

OVERVIEW of the Daf

1) Collecting for the consumption of produce (cont.)

The Gemara asks whether R' Chanina requires that the obligation be fixed and written or whether fixed is sufficient.

An unsuccessful attempt is made to resolve the inquiry.

Ulla's earlier explanation of the Mishnah is unsuccessfully challenged.

Another attempt is made to demonstrate that according to R' Chanina it is not necessary for the obligation to be recorded as long as it is fixed.

It is noted that the dispute between Ulla and R' Chanina parallels a dispute between Tannaim.

2) Taking an oath about a lost object

R' Yitzchok issues a number of rulings related to whether someone who finds a lost object is obligated to take an oath if the one who lost the property claims that the finder is not returning all the lost property.

R' Yitzchok's position is challenged from our Mishnah that rules that a finder does not take an oath.

The Gemara answers that R' Yitzchok follows the opinion of R' Eliezer ben Yaakov who disagrees with the Mishnah.

The Beraisa that records R' Eliezer ben Yaakov's opinion is cited.

R' Eliezer ben Yaakov's position is challenged and in response to the challenge the Gemara is forced to limit the application of R' Eliezer ben Yaakov's opinion.

After this suggested explanation is rejected it is suggested that the dispute between our Mishnah and R' Eliezer ben Yaakov relates to Rabbah's explanation for why someone who admits to part of a claim must take an oath. ■

REVIEW and Remember

1. Why is a widow permitted to collect payment for her food from encumbered property as opposed to the deceased's daughters?

2. What is the difference between a pair of oxen and a pair of purses?

3. When does a person take an oath in response to his own claim?

4. What is the rationale for the oath of partial admission (מודה במקצת)?

Distinctive INSIGHT

What is the reason Rabbah wonders about מודה במקצת?

מפני מה אמרה תורה מודה מקצת הטענה ישבע

Rabbah asks why the Torah requires that an oath be administered to a person who admits to only part of a claim registered against him (מודה במקצת). The Rishonim discuss the nature of Rabbah's issue.

Rashi (Bava Kamma 107a) explains that the problem is why the Torah only requires an oath for a person who admits partially, whereas someone who denies the claim against him completely does not have to take an oath. Accordingly, the answer of the Gemara is that we have a firm assumption that a person who actually borrowed money would never have the audacity to totally deny that fact to his lender. If a person who is confronted regarding a loan reacts with total denial, we must assume that the denial is true, and therefore no oath is necessary to establish his claim as believable.

Rashi in Bava Metzia (3a) explains that the inquiry of Rabbah is that when someone admits partially to a financial claim against him, we presume that he could have denied the entire amount by saying he owes nothing. The fact that he is admitting to part of the claim is, in effect, a voluntary gesture on his part, indicating that it is truthful. If he was lying, why would he admit anything? This is comparable to a person who returns a lost wallet which he finds (משיב אבידה), where the one who lost it claims that there was more money in it than is being returned. If the finder claims that he found it with the amount he is returning, we believe him, for if he was lying we assume he would have kept the entire wallet for himself. Why, then, is there an oath for one who admits to part of the claim? The Gemara answers that in the case of a loan, the borrower is not willingly admitting to the partial amount he says he owes. He cannot be given credit as we find by one who is returning a lost object, because the borrower does not have the audacity to deny the loan.

Tosafos (ד"ה מפני) understands that Rabbah's question is that the borrower should be exempt from an oath by means of a מינו. Since, if he was lying, he could have and would have apparently denied the entire loan, we should believe him when he admits to part of it. The answer of the Gemara, according to Tosafos, is that there is no מינו, as the option to deny the entire loan is not viable. This is a מינו דהעוה, where the alternative claim to deny the loan would entail a stance of audacity, which we do not consider as an option. ■

HALACHAH Highlight

A person's inability to behave brazenly

משום דאין אדם מעיז פניו בפני בעל חובו

Because a person is not brazen enough [to deny the loan] to the face of his creditor

Rashi¹ explains that the reason the borrower would not deny the loan altogether is that he is not brazen enough to deny borrowing money from the person who did him a favor. Tosafos² asks that according to Rashi a watchman (שומר) should be believed when he makes a partial admission regarding the object he was entrusted to watch. Since the depositor (מפקיד) did not do any favors for the watchman the issue of not wanting to appear brazen is no longer a factor. Accordingly, when the watchman makes a partial admission regarding an object placed in his care (פקדון) he should be believed with a מיגו that he could have denied the existence of the object altogether. As an alternative explanation, Tosafos suggests that the presumption is that a person would not lie to the face of someone who knows that it is a lie.

Pnei Yehoshua³ suggests that Rashi agrees that the primary deterrent against lying is that a person would not lie to the face of someone who knows that it is a lie. The reason Rashi cites an alternative reason is to account for those circumstances where even the depositor does not know that the watchman is lying, e.g. the depositor does not recall how much was given to the depositor. Tumah⁴ also suggests that Rashi agrees with Tosafos and Rashi invokes the secondary reason that a person would not be so brazen as to lie to the face of someone who did him a favor to take into account the case of a child who is a depositor. Rashi maintains that when a minor makes a definitive claim (ברי) one is obligated to take an oath against that claim. In such a case the watchman would not be embarrassed to lie to the face of a child who knows that he is lying, therefore, it is necessary for Rashi to add an additional reason to believe the borrower, i.e. a person would not be so brazen as to lie to someone who did him a favor. ■

1. רש"י ב"ק ק"ז. ד"ה כדרבה.
2. תוס' גיטין נ"א: ד"ה אין אדם.
3. פני יהושע ב"ק שם ברש"י ד"ה מעיז.
4. תומים סי' פ"ב כללי מיגו אות קי"א. ■

STORIES Off the Daf

Lost and Found

"המוציא מציאה לא ישבע..."

Today's daf discusses one who found a lost object.

While one commuter from Bnei Brak was filling his car with gas for his trip home, he noticed that the man in front of him had placed his wallet on his car roof and went to pay for his gas. When this man returned he hopped into his car and drove off—and completely forgot all about his wallet. The observer sprang into action. He rushed to pay his bill and within half a minute raced off in the direction of the car with the wallet on the roof. Although he caught up fairly easily he encountered a very strange reaction to his endeavor to get this

man's attention. Although he honked and honked the man completely ignored him. After a few minutes of this on the highway he noticed that the wallet fell to the side of the road. The observer pulled over and picked up the forgotten wallet.

When he arrived home he checked the contents of the wallet. There was an Israeli identity card inscribed with an obviously Slavic name and a veritable fortune in hundred dollar bills. As is well known, many non-Jews entered Israel in recent years either with false papers confirming their Jewishness or as the children of Jewish fathers and non-Jewish mothers. The Knesset even passed a law that granted prospective immigrants from the Soviet Union with only a single Jewish grandparent full Israeli citizenship under the Law of Return. What was the likelihood that the man

who had lost the wallet was actually Jewish? On the other hand, the man might well be Jewish—in which case the finder was obligated to call the man's number and return his wallet.

The man decided to consult with Rav Yitzchak Zilberstein, shlit"a, regarding this question. "There is no way to know if he is Jewish or not. Perhaps you are not obligated to call him but you should anyway. Call him now and invite him to my house."

The man called, and the former Russian citizen, whose picture matched the identity card, arrived shortly after. When this man saw his wallet with all the money intact he was so moved that he prostrated himself before his 'angel of mercy' and kissed his feet! ¹ ■

1. עלינו לשבח, ח"ג, עמוד תקט"ז – תקט"ז