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שבועות ל״ג
CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

Ravina explains why a pair of witnesses who deny knowledge of testimony are liable when there was a second pair of witnesses who could testify.

2) MISHNAH: The Mishnah discusses different cases of witnesses denying knowledge of testimony and whether they are liable for multiple violations or only one violation.

3) Adjuring witnesses to testify in a case involving a penalty

The Gemara inquires whether witnesses who deny knowledge of testimony in a case involving a penalty are liable.

The Gemara further clarifies that this inquiry is only relevant according to the position of Rabanan who disagree with R' Elazar the son of R' Shimon.

The relevance of the question even according to Rabanan is further clarified.

On the third attempt the Gemara succeeds at demonstrating that cases involving penalties are no different than regular monetary cases and witnesses who deny knowledge of testimony are liable for a false oath of testimony.

4) MISHNAH: The Mishnah presents numerous cases where witnesses are not liable if they deny knowledge of testimony.

5) A request to testify from someone other than the claimant

A contradiction of inferences in the Mishnah is noted.

Shmuel resolves the contradiction.

This resolution is unsuccessfully challenged.

6) Oath of testimony

A lengthy Baraisa is cited that cites different Tannaim who demonstrate that the law of oaths of testimony is limited to monetary cases. ■

REVIEW and Remember

1. How must witnesses phrase their denial to be accountable for many denials?
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2. Why is the question of whether one can adjure a witness for a case involving a penalty not relevant for R' Elazar the son of R' Shimon?
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3. What are cases in which witnesses would not be liable for denying knowledge of testimony?
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4. What does the term "מאלה" imply?
____

Distinctive INSIGHT

Is a lost opportunity to seize money considered a financial loss?

שהדליק גדישי בשבת

The Mishnah illustrates examples of witnesses who are asked to come and testify on someone's behalf and the witnesses refuse by swearing that they have no information to provide. A witness later confesses that he actually can testify, and that he swore falsely when he earlier denied it. If the nature of his denial was one which would have caused a loss of money to the claimant, the witness is guilty of שבועת העדות, the oath of witnesses, and he must bring an עולה ויורד offering (see 32a).

Our Mishnah cites examples of testimony where there is no financial consequence of the witness's withholding his testimony, and therefore no עולה ויורד is brought. One example is where Reuven demands that witnesses testify that Shimon burned down his haystack on Shabbos. Even if the witnesses would testify, Shimon would not pay financial restitution to Reuven for the loss of the haystack, because Shimon is guilty of a capital crime of violating Shabbos for setting this fire. When the witnesses refuse to cooperate, and they swear that they know nothing, they are not causing a loss of money to Reuven.

שב שמעתתא (#7:3) is bothered how to resolve this Gemara with the opinion of Rashi in Bava Metzia 91a. Rashi says that when someone is exempt from monetary payment for damage because he is liable for his life (מתחייב בנפשו), it means that the court cannot exact payment. But, if the one owed grabs money for payment from the damager, he may keep the money. According to this opinion of Rashi, in our case the witnesses' withholding information indeed causes a potential financial loss to the one whose property was damaged on Shabbos, because had they testified, he would have been able to confiscate restitution from the damager. Now that the witnesses remain silent, he has lost his legal ability to seize payment.

שב שמעתתא answers that there is a difference between the cases. Where the Torah recognizes that a witness's testimony would result in collection of a payment without the claimant's having to seize the property on his own, but the case fails because the rabbis disqualified the witness and now

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By Mr. & Mrs. Dennis Ruben in memory of their parents
ר׳ אברהם וואלף בן ר׳ בערל ז״ל
ר׳ חיים שלום בן ר׳ בנדיט מאיר ז״ל

(Insight...continued from page 1)

collection can only succeed with the claimant's seizing it, in this case the witness would bring an offering for suppressing his testimony. However, if the witness's testimony was that the defendant is liable for death, and that he also owes money, the testimony does not result in actual payment, not on a Torah level nor on a rabbinic level. In this case, although seizure is a possibility, we do not say that the witnesses' withholding of information is of a financial consequence. Kehillas Yaakov (#25, end of note 3) explains that once the defendant is exempt from paying, the witnesses are technically not termed as witnesses for the financial element of the case. ■

HALACHAH Highlight

Writing a power of attorney to collect a loan

לא כותבין אורכתא אמטלטלי

We do not write a power of attorney for movable objects

The Gemara cites the opinion of Nehardea which holds that one may not write a power of attorney for movable objects. The Gemara Bava Kamma (70a) gives two explanations for this ruling. According to one version, one cannot write a power of attorney authorizing someone to collect movable property since those objects are not in his possession such that he can transfer them to another person. This is similar to the law of sanctifying property. One may not sanctify property that he owns if it is not currently in his possession. The second version maintains that the limitation against writing a power of attorney for movable property is limited to circumstances where there is a denial of the claim. The reason a power of attorney may not be written in such a case is that it appears false for the witnesses to sign that the plaintiff transferred something to his agent when the defendant denies the claim altogether.

Tosafos[1] writes that the question of whether one can write a power of attorney for a loan revolves around the two versions of the Gemara in Bava Kamma. According to the first version that one may not write a power of attorney on movable objects because they are not in his possession, the same limitation would apply to a loan since the money that is being transferred is in the possession of the borrower rather than the lender. According to the second version, which is the version cited in our Gemara, the limitation against signing a power of attorney is limited to where the defendant denies the claim. In the event that the defendant does not deny the claim it could be transferred to an agent and the same would be true for a loan.

Rambam[2], however, disagrees and writes that one may not write a power of attorney for a loan under any circumstances. The reason is that the money that was given to the borrower is supposed to be spent (מלוה להוצאה נתנה) and as such from the perspective of the lender it is considered something that does not exist. As such it cannot be transferred based on the principle that one cannot convey ownership of something that does not exist (אין אדם מקנה דבר שלא בא לעולם). Nevertheless, the Gaonim enacted that one could write a power of attorney for a loan so that people should not borrow money and then flee. ■

1. תוס' ב"ק ע. ד"ה אמטלטלין.
2. רמב"ם פ"ג מהל' שלוחין ה"ז. ■

STORIES Off the Daf

Questionable Redemptions

"משביע אני עליכם..."

A certain kohen often presided as the kohen at a pidyon haben . After many years it came out that this kohen was actually a ben gerushah and was not eligible to redeem firstborn sons at all.

When this kohen was asked to return money he had received for redeeming a firstborn he refused, explaining that he had not known that he was ineligible and could not afford to return the money. After all, he was no more than an אונס. Besides, who said that the redemption had not been valid בדיעבד?

When this question was presented to a local rav, he ruled that the pidyonos had been valid. "We see this from Shevuos 33. There we find that one who falsely swore that he could not verify that his friend was not the son of a gerusha is not obligated to bring a korban since this causes no monetary loss. But what about the money this person had taken for pidyonos that he must now return? Apparently, he would not be obligated to return the money..."

But to be extra sure, the rav decided to ask Rav Yitzchak Elchonon Spector, zt"l. Rav Spector saw the issue in an entirely different light. "And what about earlier in the Mishnah where the witness swears that he cannot testify that so-and-so is a kohen? If he is a non-kohen everyone admits that he returns the money. So why isn't the witness obligated in a korban? Clearly the Mishnah is not discussing a case where he took money for pidyon haben.

"But we can learn from the halachah that if a chalal mistakenly ate terumah, he must repay its value since matnas kehunah was given to the children of Aharon and not chalalim. The same is true regarding pidyon haben. He must return the money and any firstborn child redeemed by him must be redeemed again by a genuine kohen."[1] ■

1. שו"ת באר יצחק, ח"י, ס' כ"כ"ה ■

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