



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

### Bava Metzia Daf Hey

- **Q: Rami bar Chama** taught a Braisa that says, in order for the 4 shomrim to become chayuv to make an oath, they must deny part of the claim and admit to part of the claim. Presumably, the case is where the shomer told the owner "heilech" (here it is) regarding the part that he admits to, and still he must swear. We see that one must swear even in a case of heilech!? **A:** The case is where the owner claims he gave 3 animals to the shomer and claims that all died through negligence, and the shomer replies, I only got two, and of the two, one died with an oneis and one died through negligence, for which I must pay you. Therefore, it is not a case of heilech.
- **Q: R' Chiya** had stated, if a defendant denies a claim, and witnesses then obligate to pay part of the claim, he must swear on the rest. The father of **R' Aftoriki** taught a Braisa that says, the pasuk of "asher yomar ki hu zeh" teaches that one is only chayuv to swear if there is partial self-admission, not if he becomes obligated to part based on testimony of witnesses. This refutes **R' Chiya**!? **A: R' Chiya** is a Tanna and may argue on a Braisa.
  - **Q:** How would **R' Chiya** explain the pasuk? **A:** He would say, the pasuk is not extra, and instead simply teaches the halacha that a partial admission must swear. From there, he learns via a kal v'chomer (stated earlier) that if witnesses obligate to partial payment he also must swear.
  - The father of **R' Aftoriki** would say that the word "hu" teaches that a partial admission must swear, and the word "zeh" teaches that if witnesses obligate the partial payment he is patur from swearing. **R' Chiya** would say that the second drasha teaches that in order for him to have to swear, the admission must be regarding the same type that the claim was made (if he claimed wheat, he must admit to wheat, not barley). The father of **R' Aftoriki** doesn't make that drasha, because he holds like **R' Gamliel**, who says that even if the admission is not on the same type as the claim, he would be chayuv to swear.
  - There was a shepherd who would be given animals by the people of the town in front of witnesses every day to watch for them. One day they gave the animals to him without witnesses. He then claimed that he never received animals that day. Witnesses came and testified that they saw him eat two of the animals. **R' Zeira** said, according to **R' Chiya**, he would have to swear regarding the other animals that were claimed to have been given to him. **Abaye** asked, this shepherd has been proven as a full ganav, and as such can't swear!? **R' Zeira** said, I meant that the plaintiffs would have to swear instead of him, since he can't swear (they would swear and collect).
    - **Q:** Even not according to **R' Chiya** there should be an oath made, because **R' Nachman** said that the **Rabanan** instituted an oath be made upon full denial as well!? **A:** The concept of shifting the oath to the plaintiffs is itself a takana of the **Rabanan**. Therefore, since **R' Nachman's** oath is also only D'Rabanan, we would not put a takana on top of another takana. However, if there is an oath of **R' Chiya** (which is D'Oraisa), we would apply the takana, because that would be only one takana.
    - **Q:** Even if this shepherd wasn't proven to be a ganav he wouldn't be able to swear, because **R' Yehuda** said that a regular shepherd is passul to serve as a witness (because they allow their animals to graze in the fields of other people)!? **A:** That is only when he is watching his own animals (and stands to benefit from allowing them to do that), but not when he is watching the animals of other people. If we don't say this, we would never be allowed to give an animal to a shepherd to watch, because we would be enabling him to do an aveirah.

- **Q:** Why does he swear that “I do not own less than half” instead of swearing “I own half” (the Mishna’s version can technically be true even if he owns nothing at all)? **A: R’ Huna** said, he swears “I have ownership in this, and it is not less than half”.
  - **Q:** Why doesn’t he swear that he owns the entire thing, which is what he is claiming? **A:** We will not give him the entire thing, so we only make him swear based on what we will ultimately give him.
  - **Q:** Why doesn’t he simply swear “half of it is mine” instead of stating it in the negative? **A:** Then he would be swearing in a way that contradicts his original claim.
    - **Q:** Now he is also swearing different than he had originally claimed!? **A:** He says to Beis Din “It is entirely mine, however, because you will not allow me to swear to that, I swear that I have ownership in it, and I do not own less than half”.
- **R’ Yochanan** said, the oath in the Mishna is based on a Rabbinic enactment, so that people not go and grab items of other people and claim it to be theirs. Requiring an oath will prevent people from making such a claim.
  - **Q:** If we are concerned that people will steal, we should be concerned that they will also swear falsely, and we should not allow them to swear either!? **A:** Even if we are concerned that a person may steal, we do not say that that means he would also swear falsely. If we don’t say this, how can any partial admission swear? We make him swear because we are concerned he may be stealing, and therefore should not allow him to swear either!
    - The Gemara says, this last proof from a partial admission is no proof, because we don’t think he intends to steal, rather we think he is trying to buy time to find money with which to pay. In fact we find that **R’ Idi bar Avin in the name of R’ Chisda** said, that one who denied a loan and was proven false by witnesses may still be a valid witness, but one who denied a deposit and was proven false would be passul. It must be that we don’t consider the one who denied a loan to be a ganav.
    - **Q: Rami bar Chama** taught a Braisa that says, in order for the 4 shomrim to become chayuv to make an oath, they must deny part of the claim and admit to part of the claim. In that case why don’t we say that since we are concerned that he may have stolen, we should also be concerned that he will swear falsely!? **A:** Even though that discusses a deposit, there too he may be looking to buy time to find the ganav that stole the deposit from him, or find the deposit that he lost.
      - **Q:** Based on this, why is one who denied a deposit passul to be a witness? Why don’t we say he was just looking to buy time? **A:** When we said he is passul is when witnesses come and testify that at the time he denied having the deposit it was actually in his possession. Therefore, there was no reason to buy time, and it must be that he was actually trying to steal.
    - **Q: R’ Huna** has said that we make the shomer swear that the deposit is not in his possession. We should say that since he is suspect of stealing he should also be suspect to swear falsely!? **A:** He is not actually stealing there. He rationalizes that he will pay for the item that he is taking, and is therefore not truly stealing.
      - **Q: R’ Acha MiDifti** asked **Ravina**, even if he plans on paying for it, he is oiver on the lav of “lo sachmod”, and should therefore be suspect regarding other matters as well!? **A:** People think that “lo sachmod” only applies when they don’t pay for the item. Therefore, he is not suspect on other matters or regarding swearing.
    - **Q:** If a person who is suspect regarding monetary matters is considered to be suspect for purposes of swearing, how does **R’ Nachman** make a person who has denied an entire claim to take an oath? **Q2:** In the case mentioned earlier (with the storekeeper who claims that he gave money to a person’s workers and the workers claim they were never paid, and they then both go to the boss to be paid), how does **R’ Chiya** say that they both swear and get paid? **Q3:** How does **R’ Sheishes** say that we make a shomer swear that he was not negligent, that he

didn't use the deposit, and that it is not in his possession? **A:** Rather, it must be that we don't say that just because someone is suspect regarding monetary matters he is also suspect for matters of taking an oath. This is why we can impose an oath in our Mishna with the logic of **R' Yochanan**.

- **Abaye** argued and said that we *do* say that if someone is suspect regarding monetary matters he is also suspect regarding matters of swearing. The reason we make him swear in the Mishna is because we are concerned that maybe one of the parties had a questionable loan on the other party, and thought that the only way he could possibly collect on the loan would be to grab the talis and take money that way. To prevent that from happening, we make them take an oath.
  - **Q:** Why don't we say that if this person is willing to grab money that is only questionably his, maybe he would swear for something like this as well? **A:** **R' Sheishes the son of R' Idi** said, people stay away from even possibly swearing falsely even though they don't stay away from money that may possibly not be theirs. The reason is, money can always be returned. A false oath cannot be taken back.