



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

Shavuos Daf Mem Ches

AMAR L'CHENVINI TEIN LI B'DINAR PEIROS...

- A Braisa says, **R' Yehuda** said, the customer only needs to swear if the produce is piled up and placed between the storeowner and the customer (neither has possession of it). However, if the produce was already put into the customer's box, we would say hamotzi meichaveiro alav haraya, and the customer would not have to swear.

AMAR L'SHULCHANI TEIN LI...

- This case is needed in addition to the previous case of the storeowner with the produce. If we would only have the case of the produce, we would say that only there the **Rabanan** say the customer must swear that he already paid, because produce spoils and a storeowner therefore transfers it to the customer's possession as soon as an agreement is made, even before payment is given. However, in the case of the moneychanger, we would say that since there is no concern for spoilage, the **Rabanan** would agree to **R' Yehuda** that the customer does not have to swear, because if he would not have paid he would not have received the change. And, if we would only have the case of the moneychanger, we would say that **R' Yehuda** only holds that he need not swear in that case, for the above reason, but would agree with the **Rabanan** in the case of the produce. That is why both cases are needed.

K'SHEIM SHE'AMRU HAPOGEMES KSUBASAH...V'CHEIN HAYESOMIM LO YIPAR'U

- **Q:** Who are the orphans collecting from that the Mishna says they need to swear. It can't be referring to where they are collecting directly from the borrower, because since the father would not have had to swear to collect from him, they wouldn't have to swear either!? **A:** Rather, this is referring to where orphans are collecting for the estate from other orphans from their estate for a debt of their father.
 - **Rav and Shmuel** explained, this is only true if the lender died while the borrower was still alive. However, if the borrower died while the lender was still alive, the lender would have been obligated to swear (that the loan was definitely not paid) in order to collect, and children cannot inherit a debt that is only collectible with an oath.
 - When this ruling was repeated to **R' Elazar**, he disagreed and said that the orphans would swear the typical oath of orphans (that they have no reason to believe this debt has already been paid) and they would collect. When this was brought to **R' Ami** for a psak, he agreed with **R' Elazar**, but added that if the lender had taken the borrower's orphans to Beis Din and *then* died, since he became chayuv to take his oath, his own orphans would no longer be able to collect on that loan, because they cannot take the same oath.
 - **R' Nachman** asked, it is not Beis Din who obligates the lender to swear! From the time of the borrower's death he becomes obligated to swear. If so, it should not make a difference if the lender went to Beis Din before he died or not!? Rather, if you hold of **Rav and Shmuel**, you must agree with them in all cases, and if you disagree, you must disagree in all cases.
 - **Q:** We see that **R' Nachman** was unsure whether to pasken like **Rav and Shmuel**. However, we find that in such a case **R' Yosef bar Minyumei** said that **R' Nachman** paskened that the money should be divided, which is *not* like **Rav and Shmuel**!? **A:** **R' Nachman** was saying that **Rav and Shmuel** may be correct in how they explain the view of **R' Meir**, but not that he himself holds that way.

- **Q: R' Oshaya** asked, a Mishna says that if a husband died (which would obligate his wife to swear before collecting her kesubah from the orphans) and then the wife died, her heirs may collect the kesubah for up to 25 years from the husband's death. This contradicts **Rav and Shmuel!**? **A:** The case in the Mishna is where she swore before she died.
- **Q:** A Mishna says that if a wife died, then the husband died, and then his second wife died, the heirs of the second wife take precedence to the heirs of the first wife to collect their respective kesubos. Now, the second wife would have had to swear to the heirs of the first wife before collecting, and yet we see that her heirs can collect her kesubah. This refutes **Rav and Shmuel!**? **A:** The case in the Mishna is where she swore before she died.
- **Q:** A Mishna says, if a husband wrote to his wife, "I have no vow or oath on you, on your heirs, or on someone who comes in your place", he cannot make either of these people swear when they come to collect her kesubah. However, *his* heirs (if he died) can demand an oath from her or her heirs or the other people if they come to collect from them. This refutes **Rav and Shmuel!**? **A: R' Shmaya** said, when the Mishna said that the heirs can collect, it was referring to the heirs of a woman who was divorced from the husband, not widowed, and she then died before her ex-husband. Therefore, she was never obligated to swear before she collected, and her heirs would only have to swear the regular oath of orphans.
- **Q: R' Nosson bar Hoshaya** asked, a Braisa says, a son's power to collect his father's debt is greater than the father's own power to collect that debt, because a son can collect the debt with an oath and without an oath (if there are witnesses that say that the father said at the time of his death that the debt was not yet paid) and the father must always swear before collecting the debt. Now, this must be talking about where the debt is being collected from the heirs of the borrower. Yet, the Braisa says that the son may collect with an oath – referring to the oath of orphans – or without an oath, according to the opinion of **R' Shimon ben Gamliel**. We see that even though the father was chayuv to swear, his heirs can collect with making the oath of orphans (that they have no reason to believe that the debt was paid). This refutes **Rav and Shmuel!**? **A: R' Yosef** said, the Braisa follows the view of **B"V**, who say that a debt in a document is considered as if it is already collected. Therefore, it is as if the father already collected the debt and the orphans may therefore collect it as well.
- **R' Chisda and Rabbah bar R' Huna** went to **R' Nachman** and asked that they set up a Beis Din to uproot the ruling of **Rav and Shmuel**. He told them that he would not do that (even though he disagreed with the ruling), but that they should make sure the ruling is limited to the exact case of the ruling and not expanded beyond that.
 - **Q:** What case would we think to expand it to? **A:** The ruling of **R' Pappa**, which says that if someone weakened his document by admitting it was partially paid, which makes him chayuv to swear to collect the rest, and he then died, his heirs swear the oath of orphans and can then collect the remainder of the debt.
 - There was a borrower who had a guarantor to his loan, and the borrower died. The lender then died. The heirs of the lender couldn't collect from the heirs of the borrower based on **Rav and Shmuel**, so they wanted to collect from the guarantor by taking the oath of orphans. **R' Pappa** thought to say that if we don't allow them to collect that would be expanding on the ruling of **Rav and Shmuel**, which is what **R' Nachman** said not to do. **R' Huna the son of R' Yehoshua** told **R' Pappa**, since after the guarantor pays he will go and collect from the borrower's orphans, it is literally the same case of the ruling of **Rav and Shmuel**, and we may therefore not allow them to collect.

- There was a lender who died after his borrower and the lender left only a brother as an heir. He wanted to collect from the borrower's orphans. **Rami bar Chama** thought to say that if we don't allow him to collect with the oath of the orphans, that would be expanding the ruling of **Rav and Shmuel**. **Rava** said, this is considered to be exactly the case of the ruling, and therefore we would not allow him to collect.
- **R' Chama** said, since we have not decided the halacha as following **Rav and Shmuel** or **R' Elazar**, whichever view a judge paskens like, it is considered to be a proper decision. Based on this **R' Pappa** said, if a borrower died and then the lender died, we do not allow the lender's heirs to collect with the loan document, because maybe we pasken like **Rav and Shmuel**, but we also do not rip up the loan document, because if a judge paskens like **R' Elazar** it is considered to be a proper decision.

V'EILU NISHBA'IN

- **Q:** Are we dealing with fools? Why would someone swear if there is no claim lodged against him!? **A:** The Mishna means that the following people must swear even though the claim against them is not made with certainty.
- A Braisa says, when the Mishna says that the brother who runs the estate for the others must swear, it is not referring to a brother who simply tours the properties. Rather, it is referring to a brother who hires and fires workers for the estate, and who buys and sells produce for the estate.
- **Q:** Why are the people in this list different in that they are made to swear even against an uncertain claim? **A:** It is because they rationalize that it is mutar for them to keep a larger share. Therefore, we make them swear to make sure that they are not doing so.
- **R' Yosef bar Menyumei in the name of R' Nachman** said, the Mishna is only talking about where the claim is for a minimum value of 2 silver maos.
 - **Q:** This seems to follow **Shmuel**, who said earlier that for a D'Oraisa oath the claim must be for at least 2 silver maos, irrespective of how much the denial is. Now, **R' Chiya** taught a Braisa that supports **Rav** who says that the denial alone must be for at least 2 silver maos!? **A:** Understand **R' Yosef bar Menyumei** to have said that the *denial* must be for at least the value of 2 silver maos.

CHALKU HASHUTFIN V'HA'ARISIN

- **Q:** Do we make a "gilgul shvuah" based off of a D'Rabanan oath? **A:** A Braisa says, that if one lent money the year before shmitta and the year after shmitta he became partners with his borrower he may not use the circumstances of his swearing as a partner to make him swear regarding the loan. This suggests that this is only because the loan was cancelled by shmitta, but otherwise he would be allowed to make him swear a gilgul shvuah based on the D'Rabanan oath.
 - This is not the inference that should be made from the Braisa. The inference that should be made is, that if he became partners before shmitta and didn't demand that his partner swear then, and after shmitta he loaned money to his former partner, he can use the D'Oraisa oath of the loan to create a gilgul shvuah on the partnership division.
 - **Q:** This is stated explicitly in a Braisa!? **A:** We must say that the initial understanding of the inference is correct, and we can prove that we do make a gilgul shvuah based on a D'Rabanan oath. **SHEMAH MINAH.**
 - **R' Huna** said we make a gilgul shvuah based on all D'Rabanan oaths except for the oath required to be made by a worker to collect his wages. **R' Chisda** said, we are not lenient regarding any D'Rabanan oaths (and we used them as a basis for gilgul shvuah) except for the oath required to be made by a worker to collect his wages.
 - **Q:** What is the difference between these rulings? **A:** The difference would be whether Beis Din suggests to the plaintiff to demand a gilgul shvuah in all other cases. According to **R' Huna** we would do so, and according to **R' Chisda** we would not.

V'HASHVI'IS MISHAMETES...

- **R' Gidal in the name of Rav** said, this is learned from the pasuk of “v'zeh *dvar* hashmittah” – even liability for speech (i.e. an oath) is cancelled by shmitta.

HADRAN ALACH PEREK KOL HANISHBA'IN!!!