



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

Bava Metzia Daf Pey Beis

HILVAHU AHL HAMASHKON SHOMER SACHAR

- **Q:** Shall we say that the Mishna doesn't follow **R' Eliezer**? A Braisa says, if someone lent money and took collateral and lost the item of collateral, **R' Elizer** says, he swears that he was not negligent and still gets paid for the loan. **R' Akiva** says, the borrower can insist that the loan be netted against the collateral. If the loan was recorded in a document and collateral was given for it, all would agree that the loan would be netted against the collateral if it is lost. Our Mishna seems not to follow **R' Eliezer**!? **A:** The Mishna may even follow **R' Eliezer**. **R' Eliezer** was referring to a case where the collateral was taken at the time of the giving of the loan, and the Mishna is discussing where the collateral was taken at a later point in time.
 - **Q:** The Mishna and the Braisa both use the verbiage of "one who lends against collateral", which implies that in both cases the collateral was taken at the time of the loan!? **A:** The Braisa is discussing where he lent money, and the Mishna is discussing where he lent produce.
 - **Q:** From the fact that the Mishna then quotes **R' Yehuda**, who says that if he lent him money, he becomes a shomer chinam on the collateral, and if he lent him produce he becomes a shomer sachar on the collateral, it would seem to mean that the **T"K** does not agree with that distinction!? **A:** The entire Mishna is the view of **R' Yehuda**, and the Mishna later explains, that this is the view of **R' Yehuda**, as expressed elsewhere.
 - **Q:** This would mean that the Mishna does not follow **R' Akiva**!? **A:** We must revert to we said initially, that the Mishna does not follow **R' Eliezer**.
 - **Q:** Maybe we can say that the machlokes between **R' Eliezer** and **R' Akiva** is in a case where the collateral does not equal in value to the money that was lent, and they argue regarding the halacha of **Shmuel**, who says that even when the collateral is small compared to the overall loan, if the collateral is lost, the entire loan is written off as well. We can say that **R' Akiva** agrees with **Shmuel**, and **R' Eliezer** does not? **A:** It may be that in a case where the collateral is worth less than the loan, all would disagree with **Shmuel**. The machlokes may be in a case where the collateral is equal to the loan, and they argue in the halacha of **R' Yitzchak**, who says that the lender becomes the legal owner of the collateral. **R' Akiva** agrees with this, and therefore says that when the collateral is lost, it is the lender who must bear the loss, and **R' Eliezer** disagrees with **R' Yitzchak**, and therefore says that it is the borrower who must bear the loss.
 - **Q:** This can't be the machlokes, because **R' Yitzchak** only refers to a loan taken at a time other than at the time of the loan, whereas **R' Akiva** and **R' Eliezer** refer to collateral taken at the time of the loan!? **A:** Rather, we can say that when the collateral is taken at a time other than when the loan is given, all would agree with **R' Yitzchak**. The machlokes here is where the collateral was given at the time of the loan, and since the lender has come into possession of the collateral through a mitzvah (lending money is a mitzvah) and is therefore like a shomer aveida, the machlokes is what status a shomer aveida is given – **Rabbah** says he has the status of a shomer chinam, and **R' Yosef** says he is like a shomer sachar. **R' Eliezer** would hold like **Rabbah**, and **R' Akiva** would hold like **R' Yosef**.
 - **Q:** Based on this, should we say that **R' Yosef's** view is subject to a machlokes among Tanna'im? **A:** It may be that all would agree with **R' Yosef** regarding a shomer aveida. However, the Braisa is talking about a lender who needs to use

the collateral (and reduce the debt). **R' Akiva** holds he is still doing a mitzvah by lending money, and is therefore a shomer sachar like a shomer aveida. **R' Eliezer** holds he lent money for his own personal benefit (to use the collateral), and therefore he is considered to be a shomer chinam.

ABBA SHAUL OMER MUTAR L'ADAM L'HASKIR MASHKONO...

- **R' Chanan bar Ami in the name of Shmuel** said, the halacha follows **Abba Shaul**. But, even **Abba Shaul** only said this regarding something like a shovel or the like, which have high rental fees and little depreciation.

MISHNA

- If a person is moving a barrel from one place to another and broke it accidentally, whether he is a shomer chinam or a shomer sachar, he must swear that he was not negligent and is then patur from paying. **R' Elazar** says, I also heard from my rabbe'im that both would have to swear and be patur, but I wonder how they become patur with an oath.

GEMARA

- A Braisa says, **R' Meir** says, if a person is moving a barrel from one place to another for another person and broke it accidentally, whether he is a shomer chinam or a shomer sachar, he must swear that he was not negligent and is then patur from paying. **R' Yehuda** says, a shomer chinam swears and is patur, but a shomer sachar would have to pay. **R' Elazar** says, I also heard from my rabbe'im that both would have to swear and be patur, but I wonder how they become patur with an oath.
 - **Q:** Do you mean to say that **R' Meir** holds that one who trips is not called negligent? A Braisa says that **R' Meir** holds, if a person trips and breaks a keili and then someone damages himself on that keili, the person is chayuv. This shows that he holds that tripping is considered to be negligence!? **A:** **R' Elazar** said, we must say that the one who taught the first Braisa is not the same Tanna as the one who taught the second Braisa.
 - **R' Yehuda** comes along in the Braisa to teach that a shomer chinam is treated according to his laws and a shomer sachar according to his laws. **R' Elazar** then comes to teach that it is true that we have a tradition that teaches like **R' Meir**, but it seems not to make sense! A shomer chinam can swear that he was not negligent and be patur, but a shomer sachar is chayuv even if he was not negligent!? Moreover, even a shomer chinam can be considered not negligent only if he tripped on an incline. However, if he tripped on even ground, he should be considered to have been negligent!? Moreover, even if there was an incline, he would only swear if there were no witnesses. However, if people saw it happen, he would not have to swear, as **Issi ben Yehuda** says in a Braisa!?