



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

Bava Metzia Daf Beis

MESECHTA BAVA METZIA

PEREK SHNAYIM OCHZIN -- PEREK RISHON

MISHNA

- Two people who come to Beis Din holding a talis: one says I found it first and the other says I found it first, one says it is all mine and the other says it is all mine, the halacha is that this one swears that he does not own less than half of it and the other one swears that he does not own less than half of it, and they then divide the talis.
 - If one said it is all mine and the other says half of it is mine, the halacha is that the first one swears that he does not own less than $\frac{3}{4}$ of the talis and the second person swears that he does not own less than $\frac{1}{4}$ of the talis, and the first person then takes $\frac{3}{4}$ and the second person takes $\frac{1}{4}$.
 - Two people who come to Beis Din riding an animal, or one of them was riding it and the other one was leading it: one says it is all mine and the other says it is all mine, the halacha is that this one swears that he does not own less than half of it and the other one swears that he does not own less than half of it, and they then divide the animal.
 - If the 2 people agree that they were koneh the item at the same time, or if there are witnesses who say so, they divide the item without swearing.

GEMARA

- **Q:** Why does the Mishna have to give 2 cases: one where each says "I found it" and one where each says "it is all mine"? Why couldn't it just give one case? **A:** It is actually one case. The case is that one said I found it and it is therefore entirely mine, and the other says I found it and it is therefore entirely mine.
 - **Q:** Why not just say that they each said "I found it" and we would know that the claim includes "and it is all mine"? **A:** If the Mishna would only say "I found it", we would think that meant that the person claimed he saw it, even though he never actually touched it, which would teach that simply seeing it can make a person be koneh. The Mishna therefore says "it is all mine" to teach that seeing alone is not a kinyan.
 - **Q:** We have learned that **Rabbenai** said, the pasuk of "umitzasa" (and you find it) means it reached the finder's hands. We see that "finding" is not to be understood as simply seeing!? **A:** When a pasuk says "finding" it surely means it reached his hand. However, the use of the word by the Tanna may be understood as referring to "seeing". The Mishna therefore says "it is all mine" to teach that it must reach his hand.
 - **Q:** Why not just use the phrase "it is all mine" and not bother with the unclear phrase of "I found it"? **A:** If we would have done so, we would think that elsewhere, where the Tanna uses the phrase "I found it" it means that seeing alone can be koneh. The Tanna here therefore says both phrases to teach that "I found it" is only koneh if it reaches his hand.
 - **Q:** How can we say that the Mishna is talking about one case? The Mishna says "*this one* says I found it and *this one* says I found it" and then says "*this one* says it is all mine and *this one* says it is all mine". The multiple uses of "this one" suggests that we are talking about different cases!? **A:** **R' Pappa or R' Simi bar Ashi** said, it is two cases. The first case refers to people arguing over a found item, and the second case deals with people arguing over a purchased item. Both these cases are necessary. If we would only give

the case of the found item we would say, that only in that case the **Rabanan** required them to swear, because in that case we need to be concerned that the person rationalizes saying it is his even if it is not, because he doesn't feel that he is taking anything away from the other person. However, in a case of a purchase, since this rationalization cannot be made, maybe the **Rabanan** didn't institute that an oath must be taken. If we would only have the case of the purchase, we would say that only in that case the **Rabanan** required that he swear, because he rationalizes and says that they both gave money, so he will take the item and the other person will get back his money and go buy a different item. That is why an oath is required. However, in the case of a found item, since this rationalization cannot be made (he can't assume the person will find another item), the **Rabanan** did not require that he swear.

- **Q:** If the case is discussing a purchase, why don't we simply see who gave money to the seller? **A:** The case is that they both gave money. The seller says he accepted from one willingly and the other forced the money upon him, and he doesn't remember which one was taken willingly and which one was forced.
- **Q:** Maybe we must say that our Mishna does not follow **Ben Nanas**, who says in a different case that we can't make two people swear when one of them is definitely going to be a false oath? **A:** The Mishna may even follow **Ben Nanas**. Our case is different, because it may be that they both picked it up at the same time, in which case they are each koneh half and there is no false oath at all.
- **Q:** Maybe we must say that our Mishna does not follow **Sumchos**, who says when there is a safek regarding money (regarding the case where an ox gored a cow and we find a dead fetus from the cow at its side, and we don't know whether this miscarriage happened before the goring or as a result of the goring) we simply divide the money without anyone swearing?
 - **Q:** In that case (of the ox and the cow) the **Rabanan** say "hamotzi meichaveiro alav haraya". Does that mean that our Mishna does not follow the **Rabanan** either? **A:** What we mean is, that it makes sense for our Mishna to follow the **Rabanan**, because they say "hamotzi meichaveiro..." in that case, where no one is holding onto the item in question. However, in our Mishna, where both parties are holding onto the item, they would say that it should be divided with an oath. Now, according to **Sumchos**, who says in a case where no one is holding onto the item, that we divide it without an oath, then certainly in the case of the Mishna, where they are both holding onto it, they should divide it without an oath!?
 - **A:** We can even say that our Mishna follows **Sumchos**. **Sumchos** only says that they divide without swearing in a case where neither party can say for sure what happened. However, in the case of the Mishna, where each party claims to know for sure what happened, he would say that they divide with an oath.
 - **Q: Rabbah bar R' Huna** said that **Sumchos** says they divide with no oath even where both parties claim to know exactly what happened. According to him, how would we explain our Mishna according to **Sumchos**? **A:** **Sumchos** says that an oath is not required only where there is a true loss of money ("drara") involved (someone will suffer the loss of the fetus). In our Mishna there is no true loss (they are fighting over a found item, which is a windfall to one, not a loss to the other), and therefore they must swear.
 - **Q:** We should say a kal v'chomer – if an oath is not needed where someone stands to lose money, and where the money involved clearly belongs to only one of the parties, then surely one should not be needed where no one stands to lose money, and it is possible that it actually does belong to both of them!? **A:** We can say the Mishna even follows **Sumchos**. The reason for the oath in our Mishna is as explained by **R' Yochanan**, that the **Rabanan** enacted the parties to swear to prevent people from grabbing an item of someone else and claiming ownership. Even **Sumchos** would agree to this reason and this enactment.