



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

Bava Metzia Daf Lamed Hey

- **Q: R' Huna** had said that before a shomer or lender is willing to pay for the deposit or collateral that he says he no longer has, he must swear that it is no longer in his possession. **R' Huna bar Tachlifa in the name of Rava** said, the 3rd case in the Mishna just quoted refutes **R' Huna**. That case of the Mishna was where a lender lost the collateral for a loan of a selah, and the borrower says the collateral was worth 2 selah and the lender says it was worth one selah. The Mishna said that the lender is patur from having to swear regarding the value of the collateral, because there was no partial admission. Now, according to **R' Huna**, since he will have to swear that he no longer has it in his possession, through the use of "gilgul shevuah" we should also make him swear as to how much the collateral was worth!? **A: R' Ashi** said that **R' Kahana** told him, the case of the Mishna is where the borrower trusts the lender when he says that he no longer has it, and that is why he is not swearing to that.
 - **Q:** If so, he should also trust him regarding the value of the collateral and the lender should not have to swear in the 4th case either!? **A:** The borrower feels that the lender is not familiar enough with the collateral to give a true estimate of value.
 - **Q:** Why doesn't the lender trust the borrower to give the value, since he is more familiar with the collateral? **A:** The case is that the lender does not trust the borrower.
 - **Q:** Why does the Mishna give a case where the borrower trusts the lender, but the lender doesn't trust the borrower? **A:** The borrower says (based on a pasuk) that since the lender is financially successful it must be that he is an honest person. The lender says (based on a pasuk) that since the borrower is not financially successful, it must be that he is not honest.
- A person once gave earrings to a shomer to watch for him. When the owner asked for them back, the shomer said "I don't remember where I put them". **R' Nachman** said, that is called negligence and the shomer must pay. The shomer refused to pay, and so **R' Nachman** took the shomer's mansion as payment. Later on the earrings were found, at a time when the earrings were greater in value than the amount that was taken in payment by **R' Nachman**. **R' Nachman** said, the mansion should be given back to the shomer and the earrings should be given back to the owner. **Rava** said, I was there when this psak was given, and we were in middle of learning Perek Hamafkid. I asked **R' Nachman**, the Mishna says that if the shomer pays instead of swearing he gets the penalty payments, which should mean that he gets all future appreciation, including the appreciation of the earrings in this case!? **R' Nachman** did not answer me, but it was for good reason that he did not answer. In our Mishna, the shomer did not require the owner to go to Beis Din to collect the money (and that is why he gives him the future appreciation). In this case he did make him go to Beis Din.
 - **Q:** Are we to say that **R' Nachman** holds that even after something was taken by Beis Din for payment, it may be taken back if another form of payment is later given? **A:** This case is different, because the taking was done mistakenly. It was thought that the earrings were forever gone, when in fact they were there all along.
 - In **Nehardai** they said, property taken as payment must be returned if money is offered in its place within 12 months. **Ameimar** said, the property must always be returned if money is offered in its place. The Gemara paskens like **Ameimar**, based on the pasuk of "v'asisa hayashar v'hatov".
 - Clearly, if property is taken as payment from a debtor, and the creditor then gives that property to his own creditor, we would take it back from the second creditor, because we tell him that he is not in a stronger position than the one who gave it to him. If the first creditor sold the property, gifted it, or left it as an inheritance, since these people entered the land with intent to keep it, never

wanting money in its place, they would be allowed to keep the land and would not have to return it.

- If property was taken as payment for a creditor who was a woman, or from a debtor who was a woman, and she then got married and died, the husband is considered to be a purchaser of her properties, and he therefore need not return the property (in the first case) and does not get the property returned to him (in the second case) even if he offers money for it.
- If the debtor himself gave property as payment and then wants to give money and take back the property, **R' Acha and Ravina** argue: one says it must be returned to him – he holds it is not considered to be a sale and the reason he gave it is because he is embarrassed to go to Beis Din, and the other says it need not be returned – he holds it is considered to be like a sale since it was given willingly.
- **Q:** At what point may the creditor begin eating from the produce of a field that was given to him as payment in Beis Din? **A: Rabbah** said, at the time that the document of collection reaches his hand. **Abaye** said, the signature of the witnesses on the document are koneh it for him. **Rava** said, at the time that the announcements for sale of the property are over.

MISHNA

- If a person rented a cow and then lent it to someone else, and the cow then died on its own, the renter should swear to the owner that it died on its own (and he will be patur), and the borrower must pay the value of the cow to the renter. **R' Yose** said, how can it be that someone can do business with someone else's cow? Rather, the value of the cow must be returned to the owner.

GEMARA

- **Q: R' Idi bar Avin** said to **Abaye**, the renter is koneh the cow with the oath that he makes. Why can't the owner tell the renter "remove yourself and your oath and I will litigate directly with the borrower"? **A: Abaye** said, the renter is not koneh the animal with the oath. He is koneh the animal at the time that it dies. The oath is only made so that the owner can't claim the death was due to negligence.
- **R' Zeira** said, there are times when the owner will have to pay a number of cows to the renter. The case would be where a person rented a cow for 100 days and the owner then borrowed it from the renter for the first 90 days, and the renter then rented it again for the first 80 of those days and the owner borrowed it for the first 70 of those days, and the cow died on its own in those 70 days. For each borrowing of the cow the owner would have to pay the renter one cow.
 - **Q: R' Acha MiDifti** said to **Ravina**, it is one cow that has gone through multiple statuses as rented and borrowed, so it can't be that a separate cow would have to be paid for each act of borrowing!? **A: Ravina** said, still, since the cow is no longer here, there are 2 separate claims for payment of a cow, and therefore 2 separate payments must be made.
 - **Mar bar R' Ashi** said, the owner would have to give the renter 2 cows – one as payment for the borrowed cows, and one for him to use for the remaining days of his rental period.
- **R' Yirmiya** said, there are times when the renter and the borrower would both have to bring a chatas for swearing falsely, there are times when they would both have to bring an asham, there are times when the renter would bring a chatas and the borrower would bring an asham, and there are times when the renter would bring an asham and the borrower would bring a chatas.
 - This is all based on the rule that a false oath taken to deny a monetary claim requires that an asham be brought, and a false oath taken for any other reason requires that a chatas be brought. Based on this:
 - If the animal died on its own and they both swear that it happened with an oneis, then the renter who would be patur with either claim brings a chatas for this false oath, and the borrower who would be chayuv for either claim also brings a chatas for this false oath.

- If the cow was stolen and they both swore that it died while doing the work it was supposed to do, then they both swore falsely in a way to try and make themselves patur, and they therefore would both be chayuv to bring an asham.
 - If the animal died on its own and they both swore that it died while doing the work it was supposed to do, then the renter who would have been patur with either claim, must bring a chatas, and the borrower, who tried to make himself patur with this oath, must bring an asham.
 - If the animal was stolen and they both swore that it died on its own, then the renter who tried making himself patur with this oath, would be chayuv to bring an asham, and the borrower, who would be chayuv for either claim, must bring a chatas.
- The chiddush of **R' Yirmiya** in saying this is to exclude the shitah of **R' Ami**, who says that a person does not bring a chatas for a false oath when the oath was imposed on him by Beis Din.