



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

### Bava Kamma Daf Kuf Yud Beis

- A Braisa says, if a person steals and feeds the item to his children, they are patur from having to pay for it. If he left over the items intact as an inheritance, then if the heirs are adults they must pay, and if they are minors they do not have to pay. If the adults tell the owner "we are not familiar with our father's dealings with you" (i.e. he may have paid back already), they are patur.
  - **Q:** Just because they are not familiar they become patur from having to pay!? **A: Rava** said, the Braisa means, if the adult heirs say "we know that our father paid you for it already", they are patur.
- A Braisa says, if a person steals and feeds the item to his children, they are patur from having to pay for it. If he left over the items intact as an inheritance and they consumed it, whether they are adults or minors they must pay.
  - **Q:** Even a minor who damages does not have to pay, so why would they have to pay here? **A: R' Pappa** said, the Braisa means to say, if the ganav left it for them intact as an inheritance, and they did *not* consume it, whether they are adults or children they must return it.
- **Rava** said, if a father leaves an inheritance of a cow that he borrowed, they may use it for the term that their father had borrowed it for, and if it died they would not be chayuv to pay if it came about through an oneis, because they are not chayuv for any oneis. If they thought the cow belonged to their father and proceeded to shecht it and eat it, they must pay for the meat they ate based on a cheap rate of meat. However, if their father also left over real estate, they would have to pay for the borrowed cow from the real estate.
  - Some say this last halacha was said on the first part of **Rava's** statement (where the cow died) and others say it was going on the last part (where they shechted and ate it). The version that says it was said on the first part will agree that it applies to the last part as well, and would therefore argue on **R' Pappa**. The one who says it goes on the last case would hold that it would not go on the first case, and would therefore hold like **R' Pappa**, who said that a borrower does not become chayuv for an oneis until the oneis actually happens (which would be why the heirs would not be chayuv to pay for an oneis from the real estate, because there was no obligation from the father for that oneis).
- A Braisa says, the pasuk says "v'heishiv es hagzeilah asher gazal". The extra words "asher gazal" teach that he must return the item as it was when he stole it. Based on this the **Rabanan** said, if a person steals and feeds the item to his children, they are patur from having to pay for it. If he left over the items intact as an inheritance, whether they are adults or minors they must pay for it. In the name of **Sumchos** they said, if the heirs were adults they would have to pay for it, but if they were minors, they would not.
  - The minor son of **R' Yirmiyah's** father in law prevented **R' Yirmiyah** from taking possession of his **R' Yirmiyah's** father in law's house. **R' Avin** said he is correct in doing so, since he inherited it from his father. **R' Yirmiyah** said, I have witnesses that I made a chazakah on the property while my father in law was still alive! **R' Avin** told him, we do not accept witnesses to testify if the other party is not present (and a minor is considered as if he is not present). **R' Yirmiyah** asked, the Braisa says that even the minor heirs must return the property, which shows that minors can be told to return property!? **R' Avin** said, in that Braisa we see that **Sumchos** disagrees with that. **R' Yirmiyah** asked, are we going to follow the single view of **Sumchos**!? The matter

eventually made it to **R' Avahu**, who said that **R' Yosef bar Chama in the name of R' Oshaya** said, if a child takes his slaves and uses them to help make a chazaka on a field, we don't say that we allow him to keep it until he becomes an adult. Rather, we take it away from him and he may then bring witnesses once he becomes an adult. We see from here that we pasken like the **Rabanan**, and not like **Sumchos**. The Gemara says, this is not a valid comparison to our case. In our case the house was known to be owned by his father, and that is why he can't be made to vacate it. In the case of **R' Oshaya**, there is no assumption that it belonged to him, and we therefore don't allow him to claim a chazakah on it.

- **R' Ashi in the name of R' Shabsai** said, we may accept witnesses even if the party they are testifying against is not there. **R' Yochanan** wondered, could we really accept witnesses like that? **R' Yose the son of R' Chanina** said, that **R' Yochanan** explained, that **R' Ashi** must have been referring to a case where either the party bringing the witnesses was sick and might soon die, or the witnesses were sick and might soon die, or the witnesses will be leaving to overseas, and the other party was asked to come to Beis Din and he refused.
- **R' Yehuda in the name of Shmuel** said, we may accept witnesses even if the party they are testifying against is not there. **Mar Ukva** said, the statement of **Shmuel** was explained to me as referring to where the court case began, and the other party was summoned to Beis Din and he refused to come. However, if the case had not yet begun, the defendant can say he insists on having the case heard in the Great Beis Din.
  - **Q:** If so, why can't he say that even if the case already began? **A: Ravina** said, the case is that the Great Beis Din gave a letter stating that the case should be heard by the local Beis Din.
- **Rav** said, we may certify a loan document without the debtor present. **R' Yochanan** said, we may not do so.
  - **R' Sheishes** said to **R' Yose bar Avahu**, the reason for **R' Yochanan** is that he considers this no different than a defendant whose animal did damage, in which case the defendant must be present for testimony.
  - **Rava** said, we pasken that we may certify a loan document without the debtor present, and even if the debtor is there and yells "do not certify it, because it is a forged document" we would still certify the document. However, if he says, give me some time so that I can bring witnesses that will invalidate the document, we give him some time. If he comes within the time given, we accept it. If he does not come within that time, we add on an additional Monday, Thursday, and Monday, and if he still did not show up we put him in cheirem for 90 days. If even then he still hadn't come, we allow the money to be collected from his property. Now, we only wait this long if he said he will be showing up to Beis Din. If he said right away that he would not be coming, we allow him to be collected against immediately. Also, this is only with regard to a claim for a loan. If the claim was for a deposit, we allow for collection immediately. Furthermore, we only allow the plaintiff to collect from the defendant's real property, but not from moveable property, because we are concerned that the plaintiff will consume the moveable property, and when the defendant does come back with the proof he needed there will be nothing left for him to collect back. However, if the plaintiff himself has real property, we would even allow him to collect from moveable property, because the defendant could always collect from that real property.
    - The Gemara says, in fact we would not allow the plaintiff to collect from moveable property even if he had his own real property, because as a rule we do not write a collection document against moveable property, because we are concerned that the real property of the plaintiff will decrease in value and not provide a method of collection.

- When we write a collection document we notify the defendant. However, that is only if he is nearby. But, even if he is far away and has local relatives, or there are caravans that go back and forth between the place of Beis Din and the place where he is, we wait 12 months for a caravan to go back and forth, as we find that **Ravina** paskened.
  - The Gemara says that **Ravina's** case was with an extreme plaintiff, and that is why he delayed the collection process. However, with a normal plaintiff, we only wait a few days.
- **Ravina** said, if the shaliach of Beis Din went to call someone to a Beis Din, and he comes back and reports that the person refused to come, he is believed as 2 witnesses.
  - This is only with regard to putting him into cheirem. However, with regard to writing a document of cheirem, he is not believed like 2, because that would cause the defendant to have to pay for the document before being released from cheirem.
- **Ravina** said, we can send a woman or a neighbor to a defendant to summon him to Beis Din.
  - This is only if the defendant is not in the city of Beis Din. If he was, we are concerned that these people will rely on the shaliach of Beis Din and will not pass along the message. Also, this is only if the defendant doesn't pass by the Beis Din, for the same reason. Also, we only say that these people have surely given the message if the person will be home that day. If not, we are concerned that they will forget to do so by the time he gets home.