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#### Intro

Today we will בע"ה learn דף ל"ה of מסכת בבא מציעא of אין of מסכת בבא מציעא. Some of the topics we will learn about include.

#### The incident of

ההוא גברא דאפקיד כיפי גביה חבריה

A person gave earrings to his friend for safekeeping and when the owner claimed them the שומר could not find them.

רב נחמן אגביה לאפדניה מיניה

רב נחמן confiscated the mansion of the שומר as payment for the earrings. The earrings were later found and their value had increased.

ruled רב נחמו

הדרי כיפי למרייהו

והדרא אפדנא למרה

The owner gets back his earrings and the שומר gets back his mansion.

And even though the שומר paid for the earrings, he does not keep the earrings and acquire the gain of the increase in value, because

אטרחיה לבי דינא

The שומר did not pay voluntarily; but rather troubled the owner to summon him to Bais Din who compelled him to pay.

The Machlokes regarding שומא הדר

If Bais Din confiscated a לוה s item to pay off a debt that he owes to the מלוה, until when must the מלוה return the item if the א wants to pay up?

The Machlokes in the Mishnah's case of

השוכר פרה מחבירו

והשאילה לאחר ומתה כדרכה

If a person rented someone's cow, and he then loaned the cow to someone else, and the cow died naturally;

The תנא קמא holds

ישבע השוכר שמתה כדרכה

והשואל ישלם לשוכר

The renter swears to the owner that the cow died naturally, and he becomes exempt from payment, and then the borrower, pays the שוכר for the cow that he loaned to him. However, the שוכר keeps the money and does not pay it to the owner.

רבי יוסי disagrees and says

כיצד הלה עושה סחורה בפרתו של חבירו

אלא תחזור פרה לבעלים

The שוכר must give the owner the money he gets from the שוכר, and he may not keep it and benefit from someone else's cow.

פעמים שהבעלים משלמין כמה פרות לשוכר

The scenario in which according to the תנא קמא the owner would be obligated to pay four cows to the שוכר;











So let's review ...

The previous Mishnah taught שילם ולא רצה לישבע משלם תשלומי כפל למי שהפקדון אצלו

If the שומר voluntarily paid for the פקדון rather than swear to be exempt and the גוב was then discovered;

The שומר gets back the קרן that he paid, and he also gets the additional כפל and יד' hecause as the Gemara explains בעלים מקני ליה כפילא

The owner grants the כפל and יד' to the שומר for his generosity in paying for the פקדון.

The Gemara proceeds with an incident of ההוא גברא דאפקיד כיפי גביה חבריה
הוא גברא דאפקיד כיפי גביה חבריה
A person gave earrings to his friend for safekeeping. When the owner claimed the earrings, the שומר said לא ידענא היכא אותבינהו
I don't know where I put them.
דב נחמן כל לא ידענא פשיעותא היא כל לא ידענא פשיעותא היא שלים כל לא ידענא פשיעותא היא זיל שלים must pay for the earrings because he was careless.









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At first the שומר did not pay, but then רב נחמן אגביה לאפדניה מיניה confiscated his mansion for the payment.

ב ניכון reomiseated in mansion for the paying לסוף אישתכח כיפי ואיקור

The earrings were later found and their value had increased.

ruled רב נחמן

. הדרי כיפי למרייהו

והדרא אפדנא למרה

The owner gets back his earrings and the שומר gets back his mansion.

And even though the שומר paid for the earrings, he does not keep the earrings and acquire the gain of the increase in value, because

אטרחיה לבי דינא

The שומר did not pay voluntarily; but rather troubled the owner to summon him to Bais Din who compelled him to pay.

However, in the Mishnah's case

שילם ולא רצה לישבע

בעלים מקני ליה כפילא

If the שומר pays for the פקדון, the owner grants him the פקדון and its gain of כפל because

לא אטרחיה לבי דינא

The שומר paid for the פקדון voluntarily, and did not trouble the owner.

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At first the שומר did not pay, but then

# רב נחמן אגביה לאפדניה מיניה

כב נחמן confiscated his mansion for the payment.

# לסוף אישתכח כיפי ואיקור

The earrings were later found and their value had increased.

ruled רב נחמן

## הדרי כיפי למרייהו והדרא אפדנא למרה

The owner gets back his earrings and the שומר gets back his mansion.

Even though the שומר paid for the earrings, he does not keep the earrings and acquire the gain of the increase in value, because

## אטרחיה לבי דינא

The שומר did not pay voluntarily but rather troubled the owner to go to Bais Din who compelled him to pay.

However, in the Mishnah's case

## שילם ולא רצה לישבע בעלים מקני ליה כפילא

If the שומר pays for the פקדון, the owner grants him the פקדון and its gain of כפל because

# לא אטרחיה לבי דינא

The שומר paid for the פקדון voluntarily, and did not trouble the owner.





The Gemara proceeds with a Machlokes regarding שומא

If Bais Din confiscated a לוה's item to pay off a debt that he owes the מלוה, until when must the מלוה return the item if the לוה wants to pay up?

נהרדעי says

שומא הדר עד תריסר ירחי שתא

The מלוה must return the item only within the first year, but afterward the מלוה keeps it.

אמימר says

שומא הדר לעולם

The מלוה is must return the item forever.

And the Gemara concludes;

והלכתא שומא הדר לעולם

משום שנאמר ועשית הישר והטוב

The מלוה is obligated to go beyond the letter of the law.



However, the Gemara qualifies this Halachah, and proceeds with several Halachos regarding שומא הדר

שמו ליה לבעל חוב

ואזל איהו ושמה לבעל חוב דידיה

If the מלוה confiscated the מלוה 's item, and then used it to pay off a debt of his own to another מלוה; the second מלוה must return the item to the first לוה, because he is also obligated in ועשית הישר והטוב, since

אדעתא דזוזי נחות

Both initially wanted their money back, and not this item.

שמו ליה לבעל חוב
ואזל איהו ושמה לבעל חוב דידיה
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אדעתא דזוזי נתות
Both initially wanted their money back,
and not this item.



Dedicated By: \_





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2.

However,

זבנה, אורתא, ויהבה במתנה

If after confiscating the ה'ל item, the מלוה, either, sold, bequeathed or gave it away as a gift, the recipient has no obligation to return the item to the ה'ל, and ועשית הישר does not apply, because

הני מעיקרא אדעתא דארעא נחות

They initially intended for the land and not for the money.

3.

The Gemara cites a Machlokes רב אחא ורבינא regarding a related Halachah:

אגביה איהו בחובו

If the מלוה voluntarily gave his item to the מלוה as payment of the loan, and it was not confiscated by Bais Din;

The מלוה is obligated to return the item, because לא זביני מעליא הוא

והאי דאגביה מדעתיה

מחמת כיסופא הוא דאגביה

The לוה did not intend for the מלוה keep the item, and he gave it to him merely to avoid the embarrassment of Bais Din confiscating it.

וחד אמר לא הדרה

The מלוה is not obligated to return the item, because האי זביני מעליא היא

דהא מדעתא דנפשיה אגביה

The מלוה did intend that the מלוה keep the item since he gave it to him voluntarily.

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### זבנה, אורתא, ויהבה במתנה

If after confiscating the מלה's item, the מלוה, either, sold, bequeathed or gave it away as a gift, the recipient has no obligation to return the item to the לוה and טעשית הישר והטוב does not apply, because

#### הני מעיקרא אדעתא דארעא נחות

They initially intended for the land and not for the money.



A Machlokes רב אתא - רבינא

אגביה איהו בתובו

If the מלוה voluntarily gave his item to the מלוה as payment of the loan, and it was not confiscated by Bais Din;

וחד אמר לא הדרה

The מלוה is not obligated to return the item, because

האי זביני מעליא היא דהא מדעתא דנפשיה אגביה

The לוה did intend for the מלוה to keep the item since he gave it to him yoluntarily. תד אמר הדרה

The מלוה is obligated to return the item, because

לא זביני מעליא הוא והאי דאגביה מדעתיה מחמת כיסופא הוא דאגביה

The הול did not intend for the מלוה keep the item, and he gave it to him merely to avoid the embarrassment of Bais Din confiscating it.



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#### Zugt Di Mishnah

השוכר פרה מחבירו

והשאילה לאחר ומתה כדרכה

If a person rented someone's cow, and then loaned the cow to someone else, and the cow died naturally;

ישבע השוכר שמתה כדרכה והשואל ישלם לשוכר

The שוכר, the renter, swears to the owner that the cow died naturally, and he becomes exempt from payment; and then the שוכר the borrower, pays the שוכר for the cow that he loaned him. However, the שוכר keeps the money and does not give it to the owner, because as the Gemara explains

שוכר משעת מיתה הוא דקני ושבועה כדי להפיס דעתו של בעל הבית

When the cow dies, the שוכר automatically becomes פטור from paying the owner, and the שוכר makes the שבועה to the owner merely to satisfy him.











רבי יוסי disagrees and says כיצד הלה עושה סחורה בפרתו של חבירו אלא תחזור פרה לבעלים

The שוכר must give the owner the money he gets from the שואל. He cannot keep it and benefit from someone else's cow, because as Tosfos explains, רבי יוסי holds שוכר בשבועה הוא דקני

Only after the שוכר makes the שבועה does he become פטור. Therefore, the owner can say to the שוכר דל אנת ודל שבועתך

ואנא משתעינא דינא בהדי שואל

I release you from your שבועה obligation to me, and instead I will deal directly with the שואל and accept his payment.

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According to the Tanna Kamma, רבי זירא says; פעמים שהבעלים משלמין כמה פרות לשוכר

In the following scenario the owner would be obligated to pay four cows to the שוכר:

(Ed note: This should have a timeline)

אגרה מיניה מאה יומי

והדר שיילה מיניה תשעין יומי

The שוכר first rented a cow for one hundred days, and the owner then borrowed the same cow back for ninety days, which leaves the שוכר with days 91-100;

Then.

הדר אגרה מיניה תמנן יומי

והדר שיילה מיניה שבעין יומי

The שוכר rented back the same cow for eighty days, which leaves the שואל, the owner, with days 81-90, and then the owner borrowed back the same cow for seventy days, which leaves the שוכר with days 71-80;

Now,

מתה בתוך ימי שאלתה

If the cow died during the first seventy days that the שואל, the owner, had it, the שוכר swears to the owner that the cow died naturally, and he becomes exempt from all payments, and the owner must now pay the שוכר four cows, as Rashi explains;

שתים נחלטות לו

בשביל שתי פרות שאולות שהשאילו

The שוכר claims and keeps two cows as payment for the two cows that he had loaned to the owner, and although חדא פרה הוא דהוי

It was the same cow that he loaned twice? We consider it as two different cows, because אין פרתו בעין שהשאילו בראשון

The original cow is not being returned; rather the שואל is reimbursing the משאיל, in this case, the שוכר. Therefore, the owner must reimburse him for each שאלה.

על שתי שכירות לעשות אצלו עשרים יום

And the שוכר claims two cows to use for his two rentals of ten days each, and he returns these cows to the owner after the rentals expire.

# ימ צים פעמים שהבעלים משלמין כמה פרות לשוכר

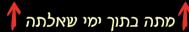
In the following scenario the owner would be obligated to pay four cows to the שוכר:

תמנן יומי The שוכר rented back the same cow for 80 days, which leaves the שואל, the owner, with days 81-90

אגרה מיניה

אגרה מיניה מאה יומי

The שוכר first rented a cow for 100 days,



הדר

If the cow died during the first seventy days that the שואל had it, then the swears to the owner that the cow died naturally, and he becomes exempt from all payments, and the owner must now pay the שוכר four cows!

ושתים

על שתי שכירות לעשות אללו עשרים יום

And the שוכר claims two cows to use for his two rentals of ten days each, and he returns these cows to the owner after the rentals

שתים נחלטות לו

בשביל שתי פרות שאולות שהשאילו The שוכר claims and keeps two cows as payment for the two cows that he had loaned to the owner.

And although it was the same cow that he loaned twice - we consider it as two different cows, because

אין פרתו בעין שהשאילו בראשון The original cow is not being returned; rather the שואל is reimbursing the משאיל, in this case, the שוכר. Therefore, the owner must reimburse him for each שאלה.









מר בר רב אשי disagrees and says אין לו עליהן אלא שתי פרות חדא דשאלה וחדא דשכירות

The owner gives the שוכר only two cows; one cow he keeps for the two שאילות, and one cow he uses for the two שכירות, because

שום שאלה אחת היא

The שוכר has only one claim of שאלה because it was the same cow that he had lent to the owner twice; and ושום שכירות אחת היא

The שכירות has only one claim of שכירות because it was the same cow that he had rented from the owner twice.



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The שוכר has only one claim of שאלה because it was the same cow that he had lent to the owner twice;



