



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

Bava Kamma Daf Kuf Vuv

- **R' Huna said in the name of Rav**, if someone denies having money of a second person and swears to that effect, and witnesses then come and say that he does have the money, he is patur from paying. This is based on the pasuk that says that once a plaintiff has accepted the defendant's oath, the defendant no longer has to pay.
 - **Rava** said, this halacha should seemingly only apply to a denied loan, since a loan is given with the intent that the money be used and other money is then used to "pay" (which would seem to fit the verbiage of the pasuk). With regard to a deposit, which is not meant to be used, it should not be included in this halacha. However, **Rav** has said that this applies to a deposit as well, because the pasuk is written regarding a deposit.
 - **R' Nachman** was repeating the halacha of **Rav**, and **R' Acha bar Menyumei** asked, a Mishna says that one who denies and swears falsely regarding a deposit, and witnesses then testify that he swore falsely, he must pay for the principle. If he admitted his guilt, he must pay principle, an additional fifth, and bring a Korbon Asham!? **A: R' Nachman** said, the case here is that the person swore outside of Beis Din (which therefore doesn't have the force of a full oath), whereas the halacha of **Rav** applies only to an oath made in Beis Din.
 - **Q: R' Acha** asked, the Mishna gives another case of one who claims that the deposit in his possession was stolen, and swears to that, and was then found to have sworn falsely based on the testimony of witnesses, and the Mishna says that he must pay keifel. If he swore falsely to that effect, and then admitted his guilt, he would have to pay principle, the fifth, and bring the korbon. Now, this must be discussing in Beis Din, because if not he would not be chayuv keifel, and yet we see that **Rav's** halacha does not apply!? **A: R' Nachman** said, I could answer that the first case is discussing outside of Beis Din and the later case is discussing inside of Beis Din, but I can even answer that both cases took place in Beis Din. The difference between them is that in the first case the oath was taken before Beis Din had a chance to impose it, and in the second case Beis Din imposed the oath.
 - **Q: R' Hamnuna** asked, a Mishna says, if a person was made to swear in front of Beis Din or not in front of Beis Din 5 times about the same claim, and he swore falsely each time, he would be chayuv a separate fifth and a separate Asham for each oath. **R' Shimon** explains, this is so, because he could admit before each oath and not pay the additional fifth, and not make the false oath. Now, the Mishna says he was "made to swear", which means Beis Din imposed the oath on him, it also clearly says that it was done in Beis Din, and we see that after each oath he would have to pay, which refutes **Rav**!? **A: R' Hamnuna** answered, the Mishna should be understood as referring to two different cases – if it took place in Beis Din it is referring to where he swore before Beis Din imposed it on him, and if Beis Din imposed it on him the case was that it took place outside of Beis Din.
 - **Q: Rava** asked, a Braisa says if a shomer said the item being watched was stolen from him, and he swore to that, and then admitted that he himself stole the item for himself, if he admitted to this before witnesses testified that he stole it, he is chayuv to pay the principal, a fifth, and to bring an Asham. If the witnesses came before the admission, he pays keifel and brings an Asham. Now this cannot be talking about an oath taken outside of Beis Din, or before imposed by Beis Din, because there is a keifel obligation. Yet we see that he must pay, which refutes **Rav**!? **A: Rava** said, **Rav** did not say his halacha in a case where one

claimed that something was lost or stolen and swore falsely to that effect and then admitted his guilt. **Rav** also did not say his halacha in the case where he claimed it was stolen, swore, and was proven false by witnesses. **Rav** only said his halacha when he claimed the item was lost, swore to that effect, and was then proven false by witnesses.

- **R' Gamda** told **R' Ashi** what **Rava** had said. **R' Ashi** asked, **R' Hamnuna** was a talmid of **Rav**, and clearly felt that **Rav** was even talking about a case where the person admitted his guilt (as we see that he asked from such a case), so how can you say that **Rav** was not talking about such a case!? **R' Acha Saba** answered, we can say that **R' Hamnuna** agreed that **Rav** only said his halacha in a case where witnesses testified that he swore falsely. The question he asked earlier can be explained with this understanding as well.
- **R' Chiya bar Abba in the name of R' Yochanan** said, if a shomer chinam claims that the deposit was stolen, when in truth he stole it for himself, he would have to pay keifel to the owner. If he sold or shechted a sheep or ox that was deposited by him and claimed that it was stolen, he would be chayuv to pay daled v'hey. We can learn this as follows. Since a ganav pays keifel and a shomer who claims it was stolen pays keifel, then just as a ganav becomes chayuv for daled v'hey, a shomer would as well.
 - **Q:** We can say that a ganav is different in that he pays keifel even if he doesn't swear, whereas a shomer only pays keifel if he first swears falsely, and therefore maybe doesn't become chayuv to daled v'hey? **A: R' Yochanan** was learning by means of a hekesh, and a hekesh cannot be refuted.
 - **Q:** That is a valid answer if we darshen the pesukim to be dealing with these two types of ganav, and therefore can be learned as a hekesh. However, according to the view that the pesukim are not dealing with these different types of ganav, how will he learn this? **A:** He learns it from the extra "hey" in the word "haganav".
 - **Q: R' Chiya bar Abba** asked **R' Yochanan**, a Braisa says, if a shomer swears that the animal he was watching was stolen, and witnesses then saw him eating it, he pays keifel. Now, if he was eating it, it must be that he shechted it, and yet we see there is no daled v'hey!? **A:** He ate it as a neveilah, without shechita.
 - **Q:** Why doesn't he say that he shechted it and it was found to be a treifah, which **R' Shimon** holds is not considered to be a shechita for purposes of daled v'hey? **A:** He wanted to answer according to **R' Meir**, who holds that the shechita of a treifah would be considered a shechita.
 - **Q:** Why doesn't he say that the animal was a "ben paku'ah" (fetus found in the womb of a shechted mother), which does not need shechita? **A:** He wanted to follow **R' Meir**, who says that such an animal does need shechita.
 - **Q:** Why doesn't he say that the case was where he was already told by Beis Din "go pay him", in which case if he then shechts the animal he would not be chayuv daled v'hey, because he has become a gazlan instead of a ganav!? **A:** He could have given that answer, as well as some others, but he chose one answer to give.
 - **R' Chiya bar Abba** said in the name of **R' Yochanan**, if someone who found a lost item claims that it was then stolen from him, and in truth it was not, he would be chayuv keifel, based on the pasuk of "ahl kol aveidah asher yomar ki hu zeh".
 - **Q: R' Abba bar Mamal** asked, a Braisa says, the pasuk says "ki yitein ish", which teaches that if a katan gives something to someone to watch, the shomer would not be subject to all the laws of a regular shomer. How do we know this same halacha applies even if the katan becomes an adult before taking the shomer to Beis Din and asking for his item to be returned? The pasuk says "ahd ha'elohim yavo dvar shneyhem", which teaches that the giving and the suing must happen when he is an adult. Now, if a finder of a lost item is subject to keifel, we should say that the deposit of the katan should get the status of a lost item that was found, and the shomer should be chayuv keifel!? **A:** The case is that the item was consumed before the katan became an adult.

- **Q:** If that is true, then the Braisa should say “until the consumption and suing were done while he was an adult”, instead of saying “the giving and the suing must happen when he is an adult”!? **A:** Change the Braisa to read “until the consumption and suing were done while he was an adult”.
- **R’ Ashi** said, the deposit of a katan cannot be considered like a found item, because the found item came from somebody with legal mental capacity, whereas a katan does not have legal mental capacity.