

OVERVIEW of the Daf

1) Litigation (cont.)

The Baraisa presents the last nine of the thirteen laws derived from the words **מדבר שקר תרחק**.

A number of the laws are further explained by the Gemara.

Rav and Shmuel offer different interpretations of a verse understood to be referring to legal matters.

2) Those who are fit to testify

R' Pappa and R' Acha bar Yaakov offer different cases that are excluded when the Mishnah teaches that the law of oaths of testimony applies only to those who are fit to testify.

This disagreement is analyzed.

3) Dispute between R' Meir and Rabanan

The rabbis suggested one explanation for the dispute between R' Meir and Rabanan whether one is responsible for making an oath outside of Beis Din that he does not have knowledge of testimony.

R' Pappa rejects this understanding and offers his own understanding of the dispute.

The rabbis disagree with R' Pappa's conclusion and R' Pappa admits that their proof is reliable but their attempted proof from our Mishnah is unacceptable.

4) Clarifying the Mishnah

A Baraisa is cited that proves that one is liable for an intentional violation of the oath of testimony.

The Gemara explains how there could be a case where a person is knowing and unknowing with regards to his oath of testimony.

The reason our Mishnah is not an answer to the question of R' Kahana and R' Assi's question regarding one who took a false oath thinking it is true is liable, is explained.

5) MISHNAH: The Mishnah presents the simple case of a violation of the oath of testimony. The case of multiple oaths is discussed as well as other halachos related to the oath of testimony.

6) Oath of testimony

Shmuel rules that witnesses are not liable for an oath of testimony unless they are instructed by the litigant to testify on his behalf.

The Gemara questions the novelty of Shmuel's teaching.

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Distinctive INSIGHT

Deception and maneuvering in court

מנין לנושה בחבירו מנה שלא יאמר אטעננו במאתים וכו' מנין לנושה בחבירו מנה וטענו מאתים שלא יאמר אכפרנו וכו'

The Gemara brings several lessons which are derived from the verse (Shemos 23:7), "Distance yourself from falsehood." Two examples involve arranging a false claim in order to support one's actual legitimate position. For example, if someone actually lent \$100 to his friend, and the lender figures that he wants to guarantee a strong legal position in order to get his money back. He plans to claim \$200, expecting the borrower to respond that he only owes \$100. As a result, the lender will get his \$100, but the lender will then be able to force the borrower to take an oath that he owes no more (**מודה במקצת**), and the borrower will have to swear regarding other disputes between him and the lender. The lender may not advance a claim of \$200 to fraudulently maneuver to get the borrower to swear, as this is learned from the verse "Distance yourself from falsehood."

Similarly, a lender claims \$200 is owed to him, and the borrower knows that the true loan was only for \$100. He knows that if he admits \$100, he will be obligated to take an oath of **מודה במקצת** on the second hundred. The borrower decides to deny the entire amount in court, only to later admit the actual \$100 outside of court, in order to avoid having to take the oath of **מודה במקצת**. It is not allowed for the borrower to maneuver deceitfully to avoid his oath, due to the verse mentioned above.

In his commentary to Sefer HaMitzvos of R' Saadia Gaon, **פערלא הגר** questions why the Gemara applies the mitzvah to not lie to these cases where the borrower or lender considers ways to require or avoid an oath. A person is not allowed to mislead or lie at all, even in simple conversation, even when it does not involve perversion of justice in any way. It is certainly prohibited to illegally require or avoid an oath, as this causes a perversion of court proceedings.

פערלא הגר explains that it seems from here that as long as a person does not take money that is not his, it is not illegal from a Torah standpoint to lie and misrepresent one's position for strategic advantage. This type of position might be technically permitted if it would be necessary for **דרכי שלום** or to avoid a loss of money. Nevertheless, he grapples to determine whether this is still prohibited rabbinically or if it is just abhorrent to do so. In either case, a Torah prohibition of lying is only violated when the situation causes misjudgment, such as in the cases of the Baraisa where an oath is forced or avoided improperly.

Chofetz Chaim writes (**פתחיה עשין, במ"ח י"ג**) that although the Rishonim disagree whether this mitzvah (**מדבר שקר תרחק**) is to be counted among the positive commandments, all agree that lying is prohibited, even in common conversation. ■

This week's Daf Digest is dedicated
 By Mr. & Mrs. Dennis Ruben in memory of their parents
 ר' אברהם וואלף בן ר' בערל ז"ל
 ר' חיים שלום בן ר' בנימין מאיר ז"ל

HALACHAH Highlight

Is it permitted to lie to secure a truthful verdict?

אכפרנו בבית דין ואודה לו חוץ לבית דין

I will deny his claim in Beis Din but I will admit to him outside of Beis Din

Teshuvus Beis Yaakov¹ discusses a dayan who sees that the other two judges are going to rule in a manner that is not consistent with the truth. When it comes time for the judges to vote the dayan would like to respond "I don't know." By doing so the panel of judges is forced to bring another two judges to the panel and he hopes that the additional two judges will see things as he does and a truthful decision will emerge rather than one that is false. The hesitancy in doing so is that the judge must lie in order to generate this outcome. Beis Yaakov ruled that it is prohibited because when two judges are added it gives the impression that the original panel of judges was incompetent. Birkei Yosef² agreed that it is prohibited for the judge to lie and he must vote the way he sees the truth. If the other judges accept his argument, good, but if not, it is not his responsibility and one should not try and outsmart Hashem. One proof to this is our Gemara. The Gemara discusses one who owes one hundred zuz but the plaintiff is claiming two hundred zuz. The defendant wants to deny in Beis Din owing any money but admit outside of Beis Din that he owes one hundred zuz. By doing so he saves himself from having to take the oath of partial admission which could then lead to his taking other oaths. The Gemara cites the verse that indicates that

REVIEW and Remember

1. Is one permitted to lie in order to avoid taking an oath?
2. Explain דון מינה ואוקי באתרה and דון מינה ומינה.
3. How is it possible to be שוגג and מזיד with regards to the oath of testimony?
4. Is one who swears falsely that he does not know testimony liable to bring a korban?

one must stay far away from falsehood to teach that the defendant may not adopt this approach. This teaches that one must be honest and may not use falsehood to bring about a correct and true verdict.

Teshuvus Shvus Yaakov³ disagrees and maintains that in such a case one is permitted to lie in order to bring about a true verdict. The basis of his lenient ruling is that the Gemara has many instances in which one is permitted to lie to promote peace and a true and accurate ruling also promotes peace, as the verse teaches (Zechariah 8:16), **אמת ומשפט שלום שפטו** – Truth and peaceful judgments shall rule in your gates. ■

1. שו"ת בית יעקב סי' ט"ו.
2. ברכי יוסף חו"מ סי' י"ח אות ג'.
3. שו"ת שבות יעקב ח"א סי' קל"ח. ■

STORIES Off the Daf

"Keep Far from Falsehood"

"תלמוד לומר מדבר שקר תרחק..."

A very wealthy man once sauntered into a certain ornate shul. He was dressed at the height of fashion, with many gold buttons adorning his impeccably clean jacket. The gabbai of the shul immediately darted towards him from the eastern wall and with a huge smile on his face offered his hand and intoned a drawn out, "Sha-lom alei-chem!"

The wealthy man was immediately escorted to a coveted seat on the eastern side, and everything went back to normal. A few moments later what could only be a very poor man, dressed in rags,

slunk into the shul. He immediately sat down in an unobtrusive seat at the back of the shul.

The gabbai, who was conscientious about his job which was to greet every newcomer, noticed this man's entry as well and slowly made his way towards the newest guest with a fake smile on his face. He proffered a few fingers to the poor man and quietly muttered a quick, "Shalom aleichem."

When Rav Leib Chasman, zt"l, related this parable he applied it to today's daf. "What do you suppose this gabbai thinks? He honestly believes that he makes no distinction between the rich and the poor since he did greet both with the customary 'shalom aleichem.' Yet of course he is hardly abiding by the

truth since to whom did he offer the effusive greeting? Was it not to the buttons on the impeccable coat and what they represent?

"This explains why we find on Shevuos 31 that the judges may not judge a well-dressed wealthy person along with a badly-dressed poor man, since doing so violates, 'מדבר שקר תרחק' —Keep far from falsehood.' Instead, we tell the wealthy man that he either must dress as the poor man or pay to dress the poor man as the wealthy man is dressed. This demonstrates the Torah's deep understanding of human nature. Even if the judge believes that he will not be swayed by the wealthy man's better dress, the Torah knows better!"¹ ■

1. זקניך ויאמרו לך, עמי ע"ט ■