

OVERVIEW of the Daf

1) Oath of testimony (cont.)

The Gemara explains the novelty of Shmuel's ruling that witnesses are not liable for an oath of testimony unless they are instructed by the litigant to testify on his behalf.

This explanation is unsuccessfully challenged.

A Baraisa is cited that supports Shmuel's ruling.

2) Denying knowledge of testimony

Abaye suggests a source that one is liable for denying knowledge of testimony only when the denial was made in Beis Din.

R' Pappa unsuccessfully challenges this explanation.

3) Two witnesses denying testimony

The Gemara questions the Mishnah's reference to two witnesses denying knowledge of testimony at the same time.

R' Chisda asserts that the Mishnah follows R' Yosi HaGalili who maintains that two things could happen simultaneously.

R' Yochanan explains that the Mishnah could even fit within the dissenting opinion of Rabanan if the witnesses deny knowledge within תוך כדי דיבור.

Ravina further clarifies how the two witnesses will issue their respective denials within תוך כדי דיבור.

4) Oath of testimony

It is noted that the Mishnah that indicates that the oath of testimony does not apply to a single witness does not accord with R' Elazar the son of R' Shimon who disagrees about this point with Tanna Kamma in a Baraisa.

One possible explanation of this dispute is suggested but rejected.

An alternative explanation of this dispute is presented.

5) Abaye's teaching regarding witnesses

The Gemara explains the different rulings of Abaye related to testimony that were cited in the Gemara's previous discussion.

The Gemara cites two similar statements of R' Pappa and explains them.

A possible inference is drawn from R' Pappa's ruling but it is rejected.

6) Clarifying the Mishnah

It is noted that the Mishnah's case of one witness denying knowledge of testimony when the second witness admitted having knowledge of testimony seems redundant.

The necessity for the ruling is explained.

This explanation is unsuccessfully challenged.

The Gemara questions why a pair of witnesses who deny knowledge of testimony are liable when there was a second pair of witnesses who could testify. ■

Distinctive INSIGHT

He cannot swear to counter the witness

לישתבע, כיון דאמר אין חטפי ודידי חטפי הוה ליה כגזלן

R' Ami was faced with a challenging case in his court. Reuven snatched a bar of metal from Shimon. In court, Shimon confronted Reuven, and he brought a single witness to corroborate his story. Reuven admitted that he took the piece, but he claimed that it was his, and he was only taking that which he owned. R' Ami pointed out that the solution to resolve this case was complex. The court could not rule that Reuven must pay, because the one witness was inadequate testimony to that effect. To exempt Reuven totally was not an option, as there was one witness that he took the bar from Shimon, and one witness requires that the defendant take an oath against his testimony. However, it was not possible for Reuven to take an oath to nullify the witness who said that he took the bar, because Reuven admitted that he took it. Therefore, there was no apparent solution to resolve this case.

There are varying explanations regarding the final factor, that Reuven was not able to take an oath against the witness. The words of the Gemara are that Reuven "is just like a thief," so the oath is not an option. Rashi explains that this means that Reuven admits that he took the object, and the nature of the oath must be to counter and contradict the single witness. Reuven cannot swear that he did not take the object, because that is not his claim. In this regard he is similar to a thief. Just as a thief cannot swear, as he is disqualified, so, too, Reuven cannot swear, as he is not coming to counter the testimony of the single witness.

(Continued on page 2)

REVIEW and Remember

1. What is the source that witnesses are liable only when they deny knowledge of testimony in Beis Din?
2. What is the point of dispute whether a single witness who falsely denies knowledge of testimony is liable?
3. What is the case of אבא דר' נסכא דר' אבא?
4. Can a litigant force witnesses to testify about a land-related matter?

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HALACHAH Highlight

The duration of תוך כדי דיבור

מכדי תוך כדי דיבור כמה הוי כדי שאילת תלמיד לרב

Let us see, how long is within the time it takes to make an utterance?

The time necessary for a student to greet his Torah teacher

Poskim debate the duration of time called תוך כדי דיבור – the time it takes to make an utterance. The Gemara explains that תוך כדי דיבור is equal to the length of a student's greeting to his teacher. Rashi¹ writes that תוך כדי דיבור is the time it takes to say three words - שלום עליך רבי. This is also the opinion of many Poskim including the Mishnah Berurah². Taz³, however, maintains that תוך כדי דיבור is the time it takes to say four words - שלום עליך רבי ומורי. This view is supported by the Gemara Bava Kamma (73b) that indicates that the greeting of a student to his teacher is four words.

Interestingly, Rambam⁴ writes that one should not greet or respond to a Torah teacher the same way that one greets or responds to others. When greeting a Torah teacher one should bow in deference and say שלום עליך רבי and if one is responding to a greeting from his Torah teacher his response should be שלום עליך רבי ומורי. The rationale for adding a word when responding is explained by Perisha. Perisha⁵ writes that etiquette demands that when one is responding to the greeting of another person he should add something to the greeting that he received. Teshuvos Divrei Yatziv⁶ suggests that according to Rambam there is but one duration of time that constitutes תוך כדי דיבור and that is the amount of time needed to say the four words שלום עליך רבי ומורי.

When Rambam differentiates between the manner in which one greets or responds to a greeting of one's Torah teacher his intent was not to assert that there are two different durations of time.

(Insight...continued from page 1)

Tosafos (ד"ה הוה) explains that Reuven is compared to a thief in a more direct sense. We have a general presumption (חזקה) that whatever a person has in his possession is assumed to belong to him. When Reuven snatches the bar from Shimon, we cannot readily accept Reuven's claim that he took that which belongs to him, because this is contrary to the חזקה that we observed the object in the possession, and therefore presumed ownership, of Shimon. When Reuven admits that he snatched the item from Shimon, he is, in effect, admitting that he took someone else's object. He is like a thief and therefore disqualified from taking an oath.

Tosafos (ibid.) asks another question. Reuven is not believed when he claims that the object he took is his, because even if he has a מינו that he could have denied that he snatched it, this other claim would have required that he swear to counter the single witness who testified that he did take it. We do not use a מינו which would require an oath. Why, though, do we not believe him if he takes an oath now that he took the bar and that it is his? Tosafos answers that he might be willing to swear that the object is his, but he might not be willing to swear falsely that he did not take the object. The oaths are not comparable. ■

The amount of time it takes one to initially greet his Torah teacher with only three words but also bowing in deference is equivalent to the time it takes to respond to one's Torah teacher with four words. ■

1. רש"י ד"ה תלמיד.

2. מ"ב סי' ר"ו ס"ק י"ב.

3. ט"ז שם סק"ג.

4. רמב"ם פ"ה מהל' תלמוד תורה ה"ה.

5. פרישה יו"ד סי' רמ"ב אות י"ד.

6. שו"ת דברי יציב או"ח סי' ס"ד אות ג'.

STORIES Off the Daf

Dishonest Dealings

"דבר הגורם לממון פטור..."

Acertain man was owed a large sum of money by his non-Jewish business associate. Of course it was impossible to bring the non-Jew to beis din, so the Jewish creditor was forced to subpoena him to a civil court. When they were there the Jew was shocked when a fellow Jew gave false testimony which caused the judge to rule that the non-Jew owed him nothing at all.

When the Jewish creditor pressed the witness about his actions, he freely admitted that the non-Jew had bribed him and

that his testimony had been completely false. But when the creditor insisted that he pay the money he had lost, the false witness refused. "I did not take the money from you. I merely allowed the non-Jew to avoid paying you. So I don't think you can get a penny from me."

When the creditor took the false witness to beis din, the Shevus Yaakov, zt"l, ruled that indeed he could not be forced to pay. "In our case the false witness only caused that the non-Jew was not obligated to swear in court. There is a similar question in Shevuos 32. There we find a dispute between the sages and Rabbi Elazar ben Rabbi Shimon, whether one witness who falsely swore that he does have testimony to offer on behalf of a fellow Jew is

obligated a sacrifice if he swore. Rabbi Elazar ben Rabbi Shimon obligates him since if he testified falsely the other party would have been required to swear. Since most people would rather absorb a loss than swear in court, in a roundabout way the failure to testify results in another's Jew's loss."

He concluded, "The halachah follows the opinion of the sages, however, and the same is true in our case. Even though the non-Jew would have paid if not for the false testimony, it is too indirect a form of damage to allow beis din to exact it from the dishonest witness."¹ ■

1. שו"ת שבות יעקב, ח"א, ס' קמ"ז ■