



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

Bava Metzia Daf Lamed Zayin

MISHNA

- If a gazlan tells 2 people, "I stole a maneh from one of you, but I don't remember from who", or if a person tells 2 people "the father of one of you gave me a maneh to watch, but I don't remember whose father it was", he should give a maneh to each of them, because he admits to the claim.
- If 2 people gave money to a shomer – one gave a maneh and the other gave 2 maneh, and they then each claim that they were the one who gave the 2 maneh, he should give one maneh to each of them, and the remaining maneh should be put away until Eliyahu comes and tells us who the true owner is. **R' Yose** said, if each person gets back a maneh, the one who is making the false claim stands to lose nothing at all!? Rather, all 3 maneh are put away until Eliyahu comes.
 - The same would be if 2 people each gave a keili to a shomer – one worth one maneh and the other worth 10 maneh, and they each claim to have given the one worth 10 maneh, the shomer should give the cheaper keili to one of them, and take a piece worth a maneh of the other keili and give it to the other one, and the remainder should be put away until Eliyahu comes. **R' Yose** said, if each person gets back a maneh, the one who is making the false claim stands to lose nothing at all!? Rather, both keilim are put away until Eliyahu comes.

GEMARA

- **Q:** The first case of the Mishna teaches that in a case of doubt we make the person pay all claims, and we don't say that he should hold onto the money until Eliyahu comes. However, in the next cases of the Mishna we are taught that he doesn't have to pay all claims when there is doubt, and instead the money is put away until Eliyahu can clarify the doubt for us!? **A:** The first case is one of stealing, and the **Rabanan** therefore penalized the thief and made him pay all claims. The later cases are cases of a deposit. In that case no issur was done, and the **Rabanan** therefore did not penalize the shomer.
 - **Q:** There seems to be a contradiction between two cases of deposit, and there seems to be a contradiction between two cases of stealing. With regard to cases of deposits, the beginning of the Mishna gives the case of someone who is unsure whose father deposited money with him, and the Mishna says that he must give money back to each of them, and yet the later part of the Mishna says that we put the money away until Eliyahu can clarify for us!? **A: Rava** said, the first case is discussing where only one person actually gave a deposit. Therefore, the shomer should have paid more attention to remember who it is that gave him the deposit. The later case is discussing where two people gave him deposits at the same time. He can therefore tell them, "you obviously were not particular about giving the money at the same time and creating confusion, and therefore I also did not have to be particular about who was giving what". Based on this, he is not considered to be negligent.
 - **Q:** With regard to cases of stealing, our Mishna says he must give money back to all the people that claim he stole from them. However, there is another Mishna that says that **R' Tarfon** says, if someone stole from one of five people and they all claim it was them that was stolen from, the ganav may place the money down and walk away!? A Braisa on that Mishna says that **R' Tarfon** would agree that in the case of our Mishna he would have to pay back to each person. This is contradictory!? **A:** The other Mishna is giving the halacha in the case – he must only pay back the one who was stolen from, and not everybody. Therefore, he can leave the money and walk away. Our Mishna is discussing

a person who wants to fulfil even his Heavenly obligation. To do this, one must pay back each of the people, even though he truly only stole from one of them. In fact, the words of our Mishna “because he admits to the claim” suggests someone who is looking to fulfil a Heavenly obligation, not just strict halacha.

- **Q:** In the Mishna with the one who stole from one of 5 people, and each of them sue for the money, what is the ganav’s response? **A: R’ Yehuda in the name of Rav** said, the ganav remains quiet, and **R’ Masna in the name of Rav** said, that he tells each one that he doesn’t recognize him.
 - According to **R’ Masna**, if he would remain quiet, that would be an admission of guilt to all of them. **R’ Yehuda** would say that it would not be an admission, because he can explain and say that the reason he remained quiet was because he knows that he does owe the money to one of them.
- **Q: R’ Tarfon** said in the Mishna, he places the stolen item between them and walks away. We have learned that **R’ Abba bar Zavda in the name of Rav** said, if someone sees something that may or may not have been left there intentionally he should not take it, but if he did take it he should not return it to anybody. We see that one is to keep an item until he knows its rightful owner, so how could **R’ Tarfon** say that he can place the money in front of all the people? **A: R’ Safra** said, when the Mishna says he places the money, it means he places it in Beis Din to see if any of the people can prove that they are the rightful owner.
- **Q:** The end of that Mishna says that **R’ Akiva** said that leaving the money and walking away is not the way one removes himself from the aveirah, rather he must pay back to each and every claimant. This shows that he holds that we do take money from somebody in a case of doubt. Now, there is another Mishna that says, if a house fell on a woman and her son and we don’t know who died first, and the heirs of the son say the mother died first (and therefore they are entitled to the assets of the mother that were inherited by the son before his death), and the heirs of the mother say the son died first (and they are entitled to the assets of the mother), **B”S and B”H** would agree that they divide the assets. **R’ Akiva** said, I would agree in this case that the money stays by the one who has it. Now, this contradicts his view in the other Mishna!? **A: Rava** answered to **Abaye**, in the case of the second Mishna everyone only claims that it is *possibly* theirs, and therefore the money stays where it is. In the case of the ganav, each claimant claims with *certainty* that the money belongs to him, and that is why he must pay back each person.
 - **Q:** Our Mishna, is where he stole from one of two people, and each claims that it was *possibly* stolen from him, and yet the Mishna says that he must pay back to each and every one of them. A Braisa on this Mishna says that **R’ Tarfon** agrees that in this case he would have to pay back each person. Presumably he “agrees” to **R’ Akiva**, which is who he argues with on this topic, which proves that our Mishna is the view of **R’ Akiva**!? Also, the verbiage of the Mishna and a Braisa of **R’ Chiya** says the Mishna is talking about where the claimants do not come with a claim of certainty. If so, why does **R’ Akiva** in this case say that he must pay back each person!? **A:** We have said that the Mishna is discussing a person who is looking to fulfil his Heavenly obligation, and that is why he should pay each of the people.
- **Q:** We said above, that **Rava** said that if two people each give a deposit to a shomer at different times, he is expected to pay attention and know what he is taking from who. **Ravina** asked **R’ Ashi**, we find that **Rava** says that all would agree that if a shepherd has 2 animals from two people and he doesn’t remember which belongs to which person, he puts the animals between them and walks away!? **A: R’ Ashi** said, that case is where the owners put their animals into the shepherd’s herd without the shepherd’s knowledge. That is why he is not expected to know which belongs to who.

V'CHEIN SHNEI KEILIM ECHAD YAFEH MANEH...

- Both cases (the case of deposited money and the case of deposited keilim) are necessary. If we would have only been taught the case with the money, we would say in that case the **Rabanan** say that each person gets the amount that both are surely entitled to, because money can be divided without losing its value. However, in the case of keilim, where the more expensive keili must be broken, maybe they would agree to **R' Yose**. If we would only have the case of keilim, we would say that **R' Yose** only holds that way in that case, because breaking the keili causes a loss, but in the case of money we would say that he agrees with the **Rabanan**. That is why both cases are needed.
 - **Q: R' Yose** explained his reasoning – to assure that the liar stands to lose something as well, so we would know that he holds that way regarding money as well!? **A:** It must be that both cases were written for the view of the **Rabanan**, and the Mishna should be understood as having been written in the style of “not only this, but even that”.