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CHICAGO CENTER FOR Torah & Chesed

This month's Daf Digest is dedicated in memory of
Mrs Yenta Weiss, Rivke Yenta bas Asher Anshel & Yosef ben Chaim Hacohen Weiss
By Mr. and Mrs. Manny Weiss

OVERVIEW of the Daf

1) The oath of the Mishnah (cont.)

Numerous sources are cited that demonstrate that we do not rule according to the principle "One who is suspected of stealing is suspected of lying under oath."

Abaye offers another explanation for the oath imposed on the claimants in our Mishnah.

This explanation is unsuccessfully challenged.

2) Seizing the item in front of Beis Din

R' Zeira inquires whether a litigant who seizes the item under dispute in front of Beis Din will be permitted to keep the item or not.

The circumstances of the inquiry are explained.

R' Nachman suggests a resolution to this inquiry from a Mishnah.

Two alternative explanations of the Baraisa are suggested leaving the inquiry unresolved.

The Gemara wonders, assuming that one who seizes the item is permitted to retain possession of the item, if he were to consecrate that item would that consecration take effect?

The two sides of the inquiry are explained.

An unsuccessful attempt is made to resolve this inquiry.

Rav Chanaya cites a Baraisa as proof of the premise of Rabbah's rejection of R' Hamnuna's position, namely, that Beis Din would take away a questionable bechor if it was seized by a kohen.

Abaye initially rejected this proof but then changed his position and cites a Mishnah that demonstrates that in cases of doubt there is no obligation to tithe animals. ■

REVIEW and Remember

1. What is a שבועת היסת?

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2. If one of the claimants to a talis grabs hold of the talis in front of Beis Din is he allowed to keep it?

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3. Is one obligated to redeem his first-born son if there is a doubt whether the son is a בכור?

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4. What happens when one of the counted animals jumps into the pen with the uncounted animals?

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Distinctive INSIGHT

Silence, followed by a loud protest

איגליא מילתא דהאי דשתיק מעיקרא סבר הא קחזי ליה רבנן

R' Zeira proposed a question regarding a case where one person was holding onto a garment, and someone else grabbed it away from him in front of us. The Gemara determines that the question was posed regarding a situation where the one who had the garment was quiet at first, but he later started to protest in order to retrieve his possession. On the one hand, we might say that his initial silence indicates his acquiescence. However, we might say that his later protest indicates that his initial silence was not an expression of agreement, but due to his relying on our having observed the incident. He thought that "the rabbis were watching," and that there was no need to protest. Only later, when he notices that the situation was unsettled did he speak up and voice his original concern.

Rashba notes that there are opinions which say that the wording of the Gemara indicates that the person's silence can only possibly be dismissed and interpreted as his relying on "the rabbis watching" when the item is snatched in front of beis din. If this event did not occur in front of judges who witness it, the owner would have no excuse why he was originally silent as he was confronted with such an aggressive act. Rashba himself, however, disagrees and explains that it is only in front of beis din that we expect the person later to protest and complain. In other words, if the event occurred away from the court, the owner can say that he did not bother to speak up when the item was taken from him, because there was no need for him to register his complaint in a place where there was no legal benefit to do so. He fully intended to reserve his right to complain and protest when he would go to court. In fact, he prefers to wait and only speak in front of judges, rather than to scream for no reason and reveal his legal strategies too early.

Ritva, however, rejects the basis of the contention of Rashba. The reason the Gemara chose to illustrate this case as occurring in front of beis din is not in order for the argument of having the judges realize the reason for his silence. Rather, it did not wish to illustrate the case simply taking place in front of two witnesses is that in this case, the owner's silence would be too incriminating. His silence in front of witnesses as his object is forcefully taken away is tantamount to a clear confession, and a later protest would not be regarded as a challenge of המוציא מחבירו עליו הראיה. ■

Today's Daf Digest is dedicated
In memory of
מרת עלקא בת ר׳ מנחם מנדל, ע״ה

HALACHAH Highlight

Counting two numbers for Sefirah when one is in doubt which is the correct number

קפץ אחד מן המנויין לתוכן כולן פטורין

If one of the counted ones jumps back in, they are all exempt

The Gemara relates that a person was counting animals for the purpose of tithing and one of the counted animals jumps back into the pen with the uncounted animals before the owner reaches the number ten and rules that all of the animals are exempt from the tithing obligation. Rava explains, the reason the owner is not obligated to tithe the remaining animals is that the Torah obligates the owner to separate the animal that is certainly the tenth and not one that may not be the tenth animal. Shitah Mekubetzes[1] elaborates on this principle with the following explanation. Even though the animal that jumps back in the pen should be nullified in the majority, nevertheless, one can not count out ten animals and designate the tenth as ma'aser since it is possible that this is the animal that jumped back into the pen and was assigned a different number.

Many later authorities present numerous challenges to this principle and Teshuvas Dvar Avrohom[2] defends it by explaining that the explanation applies only when it comes to counting. In order for one to count he must be certain what number he is counting and if he is unsure which number should be counted it is not considered a count. Therefore, although the animal that jumped back into the pen is nullified it does not change the fact that the owner can no longer count his animals with certainty and thus he is exempt from tithing the remaining animals.

Based on this principle he writes that a person who is uncertain which day of the Omer he should count cannot count both possible days and fulfill his obligation. For example, if one does not know whether he should count the 17th or 18th day of the Omer he may not count both numbers and assume that he inevitably counted correctly. The reason is that counting requires definitive knowledge of the number that is being counted and if someone counts two numbers due to his uncertainty the mitzvah is not fulfilled. Practically, however, he presents counter arguments and decides that since, nowadays, counting the Omer is only a Rabbinic obligation one could adopt a lenient approach and count both numbers even though he is counting without certainty which number is correct. ■

1. שיטה מקובצת בשם הרא"ש
2. שו"ת דבא אברהם ח"א סי' ל"ד אות ד' ■

STORIES Off the Daf

The unpaid loan

ואי קא צווח מאי הוה ליה למעבד

Chazal prohibited lending money without documentary evidence. This prevents the borrower from claiming to have paid when in fact he had not, since the fact that the proof is still in the hands of the lender indicates the loan was not repaid. Although the Aruch Hashulchan, zt"l, defends the custom of those who nevertheless lend without any kind of proof,[1] there is still a danger that the borrower will forget or deny the loan for whatever reason.

One individual foolishly ignored the potential dangers and loaned his friend a large sum of money without proof or witness. When the lender demanded remuneration, the borrower forcefully claimed to have paid the money. Since he had no proof of the loan in hand, there was nothing the lender could do.

Shortly thereafter, a non-Jew gave this lender a sum of money to give to the borrower. The sum was exactly the amount that the lender claimed was owed to him. But unlike the Jewish lender, the non-Jew handed the money over to his chosen emissary in front of Jewish witnesses. When the Jewish borrower demanded the money, the lender refused to give it to him.

The former lender argued, "As you well know, you never repaid the money you borrowed, so I am confiscating this money in lieu of what you owe me. I am willing to swear in beis din that you did not repay me a penny on the original loan!"

When this case was presented to the Rashba, zt"l, he ruled in favor of the borrower. "Unless the lender has some clear proof that he was not repaid, he cannot keep the money even if he is willing to swear. Even if the lender has the nerve to take some of the borrower's property in front of him, he must return it if there are witnesses and the borrower protests. We see this from Bava Metzia 6. There we find that if two people come to beis din holding a garment and one snatches the garment out of the hands of his companion in front of beis din and the other man protests, the man who snatched it gains no advantage by his action. It is clear that the same is true in our case."[2] ■

1. ערוך השלחן חו"מ ס' ע' ס"ק א'
2. שו"ת הרשב"א ח"ד ס' קע"ה

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