

Daf Notes

Insights into the Daily Daf
Bava Metzia Daf 2

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Daily Daf

Mishna

Two people are holding on to a cloak. This one says that he found it, and the other says that he found it. This one says that it is all his, and the other claims that it is all his. This one should swear that he does not own less than half of the cloak, and the other should swear that he does not own less than half of the cloak, and they should then split the cloak. [*This is in a case where they are both physically holding onto it; if, however, one is holding onto it, and the other one claims that it is his, he must bring a proof to validate his claim.*]

If one says that the entire cloak is his, while the other one claims that only half of it is his, the first one should swear that he does own less than three quarters of the cloak, while the second one should swear that he does not own less than one quarter of the cloak. The first one then takes three quarters, while the second one takes one quarter.

If two people were riding on an animal, or one was riding and one was leading the animal, and each of them claims that he owns the animal, each should swear that they do not own less than half of the animal, and they should then split the animal. When they agree or there are witnesses regarding the true ownership of the item, they split it without having to take an oath.
(2a)

The Case of our Mishna

The *Gemora* asks: Why does the *Mishna* say: This one says that he found it, and the other says that he found it. This one says that it is all his, and the other claims that it is all his? It should just say: This one says that he found it and it is all his, and the other one claims that he found it and it is all his?

The *Gemora* answers: It is in fact one case, and it should be understood as follows: This one says that he found it and it is all his, and the other claims that he found it and it is all his.

The *Gemora* asks: [*Even this seems verbose!*] Let the *Mishna* say that one claims that he found it, and I would understand that he therefore thinks that it belongs to him!?

The *Gemora* answers: If it would just say this, I would think that when the *Mishna* says he claims, "I found it," it means "I saw it first." The *Mishna* would be telling us that even though he only saw it first, this is enough to acquire it. The *Mishna* therefore says that he must claim that it is entirely his, to teach us that seeing alone is not enough (*but rather he must have made a proper kinyan – with the halachic laws of acquisition*).

The *Gemora* asks: How could we possibly have said that "found it" means that he "saw it first?" Didn't Rabnai say: "And he found it" implies that "it reached his hand"?

The *Gemora* answers: When Scripture uses this term, it indeed means that it had to reach his hand. However, when the *Mishna* uses this term, perhaps it was following the normal usage of language, and in a normal usage of language a person would say “I found it” even if he only saw it. I would therefore have thought that seeing, although it did not reach his hand, would be sufficient. This is why the *Mishna* had to say that he said “it is all mine” to show that seeing it is insufficient.

The *Gemora* asks: Let the *Mishna* just say that he said “it is all mine.” Why did it have to say that he also claimed “I found it”?

The *Gemora* answers: If it would have just said that each person claims it belonged to them, we would have thought that elsewhere, whenever a *Mishna* (or *braisa*) would say, “I found it,” it means that the person merely saw it, and that is sufficient. This is why the *Mishna* says both that he found it and claims that it is his, to show that seeing alone is never an acquisition.

The *Gemora* asks: It is possible to say that the *Mishna* actually means one case: This one says he found it and it is his etc. The *Mishna* clearly states: This one says that he found it and the other says that he found it. This one says that it is his etc.? [*This is a clear indicator that the Mishna is dealing with two cases!?*]

Rav Pappa answers, and some say it was Rav Simi bar Ashi, and others say it was Kedi: The first statement is referring to a case of a lost object (*where they each claim that they found the lost cloak*), and the second to a case of buying and selling (*where they each claim that they were the one who bought it*). Both cases are necessary. If it would just say a case of two people claiming to have found a lost object, we would think that the Rabbis only imposed on them an oath because the person lying thinks it is not a serious offense, being that he is not making his friend lose money (*he is just not gaining the lost object which he found*). He therefore grabs onto the object after his friend finds it, so that he can win half in *Beis Din*. This is why an oath was mandated. However, regarding a sale (*where he is taking away the object bought by the other person*), perhaps a person would realize that he is making the other person lose (*see Rashi at length*), and would not

do so without having a claim. [*This is why the Mishna must say that in this case as well an oath is taken.*] And if it would only say a case regarding a sale, one would think that the Rabbis only imposed an oath because the liar thinks he is not doing anything terrible, as he also gave money to the seller. He says to himself, “Being that I need the object more, I will keep it and my friend should go find another one.” [*This is why an oath was mandated.*] However, regarding a lost object, where the other person cannot simply go and find another valuable lost object, perhaps an oath should not be mandated. This is why the *Mishna* said both cases (*to teach that in both cases an oath must be taken*).

The *Gemora* asks: In the case regarding a sale, why don't we merely ask the buyer who gave him the money?

The *Gemora* answers: The *braisa* is referring to a case where he accepted money from both of them. One of them gave him the money with his consent, and the other one gave it to him by force. The seller does not remember as to which one of them he consented to and which is the one who forced the money upon him. (2a – 2b)

Who is our Mishna Following?

The *Gemora* asks: Let us say the *Mishna* is unlike Ben Nanas. Ben Nanas states, How can we let one of these parties swear falsely? [*Here, the Mishna is apparently not concerned about the false oath that one of these people might take.*]

The *Gemora* answers: Our *Mishna* could be according to Ben Nanas as well. In his case, someone was definitely swearing falsely. In our case, it is possible that neither is swearing falsely, as they both could have picked it up together (*and they are swearing that they do not own less than half*).

The *Gemora* asks: Let us say that our *Mishna* is unlike Sumchus. Sumchus states that money whose ownership is disputed should be divided without anyone having to take an oath. [*If an ox gores a cow and the fetus from the cow is found dead next to her, but we do not know if the ox gores the cow while the fetus was still inside of it (and the owner of the ox will be liable for the fetus as well), or whether the fetus was*

aborted prior to being gored (in which case, the ox owner would not be liable). Sumchus rules that the ox owner should pay half.]

[The Gemora proceeds to explain its question.] Who, then, does the Mishna follow? It must follow the Rabbis who argue on Sumchus (46a), and state that someone who wants to take money away from his friend must bring proof that his friend owes him the money. [Our Mishna does not rule that each one of the claimants must bring proof to validate his claim.]

The Gemora asks on this: How does this apply to our case? It is understandable that in the other case (*when the dead fetus was found next to the gored cow*), where both of them are not in possession of the disputed money (*rather, it is presently in the hands of the ox owner*), the Rabbis rule that if someone wants to take money away from his friend, he must bring proof to that effect. However, here, where they both are in possession of the disputed money (*they are both holding the cloak*), it is understandable that they should divide it while taking an oath. *[The Tanna of our Mishna can therefore reflect the view of the Rabbis.]*

However, it is difficult to say the Mishna follows Sumchus. If Sumchus says in a case where both of them are not in possession of the disputed monies (*rather, it is in the possession of the ox owner*), they should divide the money without having to take an oath; then when they are in possession of the disputed cloak, they should certainly divide it without taking an oath!?! *[The Mishna therefore must not be according to Sumchus.]*

The Gemora answers: The Mishna could follow the opinion of Sumchus. Sumchus only said that they split it without an oath when neither has a certain claim that it belongs to him (*but they have a claim that it might*). In our case, where each claims with certainty that it is his, they must both take an oath.

The Gemora asks: According to Rabbah bar Rav Huna who understands that Sumchus holds that money in doubt is divided without an oath even when both claim with certainty that the money is theirs, can Sumchus agree with our Mishna?

The Gemora answers: Sumchus only said his law where the details of the scenario cause the question, even without their claim. *[For example, if a calf could have been born either before, during, or after it was gored by an ox, the damages are unclear even without any claims being made (Tosfos).]* *[Rashi understands this to mean that in the case of the gored cow, there is a true loss of money. However, in the Mishna's case, there is no true loss of money. Sumchus would therefore rule that an oath is necessary.]* However, in a case where the claims make the case, Sumchus could agree that they must take an oath.

The Gemora asks: But is it not a *kal vachomer* (*literally translated as light and heavy, or lenient and stringent; an a fortiori argument; it is one of the thirteen principles of biblical hermeneutics; it employs the following reasoning: if a specific stringency applies in a usually lenient case, it must certainly apply in a more serious case*) that in the Mishna's case, Sumchus would rule that an oath is not necessary!?! If in the case where there is a loss of money to this one and a loss of money to this one (*by the gored cow, where based upon the ruling of the ox owner paying half, they are each losing money*), and furthermore, it could be said that it belongs completely to this one or completely to the other one, and nevertheless, Sumchus rules that the money which is in doubt must be divided without taking an oath. So in our case, where there is no true loss of money, and furthermore, it could very well belong to both of them (*if they picked up the cloak simultaneously*), shouldn't Sumchus rule that it should be divided without taking an oath!?

The Gemora answers: The Mishna can still be in accordance with Sumchus, for the oath mentioned in the Mishna is a special Rabbinic decree, as Rabbi yochanan taught: The oath of our Mishna is based upon a Rabbinic decree in order that each and every person should not grab his fellow's cloak and claim, "It is mine." (2b – 3a)

INSIGHTS TO THE DAF

Three Fellows Holding the Cloak

The Mishna had stated: Two people are holding on to a cloak. This one says that he found it, and the

other says that he found it. This one says that it is all his, and the other claims that it is all his. This one should swear that he does not own less than half of the cloak, and the other should swear that he does not own less than half of the cloak, and they should then split the cloak.

If one says that the entire cloak is his, while the other one claims that only half of it is his, the first one should swear that he does own less than three quarters of the cloak, while the second one should swear that he does not own less than one quarter of the cloak. The first one then takes three quarters, while the second one takes one quarter.

They asked the Maharil Diskin when he was only a child: What would be the *halachah* if three people were holding onto the cloak? One of them said, "It is all mine," and each of the other two said, "Half of it is mine." We cannot say that the one who claimed that it is all his should receive half, and the other two should get a quarter each, for it would emerge that only the one who said that the entire cloak is his would be losing out because there is a third party in the case. Perhaps the *halachah* should be that we should give half to the one who claims that it is all his, for the other two are admitting that this half is his, and regarding the other half, it should be split in thirds between all of them, for they are all claiming on that half that it is completely theirs. This is also not correct, for the two that were claiming that half is theirs are not admitting that the other half belongs to the one person who claimed that it is all his, for although each one of them is admitting that it does not belong to them, perhaps it belongs in partnership to the other two?

He answered on the spot as follows: The one who claimed that the cloak is completely his receives half the cloak, plus a third of one of the remaining quarters. Each of the other two receives a third of one quarter and half of the remaining quarter. And he explained: Each one of the fellows who claimed that only half of the cloak is theirs is in essence admitting that the other half belongs to the other two – half to the one who said that it is completely his, and half to the other one who said that only half is his. It emerges that the fellow who said that it is

completely his has an admission from each one of them that a quarter of the cloak is his. He therefore receives a quarter of the cloak. Each one of the fellows who are claiming that half the cloak is theirs is also admitting to the other fellow claiming a half that a quarter of the cloak is his. They each would be entitled to a quarter of the cloak except for the fact that the fellow claiming that the entire cloak is his is disputing their claim. Therefore, the two fellows claiming half the cloak is theirs each split a quarter with the one claiming that the entire cloak is his. On the last remaining quarter, all three of them are claiming that it is completely theirs. They therefore split that quarter in thirds.

Cloak or Talis?

When the Belzer Rebbe was but a child, they asked him, "What is the meaning of the *Mishna* when it stated that two people are holding onto a *talis*?"

He replied, "It means that two people were holding onto a *cloak*."

They persisted, "Perhaps the *Mishna* means a *talis* literally?"

He replied, "I can prove that it is referring to a cloak from the explanation of the Rosh. The Rosh explains the *Mishna* to be referring to a case where the object will belong to the finder, for example – if it was found in a city where a majority of the residents are idolaters. If the *Mishna* would be referring to a *talis* which has *tzitzis* on four corners, one would be obligated to announce that he found such an item even in a city of idolaters, for a *talis* obviously would not belong to them!"