



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Shavuos Daf Mem Hey

PEREK KOL HANISHBA'IN -- PEREK SHEVI'I

MISHNA

- All those who swear a D'Oraisa oath, swear to prevent themselves from having to pay. The following people swear to collect (D'Rabanan): a hired worker, a victim of theft, someone who was damaged, a person whose opposing litigant is suspect regarding swearing falsely, and a storekeeper regarding what is written in his ledger.
 - What is the case of the hired worker? If a worker asks to get paid and the employer says that he has already paid him, but the worker says he never got the money, the worker swears that he was not paid and collects. **R' Yehuda** says, this is only if there is a partial admission, for example where the employer says that he paid part and owes part of the wages to the worker.
 - What is the case of the victim of theft? If witnesses saw someone entering a debtor's house to take collateral without permission, and the debtor says that the person took keilim from him, but the person says he didn't take anything, the debtor swears that something was taken and he collects. **R' Yehuda** says, this is only if there is a partial admission, for example where the debtor claims that two keilem were taken and the person says he only took one.
 - What is the case of someone who was damaged? If witnesses testify that a person entered someone's reshus whole and left injured, and the person claims that the owner of that reshus damaged him, but the owner says he did not, the victim swears and collects. **R' Yehuda** says, this is only if there is a partial admission, for example if the person claims he was injured twice and the other person says he only injured him once.
 - What is the case of someone whose opposing litigant is suspect regarding swearing falsely? This is whether the opposing litigant once swore falsely when making a shvuas eidus, a shvuas pikadon, or even an oath in vain. If a person is a gambler, a lender with ribis, a bird racer, or one who deals with produce of shmitta and he now becomes chayuv a shvuah to prevent himself from having to pay, the shvuah obligation moves to the one making the claim against them, and this claimant swears and collects. **R' Yose** says, if both litigants are suspect to swear falsely, the oath returns to its place. **R' Meir** says, in that case they would divide the amount of the claim equally.
 - What is the case of a storekeeper regarding what is written in his ledger? This does not mean that a storekeeper can swear that someone is chayuv to pay him 200 zuz based on his ledger, and then collect based on that oath. Rather, it refers to a storekeeper who was instructed by someone to give produce to a person's son, or to give money to a person's workers, and the storekeeper says it is written in his ledger that he in fact gave as instructed, but the child or the workers say they never got anything from him. In this case, the storekeeper swears that he gave what he says he gave and then collects the amount owed from the person, and the workers swear that they never received their wages and they collect from their employer (the same person) as well. **Ben Nanas** said, how can we allow two parties to swear when one of them is certainly swearing a false oath!? Rather, the storekeeper collects without swearing and the workers swear and then collect.
 - If a person told a storekeeper, "Give me a dinar's worth of produce", and the storekeeper gave it to him and then asked for payment. The person replied, "I gave it to you before you gave me the produce, and you put it into your money bag!" The halacha is that the person swears that he gave the money and is patur from paying more. If the

person first paid and then asked for the produce, and the storekeeper said, "I already gave it to you and you took it home", the storekeeper swears that he gave the produce and is patur. **R' Yehuda** says, whoever has the produce in his possession has the upper hand.

- If a person told a moneychanger, "Give me a dinar's worth of change", and the moneychanger gave it to him and then asked for payment. The person replied, "I gave it to you before you gave me the change, and you put it into your money bag!" The halacha is that the person swears that he gave the money and is patur from paying more. If the person first paid and then asked for the change, and the moneychanger said, "I already gave it to you and you put it into your wallet", the moneychanger swears that he gave the change and is patur. **R' Yehuda** says, it is not usual for a moneychanger to give change before he is paid for it.
- Just as the **Chachomim** said that a woman who weakens her kesubah (by saying it was already partly paid) may only collect the remainder if she swears that she is still owed, and that if a single witness says the kesubah was paid the woman may only collect if she swears that she is still owed, and that if she wants to collect her kesubah from encumbered property or from orphans' properties she may only collect if she swears that she is still owed, and that if she collects her kesubah not in the presence of the husband she may only collect if she swears that she is still owed, so too orphans may only collect a debt owed to their father if they make an oath that their father did not instruct them on his deathbed or tell them at any time that this debt was already paid, and that they did not find a receipt among the father's other documents, indicating that this loan document was already paid. **R' Yochanan ben Broka** said, even if the son was born after the father's death, he still must swear that he did not find a receipt among the documents before he can collect. **R' Shimon ben Gamliel** said, if there are witnesses who testify that at the time of the father's death he said that this document has not yet been paid, the son may collect without swearing.
- The following people must swear even if no (definite) claim has been made against them: partners, sharecroppers, an apitrapis, a woman who runs a store or manages a property for her husband, and an heir who manages the estate for his brothers. If the plaintiff demanded an oath from any of these people, and these people say, "What claim do you have against me?", and the plaintiff says, "I want you to swear to me that you have not taken any of my property", these people would be chayuv to swear. If partners or sharecroppers divide the property among themselves and neither asks the other to swear at that time, they cannot demand that he swear at a later time. However, if the person to whom it was demanded to make an oath has to make an oath to this partner for some other reason, we can make him swear about the previous matters as well.
- Shmitta cancels an obligation to make an oath.

GEMARA

- **Q:** How do we know that D'Oraisa all oaths are administered only to stop someone from having to pay? **A:** The pasuk says "v'lakach b'alav v'lo yishalem", which teaches that the one who faces liability to pay is the one who must take the oath.

V'EILU NISHBA'IN V'NOTLIN...

- **Q:** Why is it that the Rabanan instituted that a worker can swear and take the wages from the employer? **A:** **R' Yehuda in the name of Shmuel** said, (this is one of the) major halachos were taught here.
 - **Q:** This is a Rabbinic takanah, not a halacha D'Oraisa, so why does **R' Yehuda** say it is a "halacha"? **A:** Rather, read it as saying that **R' Yehuda in the name of Shmuel** said, (this is one of the) major takanos were taught here.
 - **Q:** What is meant by "major"? Are we to say that there are also "minor" takanos here? **A:** Rather, **R' Nachman in the name of Shmuel** said, these are lasting takanos that were taught here (even though they uproot a halacha D'Oraisa, these takanos were made). In truth, it is the employer who should have to swear and free himself from paying. The **Rabanan** uprooted this oath and placed it on the worker, because it is the livelihood of the worker.

- **Q:** Just because it is his livelihood we make the employer suffer a loss? **A:** The employer is happy with this takanah, because it helps him attract workers to come and work for him.
 - **Q:** Maybe we should say that the worker is happy to have the employer swear, so that more people would be willing to hire workers!? **A:** Someone who needs workers has no choice but to hire workers, and they therefore don't need to be incentivized to do so.
 - **Q:** A worker who needs work also has no choice but to hire himself out, so why do we need to incentivize them to do so? **A:** Rather, the reason we have the worker swear is because the employer is busy and may mistakenly swear falsely (unintentionally). Therefore, we put the oath on the worker.
 - **Q:** If so, why didn't they just give the wages to the worker upon demand, without the need to swear? **A:** This was done to calm the employer, who feels that he already paid.
 - **Q:** Why didn't the **Rabanan** rather institute that the wages should be given to a worker only in the presence of witnesses? **A:** That would be a bother.
 - **Q:** Why didn't they instead institute that the worker get paid before he begins working (and before the employer is busy)? Then there would be no reason for an oath!? **A:** They both rather wait until after the work is done (the employer doesn't always have money before then, and the worker doesn't want to worry about losing the money during the work).
 - **Q:** If the **Rabanan** took the oath away from him because he is busy, why is it that when there is an argument as to the amount of money that was supposed to be paid, a Braisa says that the employer is believed? **A:** People definitely remember how much the deal was for. They can sometimes forget whether or not the amount was yet paid.
 - **Q:** If this is the reason for the takanah, why is it that the worker is only believed with an oath during the time that he is supposed to get paid, but not after, which is what our Mishna says? **A:** We have a chazaka that an employer will not be oiver the lav of lo salin. Therefore, the worker is not believed to say that the employer was oiver the lav.
 - **Q:** We said that an employer is busy, so how can we assume that he paid on time? **A:** He is busy and forgets only before his obligation to pay sets in. Once it does, he focuses and remembers to pay.
 - **Q:** Are we saying that we are concerned that the worker is trying to steal? **A:** The employer has two chazakos – that he will not be oiver on lo salin, and that a worker does not delay in collecting his wages. The worker has only one chazaka – he would not steal. Therefore, the employer is believed even without having to swear.
- **R' Nachman in the name of Shmuel** said, this halacha is only where the worker was hired and did the work in front of witnesses. However, if there were no witnesses, since the employer would be believed to say that he never hired him, he is believed to say that he hired him and paid him. **R' Yitzchak** said, this is correct, and in fact **R' Yochanan** said this as well.
 - **Q:** Did **R' Yitzchak** mean to suggest that **Reish Lakish** argues with **R' Yochanan** regarding this? **A:** After **R' Yochanan** said this ruling, **Reish Lakish** remained quiet. That is why **R' Yitzchak** was not sure whether he argued with **R' Yochanan** or accepted his ruling.
 - We find that **R' Menashya bar Avid in the name of Rav** said this halacha as well.
 - **Rami bar Chama** said, this is an excellent ruling. **Rava** asked, why is it a great ruling? Based on this, why should we ever have a case of a shomer having to swear that something was lost through an oneis? Since he would be believed to say that he never took the item to watch it, he should also be believed to say that he took it to watch it, but it was lost through an oneis!? **Rami bar Chama** said, the case of the shomer who has to swear would be a shomer who was given the item in front of witnesses. **Rava** asked, even then, since he would be believed to say that he already returned the item, he should also be believed to say that it was lost through an oneis!? **Rami bar Chama** said, the case of swearing would be where the deposit was recorded in a document, and the owner still has the document, which means that the item was never returned.

- We see from here that both, **Rami bar Chama and Rava** hold that if one is given an item to watch and it is given in front of witnesses, that does not require it to be returned in front of witnesses. But, if it was given over and recorded in a document, it would have to be returned in front of witnesses.
- **R' Sheishes** asked **Rabbah bar Shmuel** whether he had learned anything regarding a hired worker. He said he did, and quoted a Braisa. The Braisa says, if a hired worker makes a claim for his wages when it is due he may swear and collect his wages. How is this applied? If the worker tells the employer, "You hired me but haven't paid me" and the employer says, "I did pay you", that is when he can swear and collect. However, if the worker says "You hired me for 2 selah" and the employer says "I hired you for one sela" we would say hamotzi meichaveiro alav haraya, and the worker would have to bring proof. **R' Sheishes** said, since the second case requires him to bring proof, we can infer that in the first case he can swear and collect without any proof – even without proof that he was actually hired. This would contradict the ruling of **Rav and Shmuel**, above. **R' Nachman bar Yitzchak** said, the Braisa requires proof of employment in order to swear in the first case. It doesn't say that proof is needed, because it only speaks of proof when it is needed to make someone pay, not when it is needed to allow someone to swear.