



Daf In Review – Weekly Chazarah

Maseches Bava Metzia, Daf לז – Daf לז Daf In

Review is being sent l'zecher nishmas R' Avrohom Abba ben R' Dov HaKohen, A"H

vl'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

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MATZA CHAMOR UPARAH...

- **Q:** On the one hand the Mishna says that if a cow or donkey is seen grazing by the road it is assumed not to be lost, which would suggest that if it was seen running by the road or grazing in the vineyard it would be assumed as lost. However, the Mishna then says that if a donkey was seen with its keilim overturned or a cow was seen running through the vineyard it is presumed to be lost. This suggests that if it was seen running along the road or grazing in the vineyard it would not be assumed to be lost!? **A: Abaye** said, we can learn one case from the other. The Mishna teaches that grazing at the road is not assumed as lost, and the same would be true for grazing in the vineyard. The Mishna teaches that running in the vineyard is assumed to be lost, and the same would be true for running along the road.
 - **Q: Rava** asked, if this is the way to understand the cases, why didn't the Mishna teach the less extreme cases? The Mishna should have taught that running by the road is assumed lost, and we would know that running in the vineyard is surely assumed lost!? The Mishna should have taught that grazing in the vineyard is not assumed lost, and we would know that grazing along the road is surely not assumed lost!? **A: Rava** therefore said, the cases of inference regarding running are not contradictory, because it depends in which direction the animal is running – if it is running toward the wilderness it is considered lost and if it is running toward the city it is not. The cases of grazing are also not contradictory. When the Mishna says that grazing in the vineyard is not assumed to be lost, that is referring to the cow itself, and when it says "it is lost" it is referring to the land that is being eaten.
 - **Q:** If the animal is grazing in the vineyard, although it may not be lost, it should have to be removed to save the field from damage!? **A:** The case is where a goy owns the field, and a person need not prevent damage to the field of a goy.

HECHZIRA UVARCHA HECHZIRA UVARCHA...

- One of the **Rabanan** asked **Rava**, maybe we should say that "hasheiv" teaches that an item must be returned once, "teshiveim" teaches that it must be returned a second time, but that would be the limit of the obligation? **Rava** said, "hasheiv" teaches that it must be returned even 100 times. "Teshiveim" teaches that it need not be returned to his house, rather it may even be returned to his protected field or ruin. The reason is, that return of a lost item does not need the knowledge of the owner, as **R' Elazar** says.
 - Regarding the mitzvah of shiluach hakan we are taught that the mother must be sent away, even many times. One of the **Rabanan** asked **Rava**, maybe "shalayach" teaches it must be done once, and "tishalach" teaches that it must be done a second time, but that is the limit of the obligation? **Rava** said, "shalayach" teaches that it must even be done 100 times. "Tishalach" teaches that it must be sent away even if it is needed for a mitzvah (e.g. the mother can be brought as a korban).
 - Regarding the mitzvah of giving mussar we are taught that it must be done even multiple times. One of the **Rabanan** asked **Rava**, maybe "hochayach" teaches it must be done once, and "tochiyach" teaches that it must be done a second time, but that is the limit of the obligation? **Rava** said, "hochayach" teaches that it must even be done 100 times. "Tochiyach" teaches that even a talmid must give mussar to his rebbi, if the rebbi is acting improperly.
 - Regarding the mitzvah to help unload packages from an animal that collapsed under the weight, the pasuk says "azov taazov imo". The word "imo" suggests that this must only be done if the owner is there as well. How do we know that it must be done if he is not there as well? The words "azov taazov" teach that it must be done in all instances.

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- Regarding the mitzvah to help load packages onto an animal, the pasuk says “hakeim takim imo”. The word “imo” suggests that this must only be done if the owner is there as well. How do we know that it must be done if he is not there as well? The words “hakeim takim” teach that it must be done in all instances.
 - **Q:** Why did the Torah have to separately teach the mitzvah of unloading and the mitzvah of loading? **A:** Both are needed. If we would only have the mitzvah of unloading an animal, we would say the obligation exists there because there is pain to the animal and there is a potential loss to the owner. If we would only have the mitzvah of loading, we would say that the obligation exists because (as some say) the person gets paid for his help, but unloading, which must be done for free, does not create an obligation.
 - **Q:** According to **R’ Shimon**, who says that loading must also be done for free, why did both have to be written? **A:** According to **R’ Shimon** it is not clear which pasuk refers to loading and which refers to unloading. Therefore we need both to know that both are included.
 - **Q:** Why was it necessary for the Torah to write these 2 mitzvos and then to also write the mitzvah of returning a lost item? Why couldn’t they be learned from it, or it from them? **A:** If we would only have those two, we would say in those cases there is an obligation to help, because there is anguish of the owner and pain of the animal, but when a lost item is found there is only anguish of the owner. If we would only have the mitzvah of returning a lost item, we would say in that case there is an obligation, because the owner is not with the item and has no way of getting it. However, with regard to loading and unloading, the owner is there and can hire workers to help him. Therefore we would think that there is no obligation.
- The pasuk regarding a murderer says “mos yumas hamakeh”. We would think that he may only be put to death with the method that is supposed to be used for him – death by sword. How do we know that if he can’t be put to death in that way, we may put him to death by any other means? The double verbiage of “mos yumas” teaches that it may be done in any way.
- The pasuk regarding an “ihr hanidachas” says “hakei sakeh”. We would think that the people of the city may only be put to death with the method that is supposed to be used for them – death by sword. How do we know that if they can’t be put to death in that way, we may put them to death by any other means? The double verbiage of “hakei sakeh” teaches that it may be done in any way.
- The pasuk regarding returning collateral to a borrower says “hasheiv tashiv”. We would think that it needs to be returned when the borrower needs it, only when the collateral was taken with the permission of Beis Din. How do we know that it must be returned even if it was taken without the permission of Beis Din? The double verbiage teaches that it must be done in either case.
- The pasuk regarding returning collateral to a borrower says “chavol tachbol”. We would think that it needs to be returned when the borrower needs it, only when the collateral was taken with the permission of Beis Din. How do we know that it must be returned even if it was taken without the permission of Beis Din? The double verbiage teaches that it must be done in either case.
 - **Q:** Why are both these pesukim regarding collateral needed? **A:** One is to address a garment worn during the day and one is to address a garment worn at night.
- The pasuk regarding tzedaka says “paso’ach tiftach”. We would think that one must only give tzedakah to poor people of his own city. The double verbiage teaches that one must give to the poor of other cities as well.
- The pasuk regarding tzedaka says “nason titein”. We would think that one must give a large amount if he is able, but there is no obligation to give a small amount. The double verbiage teaches that even a small amount is an obligation as well.
- The pasuk regarding giving gifts to a Jewish slave upon his emancipation says “haaneik taanik”. We would think this obligation only applies if the house was blessed on account of the slave. The double verbiage teaches that the obligation exists even if the house wasn’t blessed on his account.

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- According to **R' Elazar**, who says the obligation only exists if the house was blessed on his behalf, the double verbiage was written because that is how people speak, not for any drasha.
- The pasuk regarding the obligation to lend money says “haaveit taavitenu”. We would think this only applies for a person who doesn't have money and doesn't want to accept charity. The double verbiage teaches that even if someone has money and doesn't want to spend his own money, we are obligated to lend him money to live as well.
 - According to **R' Shimon**, who says the obligation doesn't exist if the person has money of his own and just doesn't want to spend his own money, the double verbiage was written because that is how people speak, not for any drasha.

HAYA BATEIL MIN HASELAH LO YOMAR...

- It was taught that the owner pays him the rate of an idle worker.
 - **Q:** He is actually doing something to return the item, so why is he only paid like an idle worker? **A:** **Abaye** said, this means that he is paid the amount that someone who was making his wages would take to stop working that harder job, and instead work an easier job.

IHM YEISH SHAM BEIS DIN MASNEH BIFNEYHEM

- **Issur and R' Safra** were in a partnership. When it ended, **R' Safra** went in front of two people and divided the partnership assets (without **Issur** there). When **Issur** complained about the division, **Rabbah bar R' Huna** told **R' Safra**, you must bring the 3 people that you divided the assets in front of, or 2 of the 3, or at least 2 witnesses who saw you do this in front of 3 people. **R' Safra** asked, how do you know this must be done in front of 3? **Rabbah bar R' Huna** answered, we see this from our Mishna, which says that the finder's stipulation must be made in front of 3 people. **R' Safra** said, that case is very different. In that case one person is looking to extract money from another. In the case at hand, I am only looking to take what is already mine, and as such only two people should be needed. In fact, we find that a widow may sell property of her husband's estate not in the presence of Beis Din! **Abaye** said, we have learned that **R' Yosef bar Menyumei in the name of R' Nachman** said, she doesn't need a Beis Din of experts, but she would need a Beis Din of ordinary people.

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MISHNA

- If someone found an animal in a barn, he is not chayuv to take it and return it (it is not assumed to be lost). If the animal was found on public property, he would be chayuv to take it and return it.
- If the finder was a Kohen and the lost item was in a cemetery, he may not become tamei so that he can retrieve the item. If his father told him to become tamei and get the item, or if a father tells his son not to return a lost item, the son should not listen to his father.
- If a person helped to unload an animal that had collapsed, and he then reloaded it, and it then collapsed again so he helped to unload it and reload it again, even 4 or 5 times, he is still chayuv to do so again, based on the pasuk of “azov taazov”.
 - If the owner of the animal sat down and told the person “you have the mitzvah to unload this animal, so do so, but I will not help”, the person is patur from unloading the animal, based on the pasuk that says “imo”. However, if the owner was elderly or sick and therefore cannot help to unload the animal, the person would be chayuv to unload the animal.
- It is a mitzvah in the Torah to unload an animal, but there is no mitzvah to load an animal. **R' Shimon** says there is even a mitzvah to load the animal. **R' Yose Haglili** says, if the animal was loaded with a load that was too heavy for it, the person does not need to help unload the animal, based on the pasuk “tachas masa'o”, which teaches that it must be a load that the animal should be able to carry.

GEMARA

- **Rava** said, the barn that is referenced in the Mishna is one that would not cause the animal to run away, but is also not guarded (to prevent the animal from leaving). It must be that it would not cause the animal to run away, because the Mishna says the person would not be chayuv to take the animal and return it. It must be that

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it is not guarded, since the Mishna found it necessary to say that he is not chayuv to do so. If it was guarded, he surely would not have to take it and return it!

MATZA B'REFES EINO CHAYUV

- **R' Yitzchak** said, this is only if the barn is within the techum (however, if it was outside the techum, he would have to assume it was lost). This would suggest that if the animal was found on public property, even within the techum, he would be chayuv to return it.
 - **Others** learn that the statement was made on the end of the Mishna. When the Mishna says that if it is found on public property he is chayuv to return it, **R' Yitzchak** said this is only when the animal was found outside the techum. This would suggest that if it was found in a barn he would not be chayuv to return it even if it was outside the techum.

B'BEIS HAKVAROS LO YITAMEI LAH

- A Braisa says, how do we know that if one's father tells him to become tamei (if he is a Kohen) or if he tells him not to return a lost item that he should not listen to his father? The pasuk says "ish imo v'aviv tira'u v'es Shabsosai tishmoru Ani Hashem". This teaches that Hashem is saying "you are all chayuv in My Honor", and therefore the father should not be listened to when he says to do something improper.
 - **Q:** If not for the Braisa we would say that we should listen to him? Listening to a father is an assei, and returning a lost object is an assei and a lo saasei, and surely an assei does not override an assei and a lo saasei!? **A:** We would think that since the honoring of one's parents is compared to the honoring of Hashem, he should listen to his father. The pasuk therefore teaches that he should not.

MITZVAH MIN HATORAH LIFROK AVAL LO LIT'ON

- **Q:** What is meant that there is no mitzvah to load an animal? It can't mean there is no mitzvah at all, because the pasuk says "hakeim takim imo"! **A:** Rather the Mishna means that there is no mitzvah to load the animal for free. **R' Shimon** argues and says, that just as one must unload an animal for free, he must also load an animal for free.
 - This explanation of the Mishna is a proof to a Braisa that clearly says that one need not load an animal for free, but must unload an animal for free. **R' Shimon** says both must be done for free.
 - The **Rabanan** hold that loading must be different than unloading, because if not, there would be no need to write both of these halachos – unloading could be learned from loading, because unloading involves pain for the animal and a loss for the owner, whereas loading has neither of these aspects. **R' Shimon** says both needed to be written, because if only one was written, we would not know if it was referring to loading or unloading.
 - **Rava** said, from both shitos we can see that the issuer of "tzaar baalei chayim" is D'Oraisa, because **R' Shimon** says we couldn't learn a kal v'chomer, because we wouldn't know what the one pasuk was referring to. However, if we would know, there would be a kal v'chomer, presumably based on the fact that unloading is more stringent because it involves tzaar baalei chayim.
 - **Q:** It may be that the kal v'chomer is based on the fact that unloading also involves a loss to the owner, whereas loading does not. Therefore, there is no proof from the proposed kal v'chomer! **A:** Loading also involves loss to the owner, because he cannot take his items to market and is exposed to thieves. Therefore, this could not be the basis of a kal v'chomer.
 - **Q:** Maybe we can prove that tzaar baalei chayim is D'Oraisa according to the **Rabanan** and **R' Shimon**, based on the end of the Mishna. The Mishna said that **R' Yose Haglili** says, if the animal was loaded with a load that was too heavy for it, the person does not need to help unload the animal, based on the pasuk "tachas masa'o", which teaches that it must be a load that the animal should be able to carry. This suggests that the **Rabanan** and **R' Shimon** (who argue on **R' Yose Haglili**) hold that a person would have to unload even in this situation, and the reason for that would presumably be based on tzaar baalei chayim! **A:** It may be that they all agree that tzaar baalei chayim is only D'Rabanan, and the machlokes here is whether we darshen "tachas masa'o" or not.
 - **Q:** We can prove that tzaar baalei chayim is not D'Oraisa from the Mishna, where it says that if the owner of the animal sat down and told the person "you have the mitzvah to unload this

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animal, so do so, but I will not help”, the person is patur from unloading the animal, based on the pasuk that says “imo”. Now, if tzaar baalei chayim is D’Oraisa, why would he be patur if the owner is not helping him out!? **A:** It may be that tzaar baalei chayim is D’Oraisa, and when the Mishna says he would be patur in this case, it means he would be patur from unloading the animal for free, and could instead charge for his unloading of the animal.

- **Q:** Maybe we can prove that tzaar baalei chayim is D’Oraisa from a Braisa. The Braisa says, one must unload the animal of a goy just like he must do for the animal of a Yid. It must be that he must do so for a goy, because tzaar baalei chayim is D’Oraisa!? **A:** It may be that the reason he must do so is to prevent hatred from the goyim. In fact, this must be the case, because the Braisa then says that he would not have to unload a goy’s animal that was carrying wine (which is assur for a Yid, and which the **Rabanan** therefore presumably made assur for a Yid to touch as well).
 - The end of the Braisa is no proof, because it may be saying that a Yid is assur to *load* the animal of a goy with the goy’s wine.
- **Q:** Maybe we can prove that tzaar baalei chayim is not D’Oraisa from a Braisa. The Braisa says that if a goy’s animal is loaded with a Yid’s packages, one need not help the goy unload the animal. Now, if tzaar baalei chayim is D’Oraisa, why shouldn’t he have to help!? **A:** It may be that tzaar baalei chayim is D’Oraisa, and the Braisa is referring to loading the animal, not unloading it.
 - **Q:** The end of the Braisa says, if the animal is owned by a Yid and the packages belong to a goy, one must help unload the animal. Now, if the Braisa is referring to loading the animal, why must one help the goy load the animal!? **A:** The reason he must help is because the Jewish owner is in tzaar, waiting for help to load his animal.
 - **Q:** If so, the same should be true in the first case of the Braisa!? **A:** The beginning of the Braisa is referring to a donkey driver who was a goy, and the Jewish owner of the packages was not there. The later part of the Braisa is discussing where the donkey driver was a Yid.
 - **Q:** The pasuk quoted by the Braisa was the pasuk of *unloading* the animal, not loading it!? **A:** This Braisa follows **R’ Yose Haglili**, who clearly holds that tzaar baalei chayim is not D’Oraisa.
- **Q:** Maybe we can prove that tzaar baalei chayim is not D’Oraisa from a Braisa. The Braisa says, if a person’s friend’s animal needs to be unloaded, and his enemy’s animal needs to be loaded, he should first help his enemy, so as to win over his yetzer harah. Now, if tzaar baalei chayim is D’Oraisa, it should be more important to unload the animal first!? **A:** Even if it is D’Oraisa, the Braisa holds that it is more important to win over the yetzer harah and help his enemy first.
- **Q:** Maybe we can prove that tzaar baalei chayim is not D’Oraisa from a Braisa. The Braisa says, the “enemy” that is discussed in the pasuk (that requires you to help him unload his animal) is a Jewish enemy, not a non-Jewish enemy. Now, if tzaar baalei chayim is D’Oraisa, he should have to help a non-Jewish enemy as well!? **A:** The Braisa is not referring to the “enemy” mentioned in the pasuk that discusses unloading, it is referring to the “enemy” in the previous Braisa, which discusses loading.
- **Q:** Maybe we can prove that tzaar baalei chayim is not D’Oraisa from a Braisa. The Braisa says, the word “roveitz” in the pasuk teaches that one need not unload an animal that often lies down under its packages, and that one need not help unload an animal that is still standing, although struggling, under its packages. The words “tachas masa’o” teach that one need not help to load an animal, and that he need not help unload a package that was too big for the animal to carry in the first place. Now, if tzaar baalei chayim is D’Oraisa, even if it often lies down, and even if it is standing and struggling, one should have to help unload it!? **A:** This Braisa follows **R’ Yose Haglili**, who holds that tzaar baalei chayim is D’Rabanan. In fact, this must be so,

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because the Braisa says that one need not help if the package was too heavy to begin with. This was the statement made by **R' Yose Haglili** in the Mishna.

- **Q:** The Braisa said that one need not help to load an animal. Now, this must mean that he need not do so for free, but rather may get paid for doing so. This can't be following **R' Yose Haglili**, because he was not the one to say that in the Mishna!? **A:** It may be that regarding getting paid for loading an animal, **R' Yose Haglili** holds like the **Rabanan**.
- A Braisa says, the pasuk regarding unloading says "ki sir'eh". One might think this means even if he sees the animal from far he must go there and help out. The pasuk therefore says "ki sifgah", that the obligation is only when you are close by to the animal. If it only said "ki sifgah" one would think that the obligation is only when he actually meets up with the animal. The pasuk therefore says "ki sir'eh", that from a small distance he would have to come and help. The **Rabanan** said that if he is the distance of a "ris" (which is 1/7.5 of a mil) he would be chayuv to go and help.
- A Braisa says, after helping an animal, the person must walk along with the animal for a parsah, to make sure that it is okay.
 - **Rabbah bar bar Chana** said, he may take payment for walking along with the animal.

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MISHNA

- If one saw his own lost item and the lost item of his father, getting his own lost item takes precedence over that of his father. If one saw his own lost item and the lost item of his rebbi, getting his own lost item takes precedence over that of his rebbi. If one saw the lost item of his father and the lost item of his rebbi, the lost item of his rebbi takes precedence, because his father brought him into this world, but his rebbi taught him wisdom and brings him into the World to Come. However, if his father is also a chochom, then getting his father's item takes precedence.
- If one's father and rebbi are carrying loads and need help putting it down, he should first help his rebbi and then his father.
- If one's father and rebbi were imprisoned, he should first redeem his rebbi and then redeem his father. However, if his father is a chochom, he should first redeem his father and then his rebbi.

GEMARA

- **Q:** How do we know that his own lost item takes precedence over that of his father? **A: R' Yehuda in the name of Rav** said, the pasuk says "efes ki lo yihyeh bicha evyon", which teaches that one may worry about his own finances before the finances of others. However, **R' Yehuda in the name of Rav** said, if someone acts in this way, he will end up becoming a poor person.

HAYA AVIV V'RABO NOS'IN MASOY...

- A Braisa says, when we mention a rebbi in these terms, **R' Meir** says it refers to his rebbi that taught him Gemara, not the rebbi who taught him Tanach or Mishna. **R' Yehuda** says it refers to the rebbi who taught him most of his wisdom. **R' Yose** says, even a person who explained one Mishna for a person is called his rebbi for these purposes.
 - The Gemara shows that **Rava and Shmuel** both held like **R' Yose**.
 - **Ulla** said, the talmidei chachomim in Bavel stand up for each other and tear clothing upon the passing of one of them. However, with regard to giving a rebbi precedence over a father, they only did so for a "rebbei muvhak" (a primary rebbi).
 - **R' Chisda** asked **R' Huna**, what if the rebbi needs a certain talmid (to help clarify certain matters)? Would this rebbi take precedence over the talmid's father? **R' Huna** thought that **R' Chisda** was referring to himself (as the talmid) with respect to **R' Huna** (as the rebbi). **R' Huna** got upset and responded sharply. They each became upset and did not go visit each other. Ultimately, **R' Chisda** fasted 40 fasts, because he felt that he hurt **R' Huna's** feelings, and **R' Huna** fasted 40 fasts for having suspected **R' Chisda**.

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- We learned, **R' Yitzchak bar Yosef in the name of R' Yochanan** paskened like **R' Yehuda**, and **R' Acha bar R' Huna in the name of R' Sheishes** paskened like **R' Yose**.
 - **Q:** We have learned that **R' Yochanan** always follows an anonymous Mishna, and an anonymous Mishna says the rebbi referred to is the one who teaches his wisdom (which is what **R' Meir** said in the Braisa)!? **A:** When the Mishna says “wisdom” it means most of his wisdom.
- A Braisa says, one who is immersed in the learning of Tanach has accomplished some, but not a lot. One who is immersed in Mishna has accomplished a lot and gets rewarded for doing so. One who learns Gemara, there is no greater accomplishment. Yet, one should always run to learn Mishna more than Gemara.
 - **Q:** The Braisa seems self-contradictory!? **A:** **R' Yochanan** said, the part of the Braisa that says that Gemara is most important, was taught in the days of **Rebbi**. Eventually, people stopped learning Mishnayos and only learned Gemara. When he saw this, **Rebbi** then darshened that one should always run to learn Mishna.
 - The Gemara brings the drasha of **R' Yehuda the son of R' Illai**, which teaches the importance of learning Gemara.
 - **R' Yehuda the son of R' Illai** also darshened a pasuk which shows that learning of Gemara is of the highest level of learning. Still, the pasuk teaches that even those who don't learn Gemara will join in the happiness of Moshiach, and will not suffer any embarrassment.

HADRAN ALACH PEREK EILU METZIYOS

PEREK HAMAFKID -- PEREK SHLISHI

MISHNA

- If someone gives an animal or keilim to a shomer to watch for him and it is stolen or lost, and the shomer decided to pay the owner for the amount of the item instead of swearing, because the **Rabanan** have said that a shomer chinam may swear and not have to pay, and the ganav is then found, the ganav must pay keifel, and if the item was a sheep or ox and the ganav had sheched or sold the animal, he must pay daled v'hey. To whom does he pay the keifel or the daled v'hey? To the shomer. However, if the shomer decided to swear rather than pay, and the ganav is then found, the ganav would pay the keifel or the daled v'hey to the owner of the item.

GEMARA

- **Q:** Why did the Mishna have to specifically mention the case of an animal and the case of keilim? Why wouldn't one have been enough? **A:** If it would only mention animals, we would say in that case the owner of the animal gives over the right to collect the keifel or daled v'hey when the shomer paid instead of swearing, because the shomer expended much effort in caring for the animal, but when the deposit was keilim, where such effort is not expended, maybe the owner does not give over his right to collection of the keifel. If the Mishna would have only mentioned the case of keilim, we would think that in that case the owner gives over his right to collect the keifel, because the value of the keifel is not that significant, but when dealing with an animal, where the possibility to collect daled v'hey exists, maybe he does not give over that right. That is why both cases were necessary to be written.
- **Q:** **Rami bar Chama** asked, presumably this right to collection would have to be given to the shomer at the time that he is given the deposit to watch. Now, a person cannot be makneh something that is not yet in existence, so how can the owner give over the right to collect the keifel or daled v'hey? Even according to **R' Meir**, who says that a person may be makneh something that is not yet in the world, that is only something like selling fruit that has not yet grown from a tree, because the fruit is likely to grow. In our case, there is no likelihood that the item will later be stolen!? Even if it is stolen, who is to say that the ganav will be caught!? Even if the ganav is caught, who is to say that he will pay the keifel? Maybe he will admit to his sin and be patur from paying the penalty!? **A:** **Rava** said, it is as if at the time the animal is given to the shomer, the owner tells him, if the animal is stolen and you decide to pay me rather than swear and be patur, my animal should be koneh to you from right now.

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- **Q: R' Zeira** asked, if so, the shomer should even be koneh the shearings and offspring of the animal from that time, and yet a Braisa says that he does not get the shearings and offspring!? **A: R' Zeira** said, it is as if the owner tells the shomer, if you pay instead of swear, you should be koneh the animal from now, but not the shearings and offspring. The reason he would make this distinction is that people more easily give away profits that come from outside sources (like the keifel), but are not as quick to give away profits that come from the body of the animal.
- **Others** say, that **Rava** said, it is as if at the time the animal is given to the shomer, the owner tells him, if the animal is stolen and you decide to pay me rather than swear and be patur, my animal should be koneh to you from right before the time that it is stolen (that is why he doesn't get the shearings and offspring, because that happened prior to the moment before the theft).
 - The difference between this approach of **Rava** and the previous approach of **Rava** is that this second approach is not faced with the question of **R' Zeira**. Another difference would be where the animal was in the swamp (i.e. not in the property of the shomer) right before the theft. According to the second approach, the shomer would not be koneh the animal (it is not around for a kinyan to have been made), whereas according to the first approach he is still koneh the animal (because he was koneh it at the time he received it from the owner).

-----Daf 77-----34-----

SHILEM V'LO RATZA LISHAVA...

- **R' Chiya bar Abba in the name of R' Yochanan** said, when the Mishna said that if the shomer pays he gets the rights to collect the keifel, it does not mean that he actually paid, rather even if he said that he will pay he gets those rights.
 - **Q:** Our Mishna said “if he paid and did not want to swear”. This suggests that he had to have actually paid, and saying that he would pay is not enough!? **A:** The Mishna then says “if he swore and did not want to pay”, which suggests that if he had only wanted to pay that would have been enough. Based on these contradictory inferences, we cannot bring a proof from our Mishna.
 - There is a Braisa that supports **R' Yochanan**. The Braisa says, if one rents a cow and it is stolen, and the renter tells the owner “I will pay and will not swear”, and the ganav is then found, he pays keifel to the renter. We clearly see that a willingness to pay is enough to acquire the rights to collect the keifel.
 - **R' Pappa** said, once a shomer chinam says that he was negligent with the deposit (and he must therefore pay), he gets rights to collect the keifel, because he could have made himself patur by claiming it was stolen without negligence on his part. Once a shomer sachar says that the deposit was stolen (and he must therefore pay), he gets rights to collect the keifel, because he could have made himself patur by claiming it broke or died. However, if a borrower says that he will pay for the item he does not get the right to collect the keifel, because the only way he could make himself patur is by claiming that the item broke or died, and that is a very uncommon thing to happen.
 - **Others** say that **R' Pappa** said if a borrower says he will pay he gets the right to collect keifel, because he could have made himself patur by claiming the item broke or died.
 - **R' Zvid** said, **Abaye** said that a borrower does not get the right to collect the keifel until he *actually* pays, because a borrower gets only benefit from this “relationship” and therefore his saying so does not suffice.
 - A Braisa supports **R' Zvid**. The Braisa says, if a borrowed item was stolen, and the borrower went ahead and paid for it, and the ganav was then found, the keifel is paid to the borrower.
 - **Q:** This Braisa does not refute the first version of **R' Pappa**, because he would agree that if the borrower actually paid he would get the keifel. Shall we say that it refutes the second version of **R' Pappa**? **A: R' Pappa** would say, just as we explained the Mishna, which says he paid, to mean that he said he will pay, we will do so the same for this Braisa.

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- **Q:** The Braisa says he “went ahead and paid”, which can’t be explained to mean that he said he would pay!? **A:** It means he went ahead and *said* that he would pay.
- **Q:** The Braisa regarding the renter says “and he said he would pay” and the Braisa regarding the borrower said “he went ahead and paid”, that shows that regarding the borrower it must mean that he *actually* paid!? **A:** These Braisos weren’t taught together, and the verbiage used in one therefore can’t be used to prove something in another Braisa.
 - They asked the yeshivos of **R’ Chiya and R’ Oshaya** regarding these Braisos, and they were told that they *were* taught together. Therefore, it shows the Braisa means that the borrower *actually* paid, and refutes the second version of **R’ Pappa**.
- **Q:** It is obvious that if the shomer said he will not pay and then said that he will pay, he will get the right to collect the keifel, because he said he will pay. What is the halacha if he first said he will pay and then changed and said that he will not pay? Do we say he is retracting what he originally said, or do we say that he is just looking to stall, but still means to pay? What if he said he will pay and died before paying and he heirs then say they will not pay? Do we say they are retracting what he originally said, or do we say that they are just looking to stall, but still mean to pay? What if the children of the shomer paid? Can the owner tell them that I only gave the right of collecting keifel to your father, because he did a favor for me, or do we say that he surely gave the right to the children as well? What if the shomer paid to the children of the owner? Can they tell the shomer that their father would have given him the right to collection, because he did their father a favor, but they are not giving him that right, or do we say that he gets the right in that case as well? What if the children of the shomer pay to the children of the owner? What if the shomer agrees to pay for half of the item (does he get half the keifel)? What if he borrowed two cows and paid for one of them (at least he paid for a full item)? What if he borrowed from partners and paid back one of them (he paid one partner in full)? What if partners borrowed and one of them paid back his portion (will he get his share of the keifel payment)? What if he borrowed from a woman and paid her husband? What if a woman borrows and her husband paid for it? **A: TEIKU**.
- **R’ Huna** said, when the shomer pays for the item we make him swear that the item is not in his possession, because we are concerned that he may have wanted the item and decided to keep it.
 - **Q:** A Mishna says, if someone lent money on collateral and lost the collateral, and he told the borrower “I lent you a selah and the collateral was worth half a selah and you therefore owe me the difference”, and the borrower says the collateral was worth a full selah, the borrower is patur from having to swear, because there is not even a partial admission. If when the lender says he is still owed the difference of half a selah the borrower responded that the collateral was worth $\frac{3}{4}$ of a selah, he would be chayuv to swear that the collateral was worth that amount and would then pay the difference. If the borrower claims that the collateral was worth 2 selah and the lender says it was only worth one selah, the lender would be patur from swearing, because there is no partial admission. If the borrower says it was worth 2 selah and the lender said it was worth 1.5 selah, he would have to swear and then pay the difference. The Mishna says, who swears? It is the lender, because if the borrower were to swear, the lender may bring out the collateral, which could contradict the oath of the borrower and make him passul to swear or serve as a witness. Now, which case of the Mishna (there were 4) is this last statement going on? It can’t be going on the last case, because the reason the lender swears there is because he made a partial admission, not because we are concerned for the status of the borrower!? Rather, **Shmuel** said it is going on the second case. In that case the borrower should swear (because he made a partial admission), but we instead make the lender swear, out of concern that the lender will produce the item to contradict the borrower. Now, if **R’ Huna** is correct, we will make the lender swear that he does not have the item in his possession, so why are we concerned that he will produce the item!? **A: Rabbah (or Rava in the name of R’ Yosef)** said, the case is that he has witnesses that it was burned in a fire.
 - **Q:** If so, why are we concerned that he will produce the item!? **A: R’ Yosef** said, he has witnesses that it was stolen from him.

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- **Q:** Still, where will he get the item to be able to produce it!? **A:** He will expend energy to find the ganav and get the item back.
 - **Q:** If so, when the lender swears we should be concerned that the borrower will track down the ganav and get the item and prove the lender wrong!? **A:** The lender knows who came into his house and can therefore find the ganav. The borrower would not know who went into the lender's house, and therefore cannot track down the ganav.
- **Abaye** said, the reason we move the oath to the lender is because we are concerned that even if the lender first swears that he does not have the item, he will then look for it better and will find it.
- **R' Ashi** said, the Mishna means that in the second case they *both* swear – the lender swears that he does not have the item in his possession and the borrower swears to the value of the item. The Mishna means to say that we make the lender swear his oath first, because if we didn't do so, he may then produce the item after the borrower swears, making the borrower become passul to swear or to act as a witness.

-----Daf דל--35-----

- **Q: R' Huna** had said that before a shomer or lender is willing to pay for the deposit or collateral that he says he no longer has, he must swear that it is no longer in his possession. **R' Huna bar Tachlifa in the name of Rava** said, the 3rd case in the Mishna just quoted refutes **R' Huna**. That case of the Mishna was where a lender lost the collateral for a loan of a selah, and the borrower says the collateral was worth 2 selah and the lender says it was worth one selah. The Mishna said that the lender is patur from having to swear regarding the value of the collateral, because there was no partial admission. Now, according to **R' Huna**, since he will have to swear that he no longer has it in his possession, through the use of "gilgul shevuah" we should also make him swear as to how much the collateral was worth!? **A: R' Ashi** said that **R' Kahana** told him, the case of the Mishna is where the borrower trusts the lender when he says that he no longer has it, and that is why he is not swearing to that.
 - **Q:** If so, he should also trust him regarding the value of the collateral and the lender should not have to swear in the 4th case either!? **A:** The borrower feels that the lender is not familiar enough with the collateral to give a true estimate of value.
 - **Q:** Why doesn't the lender trust the borrower to give the value, since he is more familiar with the collateral? **A:** The case is that the lender does not trust the borrower.
 - **Q:** Why does the Mishna give a case where the borrower trusts the lender, but the lender doesn't trust the borrower? **A:** The borrower says (based on a pasuk) that since the lender is financially successful it must be that he is an honest person. The lender says (based on a pasuk) that since the borrower is not financially successful, it must be that he is not honest.
- A person once gave earrings to a shomer to watch for him. When the owner asked for them back, the shomer said "I don't remember where I put them". **R' Nachman** said, that is called negligence and the shomer must pay. The shomer refused to pay, and so **R' Nachman** took the shomer's mansion as payment. Later on the earrings were found, at a time when the earrings were greater in value than the amount that was taken in payment by **R' Nachman**. **R' Nachman** said, the mansion should be given back to the shomer and the earrings should be given back to the owner. **Rava** said, I was there when this psak was given, and we were in middle of learning Perek Hamafkid. I asked **R' Nachman**, the Mishna says that if the shomer pays instead of swearing he gets the penalty payments, which should mean that he gets all future appreciation, including the appreciation of the earrings in this case!? **R' Nachman** did not answer me, but it was for good reason that he did not answer. In our Mishna, the shomer did not require the owner to go to Beis Din to collect the money (and that is why he gives him the future appreciation). In this case he did make him go to Beis Din.
 - **Q:** Are we to say that **R' Nachman** holds that even after something was taken by Beis Din for payment, it may be taken back if another form of payment is later given? **A:** This case is different, because the taking

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was done mistakenly. It was thought that the earrings were forever gone, when in fact they were there all along.

- In **Nehardai** they said, property taken as payment must be returned if money is offered in its place within 12 months. **Ameimar** said, the property must always be returned if money is offered in its place. The Gemara paskens like **Ameimar**, based on the pasuk of “v’asisa hayashar v’hatov”.
 - Clearly, if property is taken as payment from a debtor, and the creditor then gives that property to his own creditor, we would take it back from the second creditor, because we tell him that he is not in a stronger position than the one who gave it to him. If the first creditor sold the property, gifted it, or left it as an inheritance, since these people entered the land with intent to keep it, never wanting money in its place, they would be allowed to keep the land and would not have to return it.
 - If property was taken as payment for a creditor who was a woman, or from a debtor who was a woman, and she then got married and died, the husband is considered to be a purchaser of her properties, and he therefore need not return the property (in the first case) and does not get the property returned to him (in the second case) even if he offers money for it.
 - If the debtor himself gave property as payment and then wants to give money and take back the property, **R’ Acha and Ravina** argue: one says it must be returned to him – he holds it is not considered to be a sale and the reason he gave it is because he is embarrassed to go to Beis Din, and the other says it need not be returned – he holds it is considered to be like a sale since it was given willingly.
 - **Q:** At what point may the creditor begin eating from the produce of a field that was given to him as payment in Beis Din? **A: Rabbah** said, at the time that the document of collection reaches his hand. **Abaye** said, the signature of the witnesses on the document are koneh it for him. **Rava** said, at the time that the announcements for sale of the property are over.

MISHNA

- If a person rented a cow and then lent it to someone else, and the cow then died on its own, the renter should swear to the owner that it died on its own (and he will be patur), and the borrower must pay the value of the cow to the renter. **R’ Yose** said, how can it be that someone can do business with someone else’s cow? Rather, the value of the cow must be returned to the owner.

GEMARA

- **Q: R’ Idi bar Avin** said to **Abaye**, the renter is koneh the cow with the oath that he makes. Why can’t the owner tell the renter “remove yourself and your oath and I will litigate directly with the borrower”? **A: Abaye** said, the renter is not koneh the animal with the oath. He is koneh the animal at the time that it dies. The oath is only made so that the owner can’t claim the death was due to negligence.
- **R’ Zeira** said, there are times when the owner will have to pay a number of cows to the renter. The case would be where a person rented a cow for 100 days and the owner then borrowed it from the renter for the first 90 days, and the renter then rented it again for the first 80 of those days and the owner borrowed it for the first 70 of those days, and the cow died on its own in those 70 days. For each borrowing of the cow the owner would have to pay the renter one cow.
 - **Q: R’ Acha MiDifti** said to **Ravina**, it is one cow that has gone through multiple statuses as rented and borrowed, so it can’t be that a separate cow would have to be paid for each act of borrowing!? **A: Ravina** said, still, since the cow is no longer here, there are 2 separate claims for payment of a cow, and therefore 2 separate payments must be made.
 - **Mar bar R’ Ashi** said, the owner would have to give the renter 2 cows – one as payment for the borrowed cows, and one for him to use for the remaining days of his rental period.
- **R’ Yirmiya** said, there are times when the renter and the borrower would both have to bring a chatas for swearing falsely, there are times when they would both have to bring an asham, there are times when the

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renter would bring a chatas and the borrower would bring an asham, and there are times when the renter would bring an asham and the borrower would bring a chatas.

- This is all based on the rule that a false oath taken to deny a monetary claim requires that an asham be brought, and a false oath taken for any other reason requires that a chatas be brought. Based on this:
 - If the animal died on its own and they both swear that it happened with an oneis, then the renter who would be patur with either claim brings a chatas for this false oath, and the borrower who would be chayuv for either claim also brings a chatas for this false oath.
 - If the cow was stolen and they both swore that it died while doing the work it was supposed to do, then they both swore falsely in a way to try and make themselves patur, and they therefore would both be chayuv to bring an asham.
 - If the animal died on its own and they both swore that it died while doing the work it was supposed to do, then the renter who would have been patur with either claim, must bring a chatas, and the borrower, who tried to make himself patur with this oath, must bring an asham.
 - If the animal was stolen and they both swore that it died on its own, then the renter who tried making himself patur with this oath, would be chayuv to bring an asham, and the borrower, who would be chayuv for either claim, must bring a chatas.
- The chiddush of **R' Yirmiya** in saying this is to exclude the shitah of **R' Ami**, who says that a person does not bring a chatas for a false oath when the oath was imposed on him by Beis Din.

-----Daf ל"ג-----36-----

- We have learned, if one shomer gives the deposit to a second shomer, **Rav** said the first shomer will be patur if something happens to the item while in the possession of the second shomer, and **R' Yochanan** said he would be chayuv.
 - **Abaye** said, according to **Rav**, the first shomer is patur, even if the first shomer was a paid shomer (who has higher responsibility) and the second shomer was a shomer chinam (who has less responsibility), since the second shomer is still a person with mental capacity. According to **R' Yochanan**, the first shomer is chayuv even if the second shomer had a higher level of responsibility, because the owner can tell the shomer, it is only you that I trust with an oath, and not this second person.
 - **R' Chisda** said, the view of **Rav** was inferred incorrectly from a story that took place. There were a bunch of farmers who would give their tools to a certain elderly woman to watch for them. One day they gave it to one of the farmers to watch instead. That farmer then heard a celebration going on so he took the tools and gave it to the elderly woman to watch. The tools were stolen. **Rav** said the farmer who was given the tools to watch was patur. The talmidim thought he was patur because a shomer who gives to another shomer is patur. However, in truth, the reason why he was patur was because those farmers always gave the tools to this woman and they therefore could not claim that they didn't trust her.
 - **Q: R' Ami** repeated the view of **R' Yochanan**. **R' Abba bar Mamal** asked, our Mishna says, if the renter lends out the item he is patur from paying. Now, according to **R' Yochanan** he should be chayuv, because he is a shomer who gave something to another shomer!? **A: R' Ami** said, the case of the Mishna is where the owner gave the renter permission to lend out the item.
 - **Q:** If so, why does the borrower pay the money to the renter? He should pay to the owner!? **A:** The owner told the renter "you can lend it out at your discretion". Therefore, the renter is considered to be the lender.
 - **Q: Rami bar Chama** asked, a Mishna says, if someone was given money to watch, and the shomer gave the money to his minor children and something happened to the money, he would be chayuv. This suggests that if he had given it to adults to watch he would be patur. This refutes **R' Yochanan**!? **A: Rava** said, he would be patur if he gave it to his adult children, because when someone gives something to a shomer to watch, he gives it with the understanding that it may be given to his wife or adult children to watch. However, if he gave it to anybody else, he would not be patur.

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- **Rava** said, the halacha is, that if one shomer gives the deposit to a second and something happens to the item while in the possession of the second shomer, he would be chayuv even if the second shomer had a higher level of responsibility, because the owner can tell the shomer, it is only you that I trust with an oath, and not this second person.
- We have learned, if a shomer was negligent and the animal escaped to the swamp and died on its own there, **Abaye in the name of Rabbah** said he would be chayuv, and **Rava in the name of Rabbah** said he would be patur.
 - **Abaye in the name of Rabbah** said he is chayuv even according to the view that when something begins as negligence and ends off being an oneis he is patur. In this case he would be chayuv, because we say it may have been the bad air of the swamp that killed him. **Rava in the name of Rabbah** said he is patur, even according to the view that when something begins as negligence and ends off being an oneis he is chayuv. In this case he would be patur, because we say that the Malach Hamaves would have killed him whether he was still in the barn or was in the swamp.
 - **Abaye** would agree that if the animal was returned to the owner and died there, the shomer would be patur, because since it was returned and then died, it was not the bad air of the swamp that killed it. **Rava** would agree that if a ganav stole the animal from the swamp and it died on its own in the ganav's possession, the shomer would be chayuv, because even if the animal hadn't died the shomer would be chayuv for having had the animal stolen.
 - **Q: Abaye** asked **Rava**, we learned above that **R' Ami** explained that our Mishna is discussing where the renter was given permission to lend out the animal, and that is why the renter is patur if the animal were to die by the borrower, but if he was not given permission he would be chayuv. According to you (**Rava**), the renter should be patur even if he was not given permission, because he should tell the owner – the Malach Hamaves would have killed the animal wherever it was!? **A: Rava** answered, I hold that the reason a shomer who gave the item to another shomer is chayuv is because the owner can tell the shomer it is only you that I trust with an oath, and not this second person. Based on that, since the renter will be able to swear in this case, and the owner does not have to accept anyone else oath, the renter will be patur.
 - **Q: Rami bar Chama** asked, a Mishna says, if a shepherd took an animal up a steep mountain and it fell off and died, it is not called an oneis and he would therefore be chayuv. This suggests that if it died on its own on top of the mountain, he would be patur. Now, according to **Abaye**, why would he be patur? We should say that the bad air on top of the mountain, or the exhaustion of the climb is what killed it!? **A: The case is that the shepherd took up the animal to a good place for pasture. Therefore, the shepherd is not considered to have been negligent at all.**
 - **Q: If so, even if it fell he should not be chayuv!? A: He should have held the animal tightly and he did not. That is why he is chayuv.**
 - **Q: The earlier part of the Mishna says, if the animal went up the mountain on its own and fell, it is considered to be an oneis and the shepherd is patur. There too, we should say that he should have held onto the animal tighter!? A: The case is that the animal was stronger than the shepherd, and he couldn't hold it back. That is why it is an oneis.**

AMAR R' YOSE KEITZAD HALAH OSEH SECHARO BIPARASO...

- **R' Yehuda in the name of Shmuel** paskened like **R' Yose**.
 - **Q: R' Shmuel bar Yehuda** asked **R' Yehuda**, you have told us that **R' Yose** even argues in the first Mishna (and says that even when the shomer paid for the item, the keifel goes to the owner). Do we pasken like him there as well? **A: R' Yehuda** said, he argues there as well, and we pasken like him there as well.
 - We have learned that **R' Elazar** said, **R' Yose** also argued in the first Mishna, and we pasken like **R' Yose** there as well, and **R' Yochanan** said, that **R' Yose** does not argue in the first Mishna, because the shomer already paid before the ganav was caught.
 - **Q: We have learned that R' Yochanan** said that even a statement that he will pay, without actual payment, gives the shomer the right to collect the keifel!? **A: It must be**

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that **R' Yochanan** said that **R' Yose** agrees in the first Mishna, because the shomer already said that he will pay for the item.

-----Daf י"ג---37-----

MISHNA

- If a gazlan tells 2 people, "I stole a maneh from one of you, but I don't remember from who", or if a person tells 2 people "the father of one of you gave me a maneh to watch, but I don't remember whose father it was", he should give a maneh to each of them, because he admits to the claim.
- If 2 people gave money to a shomer – one gave a maneh and the other gave 2 maneh, and they then each claim that they were the one who gave the 2 maneh, he should give one maneh to each of them, and the remaining maneh should be put away until Eliyahu comes and tells us who the true owner is. **R' Yose** said, if each person gets back a maneh, the one who is making the false claim stands to lose nothing at all!? Rather, all 3 maneh are put away until Eliyahu comes.
 - The same would be if 2 people each gave a keili to a shomer – one worth one maneh and the other worth 10 maneh, and they each claim to have given the one worth 10 maneh, the shomer should give the cheaper keili to one of them, and take a piece worth a maneh of the other keili and give it to the other one, and the remainder should be put away until Eliyahu comes. **R' Yose** said, if each person gets back a maneh, the one who is making the false claim stands to lose nothing at all!? Rather, both keilim are put away until Eliyahu comes.

GEMARA

- **Q:** The first case of the Mishna teaches that in a case of doubt we make the person pay all claims, and we don't say that he should hold onto the money until Eliyahu comes. However, in the next cases of the Mishna we are taught that he doesn't have to pay all claims when there is doubt, and instead the money is put away until Eliyahu can clarify the doubt for us!? **A:** The first case is one of stealing, and the **Rabanan** therefore penalized the thief and made him pay all claims. The later cases are cases of a deposit. In that case no issur was done, and the **Rabanan** therefore did not penalize the shomer.
 - **Q:** There seems to be a contradiction between two cases of deposit, and there seems to be a contradiction between two cases of stealing. With regard to cases of deposits, the beginning of the Mishna gives the case of someone who is unsure whose father deposited money with him, and the Mishna says that he must give money back to each of them, and yet the later part of the Mishna says that we put the money away until Eliyahu can clarify for us!? **A:** **Rava** said, the first case is discussing where only one person actually gave a deposit. Therefore, the shomer should have paid more attention to remember who it is that gave him the deposit. The later case is discussing where two people gave him deposits at the same time. He can therefore tell them, "you obviously were not particular about giving the money at the same time and creating confusion, and therefore I also did not have to be particular about who was giving what". Based on this, he is not considered to be negligent.
 - **Q:** With regard to cases of stealing, our Mishna says he must give money back to all the people that claim he stole from them. However, there is another Mishna that says that **R' Tarfon** says, if someone stole from one of five people and they all claim it was them that was stolen from, the ganav may place the money down and walk away!? A Braisa on that Mishna says that **R' Tarfon** would agree that in the case of our Mishna he would have to pay back to each person. This is contradictory!? **A:** The other Mishna is giving the halacha in the case – he must only pay back the one who was stolen from, and not everybody. Therefore, he can leave the money and walk away. Our Mishna is discussing a person who wants to fulfil even his Heavenly obligation. To do this, one must pay back each of the people, even though he truly only stole from one of them. In fact, the words of our Mishna "because he admits to the claim" suggests someone who is looking to fulfil a Heavenly obligation, not just strict halacha.
 - **Q:** In the Mishna with the one who stole from one of 5 people, and each of them sue for the money, what is the ganav's response? **A:** **R' Yehuda in the name of Rav** said, the ganav remains

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quiet, and **R' Masna in the name of Rav** said, that he tells each one that he doesn't recognize him.

- According to **R' Masna**, if he would remain quiet, that would be an admission of guilt to all of them. **R' Yehuda** would say that it would not be an admission, because he can explain and say that the reason he remained quiet was because he knows that he does owe the money to one of them.
- **Q: R' Tarfon** said in the Mishna, he places the stolen item between them and walks away. We have learned that **R' Abba bar Zavda in the name of Rav** said, if someone sees something that may or may not have been left there intentionally he should not take it, but if he did take it he should not return it to anybody. We see that one is to keep an item until he knows its rightful owner, so how could **R' Tarfon** say that he can place the money in front of all the people? **A: R' Safra** said, when the Mishna says he places the money, it means he places it in Beis Din to see if any of the people can prove that they are the rightful owner.
- **Q:** The end of that Mishna says that **R' Akiva** said that leaving the money and walking away is not the way one removes himself from the aveirah, rather he must pay back to each and every claimant. This shows that he holds that we do take money from somebody in a case of doubt. Now, there is another Mishna that says, if a house fell on a woman and her son and we don't know who died first, and the heirs of the son say the mother died first (and therefore they are entitled to the assets of the mother that were inherited by the son before his death), and the heirs of the mother say the son died first (and they are entitled to the assets of the mother), **B"R and B"H** would agree that they divide the assets. **R' Akiva** said, I would agree in this case that the money stays by the one who has it. Now, this contradicts his view in the other Mishna!? **A: Rava** answered to **Abaye**, in the case of the second Mishna everyone only claims that it is *possibly* theirs, and therefore the money stays where it is. In the case of the ganav, each claimant claims with *certainty* that the money belongs to him, and that is why he must pay back each person.
 - **Q:** Our Mishna, is where he stole from one of two people, and each claims that it was *possibly* stolen from him, and yet the Mishna says that he must pay back to each and every one of them. A Braisa on this Mishna says that **R' Tarfon** agrees that in this case he would have to pay back each person. Presumably he "agrees" to **R' Akiva**, which is who he argues with on this topic, which proves that our Mishna is the view of **R' Akiva**!? Also, the verbiage of the Mishna and a Braisa of **R' Chiya** says the Mishna is talking about where the claimants do not come with a claim of certainty. If so, why does **R' Akiva** in this case say that he must pay back each person!? **A:** We have said that the Mishna is discussing a person who is looking to fulfil his Heavenly obligation, and that is why he should pay each of the people.
 - **Q:** We said above, that **Rava** said that if two people each give a deposit to a shomer at different times, he is expected to pay attention and know what he is taking from who. **Ravina** asked **R' Ashi**, we find that **Rava** says that all would agree that if a shepherd has 2 animals from two people and he doesn't remember which belongs to which person, he puts the animals between them and walks away!? **A: R' Ashi** said, that case is where the owners put their animals into the shepherd's herd without the shepherd's knowledge. That is why he is not expected to know which belongs to who.

V'CHEIN SHNEI KEILIM ECHAD YAFEH MANEH...

- Both cases (the case of deposited money and the case of deposited keilim) are necessary. If we would have only been taught the case with the money, we would say in that case the **Rabanan** say that each person gets the amount that both are surely entitled to, because money can be divided without losing its value. However, in the case of keilim, where the more expensive keili must be broken, maybe they would agree to **R' Yose**. If we would only have the case of keilim, we would say that **R' Yose** only holds that way in that case, because breaking the keili causes a loss, but in the case of money we would say that he agrees with the **Rabanan**. That is why both cases are needed.

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- **Q: R' Yose** explained his reasoning – to assure that the liar stands to lose something as well, so we would know that he holds that way regarding money as well!? **A:** It must be that both cases were written for the view of the **Rabanan**, and the Mishna should be understood as having been written in the style of “not only this, but even that”.