



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 Ches

#### MISHNA

- If a person stole, or borrowed money, or was given a deposit to watch, if the items came into his possession in a settled area, he may not return it in the wilderness. However, if he took the loan or the deposit on the condition that he may go out to the wilderness to return it, he may even return it in the wilderness.

#### GEMARA

- **Q:** A Braisa says, a loan may be paid back anywhere, but a lost item and a deposit may only be returned in its place. This contradicts our Mishna!? **A: Abaye** said, the Braisa means that repayment of a loan may be demanded anywhere, whereas a lost item and deposit may only be demanded in its place.

#### AHL MENAS LATZEIS BAMIDBAR

- **Q:** It is obvious that if this condition is made he may do so!? **A:** The case is that the owner told the shomer, "watch this item, because I need to go out to the midbar", and the shomer says "I also need to go out to the midbar". The Mishna teaches that this response is as if he told him, "I am accepting the deposit on the condition that I can return it to you in the midbar".

#### MISHNA

- If a person tells another, "I stole from you", or "You lent me money", or "You left a deposit by me to watch", but then says "I do not know if I returned it to you or not", he must pay. However, if he said "I do not know if I stole from you" or "if I borrowed from you" or "if you gave me a deposit to watch", he would be patur from having to pay.

#### GEMARA

- We have learned, if a person tells another, "You owe me a maneh" and the other says "I do not know", **R' Yehuda and R' Huna** say he must pay (a certain claim wins out over an unsure claim), and **R' Nachman and R' Yochanan** say he is patur (the money remains in the hands of the one who currently holds it).
  - **Q:** Our Mishna said, if he says "I don't know if I borrowed from you" he is patur. Now, if the case is where the possible lender did not ask for the money, that would mean that the beginning of the Mishna is also talking about that case, and if so, why would he be chayuv? Rather, the case must be where the lender asked for the money, and yet it says that he is patur when he says he does not know. This contradicts **R' Huna and R' Yehuda!** **A:** The Mishna is discussing where the lender did not ask for the money, and that is why he is patur. The beginning of the Mishna is discussing where the person wants to be yotzeh his Heavenly obligation (although Beis Din would not make him pay). In that case we tell him that since he agrees that there was certainly a debt at one point, he should pay. In fact, we find that even **R' Yochanan** would say that a person should pay if he wants to be yotzeh his Heavenly obligation.

#### MISHNA

- If a person steals a sheep from the flock and returns it to the flock without notifying the owner, and the animal then died or was stolen, the ganav is responsible for it. If the owner never realized it was stolen or that it was returned, and the owner then counted his flock and found it to be complete, the ganav is patur from any responsibility.

- **Rav** said, if the owner knew it was stolen, he must be notified when it is returned (for the ganav to be patur). If he never knew it was stolen, his counting and seeing that his flock is complete makes the ganav patur. Based on this, when the Mishna said “he counted it and found it complete” it is referring to the last case of the Mishna. **Shmuel** said, whether he knew it was stolen or did not know, the counting of the owner makes the ganav patur. Based on this, when the Mishna said “he counted it and found it complete”, it is going on all the cases of the Mishna. **R’ Yochanan** said, if he knew it was stolen, his subsequent counting makes the ganav patur. If he wasn’t aware it was stolen, the ganav is patur once he puts it back even if the owner doesn’t then count the flock. Based on this, when the Mishna says “he counted it and found it complete”, it is going on the first case. **R’ Chisda** said, if he knew it was stolen, his subsequent counting makes the ganav patur. If he was not aware it was stolen, the ganav must tell him that it was returned. Based on this, when the Mishna says “he counted it and found it complete”, it is going on the first case.
  - **Rava** said, the logic of **R’ Chisda** is that since the animal was stolen, it becomes accustomed to wandering away, and that is why the owner must be informed.
    - **Q:** By explaining **R’ Chisda**, it seems that **Rava** holds like him. However, we find that **Rava** says, if a person sees someone trying to steal a sheep from his flock and he yells, causing the ganav to run away, but the owner is not sure whether a sheep was taken, and the sheep then died or was stolen, the ganav remains responsible. Presumably this is said after a count was done and we see that a count is not enough to make him patur!? **A:** The case is where no count was done.
  - **Q:** How could **Rav** hold this way? We find that **Rav** says that even if the ganav returns the sheep to the flock in the desert he is no longer chayuv. This is so even though there is no counting there!? **A:** **R’ Chanan bar Abba** said, **Rav** would agree in the case of a sheep that has defining spots on it, that it is considered fully returned even without a counting, because its presence is noticeable.
  - **Q:** Maybe we can say that this 4 way machlokes is actually a machlokes among Tanna’im. A Braisa says, if a person steals a sheep from a flock, or money from a wallet, **R’ Yishmael** says he should return it to the place he stole it from. **R’ Akiva** says he must make the owner aware that he returned it. Now, the **Rabanan** thought that all hold of **R’ Yitzchak**, who says that a person constantly checks his wallet to make sure all his money is there. Presumably the Braisa is discussing where the owner was therefore aware that the money was stolen and they are arguing in the same machlokes as **Rav and Shmuel** (whether counting after knowing of the theft is enough to make him patur), and the case of the stolen sheep is discussing where he was not aware it was stolen, and they are arguing in the machlokes between **R’ Chisda and R’ Yochanan** (whether even a counting would not be needed or an actual notification would be needed). **A:** **R’ Zvid in the name of Rava** said, in the case of a person who steals a sheep from the reshus of the owner without his knowledge, all would agree with **R’ Chisda** that actual notification of the return would be necessary. The machlokes in the Braisa is regarding a shomer who was given a flock to watch and he stole one of the sheep in his possession without the owner knowing it was stolen. In that case, **R’ Akiva** says this act ends his being a shomer and he must therefore notify the owner when he returns the sheep, and **R’ Yishmael** holds that his being a shomer has not ended, and therefore, since he is aware of the theft, he need not notify the owner upon its return.
  - **Q:** Maybe we can say that whether the owner’s subsequent counting can make the ganav patur is a matter of machlokes between Tanna’im. A Braisa says, if someone steals from another person, and when giving the owner money for some other reason (e.g. he buys something from him) he adds money to cover the cost of the theft as well, one Braisa says he is yotzeh his obligation of returning the theft and is therefore patur, and another Braisa says he is not yotzeh and therefore remains chayuv. The **Rabanan** felt that both Braisos agree with the concept of **R’ Yitzchak** who says that a person constantly checks his wallet to make sure all his money is there. The machlokes would be, that the Braisa that says he is yotzeh holds that the subsequent counting makes the ganav patur, and the Braisa that says he is not patur holds that the counting does not

make him patur. **A:** It may be that all agree that a counting would make him patur, and they argue in the concept of **R' Yitzchak**, whether we can assume that a counting has taken place. **A2:** We can also say that they all hold of **R' Yitzchak**, and there is no machlokes at all. Rather, the first Braisa is talking about where he put the money into his wallet (in which case we know it will get counted) and the second Braisa is talking about where he put the money into the person's hand, and it may end up never being put into his wallet, in which case we don't know if it will be counted. **A3:** We can also say that both Braisos are discussing where it was put into his wallet. The second Braisa is discussing where there was other money in the wallet besides what was returned, and therefore even when he counts it he won't realize that the money was returned. The first Braisa is discussing where there was no other money in the wallet besides what was given to him by the ganav.

#### MISHNA

- A person may not buy wool, milk, or baby goats from shepherds, or wood or fruit from a watchman of a fruit orchard. One may buy woolen clothing from women in Yehuda, and linen clothing in the Galil, and calves in Sharon. However, if any of these women told the buyer to keep the transaction a secret, it is assur to buy from her. One may buy eggs and chickens anywhere.

#### GEMARA

- A Braisa says, one may not buy goats or baby goats, or different types of wool from a shepherd, but may buy sewn garments from them, because those surely belong to them. One may buy milk and cheese from them in the wilderness, but not in the settled area. One may buy 4 or 5 sheep from them at one time, or 4 or 5 pieces of wool, but may not buy 2 sheep or 2 pieces of wool. **R' Yehuda** says, one may buy domesticated sheep from them, but not wild sheep. The general rule is, one can buy from them anything that if the shepherd sold it the owner would realize it was missing. If it is something the owner would not realize is missing, it may not be bought from them.
  - **Q:** If he may buy 4, surely he may buy 5!? **A: R' Chisda** said, the Braisa means he can buy 4 out of 5 sheep that the shepherd has (80% of what he has). **Others** say that **R' Chisda** said that he may buy 4 from a smaller flock and 5 from a larger flock.
  - **Q:** By saying one may buy 4 or 5, this means he may not buy 3. The Braisa then says he may not buy 2, which suggest that he may buy 3!? **A:** If he is buying healthy sheep, he may even buy only 3. If they are weaker sheep, he may not buy less than 4.

#### R' YEHUDA OMER BAYSOS LOKCHIN MEIHEN MIDBARIYOS EIN LOKCHIN MEIHEN...

- **Q:** Is **R' Yehuda** going on the first part of the Braisa, and is therefore being machmir (he only allows buying 4 or 5 sheep if they are domesticated sheep, and would not allow any purchase of wild sheep), or is he going on the later part of the Braisa and is therefore being meikel (he says buying only 2 sheep is only assur if they are wild sheep, but would be mutar if they are domesticated sheep)? **A:** A Braisa says, **R' Yehuda** says, we may buy domesticated sheep from them, but not wild sheep, and in every place one may buy 4 or 5 sheep from them. Now, from the fact that he says "in every place", we see that he is even referring to the wilderness and to the wild sheep. Therefore, we see that he is going on the later part of the Braisa and is being meikel. **SHEMA MINAH.**