



# Daf In Review – Weekly Chazarah

## Maseches Bava Metzia, Daf כ – Daf ט

Daf In Review is being sent I'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen, A"H vI'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

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### MESECHTA BABA METZIA

#### PEREK SHNAYIM OCHZIN -- PEREK RISHON

#### MISHNA

- Two people who come to Beis Din holding a talis: one says I found it first and the other says I found it first, one says it is all mine and the other says it is all mine, the halacha is that this one swears that he does not own less than half of it and the other one swears that he does not own less than half of it, and they then divide the talis.
  - If one said it is all mine and the other says half of it is mine, the halacha is that the first one swears that he does not own less than  $\frac{3}{4}$  of the talis and the second person swears that he does not own less than  $\frac{1}{4}$  of the talis, and the first person then takes  $\frac{3}{4}$  and the second person takes  $\frac{1}{4}$ .
  - Two people who come to Beis Din riding an animal, or one of them was riding it and the other one was leading it: one says it is all mine and the other says it is all mine, the halacha is that this one swears that he does not own less than half of it and the other one swears that he does not own less than half of it, and they then divide the animal.
  - If the 2 people agree that they were koneh the item at the same time, or if there are witnesses who say so, they divide the item without swearing.

#### GEMARA

- **Q:** Why does the Mishna have to give 2 cases: one where each says “I found it” and one where each says “it is all mine”? **A:** Why couldn't it just give one case? **A:** It is actually one case. The case is that one said I found it and it is therefore entirely mine, and the other says I found it and it is therefore entirely mine.
  - **Q:** Why not just say that they each said “I found it” and we would know that the claim includes “and it is all mine”? **A:** If the Mishna would only say “I found it”, we would think that meant that the person claimed he saw it, even though he never actually touched it, which would teach that simply seeing it can make a person be koneh. The Mishna therefore says “it is all mine” to teach that seeing alone is not a kinyan.
    - **Q:** We have learned that **Rabbenai** said, the pasuk of “umitzasa” (and you find it) means it reached the finder's hands. We see that “finding” is not to be understood as simply seeing! **A:** When a pasuk says “finding” it surely means it reached his hand. However, the use of the word by the Tanna may be understood as referring to “seeing”. The Mishna therefore says “it is all mine” to teach that it must reach his hand.
    - **Q:** Why not just use the phrase “it is all mine” and not bother with the unclear phrase of “I found it”? **A:** If we would have done so, we would think that elsewhere, where the Tanna uses the phrase “I found it” it means that seeing alone can be koneh. The Tanna here therefore says both phrases to teach that “I found it” is only koneh if it reaches his hand.
  - **Q:** How can we say that the Mishna is talking about one case? The Mishna says “*this one* says I found it and *this one* says I found it” and then says “*this one* says it is all mine and *this one* says it is all mine”. The multiple uses of “this one” suggests that we are talking about different cases! **A:** **R' Pappa or R' Simi bar Ashi** said, it is two cases. The first case refers to people arguing over a found item, and the second case deals with people arguing over a purchased item. Both these cases are necessary. If we would only give the case of the found item we would say, that only in that case the **Rabanan** required them to swear, because in that case we need to be concerned that the person rationalizes saying it is his even if

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it is not, because he doesn't feel that he is taking anything away from the other person. However, in a case of a purchase, since this rationalization cannot be made, maybe the **Rabanan** didn't institute that an oath must be taken. If we would only have the case of the purchase, we would say that only in that case the **Rabanan** required that he swear, because he rationalizes and says that they both gave money, so he will take the item and the other person will get back his money and go buy a different item. That is why an oath is required. However, in the case of a found item, since this rationalization cannot be made (he can't assume the person will find another item), the **Rabanan** did not require that he swear.

- **Q:** If the case is discussing a purchase, why don't we simply see who gave money to the seller?  
**A:** The case is that they both gave money. The seller says he accepted from one willingly and the other forced the money upon him, and he doesn't remember which one was taken willingly and which one was forced.
- **Q:** Maybe we must say that our Mishna does not follow **Ben Nanas**, who says in a different case that we can't make two people swear when one of them is definitely going to be a false oath? **A:** The Mishna may even follow **Ben Nanas**. Our case is different, because it may be that they both picked it up at the same time, in which case they are each *koneh* half and there is no false oath at all.
- **Q:** Maybe we must say that our Mishna does not follow **Sumchos**, who says when there is a *safek* regarding money (regarding the case where an ox gored a cow and we find a dead fetus from the cow at its side, and we don't know whether this miscarriage happened before the goring or as a result of the goring) we simply divide the money without anyone swearing?
  - **Q:** In that case (of the ox and the cow) the **Rabanan** say "hamotzi meichaveiro alav haraya". Does that mean that our Mishna does not follow the **Rabanan** either? **A:** What we mean is, that it makes sense for our Mishna to follow the **Rabanan**, because they say "hamotzi meichaveiro..." in that case, where no one is holding onto the item in question. However, in our Mishna, where both parties are holding onto the item, they would say that it should be divided with an oath. Now, according to **Sumchos**, who says in a case where no one is holding onto the item, that we divide it without an oath, then certainly in the case of the Mishna, where they are both holding onto it, they should divide it without an oath!?
  - **A:** We can even say that our Mishna follows **Sumchos**. **Sumchos** only says that they divide without swearing in a case where neither party can say for sure what happened. However, in the case of the Mishna, where each party claims to know for sure what happened, he would say that they divide with an oath.
    - **Q: Rabbah bar R' Huna** said that **Sumchos** says they divide with no oath even where both parties claim to know exactly what happened. According to him, how would we explain our Mishna according to **Sumchos**? **A: Sumchos** says that an oath is not required only where there is a true loss of money ("drara") involved (someone will suffer the loss of the fetus). In our Mishna there is no true loss (they are fighting over a found item, which is a windfall to one, not a loss to the other), and therefore they must swear.
      - **Q:** We should say a *kal v'chomer* – if an oath is not needed where someone stands to lose money, and where the money involved clearly belongs to only one of the parties, then surely one should not be needed where no one stands to lose money, and it is possible that it actually does belong to both of them!? **A:** We can say the Mishna even follows **Sumchos**. The reason for the oath in our Mishna is as explained by **R' Yochanan**, that the **Rabanan** enacted the parties to swear to prevent people from grabbing an item of someone else and claiming ownership. Even **Sumchos** would agree to this reason and this enactment.

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- **Q:** Maybe we must say that our Mishna does not follow **R' Yose** (a Mishna says that if one person deposited 100 and another deposited 200 with the same person, and they then each claim that they were the one who deposited the 200, the **Rabanan** said that they each get back 100 and the remaining disputed 100 should remain until Elyahu comes. **R' Yose** said, doing so would not hurt the one who is lying, because he has gotten his full

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money out. Rather, all 300 must be left until Eliyahu comes). According to **R' Yose**, in our Mishna we should say that the entire talis must be put away until Eliyahu comes, and yet our Mishna says that it is divided with an oath!?

- **Q:** Is it better to say that the Mishna follows the **Rabanan**? According to them, since the entire talis in the Mishna is the “disputed amount”, the entire talis should be put away until Eliyahu comes as well!?  
**A:** In the case of the deposits, since the last 100 only belongs to one of the people, and not both, we must put it away until Eliyahu comes. In our Mishna, where it is possible that the talis belongs to both of them, even the **Rabanan** would agree that the talis should be divided with an oath. However, according to **R' Yose**, if in the case of the deposits, where of the 300 there is certainly 100 that belongs to one person and 100 that belongs to the other person, and still **R' Yose** says it must be put away for Eliyahu, then in the case of our Mishna, where it is possible that the talis belongs to only one of them, certainly we should say that the entire thing should be put away for Eliyahu!?
- **A:** Our Mishna can follow **R' Yose**. The difference between the cases is that in the case of the deposits there is certainly someone who is lying. In our Mishna there is not necessarily someone who is lying. **A2:** In the case of the deposits **R' Yose** feels we must penalize the liar to try and make him admit his guilt (and we do so by holding his money hostage as well). In the case of the Mishna, even if one of them is lying he doesn't lose anything by having the talis put away (it is not his and he has no money that is being held hostage).
  - **Q:** This second answer explains the case of our Mishna regarding the found item. However, it does not explain the case of the Mishna where the item was purchased (in that case, if the item and the purchase money of both parties is put away, it would incentivize the liar to admit to his guilt)? **A:** We must say that the first answer is the better answer.
- **Q:** The case of **Ben Nanas** (referred to earlier) discusses where a person asked a storekeeper to lay out money for him to pay his workers, and the storekeeper then claims that he gave the workers money as instructed and the workers claim that they never got paid. The **Rabanan** there said that the storekeeper and the workers each swear to their claim and each then gets paid by the person. Now, according to **R' Yose and the Rabanan** regarding the deposit, since there is definitely a liar here they should require the person to take the money owed and put it away for Eliyahu!?  
**A:** That case is different, because the storekeeper can tell the person, “I have done your shlichus as you asked, and I have no relationship with your workers to now have to live by and accept their oath. You should have told me to only give them the money in front of witnesses.” That is why he cannot be made to wait for his money. Similarly, the workers can tell the person “I have done work for you. I have no relationship with this storekeeper, and therefore cannot be asked to accept his oath.” Therefore, they cannot be made to wait for their money, and he must pay them as well.
- **R' Chiya** taught, if a person claims that another owes his 100 and the person denies the entire claim, and witnesses then testify that he owes 50, he would have to pay the 50 and then swear regarding the rest, so that a person's own partial admission (which causes him to swear) not be stronger than the testimony of witnesses, based on a kal v'chomer. We can see this from our Mishna as well. In the case of our Mishna, whatever each person physically has in his hand is considered as if there are witnesses testifying to ownership of that piece. Yet, we see that each must still swear.
  - **Q:** Why does **R' Chiya** say that a kal v'chomer is needed? **A:** If not for the kal v'chomer we would say that the reason for the swearing on an admission is based on the logic of **Rabbah**, who says one who partially denies a claim must swear, because he really wants to deny the entire claim, but doesn't have the chutzpah to do so (since the lender did him a favor by lending him money), and he does not admit the entire claim, because he is looking for more time to get the money to pay. Therefore, the Torah makes him swear, so that he should admit to the entire claim. Now, this logic does not apply to where the partial liability comes about through the testimony of witnesses, and we would therefore say that no swearing is necessary when witnesses testify. That is why we need the kal v'chomer to teach that an oath is necessary in that case as well.

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- **Q:** What is the kal v'chomer? **A:** It is that if one's admission, which cannot make him liable to pay money, can make him liable to swear, then testimony of witnesses, which can make him liable to pay money, can certainly make him liable to swear!
  - **Q:** An admission can most certainly obligate one to pay money!? **A:** "Money" refers to a penalty, and an admission makes one patur from paying a penalty.
  - **Q:** Maybe an admission is stronger, as we see that when a person admits to having done something that would make him chayuv to bring a chatas, and witnesses testify that he did not do what he says he did, we follow him and he brings a chatas. If the situation were reversed, we would follow him and he would *not* bring a chatas. Maybe this is also why only an admission makes one chayuv to swear? **A:** **R' Chiya** holds like **R' Meir**, who says that witnesses would obligate a person to bring a chatas in this case based on a kal v'chomer (if witnesses can put someone to death, they can certainly obligate someone to bring a chatas).
  - **Q:** Maybe an admission is stronger, as we see that when a person admits to having sworn falsely regarding a monetary claim he obligates himself to bring an asham, whereas if witnesses testify that he swore falsely he would not be obligated to bring an asham? **A:** **R' Meir** would use the same kal v'chomer as he did for a korbon chatas, and apply it to allow witnesses to obligate a person in an asham as well.
  - **Q:** Maybe an admission is stronger, as we see that when a person admits to having sworn falsely regarding a monetary claim he obligates himself to pay an additional fifth, whereas if witnesses testify that he swore falsely he would not be obligated to pay this additional fifth!? **A:** **R' Chiya** would again hold like **R' Meir**, who would use the same kal v'chomer to say that just as witnesses can obligate the person to bring a korbon, they can also obligate him to pay the additional fifth.
  - **Q:** Maybe an admission is stronger in that it cannot be contradicted and is not subject to hazamah, whereas testimony of witnesses is subject to contradiction and hazamah? **A:** Rather, **R' Chiya** learns that partial liability based on witnesses obligates him to swear based on a kal v'chomer from a single witness. If a single witness, who cannot obligate one to pay money, can obligate him to swear, then 2 witnesses, who can obligate one to pay money, can surely obligate him to swear as well.
    - **Q:** The swearing obligation created by each is very different!? The single witness obligates the person to swear to contradict what he testified about, whereas **R' Chiya** is saying that the 2 witnesses require him to swear about what is being denied!? **A:** Rather, **R' Pappa** said, he learns it from "gilgul shevuah" of a single witness (once a single witness creates an obligation to swear, the defendant can also be made to swear on other claims as well). If a single witness can do that, then surely 2 witnesses can create an obligation to swear on the denied claim.
    - **Q:** Maybe gilgul shevuah is different, because it is one oath that brings about the obligation of another oath. But, with 2 witnesses, where it is a monetary obligation, maybe it can't bring about an obligation to swear!? **A:** Really he learns it from a single witness, who can obligate a person to swear. Although we said that a single witness creates an obligation to swear on what was testified, and **R' Chiya** is trying to learn to obligate him to swear on what was denied, we can say that a self-admission swears on what was denied, and we can learn from there. Although we can ask that an admission is not subject to contradiction, we can say that a single witness is subject to contradiction and yet he creates an obligation to swear. Based on all this we can learn a "tzad hashavah", that these cases are cases of a claim, a denial, and a resulting oath. Based on these characteristics I can add the case of when witnesses support the claim and there is a denial, that he must swear there as well.
      - **Q:** Maybe the tzad hashavah between the others is that the person is not established as lying, whereas when 2 witnesses say he lied he is established as a

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liar? **A:** We find that **R' Idi bar Avin in the name of R' Chisda** says, that one who denied a loan and was proven false by witnesses may still be a valid witness. We therefore see that he is not established as a liar.

- **Q:** Maybe the tzad hashavah between the others is that they are not subject to hazamah, whereas witnesses are? **A:** **R' Chiya** does not consider this difference a basis as to why the others can obligate an oath. Therefore, this can't be used to refute how he learns witnesses from a single witness and from an admission.

### -----Daf 7---4-----

- **R' Chiya** had said that if a person denies a claim and witnesses then obligate him to part of the claim, he would have to swear regarding the rest of the claim. He said we can see this from our Mishna, where whatever each person physically has in his hand is considered as if there are witnesses testifying to ownership of that piece. Yet, we see that each must still swear.
  - **Q:** The cases are not the same!?! In **R' Chiya's** case the lender has witnesses to part of the claim, but the borrower has no witnesses to support his denial, and if he did have such witnesses **R' Chiya** would not require him to swear. In the case of the Mishna each side has "witnesses" to his claim, and yet they still have to swear!?! **A:** Rather, when **R' Chiya** said that we "can learn this from our Mishna", he was referring to a different ruling that he made. **R' Chiya** said, if a plaintiff says he is owed 100 and the defendant responds "I only owe you 50, and here, it is yours", he would have to swear, because even saying "here it is yours" is considered to be a partial admission. This can be learned from our Mishna. In the Mishna, whatever each person physically has in his hand is considered as if there are witnesses testifying to ownership of that piece and as if the defendant said "here, it is yours", and still he must swear.
    - **R' Sheishes** argues on this halacha of **R' Chiya**, and holds that when one admits to part of a claim and says "here, it is yours", he is patur from having to swear. The reason is, that when he says "here, it is yours", it is as if it is in the hands of the plaintiff and is therefore not even part of the claim. Therefore, when he denies the rest of the claim it is as if he is denying an entire claim, and therefore does not have to swear.
      - **Q:** According to **R' Sheishes**, how will he explain our Mishna, which seems to say like **R' Chiya**? **A:** He says the swearing in our Mishna is a special D'Rabanan enactment, and has nothing to do with the D'Oraisa oath on a partial admission.
        - **R' Chiya** agrees that our Mishna is a D'Rabanan enactment, but he says that a D'Rabanan is only enacted if there is a similar halacha D'Oraisa. Therefore, if we say that when the defendant says "here, it is yours" he is chayuv to swear, it makes sense that the **Rabanan** would enact an obligation to swear in the similar case of our Mishna. If, in the case of "here, it is yours" he would be patur, they would not have made the enactment.
- **Q:** A Braisa says, **R' Shimon ben Elazar** says, if a promissory note says that the debtor owed "dinars" (plural), and the lender says he lent 5, and the debtor admits to owing 3 dinars, he must swear regarding the other two, because he has made a partial admission. **R' Akiva** says he is patur from having to swear, because he is like one who is returning a lost item (since the document as written cannot require him to pay for more than two (the smallest plural). Now, having a loan written in a document is the equivalent of saying "here, it is yours", and we see that **R' Shimon ben Elazar** requires him to swear only because he admitted to 3, but had he only admitted to 2, it seems he would not be required to swear!?! **A:** It may be that even if he admitted to 2 he would be required to swear. The reason the Braisa gave the case of where he admitted to 3 was to contrast with **R' Akiva**, who in that case would say he is returning a lost item and does not have to swear.
  - **Q:** If **R' Shimon ben Elazar** would make him swear even when he admitted to only 2, why does he say that when he admits to 3 he must swear "because he has made a

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partial admission”? He should say that when he admits to 3 he must “swear in that case as well”!? **A:** Rather, we must say that if he only admitted to 2 he would be patur. Still, we can say that a case of “heilech” (“here, it is yours”) is chayuv. The reason why in this case he would be patur is because the document itself lends him credibility (since it reads as him only owing 2). **A2:** We can also say that although heilech has to swear, in this case, since there is a loan document, which creates a lien on land, he will not swear, because we do not swear on a denial or admission of a lien on land.

- **Q:** Others ask from the end of the Braisa. From **R’ Akiva** it seems that he is only patur because he admitted to 3, but had he admitted to 2 he would be chayuv. This shows that heilech is chayuv to swear, and refutes **R’ Sheishes**!? **A:** It may be that **R’ Akiva** would hold he is patur even if he only admitted to 2. The reason the Braisa discusses a case of where he admits to 3 is to exclude the view of **R’ Shimon ben Elazar**, who says he would be chayuv when he admits to 3. It even makes sense to say that **R’ Akiva** must hold that an admission of 2 would be patur as well. If an admission of 2 would be chayuv but an admission of 3 would be patur, people who want to admit to 2 would simply admit to 3 so as to circumvent the swearing obligation. It must be that he is patur when he admits to 2 as well.
  - **Q:** Based on this, the Braisa is problematic according to **R’ Chiya**!? **A:** We can say that if he only admitted to 2 he would be patur. Still, we can say that a case of “heilech” (“here, it is yours”) is chayuv. The reason why in this case he would be patur is because the document itself lends him credibility (since it reads as him only owing 2). **A2:** We can also say that although heilech has to swear, in this case, since there is a loan document, which creates a lien on land, he will not swear, because we do not swear on a denial or admission of a lien on land.
- **Q: Mar Zutra the son of R’ Nachman** asked, a Mishna says, if a plaintiff made a claim for keilim and land, and the defendant denied one and admitted to the other, he would be patur (because either the admission or the denial was on land). However, if he admitted to only part of the keilim, he would be chayuv to swear. Now, the Mishna seems to suggest that if land was not involved he would have to swear, even in similar circumstances. The similar circumstances would be a case of heilech, and we see that in a case of heilech there is an obligation to swear!? **A:** It may be that heilech would be chayuv to swear, and the reason the Mishna uses the example of land is to teach that if he admits to part of the keilim he can be made to swear even on the land as well, through “gilgul shevuah”.
  - **Q:** A Mishna already clearly teaches the halacha that one can be made to swear on land if he must swear on other moveable property!? The first Mishna is the main place for stating this halacha. The Mishna referred to here, taught this halacha in a more incidental way, without it being the main teaching of the Mishna.
- **Q:** According to **R’ Sheishes**, why does a pasuk need to teach that we don’t swear on land? Every case of land is a case of heilech, which **R’ Sheishes** says is patur from having to swear!? **A:** There is a case of land that is not a case of heilech – where one damaged the land he admits to owing. Since it is damaged, he cannot say “here, it is yours”. The pasuk is needed to teach that if he partially admitted to such land, he would not have to swear. Another case would be where the claim was for keilim and land, and he admitted to the keilim, but denied the land. This is not a case of heilech, because he is not admitting to any land. However, since the denial is on land, the pasuk teaches that he would not swear.

### -----Daf 17---5-----

- **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

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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.

ZEH YISHAVA SHE'EIN LO BAH PACHOS MICHETZYA...

- **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

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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 over 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.



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- **Q: R' Zeira** asked, if one of the parties grabbed the talis away from the other party in front of Beis Din (after they had come in both holding it together), what is the halacha?
  - **Q:** What is the case? If he remained quiet, it shows that he admits that it is not his. If he started yelling, what else should he have done? **A:** The case is that at first he was quiet and then began yelling. Do we say that since he was first quiet it shows that he admits that it is not his, or do we say that since he then started yelling, it shows that when he was at first quiet, it was because he figured that Beis Din saw what happened so there was no reason to protest.
  - **A: R' Nachman** said, a Braisa on our Mishna says, the Mishna's halacha only applies when they are both holding the talis. However, if only one is holding the talis, we would say "hamotzi meichaveiro alav haraya". Now, this can't be talking about where one person walked into Beis Din holding the talis by himself, because that would be obvious. Rather, the case must be where they were both holding it when they came into Beis Din, and then one grabbed it from the other in front of Beis Din, and was at first quiet and then protested, and we see that Beis Din does not take it away from him.
    - The Gemara says, this is no proof. The Braisa can be talking about where they came to Beis Din both grabbing the talis. Beis Din then told them to go and divide it. They then came back to Beis Din with only one of them holding the talis. The one holding it says the other person admitted to him that it was his talis. The one not holding it says he rented it to the other person, but did not give it to him! Beis Din allows the person holding it to keep it, because they tell the other person, until now you claimed the other person was a gazlan and you now went and rented it to him without witnesses!? We can also say that the Braisa is talking about where they came to Beis Din with one person holding most of the talis and the second person clinging onto it as well. The Braisa is teaching that clinging onto it is not called holding it, and therefore the other person gets to keep the talis.
  - **Q:** If we say that when one person grabs it from the other in Beis Din we take it away from him, then even if he were to make it hekdesch, it wouldn't become hekdesch. However, if we say that if he grabbed it in front of Beis Din we would not take it away from him, what would happen if he verbally made it hekdesch? Do we say that since orally giving something to hekdesch is considered like physically giving something to a regular person, this oral giving to hekdesch is as if he grabbed the entire talis, or do we say that he has not physically grabbed it, and therefore does not have it in his possession and can't make it hekdesch? **A:** There was once a bathhouse that was the subject of a fight. One of the parties went and gave the bathhouse to hekdesch. The **Rabanan** stayed away from that bathhouse. **R' Oshaya** told **Rabbah** to ask **R' Chisda** what the halacha is with this bathhouse. **Rabbah** met **R' Hamnuna** and asked him. He said, a Mishna says regarding a safek bechor, that hamotzi meichaveiro alav haraya, which presumably means that if the Kohen got this safek bechor we could not take it away from him. A Braisa on this Mishna says that the safek bechor is assur to shear and to work with. Now, if the Kohen grabbed it we would not take it away from him, and yet if he doesn't grab it, it remains assur for shearing and working. This would teach that if by grabbing it, it wouldn't be taken away from him, then even without grabbing it, hekdesch would take effect, and therefore, back to the case of the bathhouse, it would be assur as hekdesch. **Rabbah** said, this is not a valid proof. The kedusha of a bechor is different. It may be that if the Kohen grabbed it we *would* take it away from him. Still, it remains assur to shear and to work, because it is a kedusha that comes automatically, and therefore cannot be compared to the bathhouse which was made hekdesch by a person.
    - **R' Chananya** said to **Rabbah**, a Mishna is a proof to you. The Mishna says that sheep used to redeem safek donkey bechors must be included in the animal maaser process. Now, if you say that if the Kohen would grab it he would keep it, it turns out that the owner is giving maaser with an animal of the Kohen!? It must be that the Kohen would not be allowed to keep it.
      - **Abaye** said, this is no proof. It may be that the Kohen would be allowed to keep it. The case in the Mishna is that the owner has only 9 other animals. Therefore, he can join this sheep with the others. If it truly is his, he must give maaser. If it is not his, he only has 9 and does not have to give maaser. So, in either case he has done nothing wrong.

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**Abaye** then said, what I said is incorrect. We see in a Mishna that an animal that is a safek whether it is subject to maaser is not subject to maaser at all. Therefore, when the Mishna said that it is subject to maaser along with his other animals, it must be teaching that if the Kohen were to grab it, he would not be allowed to keep it.

- **R' Acha MiDifti** said, the Mishna quoted by **R' Chananya** must be referring to sheep redeemed for a safek donkey bechor, but not an actual safek bechor (the words of the Mishna are inconclusive), because a bechor cannot be counted as maaser, based on a pasuk. Therefore, it must be the sheep that was used to redeem a safek donkey bechor.

### -----Daf 7-----

- 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 reshus. 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 reshus, 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

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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

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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.

### -----Daf 7--8-----

- **Rami bar Chama** said, we can learn from our Mishna that if a person picks up a found item with the intent that another person should be koneh it, the other person is koneh it. This must be, because if not, then in the Mishna since neither of them lifted the entire item it should be considered as if the side they did not lift is considered to be still lying on the floor and neither of them should be koneh. Rather, we can see from here that when one lifts a found item so that another person should be koneh, the other person is koneh. **Rava** said this is no proof. It may be that one cannot be koneh a found item for another person. The reason it works in the Mishna is because since ("miguy") the person is koneh for himself, he is also koneh for the other person. This can be proven from the following. If a person tells a shaliach to steal for him, the sender will be patur. If partners decide to steal together and one of them physically does the act of stealing, both are chayuv. Presumably the reason for this is that since he is koneh for himself, he can also be koneh for his partner.
  - **Rava** said, based on this miguy, if a deaf-mute (cheireish) and a healthy person pick up a found item together, since the cheireish is koneh the healthy person is koneh as well.
    - **Q:** It makes sense that the cheireish is koneh, because a competent person is picking it up on his behalf. However, why is the competent person koneh? **A:** We must say that he meant to say that the cheireish is koneh, but the competent person is not koneh.
      - **Q:** If only the cheireish is koneh, what is the miguy that **Rava** referred to? **A:** Miguy that if two deaf-mutes would lift an item together they would be koneh, therefore if the deaf-mute and a competent person lift it together he will also be koneh.
      - **Q:** We can only say that a person can be koneh for someone else when he intends to do so. In this case, since the competent person is not being koneh for himself, he surely does not intend to be koneh for the cheireish!? **A:** We must say that **Rava** meant, since the competent person is not koneh, the cheireish is also not koneh.
      - **Q:** Why is it that the **Rabanan** enacted that when 2 deaf-mutes lift an item they are koneh, but when a cheireish and a competent person lift it they are not koneh? **A:** When two deaf-mutes lift it, if we would tell them they are not koneh they would argue for being treated differently than competent people. When it is a cheireish and a competent person, the cheireish will not argue, because the competent person is not being koneh so it makes sense that he should not be koneh either.
  - **Q: R' Acha the son of R' Adda** asked **R' Ashi**, from what part of the Mishna does **Rami bar Chama** mean to bring a proof? It can't be from the first case, because in that case they each claim to have lifted the entire talis for themselves, and not for the other!? **A:** It must be from the extra case in the Mishna where each of them said, "it is all mine".

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- **Q:** We have explained that this extra case is discussing a case of a purchase!? **A:** Rather, it is from the case of where one said it is all mine and the other said half of it is mine. This case seems to be extra, and is given to teach that if one lifts a found item for someone else, the other person is koneh.
  - **Q:** Maybe this case is referring to a purchase, and not to a found item!? **A:** Rather it must be from the case of the two people who come to Beis Din riding on the animal, each claiming that it is his. This case seems to be extra, and is given to teach that if one lifts a found item for someone else, the other person is koneh.
    - **Q:** Maybe it is coming to teach that riding an animal is a form of kinyan? **A:** It must be from the last case of the Mishna, which says that if they both admit, or there are witnesses, that they picked it up together, they divide it without swearing. Now, if this is discussing a purchase, this result would be obvious. Rather, it must be referring to a case of a found item, and teaches that if one lifts a found item for someone else, the other person is koneh.
    - **Rava** would say this is no proof, because the reason it works in the Mishna is only because miguy he is koneh for himself, he can also be koneh for another person.

### HAYU SHNAYIM ROCHVIN

- **R' Yosef** said that **R' Yehuda** told him, I have heard two things from **Shmuel**, one regarding a rider on an animal, and one regarding one leading an animal. Regarding one he said he was koneh and regarding the other he said he was not, but I do not remember which one is koneh and which one is not.
  - **Q:** What was the case of **Shmuel**? If he spoke about a case of one riding an animal and a separate case of one leading an animal, then surely the one leading the animal would be koneh, because all would agree to that. If he said one is not koneh, we would have to say that someone riding an animal (e.g. a found animal) is not koneh, and **R' Yehuda** should have realized this simple difference!? **A:** **R' Yehuda** was unsure in the case where one person rode the animal and another lead the animal. On the one hand the rider is stronger, because he is physically grabbing the animal, or maybe the one leading the animal is stronger, because he is the one that makes the animal move (which makes the kinyan).
  - **R' Yosef** said, **R' Yehuda** tried to answer from a Mishna. A Mishna says, if one leads animals that are kilayim, he gets malkus. Also, if one sits in a wagon attached to animals that are kilayim, he gets malkus, but **R' Meir** says he is patur. Now, from the fact that **Shmuel** reverses the shitos and says it is the **Rabanan** who say the person is patur, it must be that he holds that a rider is not koneh, and certainly a rider who rides while another person leads would not be koneh.
    - **Abaye** asked **R' Yosef**, you have told us this proof without mentioning that it was said by **R' Yehuda**!? **R' Yosef** said, I now remember that he told it to me. In fact, I remember asking him, how do you compare a case of one sitting in a wagon to one sitting on the actual animal? The one sitting on the animal is holding onto the bridle, and maybe that is why he would be koneh? **R' Yehuda** said, **Rav** and **Shmuel** both say that holding the bridle does not create a kinyan.
      - **Others** say that **Abaye** asked the question of how the cases can be compared, and **R' Yosef** answered that **Idi** said holding a bridle does not create a kinyan.
      - We have also learned that **R' Chelbo in the name of R' Huna** said, taking hold of the bridle acts as a kinyan when being koneh from another person, but not when being koneh a found item or from hefker (like the possessions of a ger who died without heirs).
      - The word for bridle is “moseirah”. **Rava** said, **Idi** explained this comes from the word “giving over” (“moser”), as one gives something over to another. This is why it only creates a kinyan when being koneh from someone else (there is someone to “give it over”), but not when being koneh from hefker.
  - **Q:** The Mishna said that when two people are riding an animal they divide it. We see that riders are koneh the animal!? The Mishna can't be **R' Meir**, because he says even sitting in a wagon will be koneh,

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so riding it would be obvious!?! Rather, it must be the **Rabanan**, and we see that they hold that riding a found animal is koneh it!?! **A:** The case is that they kicked the animal and caused it to move, at which time they are koneh it with meshicha.

- **Q:** That is simply the case of leading an animal!?! **A:** The Mishna is teaching regarding two types of leading an animal. We would think that riding is a better kinyan, because he is leading the animal and grabbing onto it. The Mishna therefore teaches that they are equally as effective.

### -----Daf 9-----

- **Q: R' Yehuda** had said that riding an animal does not make a kinyan. Maybe we can bring a proof from a Braisa. The Braisa says, if 2 people were pulling a camel, or leading a donkey, or one was pulling and one was leading, in this way they are koneh. **R' Yehuda** says a kinyan on a camel can only be made with pulling and on a donkey with leading. Now, the Braisa seems to clearly say that only leading and pulling can make a kinyan, but riding would not be able to make a kinyan. This is a proof to **R' Yehuda!** **A:** It may be that riding can also create a kinyan. The reason the Braisa specifies pulling and leading is to exclude the view of **R' Yehuda**, who says that pulling only works for a camel and leading for a donkey.
  - **Q:** If so, why didn't the Braisa list them both in one case – if 2 people were leading or pulling a camel or a donkey they are koneh it? **A:** There is one circumstance in which the person would not be koneh. Some say it is pulling a donkey, and some say it is leading a camel.
  - **Others** say the proof was meant to be from the end of the Braisa where it says “in this way they are koneh”, which seems to exclude one who rides an animal from being koneh. The Gemara says this is no proof, because it could mean to exclude the reverse (where one pulls the donkey or leads the camel).
    - **Q:** If that is true, the **T”K** would be saying the same thing as **R' Yehuda!**? **A:** The difference between them would be in one set of circumstances. Some say it is pulling a donkey, and some say it is leading a camel.
- **Q:** A Braisa says, if two people come to Beis Din, one riding a donkey and the other holding the bridle, this one is koneh the animal and the other is koneh the bridle. We see that riding an animal is a kinyan!?! **A:** The Braisa is referring to where he kicks the animal with his feet to make it move.
  - **Q:** If so, the rider should be koneh a share of the bridle as well? **A:** The Braisa should be understood as saying that the rider is koneh the animal and half the bridle and the other person is koneh half the bridle.
  - **Q:** The rider is koneh the bridle because a competent person is lifting the other side of it. However, how is the other person koneh? No one lifted the bridle on the other end!?! **A:** We must understand the Braisa as saying, the rider is koneh the animal and all of the bridle, and the other person is only koneh what is grabbed in his hand.
  - **Q:** The other person does not intend to be koneh for the rider, since he himself is not koneh, so how is the rider koneh the bridle? **A: R' Ashi** said, the rider is koneh the animal and the part of the bridle that goes around the head. The other person is koneh what is grabbed in his hand. Neither of them are koneh the remaining parts.
  - **R' Avahu** said, the other person could be koneh the entire bridle even though it was not lifted for him, since he is able to pull the bridle and bring it to him.
    - The Gemara says this is a mistake. If we say like **R' Avahu**, it would result that if a talis is lying partially on the ground and partially on a platform, and a person lifted the part from the ground and someone else came and lifted the other part off the platform, only the person who lifted the part from the ground would be koneh, and we know that is not the case. Rather, we must say that **R' Avahu's** ruling is incorrect.
- **Q:** A Braisa says, **R' Eliezer** says, if a person rides a found animal in the fields or leads it in the city, he is koneh. We see that riding is koneh!?! **A:** The Braisa is referring to where he kicks the animal with his feet to make it move.
  - **Q:** If so, that is just another case of leading!?! **A:** The Braisa discusses two types of leading.

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- **Q:** If so, why is he not koneh when he rides in the city? **A: R' Kahana** said, because people do not usually ride in the city.
  - **Q: R' Ashi** asked, if someone picks up a wallet on Shabbos, do we say that since it is not usual to do so he is not koneh? Of course not. We say that he is still koneh. The same should be here!? **A:** When the Braisa says he is not koneh by riding in the city, it is referring to a case of a purchase, where the seller told the buyer “be koneh in the way that people are normally koneh the animal”.
    - The Gemara says, if it was done in a reshus harabim he is koneh by riding. Also, if the buyer is a distinguished person, he would be koneh. Also, if the buyer is a woman, she would be koneh (in all these cases it is normal to ride even in the city). Finally, if the buyer is a person with little tznius, who doesn't care what people think and therefore rides in the city, he would also be koneh.
- **Q: R' Elazar** asked, if a person tells someone to do a meshicha on an animal in order to be koneh the keilim that are on the animal, is he koneh the keilim? Does the meshicha for an animal work to act as the meshicha for keilim?
  - **Q: Rava** asked, **R' Elazar** seems to be sure that if he was selling the animal along with the keilim the meshicha done on the animal would be sufficient. However, that would seem not to be correct. The animal is a “moving chatzer”, and as such cannot act as a chatzer to be koneh the keilim!? This would be true even if it happens to be standing still, since it has the ability to move!? **A:** The case would be where the animal was tied up, and therefore unable to move.
    - **Q: R' Pappa and R' Huna the son of R' Yehoshua** asked **Rava**, based on what you are saying, if a boat is at sea and a fish jumps onto it the owner should not be koneh the fish, because the boat is a moving chatzer!? **A: Rava** said, the boat doesn't move, it is the water that makes it move, and that is why it can act as a chatzer.
    - **Q: Ravina** asked **R' Ashi**, based on this halacha, if a woman is walking in the reshus harabim and her husband threw a get to her, which landed in her lap or in her basket, she should not be divorced, because she is a moving chatzer!? **A: R' Ashi** said, her basket doesn't move, it is her that moves the basket, and that is why it can act as her chatzer.

### MISHNA

- If a person was riding on an animal and saw a lost item, and asked someone to hand it to him, and this second person picked it up and said “I am being koneh it for myself”, he is koneh it. However, if he gave it to the first person and then said “I was koneh it for myself”, he has said nothing (we don't listen to his claim and the first person may keep it).

### GEMARA

- A Mishna says, if someone takes peyah from a field on behalf of a certain poor man, **R' Eliezer** says that poor man is koneh, and the **Chachomim** say the one who took the peyah must give the peyah to the first poor man that he sees.
  - **Ulla in the name of R' Yehoshua ben Levi** explained that the machlokes is where a wealthy person is the one who took the peyah. **R' Eliezer** says, miguy that he can be mafkir all his possessions and then be allowed to take peyah for himself, and miguy that he can take for himself he can also take for someone else. The **Rabanan** say, we can only say one miguy, not two. However, **Ulla** says, if one poor person took to be koneh for another poor person, all would agree that the second poor person would be koneh, because since he can take for himself he can also take for someone else.
  - **Q: R' Nachman** asked **Ulla**, why don't you say that the machlokes is even when a poor person picked it up for another poor person (and the machlokes would be whether we even say one miguy – that since he can take for himself he can also take for somebody else)? For, with regard to a found item all have equal rights to it (whether wealthy or poor), and yet our Mishna says that when the second person said he wants to be koneh it for himself (presumably after having already picked it up for the person riding

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on the animal), he is koneh it for himself, and we see that his lifting it was not koneh it for the first person. Now, if we say that the machlokes is whether we would say one miguy, we can say that our Mishna follows the **Rabanan**. However, if we say that even the **Rabanan** agree that we do say one miguy, our Mishna would seem not to follow anybody!? **A: Ulla** said, the Mishna is discussing where the person picking up the item said “I was koneh it for myself first” (i.e. he says he never intended to pick it up for the person on the animal), and that is why he is koneh it for himself.