



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

### Bava Metzia Daf Kuf

#### MISHNA

- If a person trades a cow for the donkey of another person, and at some point the cow gave birth, or if one sold his maidservant to another and she gave birth, and the seller (of the cow or the maidservant) says it gave birth before the transaction took place, and the buyer says it happened after the transaction took place, they divide the value of the calf or the child.
- If a person had two slaves – a large one and a small one, or he had two fields – a large one and a small one, and he sold one of them, and the buyer says he bought the large one, but the seller says he doesn't know which one was sold, the buyer gets the large one. If the seller says he sold the small one and the buyer says he does not know which one was bought, the buyer only gets the small one. If the buyer says it was the large one and the seller says it was the small one, the seller should swear that he only sold the small one and the buyer then only gets the small one. If they both say that they don't know what was sold, they divide the value.

#### GEMARA

- **Q:** Why do they divide the value in the Mishna's first case? Why don't we see in whose reshut the birth took place and then make the other person be a "motzi meichaveiro alav haraya"? **A:** **R' Chiya bar Avin in the name of Shmuel** said, the case is where the cow or the maidservant were in a place that belonged to neither party.
  - **Q:** Why don't we say that there is a chazaka that the cow or maidservant is owned by the seller, and therefore the buyer should be a motzi meichaveiro alav haraya? **A:** The Mishna follows **Sumchos**, who holds that money that sits in doubt is divided without the need for anyone to swear.
    - **Q: Sumchos** only says that when both parties are uncertain about their claims, but in the Mishna both parties are making their claims with certainty!? **A:** **Rabbah bar R' Huna** said, **Sumchos** said his halacha even when both parties claim with certainty. **A2: Rava** said that **Sumchos** only says his halacha when the claims are uncertain. However, we must read our Mishna to say that each party claimed that "maybe" the birth took place before or after the transaction.
    - **Q:** Our Mishna's last case is where both parties say that they do not know what happened, and the Mishna says that the parties divide the value. Now, according to **Rava** this can make sense, since the end of the Mishna is talking about a case of claims of uncertainty, the first case can be talking about that also. However, according to **Rabbah bar R' Huna**, since the first case says they divide in a case of claims of certainty, then they would surely divide in a case of claims of uncertainty, so why do we need the last case at all!? **A:** If not for the last case we would think that the first case is a case of uncertain claims, and that is why we say they divide the value. By having the last case, it teaches that the first case must be one of certain claims, and still we say that they divide the value.
    - **Q:** Our Mishna said, if the buyer says he bought the large (slave or field) and the seller says he sold the small one, the seller swears that he sold the smaller one and that is what the buyer gets. Now, according to **Rava** who says that **Sumchos** only said his halacha by claims of uncertainty, that is why in this case (of claims of certainty) the seller must swear. However, according to **Rabbah bar R' Huna**, that **Sumchos** even said so in cases of claims of certainty, why must the seller swear in this case? The halacha should simply be that the value is divided!? **A:** **Sumchos** would agree that in a case where one of the parties must swear

D'Oraisa (like in the case where there is a partial admission), we don't simply divide the value, as the Gemara will say later.

HAYU LO BEIS AVADIM ECHAD GADOL V'ECHAD KATAN...

- **Q:** Why must the seller swear? What was claimed by the buyer was not admitted to by the seller, and what was admitted to by the seller was not claimed by the buyer!? Also, this is a case of “heilech” (the slave is present, ready to be given), and therefore is not considered to be part of the claim, and there is therefore no partial admission!? Also, this is case of slaves, and we don't impose oaths in cases of slaves!? **A: Rav** said, the case is where the claim is for money, not the actual slave. **Shmuel** said the case is that the buyer claims he bought the clothing of a large slave or the produce from a large field, whereas the seller says it was the clothing of a small slave, or the produce of a small field.
  - **Q:** According to **Shmuel**, why would he have to swear? What was claimed by the buyer was not admitted to by the seller, and what was admitted to by the seller was not claimed by the buyer!? **A:** The case is where the argument is over a garment made of a bunch of smaller pieces of material. Therefore, admitting to having sold a smaller one is considered to be a partial admission.
  - **Q: R' Hoshaya** asked, the Mishna says the argument was about a slave, not about clothing!? **A: R' Hoshaya** therefore says, the case is where the buyer claims that he bought the large slave with his clothing, and the seller says he sold the small slave with his clothing. The admission to the smaller amount of clothing is what gives it the status of a partial admission.
    - **Q:** Why would he have to swear? What was claimed by the buyer was not admitted to by the seller, and what was admitted to by the seller was not claimed by the buyer!? **A: R' Pappa** said, the case is where the argument is over a garment made of a bunch of smaller pieces of material. Therefore, admitting to having sold a smaller one is considered to be a partial admission.
    - **Q: R' Sheishes** asked, is **R' Hoshaya** saying that the Mishna is teaching us the concept that once he has to swear regarding the clothing we can also make him swear regarding the slave as well? That is something that is taught explicitly in another Mishna!? **A: R' Sheishes** said, the Tanna of the Mishna is **R' Meir**, who says that slaves are treated like moveable property (as opposed to land) and therefore one does swear regarding them.
      - **Q:** We still have the question that what was claimed by the buyer was not admitted to by the seller, and what was admitted to by the seller was not claimed by the buyer!? **A:** The Mishna holds like **R' Gamliel**, who holds that in such a case one *does* swear.
      - **Q:** We still have the question that this is a case of “heilech” (the slave is present, ready to be given), and therefore is not considered to be part of the claim, and there is therefore no partial admission!? **A: Rava** said, the case is that after the transaction, the seller cut off the hand of the slave he admits to selling, or dug ditches in the land he admits to selling, and therefore it is not “ready to be given” and is not heilech, and therefore one does swear regarding them.
      - **Q:** A Mishna says, if a ganav stole an animal and it aged, or he stole a slave and it aged, he pays the value it had at the time of the stealing. **R' Meir** says, with regard to slaves he can just return the slave as is. We see that **R' Meir** holds that a slave is compared to land, and just as land cannot be halachically stolen, the same is true for slaves!? **A:** We will follow **Rabbah bar Avuha's** version of that Mishna in which **R' Meir** is the first view and the **Rabanan** are the second view.
      - **Q:** Why would we assume that **R' Meir** would hold that just as one swears regarding slaves he also swears regarding land? Maybe he holds that we only swear regarding a slave, but not regarding land!? **A:** That cannot be, because a Braisa says, if a person exchanges his cow for a donkey and the cow gave birth, or he sold a maidservant and she gave birth, and one party says it happened when he owned the asset, whereas the other party remained quiet, the one who makes the claim

gets the baby. If they both say that they do not know when the baby was born, they divide the value. If they both claim with certainty that it happened during their ownership, the seller swears and keeps the baby, because **R' Meir** says that any case of swearing is always where the one who swears does not have to then pay. The **Chachomim** say that we do not swear regarding slaves or land. Now, this suggests that **R' Meir** holds we would swear regarding land!

- This is no proof. It may be that the **Rabanan** are saying to **R' Meir** – just as you agree that one does not swear regarding land, you should likewise agree with us that one does not swear regarding slaves either.
- **Q:** A Mishna clearly shows that **R' Meir** would say that we do not swear regarding land. The Mishna says that **R' Meir** says, if one gives a partial monetary admission of guilt on grapes still on the vine he must swear, for although one does not swear when the asset is real estate, he would swear on the grapes. The **Chachomim** say that he does not swear, because it is considered to be real estate. **R' Yose the son of R' Chanina** explained, that the machlokes is regarding grapes that ready to be cut off the vine. In that case **R' Meir** says they are considered as if they are already cut off. Clearly, regarding unripe fruit, and certainly regarding land itself, he would say that we do not swear!? This refutes the explanation of **R' Sheishes**!? **A:** We must explain the Mishna like **R' Hoshaya** said. Although we asked that the Mishna is not needed to teach the halacha that the concept that once he has to swear regarding the clothing we can also make him swear regarding the slave as well, because that is already taught in another Mishna, our Mishna is still necessary. We would think that the clothing is considered part of the slave and the bundles of produce are considered part of the field, and therefore cannot be considered as something to be sworn about on their own. The Mishna therefore teaches that they are separate and distinct items, that require their own oath, and thereby also require an oath of the slave and the land as well.

#### ZEH OMER EINI YODEYA V'ZEH OMER EINI YODEYA YACHLOKU

- **Q:** This part of the Braisa seems to follow **Sumchos**, who says that money that lies in doubt is divided. However, the last case of the Braisa says that if both parties make claims with certainty, the seller swears and then keeps the baby. Now, according to **Rabbah bar R' Huna** who says that **Sumchos** said his halacha even when there are claims of certainty, why does the seller swear? They should simply divide in this case as well!? **A:** **Sumchos** would agree that if there is a D'Oraisa oath that needs to be taken, the value is not divided. Further, we will say that the seller cut off the slave's hand, so that it is also not a case of "heilech".

#### MISHNA

- If someone sold his olive trees for their wood, and the trees (before they were chopped down) produced less than a revi'is of oil per se'ah, they belong to the owner of the trees. However, if they produced a revi'is per se'ah, and the owner of the trees says his trees produced these fruits and the owner of the land says it was his land that produced it, they divide the olives.
- If a river swept away one's olive trees and put them into someone else's field (and they grew olives there), and the owner of the tree says it was his trees that produced the olives and the owner of the land says it was his land that produced the olives, they divide the olives.

#### GEMARA

- **Q:** What is the case? If the seller of the trees instructed the buyer to cut them down immediately, then even if it produces less than a revi'is it should belong to the owner of the land!? If he had told him to cut it down whenever he wanted to, then even if it produced a revi'is it should belong to the buyer of the trees!? **A:** The case is where he gave no instruction. Therefore, if it is less than a revi'is, since people are not particular about such a small amount, it

goes to the buyer of the trees. If it is more than a revi'is, since people are particular about such a large amount, it must be divided.

- **Reish Lakish** said, when the Mishna says a revi'is, it means after taking into account the expense of picking and pressing the olives.