



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

Shavuos Daf Mem Aleph

- **Q:** What is the difference between a D'Oraisa oath and a D'Rabanan oath? **A:** By a D'Rabanan oath, if the defendant wants he may tell the plaintiff, "Instead of me swearing and not paying, you swear and I will then pay". By a D'Oraisa oath this cannot be done.
 - **Q:** What is the difference according to **Mar bar R' Ashi**, who says this may even be done by a D'Oraisa oath? **A:** By a D'Oraisa, if the defendant doesn't swear or pay Beis Din can go into his property to collect the claim. By a D'Rabanan oath they may not do that.
 - **Q:** What is the difference according to **R' Yose**, who says that even by a D'Rabanan they may go into his property to collect? **A:** The difference would be where the defendant is one who is suspected to swear a false oath. In that case, by a D'Oraisa oath we would say that he can't swear, but rather the oath obligation is moved to the plaintiff, who must swear and can then collect the claim. By a D'Rabanan oath, since it itself is an enactment, we would not do this, because we would not make an enactment for an enactment.
 - **Q:** According to the **Rabanan** who argue on **R' Yose**, and therefore say that Beis Din will not go and collect the claim by a D'Rabanan oath, what can Beis Din do to the defendant that will force him to swear? **A:** They can put him in cheirem until he swears or pays.
 - **Q:** **Ravina** asked **R' Ashi**, that is practically collecting the claim (a person has no choice when facing cheirem, and therefore, it must be something else that is done)!? **A:** **R' Ashi** said, they put him in cheirem until it is time to give him malkus (a person who is in cheirem and doesn't go to Beis Din within 30 days to ask for a release is given malkus), they then give him malkus, and he is then left alone.
- **R' Pappa** said, if a plaintiff produces a document stating that the defendant owes him money and the defendant says it has already been paid, we tell him that he is not believed to say so against a valid document. If the defendant says that he wants the plaintiff to swear that it has not yet been paid, we tell the plaintiff to swear and then collect.
 - **Q:** **R' Acha the son of Rava** asked **R' Ashi**, a plaintiff who has a document and admits that partial has been paid must also swear. If so, how is the person in **R' Pappa's** case any better off (and he should be, because he has a much stronger claim)? **A:** **R' Ashi** said, in the case where it is partially paid, even if the defendant doesn't say anything, Beis Din tells the plaintiff that he must swear to collect. In **R' Pappa's** case Beis Din tells the defendant to pay. Only if the defendant then demands an oath, do we make the plaintiff swear.
 - If the plaintiff is a talmid chochom (a tzurba meirabanan) we do not make him swear.
 - **R' Yeimar** asked **R' Ashi**, are we to let a talmid chochom just take things from people? Rather, Beis Din would remove themselves from this case (not making him swear, but not allowing him to collect).

MANEH LI B'YADCHA...

- **R' Yehuda in the name of R' Assi** said, if one lends money in front of witnesses, the money must be repaid in front of witnesses. **R' Yehuda** said, when I repeated this to **Shmuel**, he told me that the defendant can always say "I repaid you in front of Ploni and Ploni, who have since travelled overseas", and therefore would even be believed if he said he repaid not in front of witnesses.
 - **Q:** The Mishna said, if a plaintiff claims he is owed a maneh and the defendant agrees, and the next day the plaintiff asks for the maneh and the defendant says he has already repaid it, he is patur from having to swear. Now, in this case, since the initial claim was made in front of witnesses it is as if it was lent in front of witnesses, and yet we see he is

believed to say that he paid not in front of witnesses. This refutes **R' Assi**? **A: R' Assi** would say, I only said the halacha when the money was actually lent in front of witnesses, because that is the plaintiff's way of saying that he does not believe the defendant, and therefore he must repay in front of witnesses. In the Mishna's case, since the money was lent privately, it shows that the plaintiff did trust the defendant, and therefore he need not pay in front of witnesses.

- **R' Yosef** taught the above machlokes as follows. **R' Yehuda in the name of R' Assi** said, if one lends money in front of witnesses, the borrower need not pay back in front of witnesses unless the lender said "do not repay me except in front of witnesses". **R' Yehuda** said, when I repeated this to **Shmuel**, he told me that the defendant can say "I repaid you in front of Ploni and Ploni, who have since travelled overseas", and he would be believed, but he would not be believed to say that he repaid not in front of witnesses.
 - **Q:** The Mishna said, if a plaintiff claims he is owed a maneh and the defendant agrees, and the plaintiff then said, "Do not give it back to me except in front of witnesses", and the next day the plaintiff asks for the maneh and the defendant says he has already repaid it, he is chayuv to pay because he must pay in front of witnesses. This refutes **Shmuel** (because it seems to say that he would be chayuv even if he claimed to have given it back in front of witnesses who are no longer present to testify)!? **A: Shmuel** would say that this is actually a matter of machlokes between Tanna'im. A Braisa says, if a lender says "I lent you money in front of witnesses and therefore you should only repay in front of witnesses" and the lender then claims that he was not paid, the borrower must either pay or bring proof that he paid. **R' Yehuda ben Beseira** says he can claim "I repaid you in front of Ploni and Ploni who have since travelled overseas". Based on this, **Shmuel** would hold like **R' Yehuda ben Beseira**.
 - **Q: R' Acha** asked, that Braisa may be talking about where the plaintiff didn't say this at the time of the loan, but rather at the time of the demand. Maybe it is only in such a case that **R' Yehuda ben Beseira** would believe the defendant with such a response. However, if at the time of the loan the plaintiff said repayment must be in front of witnesses, it may be that even **R' Yehuda ben Beseira** would not allow that response!?
- **R' Pappi in the name of Rava** paskened that if money is lent in front of witnesses it must be repaid in front of witnesses (and the borrower would not be believed to say that he repaid privately). **R' Pappa in the name of Rava** said that he would be believed to say that he paid privately. But, if the lender explicitly said "only repay me in front of witnesses", it must be repaid in front of witnesses and the borrower would not be believed to say that he paid privately. However, if the borrower claimed "I repaid you in front of Ploni and Ploni who have since travelled overseas", he would be believed.
- A lender once told his borrower, "when you repay me, repay me in front of Reuven and Shimon". The borrower went and repaid in front of two other witnesses, and the lender claimed that they were lying. **Abaye** said, the lender said to pay back in front of witnesses and that was done. **Rava** said, there is a reason that the lender specified these two people, and therefore the borrower is not patur until Reuven and Shimon testify for him.
- A lender once told his borrower, "when you repay me, repay me in front of two witnesses who teach Mishnayos". The borrower went and paid back in private. The lender then lost that money through an oneis. The lender went to **R' Nachman** and said, "I did get money from the borrower, but I took it as a pikadon, not as repayment of the debt, until two people who teach Mishna come and act as witnesses." Therefore, he claimed to have been a shomer at the time the money was lost, and said that the borrower should still be obligated to pay. **R' Nachman** told him, you admit that he gave you the money, and it is therefore considered to be a full repayment. If you say that the condition of the loan was not fulfilled (because the particular witnesses were not there), then go and give him back the money and I and **R' Sheishes** will serve as the witnesses.
- A lender told his borrower, "give me the 100 zuz that I lent you". The borrower denied ever having borrowed that money. The plaintiff produced witnesses that the money was borrowed

and repaid. **Abaye** said, the witnesses that say it was borrowed also say that it was repaid, and therefore the borrower remains patur. **Rava** said, when someone says "I did not borrow" it is as if he says "I did not repay". Therefore, since we have established that there was a loan, his admission that it was not repaid makes him now chayuv to repay.

- A lender told his borrower, "give me the 100 zuz that I lent you". The borrower said, "Didn't I pay you in front of Ploni and Ploni!?" These individuals (Ploni and Ploni) came and said nothing was ever repaid in front of them. The borrower said, I know I repaid, and so if it was not in front of them, then I must have done so in private. **R' Sheishes** thought to say that this borrower has already been proven as a liar and therefore should not be believed to say that he repaid in private. **Rava** said, a person doesn't remember insignificant details, and not remembering whether he repaid in private or in front of witnesses is considered to be insignificant, and therefore he is not considered to be a proven liar.
- A lender told his borrower, "give me the 600 zuz that I lent you". The borrower said, "Didn't I pay you with 100 kav of gallnuts, which were worth 6 zuz per kav!?" The lender brought witnesses who said that at the time of the repayment the gallnuts were only worth 4 zuz per kav (for a total repayment of only 400 zuz out of the 600 owed). The borrower said, I know I fully repaid you, and if the gallnuts were only worth 400, I must have given you an additional 200 zuz at the time. **Rava** said, this borrower has been proven as a liar (in regard to the misstatement of value) and therefore cannot be believed. **Rami bar Chama** said to him, you yourself have said that people don't remember insignificant details, and therefore it is understandable if he does not remember exactly how he repaid!? **Rava** said, people remember the price they set for merchandise, and therefore, the fact that he said different than the witnesses makes him a proven liar.