



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

### Bava Metzia Daf Zayin

- The Gemara had previously asked the question regarding the bathhouse that was being fought over, where one of the parties had declared it hekdesch. The Gemara now asks, what is the halacha in that case? We find that **R' Chiya bar Avin** said, there was such a case that was posed to **R' Chisda**, who then posed the question to **R' Huna**, and he answered it based on **R' Nachman**, who said that any property that a person cannot win through a legal proceeding in Beis Din, cannot be made hekdesch by that person. Therefore, since neither party could get possession of the bathhouse through Beis Din, if any of them made it hekdesch, it would not be effective.
  - **Q:** This suggests that if someone could get a property through Beis Din, he would be able to make it hekdesch even if he does not yet have it. However, we have learned that **R' Yochanan** said that if a gazlan stole an item, neither the owner nor the gazlan can make it hekdesch – the gazlan because it is not his, and the owner because it is not in his reshut. Now, the owner can surely get this item back through Beis Din, and still he can't make it hekdesch!? **A:** The bathhouse was real property, and therefore if one of them could have gotten it from Beis Din, it would immediately be considered to be in his reshut, and that is why he would have been able to give it to hekdesch.
- **R' Tachlifa** of EY taught a Braisa to **R' Avahu** that said, if 2 people come to Beis Din holding a talis, each one gets the talis to the point that he is physically holding, and they divide the part of the talis that remains between them. **R' Avahu** motioned, that the division only happens with an oath.
  - **Q:** Why does our Mishna say that the entire talis is divided? **A:** **R' Pappa** said, our Mishna is discussing where they were holding the fringes of the talis.
  - **R' Mesharshiya** said, we can learn from the Braisa, that when doing kinyan chalipin, if the person held onto a 3x3 finger width size of the cloth, it is called "v'nossan" and he is koneh, because it is as if that piece was cut off and given to the person.
    - **Q:** Why is this different than the case of **R' Chisda**, who said that if a man gives a get to his wife, and the get is attached to a string that he is holding onto, if the string is strong enough for him to pull it back, she is not divorced. Why don't we say that if she is holding the get it is as if it was cut off and in her hand? **A:** Regarding a get we need "krisus" (a complete separate between husband and wife), and the string prevents that from happening. With regard to chalipin, it just has to be given to the person, and it is called "given".
- **Rava** said, if it is a golden talis, it is divided.
  - **Q:** This is obvious!? **A:** The case is that the gold is in middle of the talis, between them.
  - **Q:** This is also obvious!? **A:** The case is that the gold is closer to one of them. We would think the closer one can say to divide the talis in a way that gives him all the gold. **Rava** is teaching that it is divided in a way that divides the gold for them both.
- A Braisa says, if a lender and borrower come into Beis Din, both holding the loan document, and the lender says it fell from my possession (and the money is owed to me) and the borrower says it fell from my possession (I have already repaid the loan), **Rebbi** says the signatures on the document should be certified. **R' Shimon ben Gamliel** says they should divide it. If the document ended up in the hands of a dayan, it should never be given out to either party. **R' Yose** says the document retains its status (and can be used to collect the debt).
  - **Q:** Does **Rebbi** mean that once it is certified the lender can collect the entire loan? Based on our Mishna they should divide it!? **A:** **Rava in the name of R' Nachman** said, if the document was certified all would agree that it is divided. The machlokes is when it was not certified. **Rebbi** says, even though a debtor admits the document was properly

written, it still must be certified in order to collect with it. Therefore he says that if it is certified it is divided, because if it is not certified it cannot be used to collect at all. The logic behind this view is that without the certification, the only way we know this document is valid is due to the debtor, and that same debtor is claiming that it was already paid. **R' Shimon ben Gamliel** says that when a debtor admits to having written the document it no longer needs to be certified. Therefore he holds that in any case it is divided.

- **Q:** Why is the halacha different only when it falls into the hands of a dayan? **A: Rava** said, the Braisa means, if any person (not just a dayan) found a document that had been in the hands of a dayan (i.e. it was certified), it cannot be given back to any party. Surely if it was not certified it may not be given back, because we can say it was written but never used. The Braisa teaches that even if it was certified it may not be given back, because we are concerned that maybe the loan was already paid back. **R' Yose** said it retains its status, because he is not concerned that maybe it was paid back.
  - **Q:** How can we say that **R' Yose** is not concerned for the possibility of payment? A Braisa says, if a kesubah was found in the street, if the husband admits to it being unpaid, we return it to the wife. If he does not admit to it, it may not be returned to either of them. **R' Yose** says, if they are still married we give it back to the woman, if they are not we don't give it to either of them (presumably, because we are concerned it may have already been paid)!? **A:** We must reverse the shitos of the earlier Braisa and say that **R' Yose** is the one who said it may not be given to either party and it is the **Rabanan** who say that it retains its status.
    - **Q:** If so, the **Rabanan** of each of the Braisos are not consistent!? **A:** The Braisa regarding the kesubah is entirely the view of **R' Yose**, and should be understood as saying as follows: if the husband does not admit it, it may not be returned to the husband or the wife. That is said only if they are no longer married, but if they are still married, we return it to the woman, because **R' Yose** says, if they are still married we give it back to the woman, if they are not we don't give it to either of them.
    - **R' Pappa** said, we don't have to reverse the shitos. In the Braisa regarding the kesubah, **R' Yose** is talking to the **Rabanan** and saying – according to me, even if they are no longer married we can return it to her, because we are not concerned that it was paid. According to you, at least agree to me that if they are still married we should give it back to her? The **Rabanan** said, even in that case we can't give it back to her, because we are concerned that he designated money for her to collect from and gave it to her to hold.
    - **Ravina** said, we should reverse the shitos of the earlier Braisa. The reason the **Rabanan** say that the kesubah cannot be given back is because we are concerned that the husband may have written a second kesubah. **R' Yose** is not concerned that a second kesubah may have been written.
- **R' Elazar** said, when it was said that the document is divided between them, that is only when they are both holding onto the “tofes” (has all the pertinent information, but not the date) or both holding onto the toref (has all the pertinent information and the date). However, if one is holding onto the tofes and the other is holding onto the toref, each takes what he is holding onto. **R' Yochanan** said they always divide it equally.
  - **Q:** The Braisa said that each take whatever they are holding and the split the rest, so how could **R' Yochanan** say that they always just split it? **A:** The case is that the toref is in between what they are holding.
    - **Q:** If so, that is obvious!? **A:** The case is that it is closer to one of them. We would think he can have it split so that he gets the whole toref. **R' Yochanan** teaches that they split it so that they divide it equally.
  - **R' Acha MiDifti** asked **Ravina**, according to **R' Elazar** who says that each takes what he has grabbed, what use does one have to the toref and the other to the tofes? Are they to use it as a bottle cover? **Ravina** said, they divide the *value*.

We appraise the value of a document that has a date (i.e. the toref, which can therefore be used to collect from real estate) and the value of one without a date (the tofes), and the one with the tofes must give the difference to the one with the toref.

- Whenever we say that something is to be divided, we mean that the value is divided. If not, why would we say the talis in the Mishna is to be divided? Cutting it in two would damage it.
  - That is not a problem, because cutting it in two makes it useful for children.
  - That would not explain how we would divide a golden talis, since physically splitting it would ruin it.
    - That is also not a problem, because cutting it in two makes it useful for princes.
- The Mishna said that if two people come to Beis Din riding an animal, it is divided. This can't mean physically split, because a non-kosher animal will lose its value if it is split!?! Clearly it means its value is split. The same would apply to the document as well.