



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

Bava Metzia Daf Daled

- **R' Chiya** had said that if a person denies a claim and witnesses then obligate him to part of the claim, he would have to swear regarding the rest of the claim. He said we can see this from our Mishna, where 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:** The cases are not the same!? In **R' Chiya's** case the lender has witnesses to part of the claim, but the borrower has no witnesses to support his denial, and if he did have such witnesses **R' Chiya** would not require him to swear. In the case of the Mishna each side has "witnesses" to his claim, and yet they still have to swear!? **A:** Rather, when **R' Chiya** said that we "can learn this from our Mishna", he was referring to a different ruling that he made. **R' Chiya** said, if a plaintiff says he is owed 100 and the defendant responds "I only owe you 50, and here, it is yours", he would have to swear, because even saying "here it is yours" is considered to be a partial admission. This can be learned from our Mishna. In the Mishna, whatever each person physically has in his hand is considered as if there are witnesses testifying to ownership of that piece and as if the defendant said "here, it is yours", and still he must swear.
 - **R' Sheishes** argues on this halacha of **R' Chiya**, and holds that when one admits to part of a claim and says "here, it is yours", he is patur from having to swear. The reason is, that when he says "here, it is yours", it is as if it is in the hands of the plaintiff and is therefore not even part of the claim. Therefore, when he denies the rest of the claim it is as if he is denying an entire claim, and therefore does not have to swear.
 - **Q:** According to **R' Sheishes**, how will he explain our Mishna, which seems to say like **R' Chiya**? **A:** He says the swearing in our Mishna is a special D'Rabanan enactment, and has nothing to do with the D'Oraisa oath on a partial admission.
 - **R' Chiya** agrees that our Mishna is a D'Rabanan enactment, but he says that a D'Rabanan is only enacted if there is a similar halacha D'Oraisa. Therefore, if we say that when the defendant says "here, it is yours" he is chayuv to swear, it makes sense that the **Rabanan** would enact an obligation to swear in the similar case of our Mishna. If, in the case of "here, it is yours" he would be patur, they would not have made the enactment.
 - **Q:** A Braisa says, **R' Shimon ben Elazar** says, if a promissory note says that the debtor owed "dinars" (plural), and the lender says he lent 5, and the debtor admits to owing 3 dinars, he must swear regarding the other two, because he has made a partial admission. **R' Akiva** says he is patur from having to swear, because he is like one who is returning a lost item (since the document as written cannot require him to pay for more than two (the smallest plural). Now, having a loan written in a document is the equivalent of saying "here, it is yours", and we see that **R' Shimon ben Elazar** requires him to swear only because he admitted to 3, but had he only admitted to 2, it seems he would not be required to swear!? **A:** It may be that even if he admitted to 2 he would be required to swear. The reason the Braisa gave the case of where he admitted to 3 was to contrast with **R' Akiva**, who in that case would say he is returning a lost item and does not have to swear.
 - **Q:** If **R' Shimon ben Elazar** would make him swear even when he admitted to only 2, why does he say that when he admits to 3 he must

swear “because he has made a partial admission”? He should say that when he admits to 3 he must “swear in that case as well”!? **A:** Rather, we must say that if he only admitted to 2 he would be patur. Still, we can say that a case of “heilech” (“here, it is yours”) is chayuv. The reason why in this case he would be patur is because the document itself lends him credibility (since it reads as him only owing 2). **A2:** We can also say that although heilech has to swear, in this case, since there is a loan document, which creates a lien on land, he will not swear, because we do not swear on a denial or admission of a lien on land.

- **Q:** Others ask from the end of the Braisa. From **R’ Akiva** it seems that he is only patur because he admitted to 3, but had he admitted to 2 he would be chayuv. This shows that heilech is chayuv to swear, and refutes **R’ Sheishes**!? **A:** It may be that **R’ Akiva** would hold he is patur even if he only admitted to 2. The reason the Braisa discusses a case of where he admits to 3 is to exclude the view of **R’ Shimon ben Elazar**, who says he would be chayuv when he admits to 3. It even makes sense to say that **R’ Akiva** must hold that an admission of 2 would be patur as well. If an admission of 2 would be chayuv but an admission of 3 would be patur, people who want to admit to 2 would simply admit to 3 so as to circumvent the swearing obligation. It must be that he is patur when he admits to 2 as well.
 - **Q:** Based on this, the Braisa is problematic according to **R’ Chiya**!? **A:** We can say that if he only admitted to 2 he would be patur. Still, we can say that a case of “heilech” (“here, it is yours”) is chayuv. The reason why in this case he would be patur is because the document itself lends him credibility (since it reads as him only owing 2). **A2:** We can also say that although heilech has to swear, in this case, since there is a loan document, which creates a lien on land, he will not swear, because we do not swear on a denial or admission of a lien on land.
- **Q: Mar Zutra the son of R’ Nachman** asked, a Mishna says, if a plaintiff made a claim for keilim and land, and the defendant denied one and admitted to the other, he would be patur (because either the admission or the denial was on land). However, if he admitted to only part of the keilim, he would be chayuv to swear. Now, the Mishna seems to suggest that if land was not involved he would have to swear, even in similar circumstances. The similar circumstances would be a case of heilech, and we see that in a case of heilech there is an obligation to swear!? **A:** It may be that heilech would be patur to swear, and the reason the Mishna uses the example of land is to teach that if he admits to part of the keilim he can be made to swear even on the land as well, through “gilgul shevuah”.
 - **Q:** A Mishna already clearly teaches the halacha that one can be made to swear on land if he must swear on other moveable property!? **A:** The first Mishna is the main place for stating this halacha. The Mishna referred to here, taught this halacha in a more incidental way, without it being the main teaching of the Mishna.
- **Q:** According to **R’ Sheishes**, why does a pasuk need to teach that we don’t swear on land? Every case of land is a case of heilech, which **R’ Sheishes** says is patur from having to swear!? **A:** There is a case of land that is not a case of heilech – where one damaged the land he admits to owing. Since it is damaged, he cannot say “here, it is yours”. The pasuk is needed to teach that if he partially admitted to such land, he would not have to swear. Another case would be where the claim was for keilim and land, and he admitted to the keilim, but denied the land. This is not a case of heilech, because he is not admitting to any land. However, since the denial is on land, the pasuk teaches that he would not swear.