Nezikin* but exempt on *Shabbos* and the explanation for the disparity given is that there is the extra requirement of *meleches machseves* on *Shabbos*. This conclusion is the exact opposite of the conclusion of the *gemora* on 60b which invokes the principle as a reason to make a person liable on *Shabbos* but exempt for *Nezkin!*

We are thus left with the strange situation whereby one principle is invoked as a reason to create a *chiyuv* in some places but as a reason to exempt from a *chiyuv* in others. Is the principle a *chumra* or a *kula?*

## A creative action or a planned outcome?

The answer is that the principle is neither a *chumra* nor a *kula* but is dependent upon the context of the situation.

On the one hand, the principle raises the requirements for the level of *ma’ase* needed to create a *chiyuv* on *Shabbos*. Hence the *gemora* in *Beitza* notes that whereas normally an act might create a *chiyuv,* on *Shabbos* there is the additional requirement for the act to be a creative action, the likes of which would be performed in a construction project such as the building of the *Mishkan.[[13]](#footnote-13)* According to the reading of *Rashi* in the passage in *Chagiga* cited above, this is also the principle underpinning the opinion of R’ Shimon who thought that one was not liable in cases where an outcome was achieved without any intention accompanying the act such as *melacha she’eino tzricha legufa* because *meleches machsheves* indicates that intention and planning are necessary conditions for the *chiyuv.*[[14]](#footnote-14)The reason therefore why in certain cases one can be exempt from performing an act on *Shabbos* is because of the added requirement for planning and intention on *Shabbos*.

On the other hand, because intention and planning are critical elements, the principle also acts as a *kula,* because it means that in cases where planning brings about an intended outcome, one may be liable even though there is seemingly no accompanying *ma’ase.* The reason why in some passages, such as in the case of fanning the flames, one is *patur,* is because there is no direct act. But on *Shabbos* we are not searching for a direct act, we are searching for planning. The *chiddush* of R’Ashi is that the principle of *meleches machsheves* means that a *chiyuv* is created on *Shabbos* where an outcome occurs which the person had planned to happen, even if it indirect As such, in the case of winnowing we are not concerned that it is ultimately the wind which has done most of the work but look at the outcome of the winnowing and check whether this outcome fulfils the original intentions of the winnower.

These two sides of the principle result in some interesting *nafka minas* between the laws of *Shabbos* and other areas.

An example of the former application of the principle is that of performing an act in an unusual manner, or what is known as *kilachar yad.* The *Chelkas Mechokaik, Siman 153* was of the opinion that if one were to write a divorce bill with his weaker hand, he would create a valid document. This indicates that writing with the weaker hand is regarded as valid act of writing.[[15]](#footnote-15) On *Shabbo*s however, one is not liable for writing with their weaker hand.[[16]](#footnote-16) Since this cannot be because writing with the weaker hand is not considered a valid act of writing, for these opinions permit writing in this manner for divorce documents, it must be that it is only because of the added requirement of *meleches machsheves* that the writing must be performed creatively.

An example of the latter application of the principle is that of forming letters by erasing parts of existing letters. The gemora in *Shabbos* 104b prohibits a situation of removing the roof of a letter *ches* to yield two letters of *zayin*; since the process has yielded two letters, *kosev* has been violated.Many *Rishonim* question this application of *kosev*, as removing ink and yielding letters is not generally considered a halachic act of writing, but is rather referred to as *chok tochos*. For example, a person crafting a *get* or writing a *sefer* *Torah* cannot merely erase ink and allow letters to emerge from non-erased areas of ink. Isn't erasing the roof of one letter to yield two other letters an example of adding through subtraction, which should thus be permissible on *Shabbos*? The *Ran* howeveracknowledged that even though this process would not normally be a valid act of writing in other areas, it would create a *chiyuv* on *Shabbos*. This is because there has been a planned activity which has resulted in the intended outcome of letters being formed on the *Shabbos*.

With all of the above in mind, the seeming contradiction between the *gemora* on *Bava Kamma* 60b and the *gemora* on 26b is now able to be resolved. The principle of *melechess machsheves* acts as a reason to exempt on 26b because the cases listed there are cases where the outcome is not planned or intended, such as when one intends to throw a stone a certain distance but throws it a different distance. However, the principle of *meleches machsheve* creates a *chiyuv* on 60b because the outcome of winnowing is planned and intended, even if the majority of the work is done by the wind.

The rule for *Shabbos* can be summarised as follows:

For any person p in population P, p is chayav if and only if p carries out a creative action or p brings into motion a planned and intended outcome.

# Nezikin

Having arrived at a working definition of the nature of the act needed to create a *chiyuv* on *Shabbos*, we must of course turn our attention back to the world of *Nezikin.* Why is it that the *gemora* on 60b considers the fanning of the flames an indirect act but the cases on 26b where there is no intention to cause harm as direct actions?

## Adam hamazik and other Avot Nezikin

The first important point to note is that a fundamental distinction must be drawn between different categories of damage. On 26b we are dealing with *adam hamazik* whereas on 60b we are dealing with the category of *eish.* It is of course far beyond the parameters of this article to offer a sustained analysis of the differences between the categories; however, we can briefly note that the category of *eish,* and for that matter *bor,* does not seem to fit into the classical ideas of *nizkei mammon.*

On the one hand, it is difficult equate the relationship between a person and his fire to that of between a person and his ox, so as to render *eish* a type of *nizkei mammon*. At the same time, it is not easy to compare the act of shooting an arrow to starting a fire, so as to render *eish* a type of *adam hamazik*.[[17]](#footnote-17) *Bor* would certainly not seem to be *adam hamazik* as the person has seemingly not been involved at all in the damage. But the classic understanding of the nature of the obligation for *nizkei mammon* is either that legal ownership dictates liability or that negligence in watching/guarding dictates liability. It is very difficult to obligate the digger because of his legal ownership, since he does not actually own the pit which anyway is in *reshus harabim*. It is just as difficult to obligate the digger because of negligence as the initial negligence only indirectly causes damage at a much later point.

One approach therefore is to understand that the *chiyuv* in these cases is due to a third model of liability: anyone who creates a public hazard and endangers others is *chayav* for the very creation of the hazard. Even though the association of the digger with the actual damage which occurred is very slight, he pays for having created a ‘monster’ in the first place.  The *gemora* on *Bava Kamma* 49b might be suggesting as much when it claims that the digger is responsible *al iskei keriya ve-al iskei peticha* -for the actual digging and opening (of the pit).[[18]](#footnote-18)Similarly, even if a fire is not considered to be owned by the lighter and the association of the lighter with the actual damage which occurred is very slight, he pays for having created the dangerous item in the first place.[[19]](#footnote-19)

The rule for *eish* can be summarised as follows:

For any person p in population P, p is chayav if and only if p brings into existence a potential hazard and that hazard subsequently leads directly to D, where D is any outcome of damage.

For the case on 60b then, the question is whether a hazardhas been created. The opinion of Rav Ashi is that because the person merely fans the flames, he is only judged to have indirectly created a hazard and is therefore exempt.[[20]](#footnote-20) The cases on 26b however are discussing *adam hamazik* and we have a rule that *adam muad leolam* so that he is liable even in cases where the outcome is indirect. There is no contradiction in other words between the two passages because each is dealing with a completely different type of damage.

## The ethic of responsibility

This rule of *adam muad leolam* must of course be understood. Why is it that a person should always be liable for damage? Do we not have a general principle that there is a differentiation between acts committed on purpose, acts committed by mistake and acts which were not intended at all?

The principle is introduced in the *Mishna* 26a but a fundamental argument over its nature and scope emerged between the Ramban*[[21]](#footnote-21)* and Tosafos*.* The Rambanthought that a person bears liability for all damages he physically causes, even if he caused damage due to circumstances entirely beyond his control. He cites the cases on 26b as proof texts which illustrate that unforeseen circumstances such as gusts of wind do not serve to exempt a person. Tosafos*[[22]](#footnote-22)*however were of the opinion that in cases of *ones gamur* a person would not be *chayav.*

Seemingly, the argument hints as to the fundamental basis of a person's liability in cases where he personally causes damage.  According to the Ramban*,* who holds a person liable even for damage caused due to circumstances entirely out of his control, clearly this liability does not stem from any degree of guilt or negligence on the individual's part.  Rather, the very fact that he directly caused his fellow financial loss obligates him to pay compensation. *Tosafos*, by contrast, do not hold a person liable unless the incident involves a certain degree of negligence on his part, even if it is true that in determining negligence we are stricter than when regarding damages caused by one's property.

It turns out, then, that according to Tosafos, there is only a difference of degree between the liabilities of different cases. The Ramban, however, saw *adam hamazik* and *nizkei mamon* as two fundamentally different categories.  Liability for *nizkei mamon* is built upon a degree of negligence on the owner's part or some ownership of the item, whereas someone who personally causes damage must pay because he bears full responsibility for all his actions, regardless of his innocence or guilt. He must therefore compensate for any damages he causes even in the cases of 26b.

# Concluding remarks

Having examined different areas of the halachic system, we have seen that the conditions needed to create a *chiyuv* are different in each case. For *Shabbos,* the critical factor is *meleches machsheves* and we have illustrated how this principle can act as both a *chumra* and a *kula.* For *Nezikin,* the critical factor depends upon whether we are referring to cases of *eish* or *adam* and we have again demonstrated that there are competing accounts offered under each classification. It is hoped that this article inspires the reader to now continue this analysis on to other areas such as *Hilchos Rotzeach* and ask what the necessary conditions for creating a *chiyuv* are in each respective area.[[23]](#footnote-23)

1. These ideas were first developed in a series of shiurim by Rabbi Mosheh Lichtenstein in his daily shiur at Yeshivat Har Etzion, 5777. Ideas in Section 4 have also been drawn from a series of shiurim by Rabbi Moshe Taragin in his VBM series, *Gemora Bava Kamma* 5771. Subsequent ideas are my own and any errors and shortcomings lie solely with the author. [↑](#footnote-ref-1)
2. The concept of necessary and sufficient conditions is an important principle for this article and a brief introduction is presented here accordingly. See Devlin, Keith, *Sets, Functions and Logic / An Introduction to Abstract Mathematics* (3rd ed.), Chapman & Hall, 2004, pp.22-23.

   In the [conditional statement](https://en.wikipedia.org/wiki/Material_conditional), "if *S*, then *N*", the expression represented by *S* is called the [antecedent](https://en.wikipedia.org/wiki/Antecedent_(logic)) and the expression represented by *N* is called the [consequent](https://en.wikipedia.org/wiki/Consequent). This conditional statement may be written in many equivalent ways, for instance, "*N* if *S*", "*S* implies *N*", "*S* only if *N*", "*N* is implied by *S*", *S* ⇒ *N*, or "*N* whenever *S*". In the above situation, we also say that *N* is a **necessary** condition for *S*. In common language this is saying that if the conditional statement is a true statement, then the consequent *N* must be true if *S* may at all be true. Phrased differently, the antecedent *S* cannot be true without *N* being true. For example, in order for someone to be called ***S***ocrates, it is necessary for that someone to be ***N***amed. [↑](#footnote-ref-2)
3. For example, there are many passages where the subject of investigation is the person involved i.e. *nashim, cheresh, shote, katan, mumar, kuti* etc. These passages assume that a regular act is carried out but explore the ability of such people to create a *chiyuv*. [↑](#footnote-ref-3)
4. It is an interesting phenomenon that most works are either structured according to the pages of the *gemora* (*Rashi, Ramban* etc*.*) or according to topics of laws (*Rambam, Shulchan Aruch* etc.) so that there are therefore very few works which compare themes such as ‘a *ma’ase*’ and how that theme is defined in different areas of the halachic system. One contemporary notable exception is that of the Encyclopedia Talmudit, which perhaps goes some way to filling this void. [↑](#footnote-ref-4)
5. See *Makkos,* 13b. R’ Yehuda is of a dissenting opinion in *Temura,* 3a [↑](#footnote-ref-5)
6. There are different classifications of the *avos nezikin* in the first few pages of *Bava Kamma.* These include cases of *dibbur* such as *eidim zomemim* and *motzi shem ra.* The *gemora* on 5a however, modifies these cases so that they do indeed contain an action. [↑](#footnote-ref-6)
7. The important differentiation between *adam hamazik* and *mammon hamazik* is critical to understanding the basics of the rules of *nezikin.* The discussion of these concepts is to be found later in Section 4. [↑](#footnote-ref-7)
8. The 39 *melachos* of *Shabbos* are also limited to creative and constructive actions. There are concepts of prohibited actions via the medium of speech such as *dabber davar* and *amira lenachri* but these do not create any *chiyyuvim.*  [↑](#footnote-ref-8)
9. The quotation is from the Soncino edition of *Bava Kamma*. See Epstein, Isidore, *Soncino Hebrew-English Talmud*. London, Soncino, 1967. All further references to passages from the *gemora* are from this edition. [↑](#footnote-ref-9)
10. Another factor at play in the passage is that of the balance of responsibility between the wind and the person fanning the flames. The passage in *Shabbos* 92b-93b about two people who together carry out a prohibited action is relevant here and discussed in the *Rishonim* but lies outside the scope of this article. [↑](#footnote-ref-10)
11. The *gemora Bava Kamma*, 45b lists a number of cases to which this principle applies [↑](#footnote-ref-11)
12. It should be noted that the above analysis follows the interpretation of *Rabeinu Chananel Shabbos* 120b and *Rashi* here who hold that winnowing is just used as an example for all acts on *Shabbos.* The *Rosh* here note 11 however holds that the case of winnowing was used as a unique *melocha* which does not follow the rules of other *melachos.* However, it is still true even according to the Rosh that in *certain* cases there are different requirements between *Shabbos* and *Nezikin.* [↑](#footnote-ref-12)
13. The *Gemora* in *Shabbos,* 49b, defines the *melachos* as acts which were performed in the construction of the *Mishkan*  [↑](#footnote-ref-13)
14. These principles require a much more thorough analysis than the scope of this article permits. *Tosafos Yoma* 34b for example disagree with this analysis. [↑](#footnote-ref-14)
15. See however *Sefer Hateruma* and the *Beis Shmuel* ibid. The *Teruma* thought that one could not write a Torah scroll with their weaker hand which would indicate that there is no act of writing at all in such situations. [↑](#footnote-ref-15)
16. *Shabbos*, 103a [↑](#footnote-ref-16)
17. It is likely that this very dilemma is the argument between R’ Yochanan and Reish Lakish as how to classify *eish.* See *Bava Kamma, 22a.*  [↑](#footnote-ref-17)
18. See also in this context the approach of the *Meiri,* 9b, to explain the position of the *Rabanan* that only the person who digs the last bit of the pit is *chayav*  [↑](#footnote-ref-18)
19. The *Talmidei Hari* brought in the *Shita Mikubetzet* suggest that *eish* is derived from both *mammon* and *chetz* and may be alluding to a similar model [↑](#footnote-ref-19)
20. In truth, the position of Rav Ashi remains a difficult one. *Tosafos* illustrate that his position leads to the untenable conclusion that two people who both fan the flames of a fire which could not have been created by either of them individually would be exempt. [↑](#footnote-ref-20)
21. *Bava Metzia, 82b* [↑](#footnote-ref-21)
22. *Bava Kamma, 27b*  [↑](#footnote-ref-22)
23. The reader is especially advised to refer to the *Ran, Sanhedrin 77b,* who explicitly contrasts between the necessary conditions needed in *Hilchos Rotzeach* and *HilchosNezikin.*  [↑](#footnote-ref-23)