

Shenayim Ochazin In Charts

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לעילוי נשמות
 הרה"ג מאיר בן דוב בער זצ"ל
 והרבנית רבקה בת חיים אריה הלוי ע"ה

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Chapter One - שְׁנַיִם אוֹחֲזִין

2a) Mishnah: Disagreements on Ownership

The first Mishnah has three parts about two people arguing over the possession of an object. The first part is the classical case of two people holding a garment and arguing over who owns it. (Tosafos notes that this Mishnah continues the ideas of the last Mishnah in Bava Kamma.)

Our Mishnah		
First part:	Two cases In both cases two people come into <i>beis din</i> holding a garment	
	One case One of the people said, "I found it." And the other said, "I found it."	Another case One of the people said, "It is all mine." And the other said, "It is all mine."
	The rule for both cases is that each one must take an oath that he owns no less than half of the garment, and then they split it. (Tosafos wonders why the rule is not just let them fight it out. "Whoever is the stronger prevails" כל דאלימ גבר.)	
Second part:	A case Two people come into <i>beis din</i> holding a garment	
	One person said, "It is all mine."	The other person said, "Half of it is mine."
	The rule is that	
	This person takes an oath that he does not own less than three quarters of the garment, and he gets three quarters of the garment.	This person takes an oath that he does not own less than one quarter of the garment, and he gets one quarter of the garment. (Tosafos asks why this person is not believed with a <i>migo</i> that he could have said he owns it all.)
Third part:	A case Two people come to <i>beis din</i> riding on an animal, or one person is riding the animal, and another person is leading the animal. One person said, "It is all mine," and the other person said, "It is all mine."	
	The rule is that each one must take an oath that he owns no less than half of the animal, and then they split the value of the animal.	
A rule for all parts:	Whenever they both agree, or have witnesses, they split the object without an oath.	

2a) Two Cases or One Case?

(Part one.) There seems to be a lot of repetition in the first part of our Mishnah. The Gemara goes through several views of whether the first part of the Mishnah is one case or two cases. For each view, the Gemara must explain why the repetition is needed.

First part of our Mishnah as two cases:	Two separate cases In both cases two people come into <i>beis din</i> holding a garment One case One of the people said, "I found it." And the other said, "I found it." Another case One of the people said, "It is all mine." And the other said, "It is all mine."
A question:	Why are two different cases needed?
The answer:	In fact, the first part of the Mishnah can be read as one case: Two people come into <i>beis din</i> holding a garment One of the people said, "I found it" and "It is all mine." And the other said, "I found it" and "It is all mine."

2a) Two Cases or One Case?

(Part two.) Looking at the first part of the Mishnah as dealing with one case means that there is a lot of repetition. The Gemara explains the repetition. At the end, the Gemara objects to it being one case and shows that the first part of the Mishnah is actually two cases.

Explanations for the repetition:	Why not let each person who claims the garment say, “I found it” and it would automatically be known “It is all mine”? If the person who claims the garment only said “I found it,” one might have thought that simply seeing the garment is a way of acquiring the garment. This is not true. Therefore, the person must add “It is all mine” to make it clear that seeing alone does not acquire the garment. An objection: How can one possibly say that “I found it” means “I saw it”? We know the <i>posuk</i>, Devorim 22:3 וְכֵן תַּעֲשֶׂה לְחִמְרֹךָ וְכֵן תַּעֲשֶׂה לְשִׁמְלֹתֶיךָ וְכֵן תַּעֲשֶׂה לְכָל־אֲבִגְדֹת אֶחָדֶךָ אַשְׁר־תִּאֱבֹד מִמֶּנּוּ וּמִצֵּאתָהּ לֹא תִּיכַל לְהַתְעַלֵּם You shall do the same with that person’s donkey; you shall do the same with that person’s garment; and so too shall you do with any object that your brother loses, <u>and you find</u>: you must not remain indifferent. Rabbenai explained, “And you find” means “it came into one’s hand” and not “it was seen.” A defense against the objection: Rabbenai taught us that when the Torah says “find” it means “come into your hand.” But one might have thought when “I found it” is said by regular people, it only means “I saw it” and that is how they acquired it. So “It is mine” is still needed.	Why not let each person who claims the garment say, “It is all mine” and it would automatically be known that “I found it”? If our Mishnah only said, “It is all mine,” then (it would be known that “I found it” but) every time any Mishnah only said, “I found it,” one would think that he acquired it only through seeing it. Therefore, our Mishnah taught the extra “It is all mine” so that one learns that “finding” is not “acquiring.” After “finding” one needs to “acquire.”
An objection:	Can one really say that the Mishnah is dealing with one case where everyone is making two claims? The Mishnah splits it very clearly into two cases with “he said” and “he said.”	
The conclusion:	Our Mishnah is really two cases. One case about “I find it” and one case about “It is all mine.” Rav Pappa, and some say it was Rav Simi bar Ashi, and some say Kedi (a name or “unattributed.”)	
	The part of our Mishnah which says “I found it” is about finding lost or ownerless objects.	The part of our Mishnah which says “It is all mine” is about buying and selling.

2b) Two Cases or One Case?

(Part three.) The Gemara concludes this *sugya* by showing how the repetition of the first part of the Mishnah is necessary.

The first part of our Mishnah as two cases:	One case One of the people said, "I found it." And the other said, "I found it."	Another case One of the people said, "It is all mine" And the other said, "It is all mine."
Explanations why both cases are needed:	This case is about finding lost or ownerless property. If our Mishnah only stated this case, one would have thought, that only a case of finding a lost or ownerless object demands an oath be taken. One might see his friend pick up such an object and then think, "my friend would not lose money (the ownerless object did not belong to anyone) if I also claim the lost object." To stop such justifications, the Rabbonim made each person take an oath that no less than half of the object is his. In contrast, in the case of buying and selling, where a person sees his friend purchasing an object, the person would not make such a strange rationalization (because money would be lost.) One would think that the Rabbis did not impose such an oath because the Rabbis were not concerned about such a rationalization. Therefore, our Mishnah had to say that the Rabbis did impose such an oath.	This case is about buying and selling. This means that two people claim to have bought the same object from a seller. If our Mishnah only stated this case, then one can make the following rationalization. They can see their friend buying an object and say "I want the object. I will claim it and my friend will not lose money. He will be able to get another object at a different seller." In order to stop such a strange justification, the Rabbonim made each take an oath that no less than half the object is theirs. In contrast, in the case of finding a lost or ownerless object, one cannot make such a justification because there is no other readily available ownerless object. (It seems that the logic of the two explanations is opposite to each other.) A question: Can the Mishnah really be dealing with buying and selling? Let the court just ask the seller who paid him. An answer: This case is dealing with when both bought the object. The seller sold the object to one buyer willingly, and the seller sold the object to another buyer unwillingly. It is unknown (Rashi: by us. Tosafos: by the seller) which buyer was which.

2b) Comparing the First Part of the Mishnah to Opinions of Other Tannaim

(Part one.) This is a long *sugya* that compares the halacha given in the first part of our Mishnah to the halachas given in three other cases. How does the halacha of the *tanna* of our Mishnah compare with the halachas of other *tannaim*? Some foreshadowing and orientation are needed.

The other *tannaim* are:

- Ben Nanas, who said that Rabbis do not make people take oaths when it is known that one is swearing falsely. כִּי צַד אֵלּוּ וְאֵלּוּ בְּאֵין לִידֵי שְׁבוּעַת שָׁנָא (Part one.)
- Sumchos, who said that money whose ownership is in doubt is split without oaths. קָמּוֹן הַמּוּטָל בְּסֶפֶק – חוֹלְקִין בְּלֹא שְׁבוּעָה (Parts two through five.)
- R' Yose, who said that money where part of its ownership is in doubt should be held until Eliyahu HaNavi comes and tells us who the real owner is. הַכֹּל יִהְיֶה מוֹנָח עַד שְׂיָבֵא אֱלִיָּהוּ (Parts six and seven.)

For each of these *tannaim*, the Gemara does not rest until it is proven that our Mishnah agrees with them.

How our Mishnah disagrees with Ben Nanas:	Our Mishnah One of the people said, “I found it.” And the other said, “I found it.” Each one must take an oath that he owns no less than half of the garment and then they split it.	(This Mishnah is not recalled in our Gemara) Mishnah Shevuos 7:5 A man tells a storekeeper to give his laborer a <i>sela</i> in small coins. Later the storekeeper says: “I gave it to the laborer,” and the laborer said, “I did not receive it.”	
		Rabbonim • The storekeeper takes an oath that he gave the coins, and the storekeeper gets paid by the man. • The laborer takes an oath that he was not paid, and the man also pays the laborer.	Ben Nanas How can we force both to swear when one is definitely lying? Rather: • The storekeeper gets paid by the man without taking an oath. • The laborer gets paid from the man without taking an oath.
How our Mishnah can agree with Ben Nanas:	Here, it could be that there is no false oath because both people picked up the garment simultaneously, and each believes they were the rightful owner. Ben Nanas would agree that both people should take an oath.		Here, there is definitely a false claim. Ben Nanas does not want a false oath to be made.

2b) Comparing the First Part of the Mishnah to Opinions of Other Tannaim

(Part two.) The Gemara compares the first part of the Mishnah with another case of disputed money. In this case, a *tanna* named Sumchos and the Rabbonim seem to have different opinions than our Mishnah.

How our Mishnah disagrees with Sumchos and also disagrees with the Rabbonim:	Our Mishnah One of the people said, "I found it." And the other said, "I found it." Each one must take an oath that he owns no less than half of it and then they split it. Here, they split the garment with oaths.	(This Mishnah is not recalled in our Gemara) Mishnah Bava Kamma 5:1 An ox gored and killed a cow. A fetus of the cow was found dead at the side of the cow, and it is not known whether the cow gave birth before the ox gored (and hence the owner of the ox is free,) or whether the cow gave birth after the ox gored the cow and the fetus died on account of the goring. Sumchos (The Mishnah does not say that this opinion is Sumchos. The Gemara in Bava Kamma 46a attributes it to Sumchos.) Since there is doubt if the owner of the ox owes or does not owe, the owner of the ox pays half the cost of the damage for the cow and one-quarter of the cost of the damage for the fetus. Here, the owner of the ox pays without an oath.	Rabbonim (The Mishnah does not give any other opinion. However, the Gemara in Bava Kamma states the Rabbonim's opinion: (המוציא מקבירו עליו הראיה) If the owner of the cow and fetus want money from the owner of the ox, he must prove his case. If he does not, then the owner of the ox pays nothing and does not need to swear. Here, the owner of the ox does not pay or take an oath.
How our Mishnah can agree with the Rabbonim:	Here, where each of the two people is in physical possession of the garment, one cannot say המוציא מקבירו עליו הראיה. The Rabbonim would agree that the two people should take oaths and split the garment.		Here, where both the owner of the ox and the owner of the cow are not in physical possession of anything, the Rabbonim said המוציא מקבירו עליו הראיה.

2b) Comparing the First Part of the Mishnah to Opinions of Other *Tannaim*

(Part three.) Two ways of seeing the relationship between Sumchos and our Mishnah are offered. The second way is partially argued with.

The two rulings:	Our Mishnah Here, they split the garment with oaths.	Sumchos Here, the owner of the ox pays without an oath.
How our Mishnah disagrees with Sumchos:	Here, Sumchos would definitely disagree with our Mishnah. He would say that here where they are both holding the garment (and there is nothing to extract) they definitely must split the garment without an oath.	Here, Sumchos said that even though the owner of the ox and the owner of the cow are not in physical possession, still they must split without an oath. In other words, the owner of the cow does not need to take an oath to <u>extract</u> money from the owner of the ox.
How our Mishnah can agree with Sumchos:	Here, Sumchos would agree with our Mishnah because this is a “certainly-certainly” case. This means that both people assert that they certainly own the garment. In such a case each one must take an oath. An objection: Rabbah bar Rav Huna says that Sumchos stated his rule of paying without an oath even in a “certainty-certainty” case. The Mishnah does not agree with this version of the rule of Sumchos.	Here, Sumchos said the owner of the ox should pay without an oath because this is a “maybe-maybe” case. This means that each party maybe correct and no oath should be taken.