



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

Bava Metzia Daf Gimmel

- **Q:** Maybe we must say that our Mishna does not follow **R' Yose** (a Mishna says that if one person deposited 100 and another deposited 200 with the same person, and they then each claim that they were the one who deposited the 200, the **Rabanan** said that they each get back 100 and the remaining disputed 100 should remain until Eliyahu comes. **R' Yose** said, doing so would not hurt the one who is lying, because he has gotten his full money out. Rather, all 300 must be left until Eliyahu comes). According to **R' Yose**, in our Mishna we should say that the entire talis must be put away until Eliyahu comes, and yet our Mishna says that it is divided with an oath!?
 - **Q:** Is it better to say that the Mishna follows the **Rabanan**? According to them, since the entire talis in the Mishna is the "disputed amount", the entire talis should be put away until Eliyahu comes as well!? **A:** In the case of the deposits, since the last 100 only belongs to one of the people, and not both, we must put it away until Eliyahu comes. In our Mishna, where it is possible that the talis belongs to both of them, even the **Rabanan** would agree that the talis should be divided with an oath. However, according to **R' Yose**, if in the case of the deposits, where of the 300 there is certainly 100 that belongs to one person and 100 that belongs to the other person, and still **R' Yose** says it must be put away for Eliyahu, then in the case of our Mishna, where it is possible that the talis belongs to only one of them, certainly we should say that the entire thing should be put away for Eliyahu!?
 - **A:** Our Mishna can follow **R' Yose**. The difference between the cases is that in the case of the deposits there is certainly someone who is lying. In our Mishna there is not necessarily someone who is lying. **A2:** In the case of the deposits **R' Yose** feels we must penalize the liar to try and make him admit his guilt (and we do so by holding his money hostage as well). In the case of the Mishna, even if one of them is lying he doesn't lose anything by having the talis put away (it is not his and he has no money that is being held hostage).
 - **Q:** This second answer explains the case of our Mishna regarding the found item. However, it does not explain the case of the Mishna where the item was purchased (in that case, if the item and the purchase money of both parties is put away, it would incentivize the liar to admit to his guilt)? **A:** We must say that the first answer is the better answer.
 - **Q:** The case of **Ben Nanas** (referred to earlier) discusses where a person asked a storekeeper to lay out money for him to pay his workers, and the storekeeper then claims that he gave the workers money as instructed and the workers claim that they never got paid. The **Rabanan** there said that the storekeeper and the workers each swear to their claim and each then gets paid by the person. Now, according to **R' Yose and the Rabanan** regarding the deposit, since there is definitely a liar here they should require the person to take the money owed and put it away for Eliyahu!? **A:** That case is different, because the storekeeper can tell the person, "I have done your shlichus as you asked, and I have no relationship with your workers to now have to live by and accept their oath. You should have told me to only give them the money in front of witnesses." That is why he cannot be made to wait for his money. Similarly, the workers can tell the person "I have done work for you. I have no relationship with this storekeeper, and therefore cannot be asked to accept his oath." Therefore, they cannot be made to wait for their money, and he must pay them as well.
- **R' Chiya** taught, if a person claims that another owes his 100 and the person denies the entire claim, and witnesses then testify that he owes 50, he would have to pay the 50 and then swear

regarding the rest, so that a person's own partial admission (which causes him to swear) not be stronger than the testimony of witnesses, based on a kal v'chomer. We can see this from our Mishna as well. In the case of our Mishna, whatever each person physically has in his hand is considered as if there are witnesses testifying to ownership of that piece. Yet, we see that each must still swear.

- **Q:** Why does **R' Chiya** say that a kal v'chomer is needed? **A:** If not for the kal v'chomer we would say that the reason for the swearing on an admission is based on the logic of **Rabbah**, who says 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 where the partial liability comes about through the testimony of witnesses, and we would therefore say that no swearing is necessary when witnesses testify. That is why we need the kal v'chomer to teach that an oath is necessary in that case as well.
- **Q:** What is the kal v'chomer? **A:** It is that if one's admission, which cannot make him liable to pay money, can make him liable to swear, then testimony of witnesses, which can make him liable to pay money, can certainly make him liable to swear!
 - **Q:** An admission can most certainly obligate one to pay money!? **A:** "Money" refers to a penalty, and an admission makes one patur from paying a penalty.
 - **Q:** Maybe an admission is stronger, as we see that when a person admits to having done something that would make him chayuv to bring a chatas, and witnesses testify that he did not do what he says he did, we follow him and he brings a chatas. If the situation were reversed, we would follow him and he would *not* bring a chatas. Maybe this is also why only an admission makes one chayuv to swear? **A:** **R' Chiya** holds like **R' Meir**, who says that witnesses would obligate a person to bring a chatas in this case based on a kal v'chomer (if witnesses can put someone to death, they can certainly obligate someone to bring a chatas).
 - **Q:** Maybe an admission is stronger, as we see that when a person admits to having sworn falsely regarding a monetary claim he obligates himself to bring an asham, whereas if witnesses testify that he swore falsely he would not be obligated to bring an asham? **A:** **R' Meir** would use the same kal v'chomer as he did for a korbon chatas, and apply it to allow witnesses to obligate a person in an asham as well.
 - **Q:** Maybe an admission is stronger, as we see that when a person admits to having sworn falsely regarding a monetary claim he obligates himself to pay an additional fifth, whereas if witnesses testify that he swore falsely he would not be obligated to pay this additional fifth!? **A:** **R' Chiya** would again hold like **R' Meir**, who would use the same kal v'chomer to say that just as witnesses can obligate the person to bring a korbon, they can also obligate him to pay the additional fifth.
 - **Q:** Maybe an admission is stronger in that it cannot be contradicted and is not subject to hazamah, whereas testimony of witnesses is subject to contradiction and hazamah? **A:** Rather, **R' Chiya** learns that partial liability based on witnesses obligates him to swear based on a kal v'chomer from a single witness. If a single witness, who cannot obligate one to pay money, can obligate him to swear, then 2 witnesses, who can obligate one to pay money, can surely obligate him to swear as well.
 - **Q:** The swearing obligation created by each is very different!? The single witness obligates the person to swear to contradict what he testified about, whereas **R' Chiya** is saying that the 2 witnesses require him to swear about what is being denied!? **A:** Rather, **R' Pappa** said, he learns it from "gilgul shevuah" of a single witness (once a single witness creates an obligation to swear, the defendant can also be made to swear on other claims as well). If a single witness can do that, then

surely 2 witnesses can create an obligation to swear on the denied claim.

- **Q:** Maybe gilgul shevuah is different, because it is one oath that brings about the obligation of another oath. But, with 2 witnesses, where it is a monetary obligation, maybe it can't bring about an obligation to swear!?
A: Really he learns it from a single witness, who can obligate a person to swear. Although we said that a single witness creates an obligation to swear on what was testified, and **R' Chiya** is trying to learn to obligate him to swear on what was denied, we can say that a self-admission swears on what was denied, and we can learn from there. Although we can ask that an admission is not subject to contradiction, we can say that a single witness is subject to contradiction and yet he creates an obligation to swear. Based on all this we can learn a "tzad hashavah", that these cases are cases of a claim, a denial, and a resulting oath. Based on these characteristics I can add the case of when witnesses support the claim and there is a denial, that he must swear there as well.
 - **Q:** Maybe the tzad hashavah between the others is that the person is not established as lying, whereas when 2 witnesses say he lied he is established as a liar?
A: We find that **R' Idi bar Avin in the name of R' Chisda** says, that one who denied a loan and was proven false by witnesses may still be a valid witness. We therefore see that he is not established as a liar.
 - **Q:** Maybe the tzad hashavah between the others is that they are not subject to hazamah, whereas witnesses are?
A: **R' Chiya** does not consider this difference a basis as to why the others can obligate an oath. Therefore, this can't be used to refute how he learns witnesses from a single witness and from an admission.