

## OVERVIEW of the Daf

### 1) Biblical and Rabbinic oaths

A difference between a Biblical oath and a Rabbinic oath is identified.

Another difference between Biblical and Rabbinic oaths according to Mar bar R' Ashi is presented.

Another difference between Biblical and Rabbinic oaths is suggested to account for another opinion.

Tangentially, the Gemara discusses how we force a recalcitrant defendant to swear.

### 2) Forcing the plaintiff to swear

R' Pappa teaches that if a defendant asks the plaintiff to swear that the document he possesses was not paid, the plaintiff must swear.

R' Acha the son of Rava asked how this is different from the case of a plaintiff who received partial payment of his debt.

R' Ashi explains the difference between the two cases.

How this halacha applies to a Torah scholar is discussed.

### 3) Repaying a loan in the presence of witnesses

R' Yehudah in the name of R' Assi teaches that one who borrows money in the presence of witnesses must repay the loan in the presence of witnesses.

Shmuel disagreed and maintained that it is not necessary to repay the loan in the presence of witnesses.

R' Assi's position is unsuccessfully challenged.

According to a second version the dispute between R' Assi and Shmuel is in a case where the lender stipulated that the loan must be repaid in the presence of witnesses and they disagree whether the borrower is believed to claim that he repaid the loan in the presence of witnesses and they left town.

Shmuel's position, namely, that the borrower is believed to claim that he repaid the loan in the presence of witnesses who left town, is unsuccessfully challenged.

R' Acha rejects Shmuel's defense to the challenge to his position.

R' Pappi and R' Pappa, both citing Rava, disagree whether a loan must be repaid in the presence of witnesses.

If the lender stipulates that the loan must be repaid in the presence of witnesses the stipulation must be honored but the borrower is believed to claim that he repaid the loan in front of witnesses who subsequently left town.

The Gemara presents a series of related incidents and rulings. ■

## Distinctive INSIGHT

*When the loan is specified not to be paid back privately*  
 ואם אמר אל תפריעני אלא בעדים צריך לפרועו בעדים

The opinion of Rav Assi is that if Reuven lends money to Shimon, even if the loan was witnessed by two witnesses, Shimon need not assemble witnesses when he pays the loan back. If he would claim that he paid it back, he would be believed, and the lack of witnesses would not be assumed to be suspicious.

If, however, Reuven, the lender, specifically stated that he did not want Shimon to pay him back without having witnesses present, then Shimon would not be believed if he later claimed that he paid back the money without witnesses.

Many Rishonim explain that the reason for this halacha is that by agreeing to the terms of the lender, the borrower forfeits his right to claim that he paid the loan back without witnesses. ר"ן writes that once a borrower agrees to pay the loan in front of witnesses, he adopts a legal position not to pay back without witnesses. When he later says that he did pay back without witnesses, we say that he must be lying. Mishne L'Melech (to Hilchos To'ein v'Nit'an 15:1) points out that according to ר"ן, if the lender admits that the borrower paid back a portion of the loan privately, when no witnesses were present, the borrower would be believed to claim that he paid back the entire loan privately. The lender's admission that the borrower was not lying regarding

(Continued on page 2)

## REVIEW and Remember

1. Explain מיפך שבועה.
2. What is the consequence of the fact that we do not have Torah scholars take oaths?
3. Is one obligated to repay a loan in the presence of witnesses?
4. Explain the principle כל האומר לא לויתי כאומר לא פרעתי דמי.

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 By Mr. and Mrs. David Binter  
 In loving memory of their father  
 ר' משה בן ר' זלמן טובי, ע"ה

# HALACHAH Highlight

## Is a Biblical oath administered ahead of a Rabbinic oath?

איכא בינייהו מיחת לנכסיה

The difference between them is descending upon the defendant's property

**T**eshuvus Shvus Yaakov<sup>1</sup> discusses a case where two people have claims against one another and it is decided that each party must take an oath. One of them, however, is obligated to take a Biblical oath whereas the second party is only obligated to take a Rabbinic oath and the question is who takes the first oath and whether precedence should be given to the Biblical oath. His initial inclination is that the one who is obligated to take the Biblical oath should swear first since his oath is more important. Upon further consideration he decided that it is evident from our Gemara that this is not true. Our Gemara searches for differences between a Biblical oath and a Rabbinic oath and throughout that search the Gemara never mentioned as a difference the fact that a Biblical oath should be administered ahead of a Rabbinic oath. The absence of this as a difference indicates that neither one takes priority over the other. Consequently, the order of the oaths will be determined by lottery, which is the method that is commonly used to order oaths when each party must take an oath.

Ketzos Hachoshen<sup>2</sup> disagrees with Shvus Yaakov and rules that the one obligated to take a Biblical oath must take the first oath. His rationale is based on the difference in halacha between one who is obligated to take a Biblical oath and one who is obligated to take a Rabbinic oath. If someone refuses to take a Biblical oath, Beis Din can confiscate

(Insight...continued from page 1)

the first portion of the loan serves to reveal that we cannot assume he was lying regarding the remainder of the loan, as well. However, according to the other Rishonim, we determined that the borrower cannot present the claim of paying privately, and this is true regarding the entire loan or even regarding a portion of it.

Ramban notes that the requirement to only pay in front of witnesses is a condition which can be agreed upon even after the moment of the loan. For example, the Mishna (38b) taught that if the lender challenges the borrower in front of witnesses and he asks, "Isn't it true that you owe me money?" and the borrower admits, if the lender states that he wishes to be paid only in front of witnesses, the borrower must comply. Some Rishonim explains that this is true only if the borrower willingly agrees to pay only in front of witnesses, while other Rishonim say that the lender can add this stipulation unilaterally. ■

property equal in value to the disputed amount whereas if someone refuses to take a Rabbinic oath, Beis Din may not confiscate his property. Consequently, it is logical that we would address the oath that allows a confiscation of property before a case that does not allow a confiscation of property. Imrei Binah<sup>3</sup> explains that according to the explanation of Ketzos the proof from our Gemara suggested by Shvus Yaakov is no longer persuasive. According to Ketzos the reason to prioritize the Biblical oath is a result of the fact that it could allow for confiscation of property which is, in fact, one of the differences mentioned by the Gemara. ■

1. שו"ת שבות יעקב ח"א סי' קנ"א.
2. קצות החושן סי' ט"ו סק"ב.
3. אמרי בינה הלי' דיינים סי' כ"ג. ■

# STORIES Off the Daf

## "The Check Bounced"

"גזל גמור..."

**T**oday's daf discusses theft.

Rav Nissim Yagen, zt"l, explained that stealing often comes into our lives in ways that are easy to miss. "How many times do people take payment for a full hour's work but spend time on the phone, thereby robbing their employer? How many times do people spend as much time as they like work-

ing on dealing with their own personal business on their employer's time? And when someone spills a package of yogurt or cheese in a store and it bursts open he should never feel that this is merely a question of gezel; it is definitely gezel! At the very least he must sincerely offer to pay for the results of his clumsiness.

"At other times, people give checks which bounce causing untold suffering and waste of time, even if the recipient is repaid, and if he is never paid back, this is outright theft. How can we possibly understand the repercussions of

such underhandedness?

"Just imagine a parent who was no paradigm of righteousness sentenced to a spate in gehinnom, who after a few days is led to Gan Eden. After his original feeling of relief, he wonders how he escaped his punishment and is told that his son gave a big check to tzedakah.

"A few days later, the avenging angels fetch him from Gan Eden, and return him to gehinnom. When he protests this treatment they tersely explain, 'The check bounced...'"<sup>1</sup> ■

1. נתיבי אור, ק"מ, וקמ"ג. ■