



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

Bava Kamma Daf Ayin Hey

- We have learned, if one admits to being chayuv a penalty, and then witnesses testify to his guilt as well, **Rav** says he is patur from the penalty, and **Shmuel** says he is chayuv.
 - **Rava bar Ahilai** said, the reason for **Rav** is based on a drasha of the pesukim. The double verbiage of "himatzei timatzei" teaches that the ganav is chayuv for keifel when he is found guilty by witnesses. Now, we would already know this from the pasuk of "asher yarshi'un"! It must be that this teaches that he if he admits and then witnesses come, he is patur.
 - **Shmuel** uses the pasuk for the drasha of the yeshiva of **Chizkiya** (taught in an earlier Gemara).
 - **Q: Rav** asked **Shmuel**, a Braisa says, if a ganav saw witnesses coming to testify, so he quickly told Beis Din, "I stole, but I did not shecht or sell it", he only pays for the principal amount. We see that he doesn't pay keifel even if witnesses testify after his admission!? **A: Shmuel** said, the Braisa is talking about a case where the witnesses did not ultimately come and testify.
 - **Q: The Braisa continues and says, R' Elazar the son of R' Shimon** says "let the witnesses come and testify" (and make him chayuv in keifel). This suggests that the **T"K** holds that even if they came he would not become chayuv in keifel!? **A: Shmuel** said, I can hold like **R' Elazar the son of R' Shimon**, who clearly holds like me.
 - **Q: According to Shmuel** we will have to say that the Tanna'im in the Braisa argue regarding his view. Will **Rav** also have to say so? **A: Rav** will say that even **R' Elazar the son of R' Shimon** holds like him. It is only there, where the admission came as a way to preempt the witnesses, that **R' Elazar the son of R' Shimon** says he would be chayuv if the witnesses do testify. However, in a case of a true admission, even **R' Elazar the son of R' Shimon** would agree that he would be patur even if witnesses later came and testified.
 - **R' Hamnuna** said, it would seem that **Rav** said his halacha in a case where the ganav admitted to stealing, in which case he obligates himself to pay for the principal, and then witnesses came, in which case he would be patur from keifel. However, if he said he didn't steal, and witnesses said that he did steal (making him chayuv to pay keifel), and he then said "I shechted or sold the animal", he would be chayuv to pay daled v'hey, because his admission did not obligate him to pay anything.
 - **Rava** said, I can refute this logic based on an earlier Gemara. The Gemara brought the story of **R' Gamliel** when he blinded the eye of his slave Tavi, and **R' Yehoshua** told him that the slave does not go free as a penalty, because **R' Gamliel** admitted to it, which suggested that if witnesses would come he become chayuv. **R' Chisda** asked this as a question to the view of **Rav**, and **R' Huna** did not answer that this case was different because **R' Gamliel** did not obligate himself to pay anything with his admission. We see that this point makes no difference.
 - **R' Chiya bar Abba in the name of R' Yochanan** said like **R' Hamnuna**.
 - **R' Ashi** said we can prove this point from our Mishna and a Braisa.
 - Our Mishna says, 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. Why doesn't the Mishna just give the case where even the theft was only

testified to by one witness and say that he pays only principal? The Mishna is teaching that if there were 2 witnesses to the theft, in which case a later admission to the shechita doesn't obligate him in anything, that is when an admission is similar to a single witness – just as if a second witness joins the first the ganav would be chayuv, so too if after such an admission (that didn't obligate him in anything) witnesses testify, he would be chayuv. However, if his original admission made him chayuv to pay principal, he would not become chayuv if witnesses then testified.

- The Braisa quoted earlier says, if a ganav saw witnesses coming to testify, so he quickly told Beis Din, "I stole, but I did not shecht or sell it", he only pays for the principal amount. Why doesn't the Braisa give the case of where he admitted to the theft or the shechting? The reason must be, because if he admitted to the theft, making him chayuv to pay principal, and witnesses then came, that is when he would be patur. However, if he only admitted to the shechting and then witnesses testified that he shechted, he would be chayuv, because his admission caused no liability on his part.
- The Gemara says, this Braisa is no proof. The Braisa is teaching that if he admits to the theft, he will not be chayuv for the shechting, even if it was testified to by witnesses, because since he is patur from the keifel, he won't be chayuv in any additional payments.
- **Q:** Maybe we can say that the concept of **R' Hamnuna** is actually a machlokes among Tanna'im. A Braisa says, if 2 witnesses testified to a theft, and another 2 testified to the shechita, and the witnesses to the theft were then found to be zomemim, all the testimony of both sets becomes batul, because testimony that becomes batul in part, becomes batul in whole. If the witnesses to the shechting become zomemim, the ganav must pay keifel and the zomemim pay the difference between keifel and daled v'hey. **Sumchos** says, they pay keifel and he pays the difference to daled v'hey. Now, what case is **Sumchos** talking about? It must be that there is another case in the Braisa. The case is that 2 witnesses testified that he stole, and the ganav says "it is true that I stole and shechted it, but you were not there", and he then brings witnesses to testify that they were not there, making them into zomemim. The owner of the animal then brought witnesses that testified that the ganav stole the animal and shechted it. In this case the **Rabanan** say that the zomemim pay keifel and the ganav does not have to pay for the difference to daled v'hey, and **Sumchos** says that he does have to pay for that difference. The machlokes is based on the fact that the admission to the shechita did not obligate him in anything, and whether that will make him patur if witnesses later testify. We see this is a machlokes Tanna'im!? **A: R' Acha the son of R' Ika** said, it may be that all agree that such an admission would not make him patur from a penalty if witnesses later testified. The machlokes is whether witnesses that cannot possibly be made into zomemim are valid witnesses. In this case, since the ganav brings witnesses that he says saw him steal and saw that the first set of witnesses were not there, these witnesses that he brought cannot be made into zomemim, because the ganav himself has admitted that they were there. The **Rabanan** say they are not valid witnesses, and their testimony to the theft and shechita is invalid, and the ganav therefore only pays based on his own admission. **Sumchos** holds that such witnesses are valid, and they therefore obligate the ganav to pay the difference between the keifel and the daled v'hey.
 - **Q:** We pasken that witnesses that cannot become zomemim are passul!? **A:** That is when they can't be made zomemim because we don't know the day or time that they witnessed – which is a weakness in their testimony. However, in the case of the Braisa, the reason they cannot be made zomemim is the admission of the ganav. This helps to strengthen their testimony, not weaken it.

- **Q:** According to **Sumchos**, why do the first witnesses pay keifel? The ganav admits that he must pay for the principal, so they should only have to pay for one extra value of the animal, not two!? **A: R' Elazar in the name of Rav** said, read the Braisa to mean that they only have to pay that one extra amount, and not the full two times.