



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

### Bava Kamma Daf Kuf Daled

LO YITEIN LO LIVNO V'LO LISHLUCHO

- If a creditor appointed a shaliach in front of witnesses to collect his debt for him, **R' Chisda** says the shaliach becomes his full-fledged shaliach, to the point that if the debtor gives him the money and something then happens to the money the debtor would not have to pay again. **Rabbah** says he does not become his full-fledged shaliach, and if something were to happen to the money before reaching the creditor, the debtor would have to pay again.
  - **R' Chisda** would say, the fact that he bothered to appoint the shaliach in front of witnesses shows that he meant that the shaliach should become an extension of himself. **Rabbah** says he only meant to show the creditor that this shaliach is a trustworthy person, and he may therefore want to send the money with him.
  - **Q:** A Mishna says, if a person borrows a cow and the lender sends the cow to him with the lender's son, slave, or shaliach, or he sends it to him with the borrower's son, slave, or shaliach, and the cow died before reaching the borrower, the borrower would not have to pay for it. Now, it must be referring to where the shaliach was appointed in front of witnesses, because if not, how would we be sure that the borrower actually appointed that shaliach? And, even though he was appointed in front of witnesses, we see that the cow reaching the hands of the shaliach is not considered as if it reached the hands of the borrower. This refutes **R' Chisda**! **A:** We will answer like **R' Chisda** said elsewhere, that the Mishna is referring to an employee or close friend of the borrower, who generally acts as his shaliach, but was not appointed in front of witnesses to be his shaliach for this purpose.
  - **Q:** Our Mishna said that the ganav may not send the stolen item back to the owner with the owner's son or his shaliach. Now, it must be referring to where the shaliach was appointed in front of witnesses, because if not, how would we be sure that the owner actually appointed that shaliach? And, even though it was appointed in front of witnesses, we see that giving it to the shaliach is not considered as returning it to the owner! **A:** **R' Chisda** said, the Mishna is referring to an employee or close friend of the borrower, who generally acts as his shaliach, but was not appointed in front of witnesses to be his shaliach for this purpose.
    - **Q:** This answer would suggest that if the shaliach would have been appointed in front of witnesses he would become a full-fledged shaliach. If that is true, when the Mishna wanted to contrast and give an example of the ganav returning the item to a shaliach whereby the ganav would fulfil his obligation to return the item, why does it give an example of the ganav giving it to a shaliach of Beis Din? Why doesn't it stick to the case of a shaliach of the owner and say "however, if the shaliach was appointed in front of witnesses, he is a full-fledged shaliach, and returning the item to him would be a fulfillment of his obligation to return the stolen item"! **A:** The reason the Mishna didn't want to use that case is because it could not make an absolute statement regarding that case in the way it could regarding the case of a shaliach of Beis Din. Regarding a shaliach of Beis Din, the shaliach has the full power of a shaliach whether the owner of the item asked that he be appointed, or the ganav requested that he be appointed. However, regarding the shaliach of the owner, it is only the owner who can create this shaliach in front of witnesses. If the ganav did so, it would have no effect.
      - This view (that even the ganav can request the appointment of a shaliach of Beis Din, and giving him the stolen item will have fulfilled his

obligation to return the stolen item) argues with **R' Shimon ben Elazar** in a Braisa, who says that the obligation to return would not be fulfilled in that case until the item reaches the hand of the owner or a shaliach that the owner appointed for this purpose.

- **R' Yochanan and R' Elazar** both say that a shaliach appointed in front of witnesses becomes a full-fledged shaliach. If you will ask that our Mishna seems to suggest otherwise, we will answer that the Mishna is discussing a case where the owner asked a person to make himself available in front of the ganav so that he have someone available to deliver the item for him to the owner in the faraway land. However, the shaliach was never appointed as a full-fledged shaliach to act as the hand of the owner himself. We can also answer like **R' Chisda** said, that the Mishna is referring to an employee or close friend of the borrower, who generally acts as his shaliach, but was not appointed in front of witnesses to be his shaliach for this purpose.
- **R' Yehuda in the name of Shmuel** said, a person should not return money (to an owner or a creditor, etc.) with a person who comes with a signed letter which shows that the owner sent him to collect the money, even if witnesses signed it, because this does not make him a full-fledged shaliach, and therefore if anything happens to the money before it reaches the hand of the owner, the person giving the money would have to pay again. **R' Yochanan** said, if witnesses signed it, he may give this shaliach the money, because he becomes the full-fledged shaliach to accept this payment, and becomes like the hand of the owner himself.
  - **Q:** According to **Shmuel**, how can a person create a full-fledged shaliach to send and accept money on his behalf? **A:** The Gemara tells the story of how **Rava** told **R' Safra**, who was sent to collect a debt on behalf of **R' Abba**, that he should have **R' Abba** be makneh the debt to him along with a piece of land, thereby making him the new creditor, and **Rava** would then give the money to **R' Safra**, knowing that by giving it to him he has fully satisfied the debt, without any risk.
    - We find that **R' Pappa** used this method when he sent **R' Shmuel bar Abba** to collect a debt for him as well.

#### NOSSAN LO ES HAKEREN...

- From the Mishna it would seem that he does not have to chase the victim down to give him the additional fifth, but he does in fact owe him this money as a monetary obligation that can be sued for in court if not paid, and if the victim were to die, this money would be paid to his heirs. We also see this concept from later in the Mishna, where the Mishna says, if he swore falsely regarding the additional fifth and then admitted to swearing falsely, he would have to pay a fifth on that amount of the fifth. Again, we see that the fifth is considered a monetary obligation. We see this in a Braisa as well, which says that if after swearing falsely and admitting to having done so the ganav died, his heirs have to pay the principle and the additional fifth to the victim, but they are patur from bringing the Asham.
  - **Q:** A Braisa says that a son does not pay the additional fifth for his father if his father died before paying it!? **A:** **R' Nachman** said, the first Braisa is discussing where the ganav admitted his guilt before he died, and the second Braisa is discussing where he did not admit his guilt before he died.
    - **Q:** If he never admitted his guilt, why are they only patur from paying the fifth? They should not have to pay for the principle amount either!? In fact, the Braisa explicitly says that the son must pay for the principle! If the case is that he didn't admit his guilt, why would the son have to pay the principle amount any more than the fifth? **A:** The Braisa is talking about where the father did not admit his guilt, but the son admitted that his father stole the item. In that case the son would have to pay for the principle amount of the theft, but not the fifth.
      - **Q:** The Braisa also says that if the son swore falsely he would still not be chayuv for the fifth. Based on what we are answering, he should be!? **A:** The case is where the stolen item is no longer in existence (in which case the son does not have to pay for the value of the item stolen by his father).
      - **Q:** If that is the case, why does he even pay for the principle value? **A:** The father had real estate, which becomes encumbered to pay back the value of the stolen item.

- **Q:** Even if the father had real estate the son should not have to pay for the stolen item, because the obligation to pay for the item is like an oral loan, and heirs do not have to pay for an oral loan of their father even if the father had real estate!? **A:** The case is that the father was sued in Beis Din and was found guilty and told that he must pay the principle. He then died. That obligation has the strength of a written loan, which is why the heirs must pay the obligation.
- **Q:** If he was found guilty before he died, why doesn't the son have to pay for the fifth when he swears falsely? **A:** **R' Huna the son of R' Yehoshua** said, the reason is that the oath was on a denial regarding a lien on land, and a denial on a lien of land does not bring about an obligation to pay the additional fifth.
- **Rava** said, the Braisa is discussing where the item is still in existence. The case is that the stolen item was given by his father to someone else to safeguard for him, so when the son swore that there was no stolen item, he was actually swearing truthfully. Therefore, with regard to the principle, since the item exists, he must return it. With regard to the additional fifth, since he didn't swear falsely, he is not obligated to pay the fifth.