

Bava Metzia – Simanim

דף 98 – צח

פרק ח – השואל את הפרה

1. Cases where the borrower/renter would have to swear

The Gemara on the previous Daf said, according to the opinion that ברי ושמא לאו ברי עדיף, that the Mishnah's case is where the defendant must swear because of מודה במקצת – *a partial admission*. Here, the Gemara explains that the first two cases (where a dispute arises over when a cow died, while borrowed or rented) are about two cows, and the final case (i.e., a dispute over which of two cows died, the borrowed or the rented) is about three cows. In the first cases, the owner claims that both cows, which were borrowed for some time and rented for some time, died while borrowed. The defendant responds: מתה ואיך לא – “Regarding *one* cow, it did indeed die while borrowed. ואיך לא מתה – However, regarding *the other*, I do not know if it died while borrowed, or while rented.” In the final case, the owner claims he gave two cows as a loan, and one as a rental, and both borrowed cows died. The defendant admits that one borrowed cow died, but is uncertain which of the other two died. In all cases, the defendant must swear, and since he cannot, he must pay.

2. שאלה בבעלים שכרה שלא בבעלים, and other cases

Rebbe Abba bar Mamal asked: שאלה בבעלים – if *one borrowed* [an animal] *with the owner* servicing him, and then *rented it* from him *without the owner* servicing him when the rental began, does the “בעליו עמו” exemption apply during the rental period? Do we consider the two periods of שמירה as separate transactions, and he would thus be liable for גניבה ואבידה for the rental, or do we say: גניבה – *rental is connected to borrowing*, since the liabilities of the rental (גניבה ואבידה) were already present at the time of the loan? Thus, we may view the rental as a continuation of the original loan transaction, which was made with בעליו עמו. The Gemara then asks, if we assume the latter, what about the reverse case, where he rented the animal with בעליו עמו, and then borrowed it without בעליו עמו? Here, the borrower's liabilities are not all included under the original rental (since a שואל is liable even for אונסין במקצת), or perhaps we say that *since it is partially connected* with the rental (since they share the liability for גניבה ואבידה דמי, *it is like it is completely connected to* [the rental]), and he would even be exempt for אונסין? The Gemara proceeds to ask two more questions.

3. When a שואל becomes liable while the cow is in transit

The next Mishnah states that if someone was borrowing a cow, and ושלחה לו ביד בנו ביד עבדו ביד שלוחו – *and [the owner] sent it to him with his son, his slave, or his shaliach*, or with the borrower's son, slave, or *shaliach*, פטור – [the borrower] is not liable until he receives it. If the borrower told the lender, שלחה לי, or he told the lender to send it with his own son, slave, or *shaliach*, or if the lender informed the borrower that he would send it with one of the above, and the borrower responded: שלח – “Send it,” then if it died after being sent, the borrower is liable. The Mishnah concludes: וכן בשעה שמחזירה – *And the same applies when he returns it*, that it remains the borrower's responsibility until it reaches the owner, or until he sends it on the owner's instruction.

Siman – Clown (צחוק)

The clown doing the hilarious “2 Borrowed/ 1 Rented Cow” Act admitting that one borrowed cow died, but wasn't sure about the other dead one, while his partner who rented a cow after borrowing it with the owner servicing him tried to claim “בעליו עמו” still applies, concluded the show right after a clown dressed as an owner's *shaliach* announced the borrowed cow he was delivering had died in transit.



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3 things to remember

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