



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

Bava Kamma Daf Ayin Daled

- **Rava** had said that contradiction of testimony is the beginning of hazama, and therefore if witnesses have their testimony contradicted by other witnesses, they are still subject to hazama.
 - **Q: R' Acha the son of R' Ika** asked **R' Ashi**, where does **Rava** learn this halacha from? It can't be that he learns it from the Braisa previously quoted by the Gemara (which **Rava** explained as referring to a first set of witnesses that said the master first knocked out his slave's tooth and then his eye, and a second set said the reverse, and a third set then made the second set into zomemim, and we see that although the second set was contradicted by the first set, they are still subject to hazama), because the second set in the Braisa can be said not to be contradicted, because Beis Din would say the master is chayuv to pay for the value of the tooth (like the second set said), since even the first set agrees that the master is chayuv to pay at least that much. If so, they cannot be said to be contradicted, and maybe that is why they are subject to hazama. How does **Rava** know that in a true case of contradiction, he would still be subject to hazama? **A: R' Ashi** said, **Rava** learns this from the second part of the Braisa, which he understands to be talking about where one set of witnesses testified that a master first knocked out the slave's tooth and then blinded the slave's eye, and Beis Din therefore said that the master must pay for the eye. A second set of witnesses then came and said the reverse, which contradicts the first set and makes them retract the verdict. The Braisa then says that if the first set were found to be zomemim, they are treated like zomemim. We see from here that hazama applies even after a contradiction. **Abaye** argued and said that the second case of the Braisa is only talking about 2 sets of witnesses. Not three. Therefore there is no proof that there is hazama after a contradiction.
 - **Q: R' Zeira** asked, why are we assuming that if the master damaged two of the slave's organs he goes out free with the first and gets paid for the second? Maybe he only goes out free and does not get paid? **A: Abaye** said, the pasuk says "tachas eino" and "tachas shino", which teaches that damage of one sets him free. Therefore, it must be that he gets paid for damage to the second.
 - **R' Idi bar Avin** said, we can see from our Mishna like **Rava** said, that contradiction is the beginning of hazama. The Mishna said, if the same set of witnesses testify to the theft and the shechita or sale, and they are then found to be zomemim, they must pay for the full value of daled v'hey. Presumably, the case is where they first testified to the theft, then testified on the shechita, then became zomemim on the theft, and then became zomemim on the shechita. Now, once they became zomemim on the shechita, they are considered to be contradicted regarding the shechita (because they said he shechted a stolen animal, and the hazama regarding the theft contradicts that and says there was no theft), and yet the Mishna says that when they are later zomemim on the shechita as well they must pay for the full daled v'hey! This proves that contradiction is considered to be the beginning of hazama.
 - The Gemara says this is no proof. The case may be where they became zomemim on the shechting first. Therefore they were not first contradicted.
 - This machlokes between **Abaye and Rava** is actually a machlokes among Tanna'im. We learned, if witnesses who testified to a murder were first contradicted and then found to be zomemim, there is a machlokes between **R' Yochanan and R' Elazar** – one says they are put to death and the other says they are not.
 - We can prove that **R' Elazar** is the one who says they are not put to death, for we find that **R' Elazar** says, if witnesses who testified to a murder were contradicted, they get malkus for saying false testimony. Now, if he holds that if

they were to become zomemim they would be put to death, they should not get malkus, because malkus is not given for a lav that can carry the death penalty.

- **Q:** Why would he say they get malkus? It is 2 witnesses against 2 witnesses, so why do we believe the second set more than the first? **A:** **Abaye** said, the case is where the reported murder victim walked into Beis Din, thus making it clear that the first set lied.

MISHNA

- If 2 witnesses testified to the theft, and only one witness testified to the shechita or the sale, or the ganav admitted to the shechita or the sale, he only pays keifel, and not daled v'hey.
- If he stole and shechted on Shabbos, or shechted for avodah zara, or if he stole from his father and his father died and he then shechted or sold the animal, or if he stole and gave it to hekdesch and then shechted it or sold it, the ganav pays keifel, and not daled v'hey. **R' Shimon** says, if it is kodashim for which he would be responsible, he pays dalaed v'hey. If he would not be responsible, he would not pay daled v'hey.

GEMARA

- **Q:** It is obvious if there is only one witness that he would not be subject to daled v'hey!? **A:** The Mishna is teaching that just like in the case of a single witness, if a second witness came and joined him the ganav would be chayuv daled v'hey, so too where he admitted to it, if witnesses later came and testified to the shechita or sale, he would also become chayuv to pay daled v'hey. This comes to exclude **R' Huna**, who says in the name of **Rav**, that if one admits to a penalty and then witnesses testified to his action that would subject him to a penalty, he would be patur.
 - **Q: R' Chisda** asked **R' Huna**, it once happened that **R' Gamliel** blinded the eye of his slave Tavi, and he was very happy that Tavi would go out free. When he told **R' Yehoshua** his "good news", **R' Yehoshua** told him he does not go out free, because it is a penalty, and you alone admit to it without any witnesses to the act, and the penalty is therefore not applied. Now, this suggests that if there were witnesses after the fact, he would be subject to the penalty, and refutes **R' Huna**!? **A: R' Huna** said, that case is different, because **R' Gamliel** did not admit in front of Beis Din. However, if an admission is made in front of Beis Din, the person will never become subject to the penalty.
 - **Q: R' Yehoshua** was the Av Beis Din, so the admission was made in front of Beis Din!? **A:** Still, they were not *in* Beis Din.
 - **Q:** In a Braisa about this story **R' Yehoshua** said to him, "you have already admitted to it", implying that even if witnesses later came he would remain patur. Presumably we should say that the 2 Braisos argue. The first Braisa holds that if after an admission witnesses came he would be chayuv, and the second Braisa holds that he would be patur!? **A:** All agree that if witnesses later came he would be patur. The machlokes is that the first Braisa holds that the admission was made out of Beis Din, and therefore it is not considered to be a full admission, and if witnesses later come he would be chayuv, and the second Braisa holds it was done in Beis Din, and therefore he would always remain patur.