



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

### Bava Metzia Daf Lamed Daled

SHILEM V'LO RATZA LISHAVA...

- **R' Chiya bar Abba in the name of R' Yochanan** said, when the Mishna said that if the shomer pays he gets the rights to collect the keifel, it does not mean that he actually paid, rather even if he said that he will pay he gets those rights.
  - **Q:** Our Mishna said "if he paid and did not want to swear". This suggests that he had to have actually paid, and saying that he would pay is not enough!? **A:** The Mishna then says "if he swore and did not want to pay", which suggests that if he had only wanted to pay that would have been enough. Based on these contradictory inferences, we cannot bring a proof from our Mishna.
  - There is a Braisa that supports **R' Yochanan**. The Braisa says, if one rents a cow and it is stolen, and the renter tells the owner "I will pay and will not swear", and the ganav is then found, he pays keifel to the renter. We clearly see that a willingness to pay is enough to acquire the rights to collect the keifel.
  - **R' Pappa** said, once a shomer chinam says that he was negligent with the deposit (and he must therefore pay), he gets rights to collect the keifel, because he could have made himself patur by claiming it was stolen without negligence on his part. Once a shomer sachar says that the deposit was stolen (and he must therefore pay), he gets rights to collect the keifel, because he could have made himself patur by claiming it broke or died. However, if a borrower says that he will pay for the item he does not get the right to collect the keifel, because the only way he could make himself patur is by claiming that the item broke or died, and that is a very uncommon thing to happen.
    - **Others** say that **R' Pappa** said if a borrower says he will pay he gets the right to collect keifel, because he could have made himself patur by claiming the item broke or died.
    - **R' Zvid** said, **Abaye** said that a borrower does not get the right to collect the keifel until he *actually* pays, because a borrower gets only benefit from this "relationship" and therefore his saying so does not suffice.
    - A Braisa supports **R' Zvid**. The Braisa says, if a borrowed item was stolen, and the borrower went ahead and paid for it, and the ganav was then found, the keifel is paid to the borrower.
      - **Q:** This Braisa does not refute the first version of **R' Pappa**, because he would agree that if the borrower actually paid he would get the keifel. Shall we say that it refutes the second version of **R' Pappa**? **A:** **R' Pappa** would say, just as we explained the Mishna, which says he paid, to mean that he said he will pay, we will do so the same for this Braisa.
      - **Q:** The Braisa says he "went ahead and paid", which can't be explained to mean that he said he would pay!? **A:** It means he went ahead and *said* that he would pay.
      - **Q:** The Braisa regarding the renter says "and he said he would pay" and the Braisa regarding the borrower said "he went ahead and paid", that shows that regarding the borrower it must mean that he *actually* paid!? **A:** These Braisos weren't taught together, and the verbiage used in one therefore can't be used to prove something in another Braisa.
        - They asked the yeshivos of **R' Chiya** and **R' Oshaya** regarding these Braisos, and they were told that they *were* taught together. Therefore, it shows the Braisa means that the

borrower *actually* paid, and refutes the second version of **R' Pappa**.

- **Q:** It is obvious that if the shomer said he will not pay and then said that he will pay, he will get the right to collect the keifel, because he said he will pay. What is the halacha if he first said he will pay and then changed and said that he will not pay? Do we say he is retracting what he originally said, or do we say that he is just looking to stall, but still means to pay? What if he said he will pay and died before paying and he heirs then say they will not pay? Do we say they are retracting what he originally said, or do we say that they are just looking to stall, but still mean to pay? What if the children of the shomer paid? Can the owner tell them that I only gave the right of collecting keifel to your father, because he did a favor for me, or do we say that he surely gave the right to the children as well? What if the shomer paid to the children of the owner? Can they tell the shomer that their father would have given him the right to collection, because he did their father a favor, but they are not giving him that right, or do we say that he gets the right in that case as well? What if the children of the shomer pay to the children of the owner? What if the shomer agrees to pay for half of the item (does he get half the keifel)? What if he borrowed two cows and paid for one of them (at least he paid for a full item)? What if he borrowed from partners and paid back one of them (he paid one partner in full)? What if partners borrowed and one of them paid back his portion (will he get his share of the keifel payment)? What if he borrowed from a woman and paid her husband? What if a woman borrows and her husband paid for it? **A: TEIKU.**
- **R' Huna** said, when the shomer pays for the item we make him swear that the item is not in his possession, because we are concerned that he may have wanted the item and decided to keep it.
  - **Q:** A Mishna says, if someone lent money on collateral and lost the collateral, and he told the borrower "I lent you a selah and the collateral was worth half a selah and you therefore owe me the difference", and the borrower says the collateral was worth a full selah, the borrower is patur from having to swear, because there is not even a partial admission. If when the lender says he is still owed the difference of half a selah the borrower responded that the collateral was worth  $\frac{3}{4}$  of a selah, he would be chayuv to swear that the collateral was worth that amount and would then pay the difference. If the borrower claims that the collateral was worth 2 selah and the lender says it was only worth one selah, the lender would be patur from swearing, because there is no partial admission. If the borrower says it was worth 2 selah and the lender said it was worth 1.5 selah, he would have to swear and then pay the difference. The Mishna says, who swears? It is the lender, because if the borrower were to swear, the lender may bring out the collateral, which could contradict the oath of the borrower and make him passul to swear or serve as a witness. Now, which case of the Mishna (there were 4) is this last statement going on? It can't be going on the last case, because the reason the lender swears there is because he made a partial admission, not because we are concerned for the status of the borrower! Rather, **Shmuel** said it is going on the second case. In that case the borrower should swear (because he made a partial admission), but we instead make the lender swear, out of concern that the lender will produce the item to contradict the borrower. Now, if **R' Huna** is correct, we will make the lender swear that he does not have the item in his possession, so why are we concerned that he will produce the item!? **A: Rabbah** (or **Rava in the name of R' Yosef**) said, the case is that he has witnesses that it was burned in a fire.
    - **Q:** If so, why are we concerned that he will produce the item!? **A: R' Yosef** said, he has witnesses that it was stolen from him.
      - **Q:** Still, where will he get the item to be able to produce it!? **A:** He will expend energy to find the ganav and get the item back.
        - **Q:** If so, when the lender swears we should be concerned that the borrower will track down the ganav and get the item and prove the lender wrong!? **A:** The lender knows who came into his house and can therefore find the ganav. The borrower would not know who went into the lender's house, and therefore cannot track down the ganav.

- **Abaye** said, the reason we move the oath to the lender is because we are concerned that even if the lender first swears that he does not have the item, he will then look for it better and will find it.
- **R' Ashi** said, the Mishna means that in the second case they *both* swear – the lender swears that he does not have the item in his possession and the borrower swears to the value of the item. The Mishna means to say that we make the lender swear his oath first, because if we didn't do so, he may then produce the item after the borrower swears, making the borrower become *passul* to swear or to act as a witness.