



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

Shavuos Daf Mem Vuv

- **R' Yirmiya bar Abba** said, they sent a question from the Yeshiva of **Rav** to **Shmuel**, what is the halacha if a worker claims he was hired for 2 selah and the employer says he hired him for only one selah – who swears? **Shmuel** said, in this case it is the employer who swears, and it is the worker who loses, because people certainly remember how much they agreed to pay.
 - **Q: Rabbah bar Shmuel** had taught a Braisa that says that in this case we would say hamotzi meichaveiro alav haraya, and the employer only pays what he says he agreed to pay. Now, according to **Shmuel** the employer should have to swear!? **A: R' Nachman** said, the Braisa should be understood as saying – either the worker can bring proof to his claim and get paid that amount, or the employer must swear to his amount and then pay that amount.
 - **Q:** A Braisa says, if after fixing a talis there is an argument as to how much the fee was supposed to be, if the talis is still in the possession of the craftsman, he is believed. If it is in the possession of the owner, then if it is still within the day that the wages were due, the craftsman swears and is believed. If it is after that, the owner is believed under the concept of hamotzi meichaveiro alav haraya. Now, the Braisa says that if it is still within the day that the wages were due the craftsman swears and is believed. According to **Shmuel** why don't we say that the owner/employer should swear and the worker/craftsman should lose!? **A: R' Nachman bar Yitzchak** said, this Braisa follows the view of **R' Yehuda**, who says that whenever there is an obligation on the employer to swear and exempt himself from payment (e.g. a partial admission), the **Rabanan** said that the worker should swear instead and collect based on that oath. However, the **Rabanan** argue on **R' Yehuda**, and **Shmuel** would follow the view of the **Rabanan**. We see **R' Yehuda's** view in a Braisa where he says that the worker may swear and collect when there is a dispute as to the amount of wages owed, and where the employer has made a partial admission to owing some money. However, where there is no partial admission, the worker would have to prove his claim in order to collect.
 - **Q: R' Shisha the son of R' Idi** asked, how can we say that the Braisa which says that when there is a dispute as to the amount of the agreed upon wages the worker swears and collects, only follows the view of **R' Yehuda** and not the **Rabanan**? In the Mishna **R' Yehuda** is more machmir and does not allow a worker to swear and collect when the employer makes a full denial, whereas the **Rabanan** would allow him to swear and collect, so how can we say that in the Braisa it is **R' Yehuda** who is more meikel and allows him to swear and collect and the **Rabanan** are more machmir and do not!? The Gemara asks, it does not make more sense to say that the Braisa follows the view of the **Rabanan**, because if the **Rabanan** agree with **R' Yehuda** in that case, who would **Rabbah bar Shmuel** follow when he said that in the case of the Braisa we say hamotzi meichaveiro alav haraya – it would not follow **R' Yehuda** or the **Rabanan**!? **A:** Rather, **Rava** said, in a case of a D'Oraisa oath (where there was a partial admission) **R' Yehuda** holds that the **Rabanan** instituted that the worker should be allowed to swear instead of the employer – even if they are arguing about the amount of the wages that were to be paid. However, if the oath is only a D'Rabanan oath (like for a full denial), it itself is a Rabbinic institution, and the **Rabanan** would not institute something on top of a Rabbinic institution. The **Rabanan** (who argue on **R' Yehuda**) hold that even by a D'Rabanan oath they instituted that the worker should swear instead of the employer. However, when the dispute is about how much the wages were made up to be, we do not

allow the worker to swear, because we say that the amount of wages to be paid is something that the employer surely remembers.

NIGZAL KEITZAD HAYU ME'IDIN OSO SHENICHNAS L'BEISO L'MASHKINO...

- **Q:** Maybe the person never ended up taking anything after entering the house, so why should we let the debtor swear and collect? We find that **R' Nachman** says that even if a person has an ax and says he will cut down someone's tree and we then find that that person's tree was cut down we can't assume that the one who made the threat is the one who cut it down. If so, why do we assume in our Mishna that he definitely took something from the house? **A:** The Mishna means that we know that he actually took something from the house.
 - **Q:** If we know, why don't we just look at what he took and make him pay that amount? **A: Rabbah bar bar Chana in the name of R' Yochanan** said, the case is that they saw him hide keilim under his clothing, but they did not know exactly which keilim it was.
 - **R' Yehuda** said, if witnesses saw someone take keilim from someone's house and hide them under his clothing and leave, and he then said "I bought these keilim" but the owner said "You borrowed them from me", the person is not believed.
 - This is only true if that owner does not typically sell such keilim. If he does, the person would be believed to say that he bought them. Further, even if he doesn't typically sell keilim, the person is not believed only if these keilim are not things that are hidden under one's clothing when he walks outside. If they are things that are normally hidden, he would be believed. Further, even with regard to things that are not normally hidden, the person is not believed only if he is not a private person. If he is, which would explain why he hid the keilim, he would be believed. Further, even if he is not such a private person, he is only not believed if the owner claims it was borrowed and the person claimed it was purchased. However, if the owner claimed it was stolen, the owner would not be believed, because one is not believed to label a person as a ganav. Further, the person is not believed to say that the keilim were purchased only if they were the type of keilim that are usually lent or rented out. However, if they were keilim that are not normally lent or rented out, he would be believed when he says that he bought them.
 - This last difference was stated by **R' Huna bar Avin** as well. **Rava** held in an actual case that possession of scissors and seforim are not indicative of ownership, because they are often rented or lent out.
- **Rava** said, even a shomer of the person's house may swear as to what the ganav took from the house and the owner may collect based on that oath. Furthermore, even the watchman's wife may swear about this.
 - **Q: R' Pappa** asked, what about the owner's worker or field worker – can he collect based on their oath? **TEIKU.**
- **R' Yeimar** asked **R' Ashi**, what is the halacha if the owner of the house claims that the ganav stole a silver cup from the house? Can he swear and collect? **R' Ashi** said, we make a determination – if he is wealthy and can afford that type of cup, or if he is trustworthy and therefore other people may have given him such a cup to watch, he may swear and collect. If not, he may not swear and collect.

NECHBAL KEITZAD

- **R' Yehuda in the name of Shmuel** said, he only needs to swear if the injury is such that it could have possibly been self-afflicted. However, if it is not possible to have been done so, he can collect even without swearing.
 - **Q:** Why are we not concerned that he scraped against the wall and caused the injury? **A: R' Chiya** taught a Braisa that says that he doesn't have to swear if we see a bite mark on his back, because that could not have been self-afflicted.
 - **Q:** Maybe someone else injured him? **A:** The case is that there was no one there besides that one other person.

UKISHENEGDO CHASHUD...

- **Q:** What does the Mishna mean "even an oath in vain"? **A:** The Mishna means to say, even if the oath did not involve a denial of money, still, the false oath makes him not believed to swear again in the future.

- **Q:** Why didn't the Mishna also say that a false shvuas bituy makes him not believed to swear again in the future? **A:** The Mishna only lists oaths that are false at the time they are said. A shvuas bituy becomes false later when he decides not to keep to it.
 - **Q:** That is true for shvuas bituy regarding the future, not for ones that were said in regard to the past!? **A:** Such a shvuas bituy is included in the term "shvuas shav" listed in the Mishna.

HAYA ECHAD MEIHEN MISACHEIK B'KUVYA

- **Q:** Why do we need to give these additional examples? **A:** The Mishna first taught examples of pessulim D'Oraisa and now gives examples of pessulim D'Rabanan.