



## Daf In Review – Weekly Chazarah

### Maseches Bava Kamma, Daf קן – Daf לך

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 קן---107-----

- **R' Chiya bar Abba in the name of R' Yochanan** said, if a shomer chinam claims the deposit was stolen, he is only chayuv for keifel if he denies part of the claim and admits to part. This is based on the pasuk of "ki hu zeh". This argues on **R' Chiya bar Yosef**, who said that the pasuk of "ki hu zeh" is written regarding a loan, not a deposit. The reason for this is based on the logic of **Rabbah**, who says that one who partially denies a claim must swear, because he really wants to deny the entire claim, but doesn't have the chutzpah to do so (since the lender did him a favor by lending him money), and he does not admit the entire claim, because he is looking for more time to get the money to pay. Therefore, the Torah makes him swear, so that he should admit to the entire claim. Now, this logic does not apply to a deposit, because the depositor did not do any favors for the shomer by giving him the deposit. Therefore, there is no reason to believe a full denial more than a partial denial. Based on this, the pasuk that teaches that the person must swear on a partial denial must be referring to a loan.
  - **Rami bar Chama** taught a Braisa that says, in order for the 4 shomrim to become chayuv to make an oath, they must deny part of the claim and admit to part of the claim.
    - **Rava** explained, regarding shomer chinam the pasuk says "ki hu zeh". A shomer sachar is learned from a shomer chinam with a gezeira shava. A "shoel" is learned from the fact that the parsha of shoel follows the parsha of shomer sachar and begins with a "vuv", which teaches that it is a continuation. A "socher" is either treated like a shomer chinam or a shomer sachar, and in either case is learned from there.
- **R' Chiya bar Yosef** said, if a shomer chinam claims the deposit was stolen, and in fact he stole it himself, he is not chayuv keifel unless he used the item for himself before making the oath. This is based on the pasuk that says that he swears "ihm lo shalach yado bimlechtes rei'eihu". **R' Chiya bar Abba** said to him, **R' Yochanan** said he would be chayuv even if the animal is "still standing by its trough" (he did not use it at the time of the oath).
  - **R' Zeira** asked **R' Chiya bar Abba**, did **R' Yochanan** mean to say that he would only be chayuv keifel if the animal is standing at its trough, because if he would have used it he would have become a ganav and would be chayuv even for an oneis, or did he mean to say that *even if* it is standing by its trough he would be chayuv keifel for the oath, but if he would have used it he would certainly be chayuv? **R' Chiya bar Abba** said, I did not hear a direct answer to this, but I did hear from **R' Assi in the name of R' Yochanan**, who said, if a shomer claims the deposit was lost and he swore to that, and he then retracts that claim and claims it was stolen and swears to that, and witnesses then testify that the shomer himself stole it, he would be patur from keifel. Presumably, this is because at the first false oath he was koneh the item and became chayuv for it then. We see that **R' Yochanan** holds that if the shomer was already koneh the item as a ganav, a later false oath will not make him chayuv to pay keifel. **R' Zeira** said, it may be that in that case he doesn't pay based on the second oath, because he already dismissed his obligation to the owner based on his first oath. In fact, we find that **R' Avin in the name of R' Illa in the name of R' Yochanan** gave this as the reason that the shomer would be patur.
  - **R' Sheishes** said, if a shomer claims that the item was stolen from him and is then found to have stolen it himself, if he used it before swearing, he will be patur from keifel. This is based on the pasuk that he swears "ihm lo shalach yado", which suggests that if he did use it, he would be patur.
    - **Q: R' Nachman** asked, we make the shomer swear three oaths: he swears that he was not negligent, he swears that he did not use it, and he swears that it is not in his possession. Presumably, just like in the case of the last oath, if it turns out that it was in his possession he will be chayuv, the same would be for the second oath, in that if it turns out that he did use it, he will also be chayuv!? **A: R' Sheishes** said, we compare the second oath to the *first* oath. Just

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like if it turns out that he was negligent he will be patur from keifel, so too if he did use it, he will be patur from keifel.

### -----Daf פקד---108-----

- **Q: Rami bar Chama** asked, the halacha is that where one is chayuv keifel he cannot also be chayuv for an additional fifth. Is the reason for that because these two obligations can't come about from the same denial, or is it that they both can't be brought about based on a single false oath? The difference would be if a shomer swore that the deposit was stolen from him, and he then retracted and swore that it was lost, and witnesses testified that the first oath was false, and he himself then admitted that the second oath was false. If the same claim can't bring about both payment obligations, then he cannot become obligated to both payments here. If it is that one oath cannot bring about both payment obligations, in this case there are two separate oaths, and therefore both payment obligations can exist. **A: Rava** said, a Braisa says, if a person denies having stolen an item and swears to that effect, and witnesses testify that he stole it, he is chayuv keifel, but if he had instead admitted on his own he would be chayuv for principle, a fifth, and an Asham. Now, the witnesses who testify to the stealing would obligate this person to pay keifel even if he hadn't sworn falsely, so it is not the oath that is making him chayuv in keifel, and yet, if he becomes chayuv in keifel he would not pay the fifth. We see that the exemption for the fifth upon payment of keifel has nothing to do with the oath, and is instead based on the fact that both payment obligations can't come about from the same claim. **SHEMA MINAH.**
  - **Q: Ravina** asked, what if the keifel is incurred by one person and the fifth by another person (for the same claim)? The case would be where a person gave his ox to two people to watch, they both claimed it was stolen and swore, one of them then admitted to swearing falsely and the other had witnesses testify that he swore falsely. Is it that one person can't become obligated to keifel and a fifth for the same claim, and here it is two people, or is it that one claim can't create these two obligations? **TEIKU.**
  - **Q: R' Pappa** asked, what is the halacha regarding one person becoming chayuv for 2 additional fifths, or 2 keifels for the same claim? The case would be where he claimed that it was lost, swore, and then admitted that he swore falsely, and did the exact same claim and oath and admission again. Another case would be where he claimed it was stolen, swore, and witnesses then testified that he swore falsely, and did the exact same claim, oath, and had the same testimony again. Did the Torah mean to say that two *types* of payments can't come about from one claim (keifel and a fifth), but two of the same type could, or did the Torah mean that no two payments (even of the same type) can come about from the same claim? **A: Rava** has said that the pasuk of "vachamishisav Yosef alav" teaches that there can be multiple fifths. **SHEMA MINAH.**
- **Q:** If the owner of a deposit asked for its return, and the shomer swore that it was stolen, but paid the owner anyway, and the true ganav was then caught, who is the keifel paid to? **A: Abaye** says it is paid to the owner, because the shomer at first made the owner accept his oath (in which case the keifel goes to the owner), and **Rava** says it is paid to the shomer, because when a shomer pays the owner, the owner gives over the right to collection of keifel if the ganav is found.
  - They argue in the understanding of a Mishna. A Mishna says, if someone gave a deposit to a shomer chinam and it was stolen or lost, if he pays for it and doesn't want to swear, and the ganav is then found, the keifel goes to the shomer. If he swears and doesn't want to pay, and the ganav is found, the keifel goes to the owner. **Abaye** says, the first case of the Mishna says "he doesn't want to swear", which suggests that if he did swear he does not get the keifel, even if he paid for it. **Rava** says, the second case of the Mishna says "he doesn't want to pay", which suggests that if he does pay he will get the keifel, even if he also swore.
    - **Abaye** will explain the last case to mean, if he swore and didn't want to pay *before taking the oath*, only afterward, then he doesn't get the keifel. **Rava** will explain the first case to mean, if the shomer paid, even after he swore, the keifel would go to the shomer.
- **Q:** if the owner of a deposit asked the shomer for its return, and the shomer swore that it was stolen, thereby making himself patur, and the ganav was then caught, and the shomer then took the ganav to Beis Din, where the ganav admitted that he stole it, and the owner then took the ganav to Beis Din and the ganav denied having

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stolen it, and witnesses then testified that he stole it, does the ganav become patur from paying keifel based on his admission to the shomer or not? **A: Rava** said, if the shomer swore truthfully that it was stolen from him thereby making himself patur, the ganav would be patur though his admission to the shomer. If, however, the shomer swore falsely (he swore that he was not negligent, but in fact he was), the ganav would not become patur with the admission to the shomer.

- **Q: Rava** asked, if the shomer was ready to swear falsely, but they did not give him the opportunity to do so, what would be the halacha with the admission of the ganav to him? **TEIKU**.
  - **R' Tavyumei** said that **Rava** asked what is the halacha if the shomer actually swore falsely? To that the Gemara said **TEIKU**.
- **Q:** If the owner of the deposit asked for its return, and the shomer said it was stolen and paid instead of swearing, and the ganav was then caught, and the owner took the ganav to Beis Din and he admitted his guilt there, and the shomer then took him to Beis Din and he denied guilt, and witnesses then testified that he did in fact steal, does the ganav become patur from keifel with his admission to the owner? Do we say that the shomer can tell the owner “I paid you, so you are no longer involved here” and an admission to him is therefore worthless, or do we say that the owner can say “you did something for me by paying for the item, so I wanted to do something for you, by bringing the ganav to court”, and therefore an admission to him would make the ganav patur? **TEIKU**.
- If a ganav steals the deposit from a shomer not due to the shomer’s negligence, and the ganav is then caught, **Abaye** said, if the shomer was a shomer chinam he can choose to either bring the ganav to Beis Din or to simply swear and not get involved, and if he was a shomer sachar he must take him to Beis Din and cannot simply swear and not get involved. **Rava** said, in both cases he must take him to Beis Din and cannot simply swear and not get involved.
  - **Q:** Maybe we should say that **Rava** argues with **R' Huna bar Avin**, who said if the shomer was a shomer chinam he can choose to either bring the ganav to Beis Din or to simply swear and not get involved, and if he was a shomer sachar he must take him to Beis Din and cannot simply swear and not get involved? **A: Rava** would say that **R' Huna bar Avin** was talking about a case where the shomer swore before the ganav was caught.
    - **Q:** He clearly said “he can choose to either bring the ganav to Beis Din or to simply swear and not get involved”!? **A:** He meant to say, “if he wants he can remain by the oath that he previously made, or he can take him to Beis Din”.
  - **Q: Rabbah Zuti** asked, if the deposit was stolen not due to the fault of the shomer, and the ganav then returned the item to the house of the shomer, where the item then broke or died due to the negligence of the shomer, what is the halacha? Do we say that once it was stolen without the shomer’s fault, he is no longer responsible as a shomer, or do we say that since it was returned to him, he again becomes the shomer? **TEIKU**.

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### MISHNA

- If an owner asked a shomer chinam “where is my deposit” and the shomer says it was lost, and the owner then demands an oath, and the shomer accepts the taking of the oath, and witnesses then testify that the shomer consumed the item, he must pay the principle value. If the shomer admitted on his own, he must pay for principle, a fifth, and bring an Asham.
- If an owner asked a shomer chinam “where is my deposit” and the shomer says it was stolen, and the owner then demands an oath, and the shomer accepts the taking of the oath, and witnesses then testify that the shomer consumed the item, he must pay keifel. If the shomer admitted on his own, he must pay for principle, a fifth, and bring an Asham.
- If someone steals from his father and swears falsely that he did not steal, and the father then died, and the son then admitted his guilt, he must pay the principle and the fifth to the father’s other sons or (if there are no other sons) his brothers. If he does not want to give away his part of the principle that he stole, or if he does not have

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the money to do so, he may borrow money and then return principle to the other sons or brothers, and the creditors can then collect from them.

- If a father makes a neder, saying to his son “you may not benefit from what is mine”, and the father then died, the son may inherit his father (it is no longer the father’s). If he said he may not benefit during his lifetime or after his death, he may not inherit his father and must instead give his portion to his brothers or his father’s brothers. If he does not have money for food, he may borrow money and then return the portion to the other sons or brothers, and the creditors can then collect from them.

### GEMARA

- **R’ Yosef** said, if there are no other heirs, the son who stole from his father must give the money to tzedaka. **R’ Pappa** said, when he does so he must say “this is the property stolen from my father”.
- **Q:** Why does he have to give the money away? Why can’t he forgive himself for his portion of the debt that he owes the estate? The previous Mishna said that one can forgive the principle amount and absolve the obligation to return it!? **A: R’ Yochanan** said, the previous Mishna follows **R’ Yose Haglili**, and our Mishna follows **R’ Akiva**. A Braisa says, if one stole from a ger and swore falsely to him, and he then heard that the ger died, making him think that he has to return the money to the Kohen, and he then meets the ger (for he hadn’t died) who converts the stolen money into a loan, and the ger then died, **R’ Yose Haglili** says the ganav is koneh the loan. **R’ Akiva** says he must remove the stolen property from his possession. It must be that **R’ Yose** holds that a person may be mochel stolen property for himself or for others, and **R’ Akiva** says that a person may not be mochel for himself or for others. In truth, **R’ Yose** could have had the case where the ger didn’t convert it into a loan. The reason that case was given was to show the extent of **R’ Akiva**, that even in that case, he must rid the money from his possession.
  - **Q: R’ Sheishes** asked, if it is so that **R’ Yose** holds that way even if it had not been converted to a loan, then the Mishna should have taught the halacha of **R’ Yose** in a case where one is mochel for himself, and we would then know that he certainly says so when one is mochel for someone else. Also, when teaching the halacha of **R’ Akiva**, the Mishna should have taught a case where one is mochel someone else, and we would know that a person can certainly not be mochel himself!? From the fact that first Mishna teaches that a person can be mochel the robbery of another, and the second Mishna teaches that one cannot be mochel it for himself, this suggests that both Mishnayos are one Tanna, who makes a difference between one who is mochel for others and one who is mochel himself!? **A: R’ Sheishes** said, both Mishnayos follow **R’ Yose Haglili**, and he says that one can only be mochel for other people, not for himself. The reason he can be mochel for himself in the case with the ger is only because it was first converted into a debt.
  - **Rava** said both Mishnayos follow **R’ Akiva**, and he says one can only not be mochel for himself, but he could be mochel for other people.
    - **Q:** That would mean that **R’ Yose** holds a person can even be mochel for himself. If so, what would be the case when the pasuk teaches that items stolen from a ger who then died must be given to a Kohen? Why can’t the person just be mochel for himself? **A: Rava** said, the case is where he stole from a ger and swore falsely to him, and the ger then died, and the ganav then admitted his guilt after the ger died. In that case, at the time of his admission, Hashem is koneh the property and gives it to the Kohanim.
- **Q: Ravina** asked, what is the halacha for someone who stole from a giyores who then died without heirs? The pasuk that says the stolen property should be given to the Kohanim says “ish”. Is that meant to exclude women, or is it simply the normal way for a pasuk to be written in the masculine, and was not meant to exclude women? **A: R’ Aharon** said to **Ravina**, a Braisa says it even applies to a female giyores, and the word “ish” teaches that if the ger is an adult we must search to see if he has any heirs, but if he is a katan, we can assume that he has no heirs (because he can’t have children).
- A Braisa says, we learn from pesukim that the stolen property of the ger that died without heirs is given to the Kohanim of the mishmar of that week.

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- A Braisa says, if a Kohen stole from a ger who then died without heirs, and he admits his guilt during the week of his own mishmar, how do we know that he can't just keep it? After all, he should keep it based on a kal v'chomer – if he is koneh from others, he should surely be koneh from his own! **R' Nosson** said the kal v'chomer is as follows – if something that a Kohen of the mishmar has no share in before it enters his possession (i.e. the korbon of another Kohen), once it enters his possession another Kohen may not take it from him, then something that he has a share in before it enters his possession (property stolen from a ger with no heirs) should surely not be able to be taken from him by another Kohen! The Braisa says this logic is not sound. Regarding the first category (the korbon of a Kohen) no Kohen had a share in it. Therefore, when it is then given to one Kohen, no other Kohen can take it from him. However, regarding the second category (the stolen items of the ger), every Kohen has a share of it, and therefore, even if one Kohen has possession of it, the others can demand it from him!? Rather, it must be that the ganav who is a Kohen must take the property and divide it among all the Kohanim of the mishmar.
  - **Q:** A pasuk teaches that a Kohen may keep the portions of his own Korbon. If so, just as he can keep the Asham that he brings, he should also be able to keep the stolen property for himself as well!? **A:** We are talking about a Kohen who is tamei, who cannot keep the portions of his Asham.
    - **Q:** If the Kohen is tamei, he would not be entitled to a share of the stolen property, because only the tahor members of the mishmar are entitled to that!? **A:** Rather, we learn from a gezeira shava from an inherited field that was sold and not redeemed, which is split among the Kohanim at Yovel. In that case a Braisa teaches that if a Kohen had bought the land that is destined to be divided among the Kohanim, and he will be entitled to a share of that, he may not simply keep the field. Rather, he must give it to be divided among all the Kohanim of the mishmar of Yom Kippur of Yovel. We learn from there, that regarding stolen property of a ger as well, the Kohen can't keep it for himself. Rather, he must give it to be divided among all the Kohanim of the mishmar.

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- A Braisa says, how do we know that a Kohen can offer his own korbanos whenever he wants? We learn it from the pasuk “uvah b'chol avas nafsho...v'sheireis”. How do we know that he gets the meat and the hides? The pasuk says “v'ish es kadashav lo yihyu”. Based on this, if the Kohen who brings the korbon has a mum, he gives it to a Kohen of that mishmar to offer it, but the meat and hides belong to the Kohen who brought the korbon. If he was old or sick, but does not have a mum, he can give it to any Kohen to offer it for him, but the meat and the hides go to the Kohanim of that mishmar.
  - **Q:** What is the case of the Kohen being old or sick? If he is fit to do the Avodah, then he should even get the meat and the hides, and if he is not fit to do the Avodah, then how can he appoint any Kohen as a shaliach (instead of giving it to the Kohen of that mishmar)? **A: R' Pappa** said, the case is that he can do the Avodah with difficulty, and therefore he can appoint any Kohen as a shaliach. However, with regard to eating the korbon, doing so with difficulty is not a valid form of eating a korbon. Therefore, the meat and the hides go to the Kohanim of that mishmar.
- **R' Sheishes** said, if a Kohen of the mishmar was tamei and was given a Korbon Tzibbur to offer, he may give it to any Kohen that he wants to offer it for him, and the meat and the hides are given to the Kohanim of the mishmar.
  - **Q:** What is the case? If there are tahor Kohanim in the mishmar, how can a tamei Kohen be asked to offer it? If there are no tahor Kohanim, how is the meat and hides given to the Kohanim of the mishmar? Since they are tamei, they cannot eat the meat!? **A: Rava** said, we must say it means that the meat goes to the Kohanim with mums of that mishmar who are tahor.
- **R' Ashi** said, if a Kohen Gadol is an onein and has his own korbon to offer, he may give it to any Kohen he wants to offer it for him, but the meat and hides go to the Kohanim of the mishmar.

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- **Q:** This seems obvious, because a Braisa says that a Kohen Gadol may offer korbanos as an onein, but cannot eat them!? **A:** We would think that he may offer it himself as an onein, but cannot appoint another Kohen to act as his shaliach to do so if he is an onein.

### MISHNA

- If someone stole from a ger and swore falsely that he did not steal, and the ger then died without heirs, the ganav must pay the principle and additional fifth to the Kohanim and bring an Asham. This is based on the pasuk.
- If the ganav was bringing the money and the animal to Yerushalayim and he died, the money is given to the ganav's heirs and the Asham is to graze until it gets a mum, and is then sold and the money used for a nedavah.
  - If he had already given the money to the Kohanim of that mishmar and he then died before bringing his Asham, the heirs cannot get the money back from the Kohanim.
  - If he gave the money to the Yehoyariv mishmar and the Asham to the Yedaya mishmar (which is the next mishmar), he is yotzeh (the Asham cannot be brought until after the money is returned). If, instead, he gave the Asham to the first and the money to the second, then if the Asham still exists, it should be given to the Yedaya mishmar to be offered. If it was already offered, the ganav must bring another Asham.
  - If he gave the principle, but not the additional fifth, the fifth does not hold back his kaparah.

### GEMARA

- A Braisa says, the word "asham" in the pasuk refers to the principle payment, and "hamushav" refers to the fifth. You may suggest that "asham" refers to the actual korbon, [the significance of that would be the statement of **Rava**, who says that by calling the principle payment "asham", we learn that if the ganav returned the principle at night or only partially, he is not yotzeh]. However, when the pasuk then says "milvad eil hakipurim", we see that the earlier "asham" refers to the principle payment.
  - A Braisa says, the word "asham" in the pasuk refers to the principle payment, and "hamushav" refers to the fifth. You may suggest that "asham" refers to the fifth, [which would teach that the fifth is essential to bringing about his kaparah]. The pasuk says "v'heishiv es ashamo b'rosho vachamishiso", which clearly shows that "asham" refers to the principle payment.
  - A Braisa says, the word "asham" in the pasuk refers to the principle payment, and "hamushav" refers to the fifth, and the pasuk is discussing one who stole from a ger with gezel. You may suggest that "hamushav" refers to keifel and the pasuk refers to one who steals from a ger with geneivah. When the pasuk says "v'heishiv es ashamo b'rosho vachamishiso", it teaches that we are talking about a principle payment, not a keifel payment.
- The Gemara brought the statement of **Rava**, that a ganav who stole from a ger and returned the money to the Kohanim at night or only partially is not yotzeh, because the Torah refers to it as "asham".
  - **Rava** also said, if the money given to the Kohanim of the mishmar is not enough to give at least a perutah to each Kohen of the mishmar, he has not fulfilled his obligation to return the money, because the pasuk says "ha'asham hamushav", which teaches that there must be a return to each Kohen of the mishmar.
    - **Q: Rava** asked, if the ganav doesn't have enough to give a perutah to each Kohen of the Yehoyariv mishmar, but has enough to do so for the Yedaya mishmar, what is the halacha if he gives it to Yedaya during the mishmar of Yehoyariv? Do we say it is not effective because it is given to the wrong mishmar, or do we say it is not sufficient for the current mishmar, so giving it to another one is okay? **TEIKU**.
    - **Q: Rava** asked, may Kohanim trade a share of property given to them as a return for property stolen from a ger for other property given to them as property stolen from a ger? Do we say that since the pasuk refers to it as "asham", it is therefore treated as an ashm, and one portion cannot be traded for another, or do we say this is simply money, and it can be traded? **A: Rava**

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then answered, that by calling it “asham”, the pasuk teaches that it cannot be traded for another portion.

- **Q: Rava** asked, are Kohanim considered to be inheriting the property of the ger or are they considered to be getting it as a gift from Hashem? The difference would be if chametz was stolen from the ger and Pesach has now passed. If they are inheriting it, then the ganav can give back the actual chametz (which is now worthless) and be yotzeh. If they are getting a gift, he would not be able to give them the chametz, because it is worthless. **R' Ze'eira** asked, even if they are considered to be getting a gift the ganav would be able to just give back the chametz, because that is the gift that Hashem instructed to be given to them. The question is if the Kohen gets 10 animals from the property of the ger. If they are inheriting it, the Kohen must give maaser. If it is a gift, he does not have to give maaser. What status does it have? **A:** A Braisa lists the 24 gifts given to the Kohanim, and lists “stolen property of a ger” as one of the gifts. We see that it has the status of a gift.

NOSSAN ES HAKESEF L'ANSHEI MISHMAR...

- **Abaye** said, we see from here that the return of the money to the Kohanim accomplishes part of the kaparah, because if it accomplished nothing at all we would say they should return the money to the ganav's heirs, because he certainly did not mean to give the money if it would not accomplish anything.
  - **Q:** Based on this logic, if the owner of a chatas died, the animal should go out to chullin, because he surely didn't designate it as a korbon if it wouldn't ultimately bring him a kaparah!? **A:** It is a Halacha L'Moshe MiSinai that if the owner of a chatas died, the animal is left to die as well.
  - **Q:** Based on this logic, if the owner of an asham died, the animal should go out to chullin, because he surely didn't designate it as a korbon if it wouldn't ultimately bring him a kaparah!? **A:** It is a Halacha L'Moshe MiSinai that if the owner of an asham died, the animal is left to graze until it gets a mum and can then be redeemed.
  - **Q:** Based on this logic, if a yevamah falls in yibum to a man she finds repulsive she should not even need chalitza, because we should say that she surely didn't agree to get married to her husband if she would have known that he would have died childless, leaving her to this man for yibum!? **A:** We know that she wanted to get married even though there was a chance that she may ultimately fall in yibum to this brother. As **Reish Lakish** said, a woman would do anything to be married.

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NOSSAN ES HAKESEF LIYEHOYARIV...

- A Braisa says, if the ganav gave the asham to Yehoyariv (the earlier mishmar) and the money to Yedaya (the following mishmar), **R' Yehuda** says the money must be given to Yehoyariv (and the asham stays with them as well), and the **Chachomim** say the asham must be given over to Yedaya (and the money stays with them as well).
  - **Q:** What is the case? If the asham was given to them at the time of their mishmar and the money was given to them at the time of their mishmar, why would **R' Yehuda** say that Yedaya has to give up the money they received? They acted properly in accepting the money (accepting the asham before the money is improper, but they did not do that), so why would they be penalized? **A:** **Rava** said, the case is that both, the asham was given to Yehoyariv and the money was given to Yedaya, during the mishmar of Yehoyariv. **R' Yehuda** holds that since Yedaya got the money when it was not their mishmar, we take the money from them and give it to Yehoyariv so that it is now given together with the asham. The **Rabanan** say Yehoyariv acted improperly by accepting the asham before the money. Therefore we take the asham from them and give it to Yedaya.
  - A Braisa says, **Rebbi** said, according to **R' Yehuda**, if Yehoyariv went and offered the asham during their mishmar, the ganav would have to go and bring another asham and give it to Yedaya to offer for him, and Yehoyariv are koneh their portion of the asham that they brought.

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- **Q:** The asham is passul, and its meat cannot be eaten, so how do they take a portion!? **A: Rava** said, this refers to their portion of the hides.
- A Braisa says, **Rebbi** said, according to **R' Yehuda**, if the asham is still in existence, the asham is taken and given to where the money was given (to Yedaya).
  - **Q: R' Yehuda** is the one who said the money is moved to where the asham is!? **A:** The case is that the mishmar of Yehoyariv completed their mishmar without offering the asham. By not offering it they have been mochel their claim to the money and now must give the asham to Yedaya as well.
- A Braisa says, **Rebbi** said, according to **R' Yehuda**, if the asham is still in existence the money must be given to where the asham is (to Yehoyariv).
  - **Q:** That is obvious, since that is exactly the view of **R' Yehuda**!? **A:** The case is that both of these mishmars completed their week, and neither asked the other for the missing part. We would think that they now each keep what they have gotten. **R' Yehuda** teaches that since they didn't claim it from each other, it reverts back to the original halacha, in which case the money is given to Yehoyariv as well.

SHEHAMEIVI GIZEILO AHD SHELO HEIVI ASHAMO...

- **Rava** said, we learn this from the pasuk that says that the principle must be returned and then says “milvad eil hakiipurim”, which suggests that the asham is brought after the money is returned.
  - **Q:** They asked **Rava**, a pasuk says that the korbon mussaf is brought “milvad olas haboker”, which according to you should mean that the morning Olah is brought after the mussaf. Yet, we have learned that nothing at all may be offered on the Mizbe'ach before the morning Olah!? **A: Rava** said, I am not learning from the word “milvad”. I am learning from the words “asher yichaper bo”, which is written in the future tense, and teaches that when he gives back the money the asham should not yet have been brought.

NOSSAN LO ES HAKEREN...

- A Braisa explains that there is an additional fifth paid for the sin of me'ilah and an additional fifth paid by a ganav. We learn one from the other, as follows. Just as the pasuk regarding the ganav refers to principle with the word “asham”, the word has the same meaning in the pasuk regarding me'ilah. Also, just as we are taught that payment of the fifth is not essential for his kaparah for me'ilah, the same would be for the kaparah of the ganav.

**HADRAN ALACH PEREK HAGOZEL EITZIM!!!**

**PEREK HAGOZEL UMAACHIL -- PEREK ASIRI**

MISHNA

- If a person stole and gave it to his children to eat, or left it for them intact as an inheritance, they are patur from having to pay the owner for the item. However, if it was real property, they are chayav to pay.

GEMARA

- **R' Chisda** said, if someone stole an item and the owner was not yet “meya'ish”, and a third person came and ate the item, the owner may collect from the ganav or from the third person. The reason is, before yi'ush the item is considered to be in the possession of the owner, so when the third party ate it, he took it from the owner's possession.
  - **Q:** Our Mishna said, that if the ganav gave the property to his children to eat they are patur from having to pay for it!? **A: R' Chisda** would say, the Mishna is discussing where they ate it after yi'ush.

IHM HINI'ACH LIFNEYHEM PITURIN MILISHALEM

- **Rami bar Chama** said, we see from here that the reshus of an heir is like the reshus of a purchaser (and just as a purchaser would not have to return the stolen item, an heir would not have to either). **Rava** said, the reshus of an heir is *not* like the reshus of a purchaser (a purchaser is koneh the item, but an heir is not and would



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therefore have to return the item if it was still intact). The reason they do not have to return it in the Mishna is because it is referring to where they ate the stolen item.

- **Q:** From the fact that the end of the Mishna says “if it was real property, they are chayuv to pay”, this suggests that the Mishna is discussing where the item is still intact!? **A: Rava** would answer, the Mishna means that if the father left over real property in his estate (it is not referring to the stolen property itself), that real property is used to pay for the stolen item (there is a lien on the property).
  - **Q:** We have learned that **Rebbi** taught his son **R’ Shimon**, that when the Mishna says “real property” it is referring to anything that is intact and recognizable as being the stolen property, and it must be returned for the honor of their father (so that people not see it and realize it was property stolen by their father). Clearly then, the Mishna is referring to stolen property that is still in existence!? **A: Rava** said, I explain our Mishna according to **R’ Oshaya**, who taught the following Braisa – if a person steals and feeds it to his children, they are patur from having to pay for it. If he left it for them as an inheritance, then if the item is still in existence, they must return it. If not, they are patur from having to pay for it. However, if the father also left over real property in his estate, they have to pay for the stolen item from the real property.
  - **Q:** The Braisa just said, if the item is no longer in existence they are patur. This seems to refute **R’ Chisda**!? **A: R’ Chisda** would say, the Braisa is discussing where they ate it after yi’ush.
  - **Q:** The Braisa just said, if the item still exists they are chayuv to return it. This seems to refute **Rami bar Chama**!? **A: Rami bar Chama** will say, the Braisa is discussing before yi’ush.
- **R’ Ada bar Ahava** said that **Rami bar Chama’s** statement was made on a Braisa (as opposed to our Mishna). The Braisa says, if a father left over money of ribis as an inheritance, even if the heirs know it is ribis, they do not have to return it. **Rami bar Chama** said, we see from here that the change in possession to an heir is treated like the change in possession to a purchaser.
  - **Rava** said, it may be that the change in possession to an heir is treated differently than to a purchaser. The reason why they do not have to return the ribis is because the Torah only obligates the *lender* to return the ribis, but does not obligate his heirs to do so.
  - The version that said that **Rami bar Chama’s** statement was made on the Braisa would say, it surely would apply to our Mishna as well. The version that said the statement was made in reference to our Mishna may hold that he would not make this statement on the Braisa, based on the reason given by **Rava**.

### -----Daf כ"ב---112-----

- 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.

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- 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,

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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.

### -----Daf ל"ג---113-----

- **Rava** said, if a document of cheirem was written against someone for not coming to Beis Din, it is not ripped up until he actually shows up. If it was written for his not listening to the Beis Din, it is not ripped up until he follows what they have told him to do.
  - The Gemara says, this last halacha is not correct. Rather, as soon as he says that he will listen, we rip up the document.
- **R' Chisda** said, we summon a person to come to Beis Din on Monday, the following Thursday, and the following Monday. If he doesn't even show up to the third day, we write a document of cheirem for him the next day.
  - **R' Assi** saw **R' Kahana** summon a woman to court in the evening and the next morning write a document of cheirem for her. He asked **R' Kahana**, do you not hold of **R' Chisda**? **R' Kahana** said, we only give more time for a man, who is busy travelling and is not local. However, a woman, who is always in the city, if she does not show up she is showing that she disregards the court and is therefore put into cheirem immediately.

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- **R' Yehuda** said, we may not summon a person to come to court in Nisnon or Tishrei, or on Erev Yom Tov or Erev Shabbos.
  - We may summon him during Nisnon or Tishrei to appear after those months. We may not summon on Erev Shabbos for after Shabbos, because he is busy then and will forget that he was summoned.
- **R' Nachman** said we do not serve a summons on people who have come to attend the weekly shiur or the shiur for Yom Tov, because that will prevent them from coming to the shiur.
  - Today, when we are concerned that people might attend the shiur just so that he not be served, we may even serve people by the shiur.

### IHM HAYA DAVAR SHEYEISH BO ACHRAYUS CHAYUV LISHALEM

- **Rebbi** taught his son **R' Shimon**, that when the Mishna says “real property” it is referring to anything that is intact and recognizable as being the stolen property (e.g. a cow or a donkey), and it must be returned for the honor of their father (so that people not see it and realize it was property stolen by their father).
  - **Q: R' Kahana** asked **Rav**, what if he had stolen a bed or table, which is only used indoors and not available for people to see? **A: Rav** said the same halacha would apply to a bed or table as well.

### MISHNA

- A person may not take change (even with permission) from the box of the customs collector or from the box of the tax collector, and we may not accept tzedaka from them (the money in their boxes is considered to be stolen). However, one may take from the coins that are found in these people's houses, or from the coins he has with him in the market.

### GEMARA

- A Braisa says, if one owes money to the tax collector, but doesn't have smaller coins with which to pay, he may give the larger coin and get back some smaller coins as change (if not he would suffer a loss by having to give the entire larger coin).
- **Q:** How can we say that these collectors are considered to have stolen from the people they collected from? **Shmuel** has said that the laws of the government are the law, and as such, the taxes that they levy are not considered to be stolen!? **A: R' Chanina bar Kahana in the name of Shmuel** said, the case is referring to a tax collector who has no limit on the amount that he is allowed to collect. **R' Yannai** said, we are discussing a self-appointed tax collector, who has no authority from the government.
  - Others learn that these distinctions were made on a Braisa, where **R' Akiva** said that a person may wear multiple garments to try and evade the tax collector. The Gemara there also asks, how can this be done? **Shmuel** has said that the laws of the government are the law, and as such, the taxes that they levy must be given!? To that, **R' Chanina bar Kahana in the name of Shmuel** gave his answer and **R' Yannai** gave his.
  - Others learn that these distinctions were made on a Mishna which says that one may swear that something is terumah to prevent it from being taken by the tax collector. The Gemara there also asks, how can this be done? **Shmuel** has said that the laws of the government are the law, and as such, the taxes that they levy must be given!? To that, **R' Chanina bar Kahana in the name of Shmuel** gave his answer and **R' Yannai** gave his.
  - **R' Ashi** adds a third answer, that the reference is to a non-Jewish tax collector, who collects more than he is supposed to.
  - A Braisa says, if a goy who is known to rob sues a Yid, **R' Yishmael** says, even if the Yid is really chayuv under Jewish and non-Jewish law, we figure out a way that he shouldn't have to pay. **R' Akiva** says that can't be done, because it can lead to Chilul Hashem.
    - **Q:** It seems that **R' Akiva** only doesn't allow this because of Chilul Hashem. However, a Braisa says that **R' Shimon** said that **R' Akiva** learns from a pasuk that it is assur to steal from a goy!? **A: R' Yosef** said, he allows the stealing from a full-fledged goy, and in the Braisa he was referring to a “ger toshav”.

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- **Q:** The pasuk that **R' Akiva** learns from refers to a goy and to a ger toshav, so he would not treat them differently!? **A: Rava** said, there is a difference between stealing from him (which is assur) and withholding payment that is due him (which would be mutar).
- **Q: Abaye** asked, taking a Jewish slave away from a goy is comparable to withholding payment, and the pasuk teaches that it is assur to do so!? **A: Rava** is following his own view that a Jewish slave is actually fully owned (even his body) by the goy, and therefore taking him is straight out stealing.
- **R' Bibi bar Gidal in the name of R' Shimon Chasida** said, an item stolen from a goy is assur to keep, but an item he lost is mutar to keep.
  - An item stolen from a goy is assur to keep based on **R' Huna**, who learns from a pasuk that we are allowed to consume the assets of a goy only when the goyim are given over to us. An item they lose is mutar to keep based on **R' Chama bar Gurya in the name of Rav**, who learns from a pasuk that the mitzvah of returning a lost item applies only to “achicha”, a fellow Yid.
    - **Q:** Maybe we should say that the pasuk of “achicha” teaches that only for a Yid must one go out of his way to get the lost item, but once it is in his hands he must return it even if it belongs to a goy? **A: Ravina** said, the pasuk says “umitzasah”, which suggests that it was already in the person’s hands, and still he only needs to return it if it belongs to a Yid.
  - A Braisa says, **R' Pinchas ben Yair** said, if not returning the lost item to the goy may result in a Chilul Hashem, it is assur to keep the lost item.
  - **Shmuel** said, the mistake of a goy is mutar to keep (e.g. he overpaid by mistake). We find that **Shmuel** once bought a gold bowl from a goy for the price of a copper one (the goy thought it was copper), and **Shmuel** added one extra zuz so that it not look like he was cheating if the mistake was ever discovered. **R' Kahana** once bought 120 barrels from a goy for the price of 100 barrels (the goy thought it was only 100). **R' Kahana** gave an extra zuz and told the goy “I am relying on your count”. **Ravina** bought a palm tree with a goy for the purpose of chopping it and dividing the pieces. He told his attendant to go and take the better pieces, because the goy was only concerned with the number, not the quality.
    - **R' Ashi** was walking and saw grapes on a vine. He told his attendant, “go see, if they belong to a goy take them, if they belong to a Yid, do not”. A goy was sitting nearby and asked, “are you allowed to just take from a goy?” **R' Ashi** told him, I told my attendant to take them and pay for them only if they belong to a goy, because a Yid would never accept payment from me, and I didn’t want to take anything for free”.
- We mentioned above that **Shmuel** said, “the laws of the government are the law”.
  - **Rava** said, we can prove this, because the government cuts down trees without permission, uses the wood to build bridges, and we walk on them. **Abaye** said that is no proof. It may be we can walk on them because the owners have been meya’ish. **Rava** said, yi’ush by itself would not make it mutar to use the bridges. It must be that it is yi’ush in conjunction with the fact that the laws of the government are the law. **Abaye** asked, the messengers who cut the trees don’t really follow the instructions of the king, because they concentrate on taking trees from one place instead of taking it evenly from everywhere? **Rava** said, these messengers have the status of the king himself, and it is known that he will not bother to go all around and will instead focus on one area. Therefore, the people who did have their trees taken are supposed to go and collect payment from all those who did not have their trees taken. If they did not go and collect, they have only themselves to blame.
  - **Rava** said, if partners who stored their grain together each removed their grain, except for one who left his grain in the storage area, and the tax collector then came and took his grain as tax for all of the partners, they must pay him back for their share of the tax.
    - This is only if they were partners who owned the land that the produce was grown on (so they are all obligated to pay the tax). However, if he was a sharecropper, he is not supposed to be

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charged a land tax and the tax taken from him was therefore improperly taken and considered to be stolen.

- **Rava** said, the property of one town resident may be taken as security for the tax obligation of another resident of that town.
  - This is only for the land tax and head tax of this year. He may not do so for the tax of past years.
- **Rava** said, one may not purchase an animal from people who take their animals and fertilize fields for other people within the techum. The reason is that their animals get mixed up with the animals of other people, and they may have stolen animals. If they fertilize fields outside the techum, it is mutar to buy from them.
  - **Ravina** said, if an animal owner was chasing them claiming his animal was among their animals, even outside the techum one may not buy from them.
- **Rava** or **R' Huna** called out – if a Yid testifies for a goy against a Yid in a non-Jewish court, he is put in cheirem. The reason is, such courts would hold a defendant liable based on the testimony of a single witness, and by him doing so, he has caused the Yid a loss he would not have had to suffer in a Beis Din. Therefore, it is only a problem if a single witness testifies in this way. If it was two witnesses, they would not be put in cheirem (because the Yid would have been liable to pay in Beis Din as well). Also, this is only a problem in a village court (where they make one liable to pay based on the testimony of a single witness). However, in the higher government courts they only require an oath when a single witness testifies, so he would not be put in cheirem.
  - **Q: R' Ashi** said, we asked **R' Huna**, if there is a prestigious person on who the courts would rely on like two people, do we say that they will make someone pay based on his testimony and he therefore shouldn't testify, or do we say since he is prestigious he cannot withhold testimony and he may therefore testify? **TEIKU**.
- **R' Ashi** said, if a Yid sells land that borders another Yid's land, to a goy, we put him in cheirem.
  - The reason can't be because of "bar metzra" because that doesn't apply when a goy is the buyer or the seller. Rather, the reason is because the neighboring Yid can say "you have placed a lion at my border" (the goy does not act with the same caution as halacha requires of a Yid, and therefore subjects his neighbors to more potential harm). Therefore, the seller is put in cheirem until he accepts responsibility for all harm that may be caused by the goy.