



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

### Bava Kamma Daf Kuf Zayin

- **R' Chiya bar Abba in the name of R' Yochanan** said, if a shomer chinam claims the deposit was stolen, he is only chayuv for keifel if he denies part of the claim and admits to part. This is based on the pasuk of "ki hu zeh". This argues on **R' Chiya bar Yosef**, who said that the pasuk of "ki hu zeh" is written regarding a loan, not a deposit. The reason for this is based on the logic of **Rabbah**, who says that one who partially denies a claim must swear, because he really wants to deny the entire claim, but doesn't have the chutzpah to do so (since the lender did him a favor by lending him money), and he does not admit the entire claim, because he is looking for more time to get the money to pay. Therefore, the Torah makes him swear, so that he should admit to the entire claim. Now, this logic does not apply to a deposit, because the depositor did not do any favors for the shomer by giving him the deposit. Therefore, there is no reason to believe a full denial more than a partial denial. Based on this, the pasuk that teaches that the person must swear on a partial denial must be referring to a loan.
  - **Rami bar Chama** taught a Braisa that says, in order for the 4 shomrim to become chayuv to make an oath, they must deny part of the claim and admit to part of the claim.
    - **Rava** explained, regarding shomer chinam the pasuk says "ki hu zeh". A shomer sachar is learned from a shomer chinam with a gezeira shava. A "shoel" is learned from the fact that the parsha of shoel follows the parsha of shomer sachar and begins with a "vuv", which teaches that it is a continuation. A "socher" is either treated like a shomer chinam or a shomer sachar, and in either case is learned from there.
- **R' Chiya bar Yosef** said, if a shomer chinam claims the deposit was stolen, and in fact he stole it himself, he is not chayuv keifel unless he used the item for himself before making the oath. This is based on the pasuk that says that he swears "ihm lo shalach yado bimlechtes rei'eihu". **R' Chiya bar Abba** said to him, **R' Yochanan** said he would be chayuv even if the animal is "still standing by its trough" (he did not use it at the time of the oath).
  - **R' Zeira** asked **R' Chiya bar Abba**, did **R' Yochanan** mean to say that he would only be chayuv keifel if the animal is standing at its trough, because if he would have used it he would have become a ganav and would be chayuv even for an oneis, or did he mean to say that *even if* it is standing by its trough he would be chayuv keifel for the oath, but if he would have used it he would certainly be chayuv? **R' Chiya bar Abba** said, I did not hear a direct answer to this, but I did hear from **R' Assi in the name of R' Yochanan**, who said, if a shomer claims the deposit was lost and he swore to that, and he then retracts that claim and claims it was stolen and swears to that, and witnesses then testify that the shomer himself stole it, he would be patur from keifel. Presumably, this is because at the first false oath he was koneh the item and became chayuv for it then. We see that **R' Yochanan** holds that if the shomer was already koneh the item as a ganav, a later false oath will not make him chayuv to pay keifel. **R' Zeira** said, it may be that in that case he doesn't pay based on the second oath, because he already dismissed his obligation to the owner based on his first oath. In fact, we find that **R' Avin in the name of R' Illa in the name of R' Yochanan** gave this as the reason that the shomer would be patur.
  - **R' Sheishes** said, if a shomer claims that the item was stolen from him and is then found to have stolen it himself, if he used it before swearing, he will be patur from keifel. This is based on the pasuk that he swears "ihm lo shalach yado", which suggests that if he did use it, he would be patur.
    - **Q: R' Nachman** asked, we make the shomer swear three oaths: he swears that he was not negligent, he swears that he did not use it, and he swears that it is

not in his possession. Presumably, just like in the case of the last oath, if it turns out that it was in his possession he will be chayuv, the same would be for the second oath, in that if it turns out that he did use it, he will also be chayuv!? **A:** **R' Sheishes** said, we compare the second oath to the *first* oath. Just like if it turns out that he was negligent he will be patur from keifel, so too if he did use it, he will be patur from keifel.