



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

### Bava Kamma Daf Kuf Ches

- **Q: Rami bar Chama** asked, the halacha is that where one is chayuv keifel he cannot also be chayuv for an additional fifth. Is the reason for that because these two obligations can't come about from the same denial, or is it that they both can't be brought about based on a single false oath? The difference would be if a shomer swore that the deposit was stolen from him, and he then retracted and swore that it was lost, and witnesses testified that the first oath was false, and he himself then admitted that the second oath was false. If the same claim can't bring about both payment obligations, then he cannot become obligated to both payments here. If it is that one oath cannot bring about both payment obligations, in this case there are two separate oaths, and therefore both payment obligations can exist. **A: Rava** said, a Braisa says, if a person denies having stolen an item and swears to that effect, and witnesses testify that he stole it, he is chayuv keifel, but if he had instead admitted on his own he would be chayuv for principle, a fifth, and an Asham. Now, the witnesses who testify to the stealing would obligate this person to pay keifel even if he hadn't sworn falsely, so it is not the oath that is making him chayuv in keifel, and yet, if he becomes chayuv in keifel he would not pay the fifth. We see that the exemption for the fifth upon payment of keifel has nothing to do with the oath, and is instead based on the fact that both payment obligations can't come about from the same claim. **SHEMA MINAH.**
  - **Q: Ravina** asked, what if the keifel is incurred by one person and the fifth by another person (for the same claim)? The case would be where a person gave his ox to two people to watch, they both claimed it was stolen and swore, one of them then admitted to swearing falsely and the other had witnesses testify that he swore falsely. Is it that one person can't become obligated to keifel and a fifth for the same claim, and here it is two people, or is it that one claim can't create these two obligations? **TEIKU.**
  - **Q: R' Pappa** asked, what is the halacha regarding one person becoming chayuv for 2 additional fifths, or 2 keifels for the same claim? The case would be where he claimed that it was lost, swore, and then admitted that he swore falsely, and did the exact same claim and oath and admission again. Another case would be where he claimed it was stolen, swore, and witnesses then testified that he swore falsely, and did the exact same claim, oath, and had the same testimony again. Did the Torah mean to say that two *types* of payments can't come about from one claim (keifel and a fifth), but two of the same type could, or did the Torah mean that no two payments (even of the same type) can come about from the same claim? **A: Rava** has said that the pasuk of "vachamishisav Yosef alav" teaches that there can be multiple fifths. **SHEMA MINAH.**
- **Q:** If the owner of a deposit asked for its return, and the shomer swore that it was stolen, but paid the owner anyway, and the true ganav was then caught, who is the keifel paid to? **A: Abaye** says it is paid to the owner, because the shomer at first made the owner accept his oath (in which case the keifel goes to the owner), and **Rava** says it is paid to the shomer, because when a shomer pays the owner, the owner gives over the right to collection of keifel if the ganav is found.
  - They argue in the understanding of a Mishna. A Mishna says, if someone gave a deposit to a shomer chinam and it was stolen or lost, if he pays for it and doesn't want to swear, and the ganav is then found, the keifel goes to the shomer. If he swears and doesn't want to pay, and the ganav is found, the keifel goes to the owner. **Abaye** says, the first case of the Mishna says "he doesn't want to swear", which suggests that if he did swear he does not get the keifel, even if he paid for it. **Rava** says, the second case of the Mishna says "he doesn't want to pay", which suggests that if he does pay he will get the keifel, even if he also swore.

- **Abaye** will explain the last case to mean, if he swore and didn't want to pay *before taking the oath*, only afterward, then he doesn't get the keifel. **Rava** will explain the first case to mean, if the shomer paid, even after he swore, the keifel would go to the shomer.
- **Q:** if the owner of a deposit asked the shomer for its return, and the shomer swore that it was stolen, thereby making himself patur, and the ganav was then caught, and the shomer then took the ganav to Beis Din, where the ganav admitted that he stole it, and the owner then took the ganav to Beis Din and the ganav denied having stolen it, and witnesses then testified that he stole it, does the ganav become patur from paying keifel based on his admission to the shomer or not? **A: Rava** said, if the shomer swore truthfully that it was stolen from him thereby making himself patur, the ganav would be patur though his admission to the shomer. If, however, the shomer swore falsely (he swore that he was not negligent, but in fact he was), the ganav would not become patur with the admission to the shomer.
  - **Q: Rava** asked, if the shomer was ready to swear falsely, but they did not give him the opportunity to do so, what would be the halacha with the admission of the ganav to him? **TEIKU**.
    - **R' Tavyumei** said that **Rava** asked what is the halacha if the shomer actually swore falsely? To that the Gemara said **TEIKU**.
- **Q:** If the owner of the deposit asked for its return, and the shomer said it was stolen and paid instead of swearing, and the ganav was then caught, and the owner took the ganav to Beis Din and he admitted his guilt there, and the shomer then took him to Beis Din and he denied guilt, and witnesses then testified that he did in fact steal, does the ganav become patur from keifel with his admission to the owner? Do we say that the shomer can tell the owner "I paid you, so you are no longer involved here" and an admission to him is therefore worthless, or do we say that the owner can say "you did something for me by paying for the item, so I wanted to do something for you, by bringing the ganav to court", and therefore an admission to him would make the ganav patur? **TEIKU**.
- If a ganav steals the deposit from a shomer not due to the shomer's negligence, and the ganav is then caught, **Abaye** said, if the shomer was a shomer chinam he can choose to either bring the ganav to Beis Din or to simply swear and not get involved, and if he was a shomer sachar he must take him to Beis Din and cannot simply swear and not get involved. **Rava** said, in both cases he must take him to Beis Din and cannot simply swear and not get involved.
  - **Q:** Maybe we should say that **Rava** argues with **R' Huna bar Avin**, who said if the shomer was a shomer chinam he can choose to either bring the ganav to Beis Din or to simply swear and not get involved, and if he was a shomer sachar he must take him to Beis Din and cannot simply swear and not get involved? **A: Rava** would say that **R' Huna bar Avin** was talking about a case where the shomer swore before the ganav was caught.
    - **Q:** He clearly said "he can choose to either bring the ganav to Beis Din or to simply swear and not get involved"! **A:** He meant to say, "if he wants he can remain by the oath that he previously made, or he can take him to Beis Din".
  - **Q: Rabbah Zuti** asked, if the deposit was stolen not due to the fault of the shomer, and the ganav then returned the item to the house of the shomer, where the item then broke or died due to the negligence of the shomer, what is the halacha? Do we say that once it was stolen without the shomer's fault, he is no longer responsible as a shomer, or do we say that since it was returned to him, he again becomes the shomer? **TEIKU**.