Daf In Review – Weekly Chazarah

Maseches Bava Kamma, Daf צט – Daf קו

Daf In Review is being sent l'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen, A"H vl'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

--------------------------------------Daf ק---100--------------------------------------

- **Reish Lakish** showed a dinar to **R' Elazar**, who then advised him that it is a good coin. **Reish Lakish** said, "See, that I am relying on you!" **R' Elazar** said, "and so what? You have said that it is **R' Meir** who judges matters of garmi, which seems to suggest that only **R' Meir** holds that way and we do not!?" **Reish Lakish** said, "what I meant is that **R' Meir** holds that way and we hold like him".
  - **Q:** Where do we see that **R' Meir** judges matters of garmi? It can't be the anonymous Mishna (which presumably is the view of **R' Meir**) that says that if a judge paskened wrong (he said the liable party is not liable, etc.) he must pay from his own property, because **R' Illa in the name of Rav** said, that this is only true if the judge took the money and gave it to the wrong party!? It can't be the Mishna in which **R' Meir** says that if a dyer colored wool the wrong color he must pay, because there too he caused the damage with his hands!? It can't be the Mishna that says that if someone spreads his vines over another's grain, the grain is assur as klayim and the person who draped the vines must pay for the loss, because there too he caused the damage with his hands!? **A:** It is from a Braisa which says that if the wall around a vineyard was breached, the owner of the neighboring field that has grain can tell the owner of the vineyard to fix the breach. If he doesn't fix it, it makes the grain into klayim, and the owner of the vineyard must pay for the loss. We see that this anonymous Braisa (which is presumably the view of **R' Meir**) judges matters of garmi.

MISHNA

- If a person gave wool to a dyer to color and the wool burned in the pot used for the dyeing process, the dyer must pay him for the value of the wool.
  - If the dyer did a bad job dyeing the wool, then if the improvement to the wool is more valuable than what it cost to get it to that state, the owner of the wool pays the dyer for his expenses. If the expenses were more than the improvement to the wool, he must pay him for the improvement.
  - If he gave him wool to dye red, but he instead dyed it black, or if he gave him wool to dye black and he instead dyed it red, **R' Meir** says the dyer must pay for the value of the wool (he was koneh it with this change), and **R' Yehuda** says, if the improvement to the wool is more valuable than what it cost to get it to that state, the owner of the wool pays the dyer for his expenses. If the expenses were more than the improvement to the wool, he must pay him for the improvement.

GEMARA

- **Q:** What does the Mishna mean when it says that the dyer "didn't do a good job"? **A: R' Nachman in the name of Rabbah bar bar Chana** said, it means he dyed it with "kalabos", which **Rabbah bar Shmuel** said that it means, he used the residue from the dyeing pot.

--------------------------------------Daf קא---101--------------------------------------

- A Braisa says, if a person gave wood to a carpenter to make into a chair and he instead made it into a bench, or if he gave it to him to make a bench and he made it into a chair, **R' Meir** says the carpenter must pay for the value of the wood. **R' Yehuda** says, if the improvement is more valuable than what it cost to get it to that state, the owner of the wood pays for the expenses. If the expenses were more than the improvement to the wood, he must pay him for the improvement. **R' Meir** would agree that if he gave him wood to make a nice chair and he instead made an ugly chair, or he gave it to him to make a nice bench and he made an ugly bench, that if the improvement is more valuable than what it cost to get it to that state, the owner of the wood pays for the

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expenses. If the expenses were more than the improvement to the wood, he must pay him for the improvement.

- **Q:** Is the dye in the wool considered to be something material on the wool or not? The question is, if a gazlan stole liquid dye and dyed wool with it, is the dye considered to be something material and the owner can therefore demand the return of the dye ingredients, or can the gazlan say, there is nothing here of yours?
  - **Q:** How can he say "there is nothing here of yours"? He should have to pay for the value of the dye!? **A:** Rather, the question is, do we say that the dye is not considered to be something material on the wool, and therefore the gazlan must pay, or do we say that the dye is considered to be something material on the wool, and the gazlan can therefore tell the owner "your ingredients are here on the wool, so take them back"?
    - **Q:** How can he take the ingredients back? If he were to use soap to remove the dye from the wool it would wash it out and will not have it returned to him!? **A:** The case is where he stole wool and dye from one person and dyed the wool in that dye, and then returned the dyed wool, if we say the dye is something material on the wool, he is considered to have returned the wool and the dye. If not, he is only considered to have returned the wool.
    - **Q:** Even if he is not considered to have returned the dye, he has returned wool which is more valuable than the wool he stole, and therefore has in effect given back the value of the dye!? **A:** The case is where the dyed wool was worth less than the uncolored wool. Or we can say the case is where he colored a monkey (that he stole) with the dye, in which case the monkey is not worth more due to the color.
    - **Ravina** said, the case would be where a monkey went and took dye from one person and used it to color the wool of another person. If the dye is considered to be something material on the wool, the owner of the dye can demand its return. If it is not, he cannot do so.
  - **Q:** Maybe we can answer the original question from a Mishna which says that a garment that was colored with the dye from orlah fruit must be burned. We see that the appearance of the dye is considered to be something material on the wool!? **A: Rava** said, the case of orlah is different, because we darshen a pasuk to teach that even this form of hana'ah is assur.
  - **Q:** Maybe we can answer from a Braisa that says that a garment that was colored with the dye from shmitta fruit must be burned. We see that the appearance of the dye is considered to be something material on the wool!? **A:** The case of shmitta is different, because we learn from the word "tihiyeh" that it remains assur even when it only exists in appearance alone.
- **Q: Rava** asked a contradiction. The Mishna regarding orlah teaches that appearance is considered to be something of significance. Another Mishna says, if a revi'is of blood is absorbed in a garment and can't be squeezed out (but can be seen), it doesn't make the house that it enters tamei. From here we see that appearance is not something of significance!? **R' Kahana** said, the case of the blood is referring to a type of blood that only gives off tumah in a house D'Rabanan. Therefore we are meikel in that case.
- **Q: Rava** asked a contradiction. One Mishna regarding shmitta says that dyes that come from wood are subject to shmitta, which means that wood is subject to shmitta. Another Mishna says that leaves of vineyards collected for wood (to use for fire) are not subject to shmitta!? **A: Rava** answered, the pasuk regarding shmitta says "l'achla", which teaches that something is only subject to shmitta if it is produce whose benefit comes about during its consumption. The benefit of using a dye happens as it is being cooked and consumed, and is therefore subject to shmitta. The benefit of firewood happens after the wood is consumed (after it has become coal) and therefore, it is not subject to shmitta.
  - **Q:** Oily wood can burn and be used as a light as it is being consumed, and so it should be subject to shmitta!? **A: Rava** said, in general, firewood is meant to be used after being reduced to coal, and that is why they are not subject to shmitta.

--------------------------------------Daf קב---102--------------------------------------

  - The Gemara had said, oily wood of shmitta, that can be used as a torch, is still not given the status of shmitta, because in general wood stands to be burned for firewood. **R' Kahana** said, this point is actually a matter of machlokes between Tanna'im in a Braisa. The Braisa says, one may not use shmitta produce for laundering. **R' Yose** says such use is permitted. The basis for the **T"K's** opinion is because the pasuk says that the shmitta produce must be used "l'achla" (for eating), and not for any other use. **R' Yose** says, the pasuk says "lachem", which teaches that any use is permitted, even for laundering. The **T"K** says that the "lachem" teaches that shmitta produce must be used in a way so that its benefit comes at the time of consumption. (For the same reason, the **T"K** would also hold that firewood would not be subject to shmita, because its benefit always comes after its consumption). **R' Yose** says the "l'achla" teaches that one may not use shmita produce for medicine.
    - **R' Yose** understands the pasuk as coming to allow laundering and disallow medicine, because laundering is something that all people need to do, whereas medicine is something only needed by sick people.
    - We see from this Braisa that the **T"K** says that the shmita restrictions do not apply to firewood, and **R' Yose** says that they would.
    - Based on this Braisa, we can determine that the Braisa that says the "l'achla" teaches that one may not use shmita produce for a medicine, for sprinkling, or to induce vomiting, must follow **R' Yose**, because according to the **T"K** the Braisa should have also listed laundering as a prohibited use.

R' YEHUDA OMER IHM HASHVACH…

- **R' Yosef** was sitting behind **R' Abba**, who was sitting in front of **R' Huna**, who said that the halacha follows **R' Yehoshua ben Korcha** and it follows **R' Yehuda** (of our Mishna). **R' Yosef** turned away in disapproval, to say, that the statement that the halacha follows **R' Yehoshua ben Korcha** is needed so that we know that although he is disputed by a majority (regarding the halacha of collecting a loan from goyim before their holidays), we follow his view anyway. However, why did he need to say that we pasken like **R' Yehuda**? This view is subject to a machlokes (in our Mishna) and is later taught as the view of anonymous Mishna (in Mesechta Baba Metzia), and the rule is that when a matter of dispute is then taught as an anonymous Mishna, we follow that view!? **R' Huna** held it was necessary to make the statement, because we would think that there is no order to the Mishnayos, and we therefore don't know if the anonymous Mishna was taught first or the machlokes was taught first. **R' Yosef** held, that if we are concerned for that, we would never have an application of the rule that when a matter of dispute is then taught as an anonymous Mishna, we follow that view. **R' Huna** would say, within one Mesechta there is surely an order, and that would be where that rule would apply. **R' Yosef** would say that all of Nezikin (Baba Kama, Baba Metzia, and Baba Basra) are considered to be one Mesechta. If we want we can say, that **R' Yosef** would agree that we must be concerned that the Mishnayos are out of order. However, since in Baba Metzia this halacha was taught among of a list of a number of halachos that we are to pasken like, there was no reason for **R' Huna** to make the statement.
- **Q:** A Braisa says, if someone gave money to a shliach (to enter into a partnership with him and) to buy wheat and he instead bought barley, or visa-versa, one Braisa says that any depreciation or appreciation of what was bought goes to the account of the shaliach (and he must pay back the money he took). Another Braisa says, any depreciation goes to the account of the shaliach, but any appreciation is considered to belong to the partnership. This contradicts the last Braisa!? **A: R' Yochanan** said, the first Braisa follows **R' Meir** who says that change effects a kinyan, and the second Braisa follows **R' Yehuda** who says that it does not.
  - **Q: R' Elazar** asked, maybe **R' Meir** only held that way regarding items that are meant for personal use, but not for items that were meant for business merchandise? **A: R' Elazar** said, both Braisos follow **R' Meir**. The first Braisa is discussing a case where the shaliach was sent to buy produce for eating, and the second Braisa is discussing where he was sent to buy produce for investment purposes.
  - In EY the asked, according to the way **R' Yochanan** understands **R' Yehuda**, how can it be that the owner of the money can be koneh any part of what was bought if the shaliach didn't follow instructions? The seller of the produce was not notified that there is an owner of the money to be makneh it to him!?

- **Q: R' Shmuel bar Sasrati** asked, if it is true that the owner of the money can't be koneh when the seller didn't know he existed, why is it different when the shaliach does as he is told? Why in that case is he koneh? **A: R' Avahu** said, that case is different, because when he does what he is told to do he is like the owner himself. We can prove this from a Mishna that teaches that if a man has wool dyed for his wife, it is no longer considered to be his property for purposes of hekdesh. Now, since the dyer didn't know it was for the man's wife, she should not be koneh it yet, and it should remain his!? Rather, we must say that since he acts as her shaliach, she is koneh. The same thing can be said in our case.
  - **R' Abba** said this is no proof. The reason the items designated for his wife are no longer his for purposes of hekdesh (they can't be taken to satisfy his hekdesh obligation) is because when a person gives to hekdesh, he does not intend to give his wife's clothing.
  - **Q: R' Zeira** asked, does a person intend to be makdish his tefillin, and yet we say that if a person is makdish all his possessions his tefillin are included!? **A: Abaye** said, a person does intend to include his tefillin, because he feels he is doing a mitzvah. He does not intend to include his wife's clothing, because that would create animosity between him and her.
  - **Q: R' Oshaya** asked, the Mishna says that if one make an eirichen vow, he himself becomes security for his obligation. Now, he clearly did not intend to give himself, and yet he is included. The same should be with his wife's clothing? **A: R' Abba** said, when a person is makdish his possessions, he is treated as if he already gave his wife's clothing to his wife, and it is therefore not included in his possessions.
- **Q:** A Braisa says, if a person buys a field in the name of another person, we do not force him to sell. But, if he said to him that it is "on condition", we force him to sell. **R' Sheishes** explained, the Braisa means, if a person bought a field under the pretense that he was buying it for the reish galusa, we do not force the reish galusa to then write a document of sale to this true buyer. However, if the buyer told the seller "I am buying this for the reish galusa on the condition that the reish galusa will then sell it to me", we do force the reish galusa to write a document of sale to the buyer. Now, this Braisa seems to argue with those in EY who said that the seller would not be makneh the property to the buyer if he doesn't know that the buyer is the true buyer, and not the reish galusa, because this Braisa seems to say that the buyer is koneh it, and it is only that we can't force the reish galusa to write the document of sale to him!? **A:** The Braisa can be talking about where the seller was told who the true buyer is.
  - **Q: R' Sheishes** said if the buyer said "on condition", we can force the reish galusa to write the document. Why can he be forced to do so? Why can't he say I don't need to be honored or dishonored with false involvement in purchases of land!? **A: Abaye** said, the Braisa means as follows. If a person buys a field in the name of the reish galusa (although he truly was buying it for himself), we do not force the seller to write up a second round of documents that show the true buyer as the buyer. However, if he said "on condition", we do force the seller to do so.
    - **Q:** According to **Abaye** it should be obvious that in the first case we can't force the seller to write a second document!? **A:** We would think that the buyer can tell the seller, you knew that I was buying it for myself and used the name of the reish galusa to prevent people from arguing with me about the field, and since this was the plan it is as if I made a condition that you would write a second deed for me. The Braisa is teaching that the seller can tell him, I thought you made a deal with the reish galusa to write the deed over to you, so I did not think you were going to make me write a second deed.
    - **Q:** According to **Abaye** it should be obvious that in the second case we would force him to write a second deed!? **A:** The case is that the buyer told witnesses at the time of the sale that he will need a second deed to be written in his

name. We would think that the seller can say "I thought you meant that you needed one written by the reish galusa". The Braisa is teaching that the buyer can say, "I specifically said this in front of witnesses during the sale in your presence, because I want you to write the second deed for me".

--------------------------------------Daf קג---103--------------------------------------

- **R' Kahana** once gave money for flax and left the flax in the seller's possession. The price of flax increased and the seller sold **R' Kahana's** flax to someone else, intending to give the proceeds to **R' Kahana**. **R' Kahana** asked **Rav** whether he can take the money. **Rav** told him, if when the seller sold it he said "this is the flax of **R' Kahana**", then you may take the money. If he did not, you may not (because it looks like you lent him money and are taking back interest).
    - **Q:** Does **Rav** hold like the people in EY, who would say that if the buyers don't know who the real seller is they cannot transfer the money to him, and that is why the money is not considered to belong to **R' Kahana**? **A:** The story can't be understood as explained above, because **R' Kahana** didn't lend money and take back more money. He bought flax, and the price of flax increased. When the seller then resold that flax, he in effect stole it from **R' Kahana** and would have to repay the value as it was at the time of the stealing. This would surely not be viewed as a loan with interest. Rather, the case was that **R' Kahana** purchased a future on flax from this seller, without actually purchasing flax right now. In such a case, **Rav** holds that if the purchaser exercised the future for a profit, and takes the actual underlying commodity, that would be mutar. However, if he takes money in its place, that would be assur as it looks like ribis.

MISHNA

- If someone stole at least a prutah of value from another, swore that he did not steal anything, and then admitted that he swore falsely and now wants to do teshuva (in which case he must return the principle value of what was stolen, an additional fifth of the value, and bring a Korbon Asham), he must give it directly to the victim even if he is now in a faraway land. He may not give it to the victim's son or shaliach to bring there, but he may give it to a shaliach of Beis Din. If the victim died, he must give it to his heirs.
    - If he gave him the principle value but not the additional fifth, or if the victim was mochel the principle amount but not the fifth, or he was mochel both besides a portion of the principle worth less than a perutah, he does not need to chase him down to return the remaining amounts. However, if he gave the fifth but not the principle amount, or if he was mochel the fifth but not the principle amount, or if he was mochel both except for a portion of the principle worth at least a perutah, he would have to chase him down to return the remaining amounts.
    - If he returned the principle and then swore falsely that he also gave the fifth, and he then admitted that he swore falsely this second time as well, he must pay an additional fifth on the fifth that he swore falsely about. This can continue going on until the amount that he swears about is worth less than a perutah.
- The same rules apply to a "pikadon", as the pasuk says "b'pikadon, oy bisisumes yad oy bigazeil oy ashak es amiso oy matza aveidah v'kichesh bah v'nishbah ahl shaker". In all these cases the person would have to pay the principle value, an addition fifth, and bring a Korbon Asham.

GEMARA

- **Q:** The Mishna seems to require him to chase down the victim to return what was stolen only because he swore falsely. This suggests that if he did not swear falsely, he would not have to go to a faraway land to return a stolen item. Whose view will this follow? It doesn't seem to follow **R' Tarfon** or **R' Akiva** of a Mishna!? A Mishna says if a person stole from one of 5 people, but he doesn't know from which of the 5 he stole, and each of the people claim that they were the victim, **R' Tarfon** says he can put the stolen item between these people and be done with it. **R' Akiva** says, that is not the proper way to do teshuva from an aveirah. Rather, he must return the

value of the item to each of the 5 people. Now, our Mishna can't follow **R' Tarfon**, because he seems to say that even in a case where the ganav swore, he can just place the item between the 5 people and walk away (which means he does not have to chase the victim down). The Mishna also can't follow **R' Akiva**, because he seems to say that even if he didn't swear falsely he would still have to return to each person (which means he would have to chase the victim down even without swearing falsely). So who does the Mishna follow!? **A:** The Mishna follows **R' Akiva**, because he holds that the item must be returned to each person only if the ganav had first swore falsely, and the machlokes was regarding a case where he swore falsely.

- **R' Akiva's** view is based on the pasuk of "lasher hu lo yitnenu b'yom ashmaso" (he must give it to the one to whom it belongs). **R' Tarfon** says, although the pasuk requires that, the **Rabanan** enacted that he not have to do that so that it not deter people from doing teshuva. **R' Akiva** says the **Rabanan** only made an enactment that when the ganav knows his victim he need not chase him down to return the item if the costs associated with doing so are significant. However, if he doesn't know who he stole from, he would have to return the value to each of the 5 people.
- **Q: R' Huna bar Yehuda** asked, a Braisa says, **R' Shimon ben Elazar** said, **R' Tarfon and R' Akiva** would agree that if someone purchased an item from one of five people, but can't remember which one, that the buyer could just leave the money between them and be done with it. They only argue when a person *stole* from one of 5 people and doesn't know which of the 5, in which case **R' Tarfon** says he can put the stolen item between these people and be done with it, and **R' Akiva** says he must pay back each of the 5 people. Now, if they only argue in a case is where he swore falsely, why would there be a difference between where he bought an item and where he stole an item!? **Q2: Rava** asked, a Braisa says there was a story with a certain chossid who bought something from one of two people and did not remember from which one. **R' Tarfon** told him to leave the money between them and be done with it, and **R' Akiva** told him he must pay each of the people. Now, when a story is said about "a certain chossid" it either refers to **R' Yehuda ben Bava or R' Yehuda the son of R' Illai**. Neither of these great people would have sworn falsely, so the case must be where he did not swear falsely, and yet we see that they argue in this case as well!? **A:** Rather, we must say that the Mishna follows **R' Tarfon** (and he only argues with **R' Akiva** when the person did *not* swear falsely), and **R' Tarfon** agrees, based on a pasuk, that if the person does swear falsely, he would have to pay to each of the possible victims. **R' Akiva** says, although the pasuk only requires that when he swears falsely, the **Rabanan** enacted a penalty that this must be done even when he didn't swear falsely.
  - **Q:** We find a Braisa where **R' Tarfon** says, if a ganav is looking to do teshuva, but cannot remember from which of two people he stole from, he must repay both of the people. We see that he holds that way even if he did not swear falsely!? **A: Rava** said, the case of our Mishna is different than the case of the machlokes, because in our Mishna he knows exactly who it is he stole from. Therefore, in the case of our Mishna, if he doesn't swear falsely, it is as if the victim has asked him to hold onto the money for him until he is able to come and collect it. However, when he swears falsely, he can only get a kaparah by actually paying the victim, and that is why he would have to chase him even to a faraway land to repay for the stolen item.

---------------------------------------Daf קד---104---------------------------------------

LO YITEIN LO LIVNO V'LO LISHLUCHO

- If a creditor appointed a shaliach in front of witnesses to collect his debt for him, **R' Chisda** says the shaliach becomes his full-fledged shaliach, to the point that if the debtor gives him the money and something then happens to the money the debtor would not have to pay again. **Rabbah** says he does not become his full-fledged shaliach, and if something were to happen to the money before reaching the creditor, the debtor would have to pay again.
  - **R' Chisda** would say, the fact that he bothered to appoint the shaliach in front of witnesses shows that he meant that the shaliach should become an extension of himself. **Rabbah** says he only meant to show the creditor that this shaliach is a trustworthy person, and he may therefore want to send the money with him.

- **Q:** A Mishna says, if a person borrows a cow and the lender sends the cow to him with the lender's son, slave, or shaliach, or he sends it to him with the borrower's son, slave, or shaliach, and the cow died before reaching the borrower, the borrower would not have to pay for it. Now, it must be referring to where the shaliach was appointed in front of witnesses, because if not, how would we be sure that the borrower actually appointed that shaliach? And, even though he was appointed in front of witnesses, we see that the cow reaching the hands of the shaliach is not considered as if it reached the hands of the borrower. This refutes **R' Chisda**!? **A:** We will answer like **R' Chisda** said elsewhere, that the Mishna is referring to an employee or close friend of the borrower, who generally acts as his shaliach, but was not appointed in front of witnesses to be his shaliach for this purpose.
- **Q:** Our Mishna said that the ganav may not send the stolen item back to the owner with the owner's son or his shaliach. Now, it must be referring to where the shaliach was appointed in front of witnesses, because if not, how would we be sure that the owner actually appointed that shaliach? And, even though it was appointed in front of witnesses, we see that giving it to the shaliach is not considered as returning it to the owner!? **A: R' Chisda** said, the Mishna is referring to an employee or close friend of the borrower, who generally acts as his shaliach, but was not appointed in front of witnesses to be his shaliach for this purpose.
  - **Q:** This answer would suggest that if the shaliach would have been appointed in front of witnesses he would become a full-fledged shaliach. If that is true, when the Mishna wanted to contrast and give an example of the ganav returning the item to a shaliach whereby the ganav would fulfil his obligation to return the item, why does it give an example of the ganav giving it to a shaliach of Beis Din? Why doesn't it stick to the case of a shaliach of the owner and say "however, if the shaliach was appointed in front of witnesses, he is a full-fledged shaliach, and returning the item to him would be a fulfillment of his obligation to return the stolen item"!? **A:** The reason the Mishna didn't want to use that case is because it could not make an absolute statement regarding that case in the way it could regarding the case of a shaliach of Beis Din. Regarding a shaliach of Beis Din, the shaliach has the full power of a shaliach whether the owner of the item asked that he be appointed, or the ganav requested that he be appointed. However, regarding the shaliach of the owner, it is only the owner who can create this shaliach in front of witnesses. If the ganav did so, it would have no effect.
    - This view (that even the ganav can request the appointment of a shaliach of Beis Din, and giving him the stolen item will have fulfilled his obligation to return the stolen item) argues with **R' Shimon ben Elazar** in a Braisa, who says that the obligation to return would not be fulfilled in that case until the item reaches the hand of the owner or a shaliach that the owner appointed for this purpose.
- **R' Yochanan and R' Elazar** both say that a shaliach appointed in front of witnesses becomes a full-fledged shaliach. If you will ask that our Mishna seems to suggest otherwise, we will answer that the Mishna is discussing a case where the owner asked a person to make himself available in front of the ganav so that he have someone available to deliver the item for him to the owner in the faraway land. However, the shaliach was never appointed as a full-fledged shaliach to act as the hand of the owner himself. We can also answer like **R' Chisda** said, that the Mishna is referring to an employee or close friend of the borrower, who generally acts as his shaliach, but was not appointed in front of witnesses to be his shaliach for this purpose.

- **R' Yehuda in the name of Shmuel** said, a person should not return money (to an owner or a creditor, etc.) with a person who comes with a signed letter which shows that the owner sent him to collect the money, even if witnesses signed it, because this does not make him a full-fledged shaliach, and therefore if anything happens to the money before it reaches the hand of the owner, the person giving the money would have to pay again. **R' Yochanan** said, if witnesses signed it, he may give this shaliach the money, because he becomes the full-fledged shaliach to accept this payment, and becomes like the hand of the owner himself.
  - **Q:** According to **Shmuel**, how can a person create a full-fledged shaliach to send and accept money on his behalf? **A:** The Gemara tells the story of how **Rava** told **R' Safra**, who was sent to collect a debt on

behalf of **R' Abba**, that he should have **R' Abba** be makneh the debt to him along with a piece of land, thereby making him the new creditor, and **Rava** would then give the money to **R' Safra**, knowing that by giving it to him he has fully satisfied the debt, without any risk.

- We find that **R' Pappa** used this method when he sent **R' Shmuel bar Abba** to collect a debt for him as well.

NOSSAN LO ES HAKEREN…

- From the Mishna it would seem that he does not have to chase the victim down to give him the additional fifth, but he does in fact owe him this money as a monetary obligation that can be sued for in court if not paid, and if the victim were to die, this money would be paid to his heirs. We also see this concept from later in the Mishna, where the Mishna says, if he swore falsely regarding the additional fifth and then admitted to swearing falsely, he would have to pay a fifth on that amount of the fifth. Again, we see that the fifth is considered a monetary obligation. We see this in a Braisa as well, which says that if after swearing falsely and admitting to having done so the ganav died, his heirs have to pay the principle and the additional fifth to the victim, but they are patur from bringing the Asham.
    - **Q:** A Braisa says that a son does not pay the additional fifth for his father is his father died before paying it!? **A: R' Nachman** said, the first Braisa is discussing where the ganav admitted his guilt before he died, and the second Braisa is discussing where he did not admit his guilt before he died.
        - **Q:** If he never admitted his guilt, why are they only patur from paying the fifth? They should not have to pay for the principle amount either!? In fact, the Braisa explicitly says that the son must pay for the principle! If the case is that he didn't admit his guilt, why would the son have to pay the principle amount any more than the fifth? **A:** The Braisa is talking about where the father did not admit his guilt, but the son admitted that his father stole the item. In that case the son would have to pay for the principle amount of the theft, but not the fifth.
            - **Q:** The Braisa also says that if the son swore falsely he would still not be chayuv for the fifth. Based on what we are answering, he should be!? **A:** The case is where the stolen item is no longer in existence (in which case the son does not have to pay for the value of the item stolen by his father).
            - **Q:** If that is the case, why does he even pay for the principle value? **A:** The father had real estate, which becomes encumbered to pay back the value of the stolen item.
            - **Q:** Even if the father had real estate the son should not have to pay for the stolen item, because the obligation to pay for the item is like an oral loan, and heirs do not have to pay for an oral loan of their father even if the father had real estate!? **A:** The case is that the father was sued in Beis Din and was found guilty and told that he must pay the principle. He then died. That obligation has the strength of a written loan, which is why the heirs must pay the obligation.
            - **Q:** If he was found guilty before he died, why doesn't the son have to pay for the fifth when he swears falsely? **A: R' Huna the son of R' Yehoshua** said, the reason is that the oath was on a denial regarding a lien on land, and a denial on a lien of land does not bring about an obligation to pay the additional fifth.
            - **Rava** said, the Braisa is discussing where the item is still in existence. The case is that the stolen item was given by his father to someone else to safeguard for him, so when the son swore that there was no stolen item, he was actually swearing truthfully. Therefore, with regard to the principle, since the item exists, he must return it. With regard to the additional fifth, since he didn't swear falsely, he is not obligated to pay the fifth.

--------------------------------------Daf קה---105--------------------------------------

CHUTZ MIPACHOS SHAVEH PERUTAH B'KEREN…

- **R' Pappa** said, when the Mishna says that less than a perutah of value need not be returned, that is when the stolen item is no longer in existence. However, if it is, it must still be returned and the victim must be chased

down to return the item to him. The reason is, we are concerned that the value of the item will increase to a perutah, in which case it would then be required to be returned, and if it wasn't, the Asham that was previously brought (which must be brought after the return obligation has been fulfilled) is retroactively passul. **Others** say that **R' Pappa** said, that even if the stolen item is still in existence, if it is worth less than a perutah it need not be returned, because we are not concerned that the price will increase to a perutah or more.

- **Rava** said, if one stole three bundles that were worth a total of 3 perutos, and their value depreciated to a total of 2 perutos, if the ganav then returned two bundles, he still must return the third bundle as well (even though it is worth less than a perutah now, he must return it because it was worth a perutah at the time it was stolen). We can see this from a Mishna as well. The Mishna says, if one stole chametz and Pesach then passes (making it worthless), if he has the chametz he may simply return it. This suggests that if he no longer has the chametz he would have to pay the value of the chametz as it was at the time he stole it, even though now it is worthless. The same would be in the case of the bundles.
  - **Rava** asked, what if he stole 2 bundles that were together worth a perutah and he returned one of them to the victim? Do we say that there is nothing of value left in his hand from what was stolen (and he therefore need not return it), or do we say that he did not return the items that he stole (he gave back less than a perutah, and that is not called a "return" of a stolen item)? **Rava** then said, there is no stolen item here, and there is no returned item here.
    - **Q:** If there is no stolen item, by definition that means there was a return!? **A:** He means, that although there is not a perutah of stolen items left, he has also not fulfilled the mitzvah of returning the stolen items, because he never returned items worth a perutah.
  - **Rava** said, if a nazir who was obligated to shave his head, left two hairs unshaved, he has not fulfilled the shaving requirement. **Rava** asked, what if he shaves one of the two remaining hairs?
    - **Q: R' Acha MiDifti** said to **Ravina**, how is that different than a nazir who shaves off one hair at a time? Surely he will have fulfilled his obligation to shave his head!? **A: Ravina** said, **Rava** was asking where one of the two hairs fell out, and he then shaved the last remaining hair. Do we say that there is no hair left, so the obligation is fulfilled, or do we say that since there were two hairs to shave, and he only shaved it when there were less than 2 hairs, he has not done an act of "shaving" and has therefore not fulfilled his obligation?
    - **Rava** answered, there is no hair here, and there is no shaving here.
      - **Q:** If there is no hair, that means a shaving was done!? **A: Rava** meant, although there is no hair on his head, he did not fulfil the mitzvah of shaving his head.
  - **Rava** said, a Mishna says, if a barrel was put in a hole that separated a lower and an upper floor, that barrel will prevent tumah from spreading from one floor to the next. If the barrel gets a hole (making the barrel tamei), tumah will pass through to the other floor. If the hole gets sealed with sediment from the barrel, tumah will no longer pass through. **Rava** asked, what if the opening between floors was large enough for tumah to pass though (a tefach), and a person then sealed half the opening (leaving an opening that would not have been large enough for tumah transfer initially)?
    - **Q: R' Yeimar** asked **R' Ashi**, the Mishna itself says that if the hole was stuffed with vines, it does not prevent tumah from passing unless one fills the spaces around the vines with clay. We see that filling half the hole is insufficient!? **A:** It could be that clay must be added there only because that is the only way to make sure the vines won't move. However, if one plugged half the opening with something that would stay put, maybe it would be sufficient.
- **Rava** said, the Mishna taught, if one stole chametz and Pesach then passes, the ganav may simply return the worthless chametz after Pesach and has fulfilled his return obligation. **Rava** asked, what if the ganav swore falsely about having stolen that chametz? Do we say that since if it gets stolen from him now he

would have to pay the original value, and therefore he has sworn falsely regarding a monetary obligation, or do we say that right now it is worthless, and therefore he did not?

- We find that **Rabbah** wasn't unsure about this question, because he said, in a case where one had another's ox, and claimed that he didn't steal it, but rather had it as some form of shomer, if he swore falsely to that, he would be chayuv an Asham (because he swore in a way that would make him patur, depending on the type of shomer he claimed to be) and he would have to pay. Even though right now he can simply return the ox, since if the ox was taken from him he would have to pay, he is said to have sworn falsely on a monetary obligation. The same would be for the ganav who stole the chametz.
- **Rabbah** repeated this halacha, that the ganav who swore that he was a shomer must bring an Asham, because he tried to make himself patur in certain circumstances. **R' Amram** asked, a Braisa learns from the pasuk of "v'kicheish bah", that if a ganav swore that he received the stolen item as a shomer, he would *not* have to bring an Asham!? **Rabbah** answered, this Braisa is discussing where the ganav immediately gives the animal back to the owner. I was talking about a case where the animal was in a swamp, not ready to be returned.

- A Braisa says, **Ben Azzai** said, there are 3 cases of a person losing an item and asking witnesses to give information regarding the lost item, and they swear that they don't have information: 1) where they swore that they had no information, but in fact had seen the lost animal, but did not know who it was that they saw had found it; 2) they saw someone (who they knew) find an animal, but did not know whose animal it was; 3) they did recognize the lost animal and the person who found it.
  - **Q:** In what halachic way did **Ben Azzai** want to make us aware that these 3 circumstances exist? **A: R' Ami in the name of R' Chanina** said, he meant to teach that the witnesses in all these cases would be patur from bringing a korbon for swearing falsely regarding not knowing testimony that could help somebody. **Shmuel** said, he meant to teach that they would be chayuv in all these cases.
    - They argue as the Tanna'im in a Braisa, which says, if one makes a single witness swear that he doesn't know testimony, the witness is patur if he swore false. **R' Elazar the son of R' Shimon** says he is chayuv. The machlokes is, that **R' Elazar the son of R' Shimon** holds that something that can cause a benefit of money is considered to be money itself, whereas the **T"K** holds that it is not.
- **R' Sheishes** said, a shomer who denies having the item given to him becomes a gazlan at the time of the denial, and becomes chayuv even for an oneis. We can see this from a Braisa as well. The Braisa says, we learn from a pasuk that one who denies a deposited item becomes chayuv to return it, and would therefore be chayuv for ay oneis that may happen to it. We see this happens after a simple denial.
  - **Q:** The Braisa may be referring to a case where he swore falsely, and only there is there such treatment!? **A:** The later part of the Braisa discusses a person who swore falsely, so this earlier part must be discussing someone who did not.
    - The Gemara says, it may be that both parts of the Braisa are discussing where he swore falsely. The first case is discussing where witnesses testified that he swore falsely, in which case he becomes chayuv for the item even if an oneis happens, and the second case is discussing where he admitted to his guilt, in which case he is chayuv for principle, an additional fifth, and for a Korbon Asham. Understood in this way, the Braisa cannot be cited as support for **R' Sheishes**.
  - **Q: Rami bar Chama** asked, a Mishna says, if a defendant is in a situation where he should swear and not have to pay, but he is one who has previously swore falsely, even if he swore falsely regarding testimony, or a deposit as a shomer, the plaintiff swears in his place and collects based on his swearing. Now, according to **R' Sheishes**, even without having sworn falsely, if a person simply denied having an item as a shomer he should become passul, without having sworn falsely!? **A:** The Mishna is talking about where the item given to him to watch was in a swamp at the time that it was being asked for, and he denied having it to try and give himself some time to fetch it and return it. That is why it was not considered a true denial.

- **Q: Ilfa** has said that an oath is koneh, which presumably means that he would then be responsible even for an oneis. We see that this only happens when he swears, and not just from a denial!? **A:** Here too, the case is that the item is in a swamp. **A2:** We can say that "an oath is koneh" is meant like **R' Huna said in the name of Rav** has said, that if someone denies having money of a second person and swears to that effect, and witnesses then come and say that he does have the money, he is patur from paying. This is based on the pasuk that says that once a plaintiff has accepted the defendant's oath, the defendant no longer has to pay. This is what is meant that upon oath he is koneh. However, he may agree with **R' Sheishes** that even from the time of denial, the shomer is already chayuv for even an oneis that happens to the item.

---------------------------------------Daf קו---106---------------------------------------

- **R' Huna said in the name of Rav** said, if someone denies having money of a second person and swears to that effect, and witnesses then come and say that he does have the money, he is patur from paying. This is based on the pasuk that says that once a plaintiff has accepted the defendant's oath, the defendant no longer has to pay.
  - **Rava** said, this halacha should seemingly only apply to a denied loan, since a loan is given with the intent that the money be used and other money is then used to "pay" (which would seem to fit the verbiage of the pasuk). With regard to a deposit, which is not meant to be used, it should not be included in this halacha. However, **Rav** has said that this applies to a deposit as well, because the pasuk is written regarding a deposit.
  - **R' Nachman** was repeating the halacha of **Rav**, and **R' Acha bar Menyumei** asked, a Mishna says that one who denies and swears falsely regarding a deposit, and witnesses then testify that he swore falsely, he must pay for the principle. If he admitted his guilt, he must pay principle, an additional fifth, and bring a Korbon Asham!? **A: R' Nachman** said, the case here is that the person swore outside of Beis Din (which therefore doesn't have the force of a full oath), whereas the halacha of **Rav** applies only to an oath made in Beis Din.
    - **Q: R' Acha** asked, the Mishna gives another case of one who claims that the deposit in his possession was stolen, and swears to that, and was then found to have sworn falsely based on the basis of testimony of witnesses, and the Mishna says that he must pay keifel. If he swore falsely to that effect, and then admitted his guilt, he would have to pay principle, the fifth, and bring the korbon. Now, this must be discussing in Beis Din, because if not he would not be chayuv keifel, and yet we see that **Rav's** halacha does not apply!? **A: R' Nachman** said, I could answer that the first case is discussing outside of Beis Din and the later case is discussing inside of Beis Din, but I can even answer that both cases took place in Beis Din. The difference between them is that in the first case the oath was taken before Beis Din had a chance to impose it, and in the second case Beis Din imposed the oath.
  - **Q: R' Hamnuna** asked, a Mishna says, if a person was made to swear in front of Beis Din or not in front of Beis Din 5 times about the same claim, and he swore falsely each time, he would be chayuv a separate fifth and a separate Asham for each oath. **R' Shimon** explains, this is so, because he could admit before each oath and not pay the additional fifth, and not make the false oath. Now, the Mishna says he was "made to swear", which means Beis Din imposed the oath on him, it also clearly says that it was done in Beis Din, and we see that after each oath he would have to pay, which refutes **Rav**!? **A: R' Hamnuna** answered, the Mishna should be understood as referring to two different cases – if it took place in Beis Din it is referring to where he swore before Beis Din imposed it on him, and if Beis Din imposed it on him the case was that it took place outside of Beis Din.
    - **Q: Rava** asked, a Braisa says if a shomer said the item being watched was stolen from him, and he swore to that, and then admitted that he himself stole the item for himself, if he admitted to this before witnesses testified that he stole it, he is chayuv to pay the principal, a fifth, and to bring an Asham. If the witnesses came before the admission, he pays keifel and brings an Asham. Now this cannot be talking about an oath taken outside of Beis Din, or before imposed by Beis Din, because there is a keifel obligation. Yet we see that he must pay, which refutes

        - **Rav**!? **A: Rava** said, **Rav** did not say his halacha in a case where one claimed that something was lost or stolen and swore falsely to that effect and then admitted his guilt. **Rav** also did not say his halacha in the case where he claimed it was stolen, swore, and was proven false by witnesses. **Rav** only said his halacha when he claimed the item was lost, swore to that effect, and was then proven false by witnesses.
        - **R' Gamda** told **R' Ashi** what **Rava** had said. **R' Ashi** asked, **R' Hamnuna** was a talmid of **Rav**, and clearly felt that **Rav** was even talking about a case where the person admitted his guilt (as we see that he asked from such a case), so how can you say that **Rav** was not talking about such a case!? **R' Acha Saba** answered, we can say that **R' Hamnuna** agreed that **Rav** only said his halacha in a case where witnesses testified that he swore falsely. The question he asked earlier can be explained with this understanding as well.
- **R' Chiya bar Abba in the name of R' Yochanan** said, if a shomer chinam claims that the deposit was stolen, when in truth he stole it for himself, he would have to pay keifel to the owner. If he sold or shechted a sheep or ox that was deposited by him and claimed that it was stolen, he would be chayuv to pay daled v'hey. We can learn this as follows. Since a ganav pays keifel and a shomer who claims it was stolen pays keifel, then just as a ganav becomes chayuv for daled v'hey, a shomer would as well.
    - **Q:** We can say that a ganav is different in that he pays keifel even if he doesn't swear, whereas a shomer only pays keifel if he first swears falsely, and therefore maybe doesn't become chayuv to daled v'hey? **A: R' Yochanan** was learning by means of a hekesh, and a hekesh cannot be refuted.
        - **Q:** That is a valid answer if we darshen the pesukim to be dealing with these two types of ganav, and therefore can be learned as a hekesh. However, according to the view that the pesukim are not dealing with these different types of ganav, how will he learn this? **A:** He learns it from the extra "hey" in the word "haganav".
    - **Q: R' Chiya bar Abba** asked **R' Yochanan**, a Braisa says, if a shomer swears that the animal he was watching was stolen, and witnesses then saw him eating it, he pays keifel. Now, if he was eating it, it must be that he shechted it, and yet we see there is no daled v'hey!? **A:** He ate it as a neveilah, without shechita.
        - **Q:** Why doesn't he say that he shechted it and it was found to be a treifah, which **R' Shimon** holds is not considered to be a shechita for purposes of daled v'hey? **A:** He wanted to answer according to **R' Meir**, who holds that the shechita of a treifah would be considered a shechita.
        - **Q:** Why doesn't he say that the animal was a "ben paku'ah" (fetus found in the womb of a shechted mother), which does not need shechita? **A:** He wanted to follow **R' Meir**, who says that such an animal does need shechita.
        - **Q:** Why doesn't he say that the case was where he was already told by Beis Din "go pay him", in which case if he then shechts the animal he would not be chayuv daled v'hey, because he has become a gazlan instead of a ganav!? **A:** He could have given that answer, as well as some others, but he chose one answer to give.
    - **R' Chiya bar Abba** said in the name of **R' Yochanan**, if someone who found a lost item claims that it was then stolen from him, and in truth it was not, he would be chayuv keifel, based on the pasuk of "ahl kol aveidah asher yomar ki hu zeh".
        - **Q: R' Abba bar Mamal** asked, a Braisa says, the pasuk says "ki yitein ish", which teaches that if a katan gives something to someone to watch, the shomer would not be subject to all the laws of a regular shomer. How do we know this same halacha applies even if the katan becomes an adult before taking the shomer to Beis Din and asking for his item to be returned? The pasuk says "ahd ha'elohim yavo dvar shneyhem", which teaches that the giving and the suing must happen when he is an adult. Now, if a finder of a lost item is subject to keifel, we should say that the deposit of the katan should get the status of a lost item that was found, and the shomer should be chayuv keifel!? **A:** The case is that the item was consumed before the katan became an adult.

- **Q:** If that is true, then the Braisa should say "until the consumption and suing were done while he was an adult", instead of saying "the giving and the suing must happen when he is an adult"!? **A:** Change the Braisa to read "until the consumption and suing were done while he was an adult".
- **R' Ashi** said, the deposit of a katan cannot be considered like a found item, because the found item came from somebody with legal mental capacity, whereas a katan does not have legal mental capacity.