



OVERVIEW of the Daf

1) Falsely claiming a deposit was stolen (cont.)

It is noted that R' Yochanan's ruling, namely, that one who falsely claims a deposit was stolen will pay כפל only if there was a partial admission, is at odds with a ruling of R' Chiya bar Yosef.

A ruling of Rami bar Chama is cited that is consistent with the position of R' Yochanan.

Rava explains the rationale behind Rami bar Chama's ruling.

R' Chiya bar Yosef asserts that someone who falsely claims an item was stolen is not liable unless he used it before he took his false oath.

R' Chiya bar Abba quotes R' Yochanan as maintaining a dissenting position.

R' Zeira asks for clarification and R' Chiya bar Abba cites another ruling that he feels could be applied to this case.

R' Zeira rejects that parallel and proof for R' Zeira's understanding of R' Yochanan's ruling is cited.

2) Misappropriating an object and then falsely claiming it was stolen

R' Sheishes asserts that one who misappropriates an object and then falsely claims it was stolen is exempt from paying כפל.

R' Nachman unsuccessfully challenges this ruling.

3) Exemption from the one-fifth surcharge

Rami bar Chama inquires whether it is the כפל payment that exempts a person from also paying the one-fifth surcharge or is it that one oath can only generate one payment.

The Gemara begins to explain the relevance of the inquiry of Rami bar Chama. ■

REVIEW and Remember

1. What is the meaning of the phrase עירוב פרשיות?

2. Why do we assume that a shomer would behave in a brazen fashion?

3. According to Rami bar Chama, when does a shomer take an oath?

4. What are the three oaths imposed on a shomer who claims the deposit was stolen?

Distinctive INSIGHT

One who makes a partial admission to a claim of a loan must take an oath

חזקה אין אדם מעיז פניו בפני בעל חובו

When a person is confronted by another to pay him a sum, the Torah has varying guidelines depending on the response of the defendant. If the claim is denied totally, the Torah does not require that an oath be taken. If the response is a partial admission, he must pay that which he admits, and the Torah requires that an oath be administered to support his denial. The view of Rabba is that this set of rules governs the denial of a loan.

Rashi understands that Rabba comes to teach that a total denial of the claim is credible on its own, without the need for an oath to support it, because we must assume that if the person had borrowed money, he would not have the audacity to deny it to the lender, who had done him this favor. Accordingly, if the response to the claim was a partial confession, an oath is necessary in order to confirm the truth of the partial confession. Admitting partially to the claim is within the realm of how a person might respond even to someone who did him a favor.

Tosafos Rabeinu Peretz challenges the explanation of Rashi. According to Rashi's approach, Rabba should have expressed his question in terms of "Why is a complete denial exempt from an oath?" rather than asking, "Why is a partial admission required to take an oath?" Furthermore, if Rabba recognizes that these rules are based upon the verse in Shemos (22:8), why does Rabba question their rationale at all?

In fact, Rashi himself in Bava Metzia (3a) explains that the question of Rabba is why is one who makes a partial confession required to take an oath, when we should believe him even without an oath. This is, in fact, the reason for exempting from an oath a person who returns a wallet he finds to its owner, where the owner claims that the wallet contained more money when it was lost. Here, the finder does not take an oath, because the very fact he returned what he found and did not deny it is proof that he is honest. Similarly, if the borrower was a liar, he would have denied the claim totally. To this, Rabba answers that although a dishonest finder might have kept the object for himself, a borrower would never deny the loan to the one who did him a favor by lending him the money in the first place.

Tosafos explains that Rabba is probing why do we not believe the borrower who admits partially, because (מיגו) if he was a liar he would have denied the entire loan. And if we do not use this logic to believe him, let us conclude that מיגו is never effective. To this, Rabba answers that there is no choice for the borrower to consider totally denying the loan. ■

HALACHAH Highlight

Claiming an object was stolen after "stretching out one's hand"

אבל שלח בה יד קנה וכו'

But once he stretched out his hand he acquires it etc.

Rashi¹ explains that once the shomer "stretches out his hand" to use the object in his care, it enters his domain for matters related to אונס and thus when he takes a false oath that it was stolen he is only denying possession of an object that is already in his possession. Rav Akiva Eiger² challenges this explanation since "stretching out his hand" only places liability on the shomer but it does not make the object his. Therefore, when the shomer falsely claims that it was stolen he was attempting to cause a loss to the owner of the object and should be required to pay double the object's value (כפל).

Shitah Mekubetzes³ cites other authorities who offer a different explanation of the Gemara. They assert that a false claim that an object was stolen generates an obligation to pay double only when the false claim would have otherwise exempted the person from financial responsibility. In our case, however, once the shomer "stretches out his hand" he is financially liable for anything that may happen to that object, even if it is stolen. Accordingly, his false claim that it was sto-

len did not exempt him from liability and that is why he is not obligated to pay double.

Another explanation of the Gemara is presented in Birkas Shmuel⁴. He suggests that once the shomer "stretches out his hand" to use the object he loses his status as a shomer and is now categorized as a thief. For that reason when he goes on to falsely claim the object was stolen he is not required to pay כפל since the obligation to pay כפל when falsely claiming an object was stolen is an obligation that is incumbent on a shomer. In this case, however, since he has already lost his status as a shomer and became a thief he does not have to pay כפל for subsequently claiming, falsely, that the object was stolen. This concept can be traced back to a comment of Rav Akiva Eiger⁵ who writes that if an object increases in value after a shomer "stretches out his hand" and then the shomer behaves negligently he will reimburse the owner for the object's value at the time he "stretched out his hand" rather than its value at the time of his negligence. The reason is that only a shomer is liable to pay the object's value at the time of the negligence but once he became a thief, by "stretching out his hand" his liability is to pay for the object's value at the time of the theft. ■

1. רש"י ד"ה אבל

2. שו"ת רעק"א מהדור"ת סי' קצ"ב

3. שיטה מקובצת ד"ה אמר בשם הראב"ד וד"ה אבל בשם הרא"ש

4. ברכת שמואל סי' מ"ב

5. חידושי רעק"א על המשניות לב"מ אות כ"ט ■

STORIES Off the Daf

Genuine gratitude

אין אדם מעיז פניו

Rashi on today's daf comments that a person doesn't have the nerve to be overly bold to one who did him a favor. The Ben Ish Chai explains that this element of hakaras hatov is precisely why Hashem put us in Egypt in the first place. He illustrates this with a parable:

There was a wealthy man who raised an orphan as one of his own children. This child's every need was taken care of for twenty years without fail. One day, a poor man came to the house and asked the wealthy man for a donation. The wealthy man gave him a generous donation and the poor man was so gratified by this kindness that he be-

gan to sing the wealthy man's praises in a very gratifying manner.

After he left, the wealthy man's wife said, "I don't understand. We gave a one time donation to the poor man and he burst into praise, yet we have paid many times that amount to the orphan yet he has never even said thank you."

"This is because he takes all that he has for granted," replied the wealthy man. "If you wish to inculcate in him an awareness of what we have given him he must be sent away."

The wealthy man called the orphan and said, "I have supported you until now but you are already a man and can definitely support yourself. You should find your way to life and peace!"

The young man kissed his host's hand as was customary, and left.

He found an abandoned bench to sleep on and the next day found work

as a laborer to earn his bread.

After three days of backbreaking labor, the wealthy man called the orphan back and said, "You may now return to my household if you wish."

Now the orphan praised the couple effusively for every kindness since he stopped taking what he received for granted.

Similarly, Hashem first made us slaves in Egypt and only later brought us to Eretz Yisrael to ensure that we not take the good of Eretz Yisrael for granted.¹

One reason why we recollect our difficult slavery briefly every day and at length at least once a year is to enable us to hold on to our gratitude to Hashem for all His kindnesses to us. A former slave should take nothing for granted! ■

בן איש חי ה"א קפ"ט