



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

### Bava Metzia Daf Tzaddik Daled

#### MISHNA

- A shomer chinam can stipulate that if he makes a claim (e.g. that the item was lost or stolen), he will be believed without having to swear. A sho'el can stipulate that he be patur from having to pay (for what he would normally be chayuv to pay for). A shomer sachar and a socher can stipulate to be believed without swearing (on something that they would have to swear to be patur) and to not have to pay (for something that they would normally be chayuv to pay).
- Anyone who makes a stipulation conflicting with what it says in the Torah, the stipulation is batel. Any condition where the result is stated before the condition is stated, is batel. Any condition which is possible to fulfill at some point, and the condition was stated before the result, the condition takes effect.

#### GEMARA

- **Q:** Why can a shomer stipulate to be patur? It is making a stipulation that conflicts what is written in the Torah and should therefore be batel!? **A:** The Mishna follows **R' Yehuda**, who holds that such a stipulation takes effect when it is regarding a monetary matter, as we find in a Braisa regarding kiddushin.
  - **Q:** The Mishna can't be said to be following **R' Yehuda**, because the end of the Mishna says that anyone who makes a stipulation conflicting with what it says in the Torah, the stipulation is batel. This follows **R' Meir**!? **A:** The Mishna can be following **R' Yehuda**, and the end of the Mishna is discussing something other than monetary matters.
  - **Q:** The Mishna says, any condition where the result is stated before the condition is stated, is batel. This logic follows **R' Meir**, as stated by **Abba Chalafta of Kfar Chananya in the name of R' Meir**!? **A:** We must say that the entire Mishna follows **R' Meir**, and the reason it works when the shomer makes this stipulation is because he is stipulating that he is actually not a shomer as described by the Torah. This is different than a case of kiddushin, because a person can't stipulate to be married in a way other than expressed by the Torah.
- A Braisa says, a shomer sachar may stipulate to be chayuv like a sho'el.
  - **Q:** One cannot obligate himself with simple words!? **A:** **Shmuel** said, it was done with a kinyan. **R' Yochanan** said it can even be done without a kinyan. With the hana'ah he gets that people will consider him to be very trustworthy, he can obligate himself to a higher level of obligation.

#### V'CHOL SHE'EFSHAR LO L'KAYMO B'SOFO...

- **R' Tavla in the name of Rav** said, this is the view of **R' Yehuda ben Teima**. However, the **Chachomim** say that even if it is impossible to fulfill the condition, it can take effect. This is seen in a Braisa. The Braisa says, if a man says "here is your get on condition that you go up to the sky" or "that you go down to the depths" or do some other physically impossible feat, since the condition cannot be fulfilled, it is not a valid get. **R' Yehuda ben Teima** says a get "like this" is a get. **R' Yehuda ben Teima** said a general rule, whenever a condition is made that is impossible to satisfy, he is simply trying to torment her, and the get is valid.
  - **R' Nachman in the name of Rav** paskens like **R' Yehuda ben Teima**. **R' Nachman bar Yitzchak** says our Mishna suggests this as well.

**HADRAN ALACH PEREK HASOCHER ES HAPO'ALIM!!!**

MISHNA

- If a person borrows a cow and borrows its owner along with it (to do work), or hired its owner along with it, or if he borrowed the owner or hired him and then borrowed the cow, and the cow then died, the borrower is patur, based on the pasuk of “ihm ba'alav imo lo yishalem”. However, if he borrowed the cow and *then* borrowed the owner or hired him, and the cow died, he would be chayuv, based on the pasuk of “ba'alav ein imo shalem yishalem”.

GEMARA

- **Q:** From the fact that the end of the Mishna says that the halacha differs if the owner was hired *after* the borrowing, it must mean that when the beginning of the Mishna says he was hired “along with it”, it must mean at exactly the same time. How is that possible? He is koneh the cow with meshicha, whereas the owner is hired by verbal agreement before that!? **A:** We can answer that the case is that the cow is in the chatzer of the borrower, so once an agreement is made he is koneh it without meshicha. We can also answer that he told the owner, you are not considered to be hired (or borrowed) until meshicha is done on the cow.
- **Q:** The Mishna in the last perek listed the 4 types of shomrim and their respective halachos. Where do we learn these halachos from? **A:** A Braisa says, the first parsha (group of pesukim) is written regarding a shomer chinam, the second parsha is regarding a shomer sachar, and the third parsha is regarding a sho'el.
  - **Q:** It is obvious that the third parsha speaks regarding a sho'el, because the pasuk says so explicitly. How do we know that the first parsha was said in regard to a shomer chinam and the second in regard to a shomer sachar? Maybe it is the reverse? **A:** The second parsha says there is responsibility for loss or theft, so it is logical to say that it was said regarding a shomer sachar.
    - **Q:** Maybe it makes more sense to say that the first parsha was said regarding a shomer sachar, because it says that he must pay keifel if he claimed it was stolen and had in fact stole the item himself!? **A:** The second parsha is considered to be more stringent, because responsibility for loss and theft without the ability to swear is more stringent than having to pay keifel after having sworn falsely. This can be proven from the fact that a sho'el, who only benefits from the transaction, still does not pay keifel.
    - **Q:** How can it be said that a sho'el only benefits? He has to pay to feed the animal!? **A:** In a case where the animal stands in a swamp, it feeds off the wild, and need not be provided with food.
      - **Q:** He must still guard the animal!? **A:** In a case where there is a city watchman, he need not guard the animal. **A2:** We can also say that a sho'el doesn't have *only* benefit, but has *mostly* benefit, and therefore is treated most stringently. **A3:** We can also answer that we are talking about borrowed keilim, which don't need to be fed, and can be guarded in his home at no cost.
  - **Q:** The Mishna said that a shomer sachar and socher swear regarding an animal that broke a limb, that was captured, or that died, but must pay for loss or theft. We know they pay for theft, because the pasuk explicitly says so. How do we know that they pay for loss as well? **A:** A Braisa says, the pasuk could have said “v'ihm ganov”, but instead says “v'ihm ganov yiganeiv”, which teaches to include the case of loss.
    - **Q:** That makes sense according to the view that the Torah does not speak like people do, and therefore a double verbiage is meant for a drasha. However, according to the view that a double verbiage is not to be darshened, how do we know that they must pay for loss as well? **A:** In EY they said a kal v'chomer – if they must pay for theft, which is closer to being an oneis, then they must surely pay for loss, which is closer to being negligence.
      - The view that learns this from the drasha agrees that a kal v'chomer could be made, but says that at times the Torah more explicitly writes something that could have been learned from a kal v'chomer.

- **Q:** The Mishna said that a sho'el must pay for everything. We know that he must pay if the item breaks or dies, because that is explicitly written in the pasuk. How do we know that he must pay if the animal is captured? It can't be learned from the case of breaking or dying, because those are anticipated types of onsim, whereas capture is not!? **A:** We learn from shomer sachar. By shomer sachar it says broken or death and captured is then included along with them, so by sho'el when it says broken or death it means to include captured as well.
  - **Q:** We can ask that these were written regarding a shomer sachar to make him patur, so maybe we can't learn from there to a sho'el, where we are making him chayuv!? **A:** We learn it from **R' Nossan**, who says in a Braisa that the word "oy" written in the pasuk of sho'el comes to include the case of capture.
    - **Q:** This word "oy" is needed to separate between broken and death, to teach that either of them makes him chayuv, and not only if both happen!? Now, according to **R' Yonason**, the word "oy" is not needed to separate, because he holds that without specifically connecting two words, we know they are considered separate, so it is available for the drasha of **R' Nossan**. However, according to **R' Yoshiya**, the word "oy" is needed to separate the two, and is therefore not available for another drasha!? **A:** In this case even **R' Yoshiya** would agree that we don't need the "oy" to separate them. Breaking of the animal is considered to be a partial death. Therefore, we would know that there is an obligation for it alone. There would be no reason to say that he is only chayuv for a full death, but not for a partial death. Therefore, the word "oy" is extra and available for a drasha.