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Bava Kamma Daf 106

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### ***Paying with an Oath***

The *Gemora* discusses a previous statement. Rav Huna said in the name of Rav: If a person claims that someone else owes him a *maneh* which the defendant denies, and after swearing that he does not owe it, he is contradicted by witnesses, he is exempt from paying. This is as the verse says, “And its owner will take and he will not pay.” This implies that once the defendant has “given” an oath to the claimant, he does not have to pay.

Rava says: Rav’s law is logical regarding a loan, which is meant to be spent (*and the actual money is not meant to be returned*). However, a deposit is still owned by the owner. However, by God, Rav still said his law by a deposit as well! This is apparent from the fact that the verse he quotes is discussing a deposit.

Rav Nachman sat and discussed this topic. Rav Acha bar Minyumi asked him a question on it from a *Mishna* (108b). The *Mishna* states: A person asks a guardian, “Where is the deposit (*I gave you*)?” The guardian claims it was lost. If he makes him swear and he answers *amen*, and then witnesses testify that the guardian ate it, he must pay its value. If he admitted on his own that he lied, he pays its value plus one fifth and a *korban asham*. [According to Rav, why in the beginning of the *Mishna* is he obligated to pay after he swore that he did not have the deposit?]

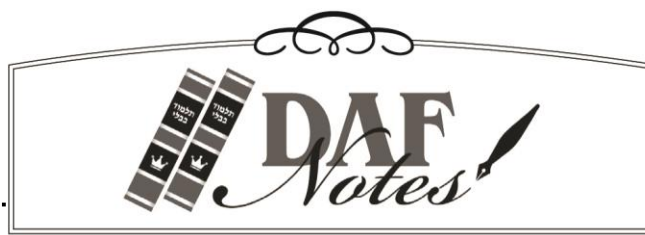
Rav Nachman answered: The case of the *Mishna* is when he swore falsely outside of *Beis Din*.

Rav Acha asked: What about the second part of this *Mishna*? It states: A person asks a guardian, “Where is the deposit (*I gave you*)?” The guardian claims it was stolen. If he makes him swear and he answers *amen*, and then witnesses testify that the guardian ate it, he must pay double its value. If he admitted on his own that he lied, he pays its value plus one fifth and a *korban asham*. If the swearing took place outside of *Beis Din*, would it be possible to still collect *kefel*?

Rav Nachman answered: I can answer that while the first case is outside of *Beis Din*, this case is inside *Beis Din*. However, I will not give you an answer that is forced. Therefore, I will answer that both cases happened in *Beis Din*. However, the first case is discussing an oath that the claimant made the defendant swear before *Beis Din* mandated that he swear, while the second is discussing an oath that was mandated by *Beis Din*.

Rami bar Chama asked Rav Nachman: You do not hold like Rav. Why are you trying hard to answer his position?

Rav Nachman answered: I am trying to explain how Rav would understand this *Mishna*.



Rami bar Chama persisted: But isn't Rav deriving his teaching from a verse?

Rav Nachman answered: This verse is required to teach us that all of those mandated by the Torah to swear must swear and do not pay. The meaning of this verse, "And its owners will take and not pay," is that whoever must pay will swear instead.

Rav Hamnuna asked a question from a *Mishna* (in *Shevuos 36b*). The *Mishna* states: If someone made someone else swear five times, whether in front of *Beis Din* or not, and the person swore falsely all five times, he is liable (to pay an extra fifth and bring an *asham*) for each oath. Rabbi Shimon says: What is the reason for this? It is because he is able to go back and admit. Here, you cannot say that the defendant voluntarily took the oath, as the *Mishna* says that he made him take the oath. Similarly, you cannot say that the case is outside of *Beis Din*, as it says that it is even if it is in *Beis Din*! [This is a question on Rav, who would seem to say he should not have to pay!]

He asked the question and he answered it as well. The *Mishna* means that he pressured him to take the oaths outside of *Beis Din*, and when they went into *Beis Din*, he took the oaths before *Beis Din* mandated that he take them.

Rava asked a question from a *braisa*: A guardian claimed and swore that the object he was watching was stolen, and then admitted that he lied. Witnesses then testified that he had lied. If he admitted first, he pays the principle, an extra fifth, and brings an *asham*. If witnesses came first, he pays *kefel* and brings an *asham*. Here, we cannot answer that being outside of

*Beis Din* or voluntarily swearing are factors, as it discusses paying *kefel*!?

Rava therefore said: Anyone who admits, whether he claimed it was lost or stolen, must pay. Rav did not say his law regarding such people, as the verse states, "And he will admit." He must pay the principle and an extra fifth. Even if he claimed it was stolen and witnesses later testified that he was guilty, Rav did not say his law. This is because the verse says he must pay *kefel* (and this is the case discussed by the verse). Rav's case is only where he claimed and swore it was lost, he did not admit, and witnesses came and testified to the contrary. [In such a case Rav says he does not have to pay after having taken an oath.]

Rav Gamda went and discussed this topic before Rav Ashi. Rav Ashi said: Now, if Rav Hamnuna who was the student of Rav knew that Rav said that in every case of admittance (after taking a false oath) one does not have to pay, as is apparent from his asking questions on Rav from *Mishnayos* with these topics, how can you say that Rav never said his law in these cases?

Rav Acha Saba explained to Rav Ashi: Rav Hamnuna meant the following when he asked his questions. If you will say that if witnesses came after the first oath he is liable to pay, it is understandable why he should be liable for the next oaths as well, as he had the chance to retract his denial. However, if you will say that he is exempt when witnesses contradict him after he swore falsely, is it possible that there is a case where witnesses cannot make him liable, but we will make him liable for each oath because he could have retracted his denial? He has not retracted (and the money cannot be collected from him according to Rav who says that his oath makes him exempt from paying)! (106a – 106b)

### ***A Guardian who Claims that the Object was Stolen***

Rabbi Chiya bar Abba says in the name of Rabbi Yochanan: If a guardian claims the object was stolen, he pays *kefel* (if it was later found that he lied). If he had slaughtered or sold it, he pays four or five times its value. He explains: If a thief or someone who claims the object was stolen pays *kefel*, it would follow that just as a thief who slaughtered or sold the animal pays four or five times the value, so too someone who claims it was stolen and actually slaughtered or sold it should pay four or five times the value.

The *Gemora* asks: [*The cases are different.*] A thief ends up paying *kefel* without taking an oath (if witnesses merely contradict him), but someone who claims the object he was watching was stolen only pays *kefel* if he takes an oath!?

The *Gemora* answers: This teaching is a *hekesh* (teaching based on comparing two topics mentioned next to each other in the Torah). One cannot ask questions on a *hekesh*.

The *Gemora* asks: This is valid answer according to the opinion that the topics mentioned in those verses are indeed a thief and a guardian who claims the object was stolen. However, according to the opinion that both the verse, "If the thief will be found" and the verse, "If the thief will not be found" were discussing a guardian who claims the item was stolen, what can we answer? [*This means that the teaching above is obviously not a hekesh!*]

The *Gemora* answers: This is derived from the extra letter "heh" in the word "ha'ganav" (in the verse there).

Rabbi Chiya bar Abba asked Rabbi Yochanan a question from a *Mishna*. The *Mishna* states: If a person asks the guardian, "Where is my ox?" The guardian responds that it was stolen. After taking an oath to this effect, witnesses testify that the guardian in fact ate the ox. The guardian has to pay *kefel*. In this case, it is obvious he needed to slaughter the animal or he could not have eaten it, and yet the *Mishna* only says he pays *kefel*, not four or five times the value!?

The *Gemora* answers: The case is where he ate it without it being slaughtered properly (i.e. it was a *neveilah*).

The *Gemora* asks: Why didn't he answer that it was eaten as a *tereifah* (it was a sickly animal, which is also forbidden to eat even if slaughtered properly)?

The *Gemora* answers: Rabbi Yochanan must hold like Rabbi Meir, who says that a slaughtering which does not render the animal fit for consumption is still called a slaughtering (as long as the *shechitah* was performed properly). [*He will therefore have to still pay four or five times, even if the animal is found to be a tereifah.*]

The *Gemora* asks: Why didn't he answer that the case is that the animal was a *ben pekuah* (animal formed in the mother's stomach that is permitted to be eaten once its mother is slaughtered without it having a proper slaughter)?

The *Gemora* answers: Rabbi Yochanan must hold like Rabbi Meir that a *ben pekuah* needs a proper slaughter.

The *Gemora* asks: Why didn't he answer that the case is where the *Beis Din* ordered the lying guardian to pay the owner of the animal *kefel*, and he then proceeded to slaughter or sell it? This would be according to Rava,

who said that in such a case the guardian is exempt from paying four or five times the value. Why does Rava hold this way? The reason is that once he was ruled to have to pay *kefel*, he is a thief who does not pay four or five times the value. However, if *Beis Din* merely ruled he was obligated to give back the animal, and he went and slaughtered it, he is liable for four or five times the value. Why? As long as *Beis Din* did not say exactly how much he owes, he is a “*ganav*” who can also be liable for four or five times the value. [The *Rishonim* differ as to the exact explanation of these cases. See the *Tosfos Rid* at length.]

The *Gemora* answers: It could have also answered that the case was regarding a partner (*in theft*) who slaughtered the animal without his friend’s knowledge. Rather, one out of two or three possible answers was given (*and therefore these types of questions are not difficult*). (106b)

### **A Guardian of a Lost Article**

Rabbi Chiya bar Abba says in the name of Rabbi Yochanan: If the guardian claimed that a lost article (*which he was watching*) was stolen (*and stole it himself*), he pays *kefel*. Why? This is as the verse states, “Regarding any lost object regarding which it is said.”

Rabbi Abba bar Mamal asked Rabbi Chiya bar Abba a question from the following *braisa*. The *braisa* states: “When a man will give,” implying that the giving of a minor is insignificant (*regarding kefel being applied due to the guardian of the object belonging to the minor claiming it was stolen etc.*). We only know this is correct when the minor gave the object to the guardian when he was a minor, and claimed it back when he was a minor. How do we know the same law applies if he gave it to him as a minor and attempted to collect it as an

adult? The verse states, “Before Elokim (*Beis Din*) will come the words of both of them.” This teaches that *kefel* is only paid if the giving and claiming were done when the owner of the object was an adult. If Rabbi Chiya bar Abba is correct, why don’t we say that as long as he is an adult when he makes the claim, it is good enough to obligate *kefel*? This is similar to the case of a lost object, where the guardian never received the lost object from the owner but merely found it, and yet still must pay *kefel*!?

Rabbi Chiya bar Abba answered: The case of the *braisa* is where the guardian ate the object when the claimant was still a minor. However, if he ate the object when the claimant was already an adult, he indeed would have to pay *kefel*.

Rabbi Abba asks: If this is the case of the *braisa*, instead of it saying, “Until the giving and claiming of the object is done when he is an adult,” it should say, “Until the eating of the object and claiming is done etc.”!?

Rabbi Chiya answered: Indeed, this is what it should say in the *braisa*.

Rav Ashi answered (*for Rabbi Chiya*): The cases are not similar. The lost object is coming from a person who has knowledge (*and the person who found it was holding it for its adult owner*), while the object given is from a minor without knowledge. (106b)

### **INSIGHTS TO THE DAF**

#### **Oath Taken Outside of Beis Din**

Rav Nachman said that if a custodian swears falsely outside of *Beis Din* and afterwards witnesses testify



against him, Rav would concede that he is still liable to pay *kefel*.

Rashi explains that an oath taken in *Beis Din* is stronger than one taken outside of *Beis Din*, and if one swears in *Beis Din*, the claim against him is dissolved.

It is also evident from the *Gemora* that if the plaintiff jumped up and adjured the custodian to swear before *Beis Din* had the chance to impose the oath upon him, and afterwards he admitted, Rav would concede that he is liable in paying the extra fifth and to bring a *korban asham*, but he will not be liable to pay the *kefel*.

The Rishonim cite Rabbeinu Chananel who explains that one who is Biblically mandated to take an oath in *Beis Din*, and he swears outside of *Beis Din*, or he swore in *Beis Din* before the court imposed the oath upon him, he is not exempt from his obligation and he can be mandated to swear again.

The Ramban and the Rashba disagree and hold that an oath taken outside of *Beis Din* is regarded as a valid oath and he would not be required to swear again. Our *Gemora* holds that one is not liable to pay *kefel* for such an oath, for it is not as strong as an oath imposed by the court.

#### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: If one swears falsely that he did not steal from his fellow and he later admits, must he pursue him to Media if the stolen object is in existence, but worth less than a *perutah*?

A: The *Gemora* cites two different versions of Rav Pappa. One says that he does, for there is a possibility

that it may rise in value, and the other says that he does not, for we are not concerned for this.

Q: Why does Rava hold that if one stole three bundles that were altogether worth three *perutos*, but which subsequently fell in price and become worth only two, if he returned two bundles, he would still have to return the third?

A: Since originally it was of the value of a *perutah*, he must pay for it.

Q: Can a *nazir* shave one hair at a time (*to be considered a shaving upon the completion of his nezirus*)?

A: Yes.

#### DAILY MASHAL

##### "Taking" the Oath

The Torah writes: And the owner will "take" (the oath), and he (the defendant) will not pay. Why does the Torah refer to the acceptance of the oath as "taking"? The Bnei Yisoschar writes that the Torah is hinting to us that the one who is compelling the oath must take stock and be fearful as well, like the Shulchan Aruch rules: Stay away from swearing. At times, he can even be called a *rasha*, as he was not "mevater" sufficiently. It is upon his head as well. Accordingly, the Torah writes that he as well is "taking" the oath.