



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

Bava Metzia Daf Mem Aleph

MISHNA

- If a person gave a barrel to a shomer to watch, without designating a place for it to be kept, and the shomer then moved it and broke it, if it broke while he was handling it then the halacha is, if he was moving it for his own benefit he is chayuv, and if he was moving it for the benefit of the barrel he is patur. If it broke after he put it down, then whether he moved it for his own benefit or for the benefit of the barrel, he is patur.
 - If the owner had designated a place for the barrel to be kept, then whether it broke while he was handling it or after he had put it down, if it was moved for the shomer's benefit he is chayuv, and if it was moved for the benefit of the barrel he is patur.

GEMARA

- Our Mishna (which says that when the shomer uses the item for his own benefit, which makes him a ganav, he is patur if he puts it back down) follows **R' Yishmael**, who says in a Braisa that a ganav becomes patur when he returns the stolen item even if it is done without the knowledge of the owner.
 - **Q:** If the Mishna is following **R' Yishmael**, the same halacha should apply even if the owner designated a place!? **A:** The Mishna means to say, surely if a place was designated, the shomer's returning the item to that place is considered to be a full return. Even moreover, if no place was designated, his putting down the item is also called a full return, because a return can be done without the knowledge of the owner.
 - **Q:** The next part of the Mishna said, if the owner designated a place then if the shomer moved it for his own benefit, he is chayuv even after he put it back. That can't follow **R' Yishmael**!? **A:** That part of the Mishna follows **R' Akiva**, who argues in the Braisa and says that a ganav must let the owners know that the item is being returned.
 - **Q:** If it follows **R' Akiva** the same halacha should apply even if the owner had not designated a place!? **A:** The Mishna means to say, surely if a place was not designated, the shomer's returning the item to that place is not considered to be a full return. Even moreover, if a place was designated, his putting down the item is also not called a full return, because a return must be done with the knowledge of the owner.
 - **Q:** Are we to say that the first part of the Mishna follows **R' Yishmael** and the next part follows **R' Akiva**? **A:** Yes. In fact, **R' Yochanan** said, "whoever can explain our Mishna to be following one shita, I will carry his clothing for him to the bathhouse!"
 - **R' Yaakov bar Abba** explained to **Rav** that when the Mishna says the shomer took it for his benefit, it means that he took it in order to steal all of it. **R' Nosson bar Abba** explained to **Rav** that the Mishna means he took it to steal some of it ("shlichus yad").
 - The machlokes between them is whether a shomer becomes chayuv for shlichus yad only if he caused a loss. **R' Yaakov** holds he would only be chayuv with a loss, and therefore in our Mishna, where he did not cause a loss, it must be referring to a full stealing. **R' Nosson** says he would be chayuv for shlichus yad without a loss, and therefore the Mishna can be talking about shlichus yad.
 - **Q:** **R' Sheishes** asked, the Mishna doesn't say he "took it", it says he "moved it"!? **A:** **R' Sheishes** said, the Mishna is discussing where the shomer used the barrel to stand on to get birds, and one who borrows without permission is a gazlan.
 - Based on **R' Yaakov**, **R' Nosson**, and **R' Sheishes** we can say that the entire Mishna follows **R' Yishmael**, and the reason he is chayuv in the later part of the

Mishna is that he did not put it back in the designated place. **R' Yochanan** (who said the Mishna can't be following a single view) holds that the verbiage of the Mishna suggests that it was returned to the designated place.

- We have learned that there is a machlokes between **Rav and Levi** – one says a shomer is only chayuv for shlichus yad if there is a loss, and the other says he is chayuv even without a loss.
 - **Q:** Maybe we can prove that **Rav** holds that he is chayuv even without a loss. A Braisa says that if a shepherd left the flock and a wolf killed a sheep, he is patur. However, if he had put his stick or his bag on the sheep before it was attacked, he would be chayuv (because he used the animal). We asked on that, why would he be chayuv for having put his stick or bag on the animal if it was taken off before the attack? **R' Nachman in the name of Rabbah bar Avuha in the name of Rav** said, the Braisa is discussing where the stick or bag was still on the animal during the attack (it is as if it was stolen by him and not yet returned). We asked, putting these items on it is not a kinyan, so how was he koneh it? **R' Shmuel bar R' Yitzchak in the name of Rav** said, he hit it with the stick and caused it to move. Now, he did not cause a loss in the sheep and yet he is chayuv. It must be that **Rav** holds he is chayuv even without causing a loss! **A:** He caused a loss when he hit it with the stick. In fact, this proves that **Rav** holds he is chayuv only when he causes a loss! **SHEMA MINAH.**
 - If **Rav** holds he is only chayuv when he causes a loss, it must be that **Levi** holds he is chayuv even when he doesn't cause a loss. **R' Yochanan in the name of R' Yose ben Nehorai** explains that **Levi** holds this way, because the concept of shlichus yad is written by shomer chinam and by shomer sachar. Now, it would seem that the Torah could have just written it for shomer chinam and we would say, if a shomer chinam, who is patur if the item is stolen or lost, is still chayuv for shlichus yad, then a shomer sachar, who is chayuv if it is stolen or lost, is surely chayuv for shlichus yad. The reason the Torah wrote it a second time is to teach that he is chayuv even if he didn't cause a loss. **R' Yochanan** himself said that the Torah had to write both, because the kal v'chomer can be refuted by saying that a shomer chinam is more stringent in that he would pay keifel if he stole the item himself, whereas a shomer sachar would not. **R' Yose** says this is not a refutation, because paying principle without being able to swear is more stringent than paying keifel after having sworn falsely.
 - **Rava** said, shlichus yad didn't have to be written by shomer chinam or shomer sachar and we could have learned it from a borrower, who is chayuv for an oneis. We would say, if a borrower, who uses the item with the consent of the owner, is chayuv for oneis as soon as he takes it, then a shomer who used the item (shlichus yad) without the owner's consent is surely chayuv. Why did the Torah write shlichus yad? One is to teach that he is chayuv even without having caused a loss, and one is to teach that we should not use the limitation of "dayo" and say that just as a borrower is patur if the owners were with him, so too the shomer would be patur if the owner was with him.
 - **Q:** According to the view that he is only chayuv if he did cause a loss, why do we need these pesukim regarding shlichus yad? **A:** One is to teach that we not use the limitation of dayo, and one is to teach a gezeirah shava that when the pasuk says "v'nikrav baal habayis ehl ha'elohim", it means that he is made to swear.