

## OVERVIEW of the Daf

1) **Swearing with a subordinate name of Hashem (cont.)**  
 R' Avahu demonstrates that the term אלה means oath.  
 A Baraisa elaborates on the multiple meanings of the term ארור.  
 How we know the term ארור means an oath is discussed.  
 R' Yosi bar Chanina elaborates on the multiple meanings of the word אמן.  
 R' Elazar asserts that the terms לאו and הן mean an oath.  
 The source for this assertion is cited.  
 Rava qualifies this ruling.  
 A Baraisa elaborates on the dispute in the Mishnah whether one is liable for swearing with a subordinate name of Hashem.

2) **Cursing**  
 The opinion that one is liable for cursing a parent when he uses the name of Hashem is attributed to R' Menachem the son of R' Yosi.  
 The sources for cursing one's self and others are cited.

3) **Euphemisms**  
 Two incidents about the importance of using euphemisms are presented.  
 The reason both incidents were recorded is explained.

4) **Implications**  
 R' Meir's position in the Mishnah that one is accountable for implications of his words is challenged.  
 The Gemara suggests that the opinions in the Mishnah should be reversed whereas a second opinion qualifies R' Meir's opposition to the use of implications.  
 The qualification to R' Meir's is successfully challenged.  
 Ravina unsuccessfully challenges whether R' Meir does not accept implications even for matters of prohibition.

### הדרן עלך שבועות העדות

5) **MISHNAH:** The Mishnah discusses at length the different halachos that apply to the oath of deposit. ■

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## Distinctive INSIGHT

### A watchman's false oath and his confession

בפני בית דין ושלם בפני בית דין

The Mishnah taught that the halacha of an oath taken to deny that one is in possession of a deposited object (שבועת הפקדון) is valid whether the oath was administered in beis din, or whether a person uttered the oath on his own outside of court.

Rashi explains that if a person uttered a false oath outside of beis din, if he later admits that he lied he must bring a offering of עולה ויורד. Maharsha and Tosafos Yom Tov point out that Rashi avoided illustrating the case to be where the person confessed that he lied, rather than where witnesses later came and testified that the one who swore actually had the item in his possession at the time of the oath. They note that Rashi is anticipating the view of Rabbah (37a) who says that a person is exempt if he takes an oath to deny money about which witnesses are available to testify. Ultimately, this oath would not have been effective in denying money, because the witnesses would have immediately set the record straight. However, according to the conclusion of the Gemara the opinion of Rabbah is not accepted as the halacha, so our case could indeed be where the false oath was followed by the arrival of witnesses who testify that the פקדון was in this person's possession.

רש"י wonders about the question of Maharsha and Tosafos Yom Tov against Rashi. In fact, the Mishnah later (49a) rules that the case of שבועת העדות only results in bringing of an offering if the person himself admits on his own and confesses his misdeed. The Mishnah says that if a שומר claims that the item deposited with him was lost, and witnesses later testify that the שומר himself ate it, the watchman must repay the principal. If he admits on his own that he lied, he must pay the principal, plus an additional one-fifth, and bring an asham. Rashi explains that the offering is only brought when a person is repentant and regrets his sinful oath, as the verse states (Bemidbar 5:7): "And they shall admit their sins." We see clearly from the Mishnah that the offering is only appropriate if the person admits on his own, and not where witnesses prove him wrong.

Nevertheless, פורת יוסף explains that Maharsha and Tosafos Yom Tov agree that the offering is only brought if the person admits that he uttered a false oath, but this outcome can even occur after the arrival of witnesses who testify that the watchman lied. The question against Rashi's commentary in our Gemara is that the case is specifically where the watchman admitted his sin,

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# HALACHAH Highlight

*Paying the one-fifth surcharge for swearing falsely about a deposit*

ומה חייב על זדונה אשם בכסף שקלים

And what is one liable for intentionally violating this law? An Asham worth two shekel.

According to the Torah one who takes an oath denying possession of a deposit or stolen object and then admits to his lie must pay the owner the principle plus a fifth as well as bring a Korban Asham. Nowadays we do not bring the Korban Asham but Minchas Chinuch<sup>1</sup> raises the question of whether there is an obligation to pay the additional fifth. He cites Rosh<sup>2</sup> who writes that nowadays there is no obligation to pay the additional fifth and he understands the rationale to be that since there is no obligation to bring a korban there is no obligation to pay the additional fifth either. Minchas Chinuch questions this rationale based on the fact that there is an obligation to bring the Korban Asham nowadays; it is just that it is not possible to bring the korban. Why should one be exempt from paying the additional fifth?

Sema<sup>3</sup> notes that Tur and Shulchan Aruch did not mention the obligation for one who swears falsely to pay an additional fifth indicating that they maintain that the payment is not made nowadays. In another comment Sema<sup>4</sup> writes that Beis Din does not adjudicate cases in which a person pays more than the value of the damage. Included in this category is one who swears in denial of possession of another person's property and later admits that he lied. This second ruling implies that although Beis Din will not adjudicate a case of one who swore falsely, there is an obligation to pay. Consequently, Minchas Chinuch concludes

# REVIEW and Remember

1. What are the different usages of the word אמן?
2. Why does the Gemara present two incidents to teach that one should use euphemisms?
3. What is the שבועת הפקדון?
4. Is one liable for the oath of deposit if he lied about a penalty?

that although Beis Din cannot force a person to pay the additional fifth, the person who swore falsely should pay his victim the additional fifth. Or Sameach<sup>5</sup> infers that this is also the position of Rambam. Rambam<sup>6</sup> writes that anyone who swore falsely about another's property and wishes to do teshuvah must pay his victim an additional fifth. Since Rambam did not mention the obligation to offer a Korban Asham it must be that Rambam was writing the halacha for times when there is no Beis Hamikdash and nevertheless he writes that it is necessary for the one who swore falsely to add an additional fifth. Although we would not force a person to make this payment if he wants to repent fully it would be necessary for him to pay the additional fifth. ■

1. מנחת חינוך מצוה קכ"ט
2. רא"ש ב"ק פ"ט סי' כ"ד.
3. סמ"ע סי' שס"ז ס"ק י"א.
4. סמ"ע סי' א' סק"ז.
5. אור שמח פ"ב מהל' טוען ונטען הי"א.
6. רמב"ם שם. ■

# STORIES Off the Daf

Careful Language

"אבל בקראי אימא לא מכנין קמ"ל..."

It has been the custom for Jews in many areas to avoid going up to the Torah when the rebuke is read. Someone once asked the Bnei Yissaschar, ז"ל, if he knew of any source for this seemingly strange custom. "This custom emerges from a clear gemara in Shevuos 36 and it has always been a wonder to me that the poskim do not codify it. There we find that when Rav Kahana was sitting in front of Rav Yehudah and repeated the mishnah which states, 'G-d should strike you if you do not testify for me,' Rav Yehudah immediately cor-

rected him. 'When you say this over, you must say instead, 'Should strike him,' so as not to curse me.' And when a certain person was learning with Rav Kahana, he said if a person says the verse, 'G-d will even cut you off forever...and uproot your from the land of life,' Rav Kahana corrected him as well. 'Change the language so you do not put a curse on me.'"

The Bnei Yissaschar continued, "The gemara asks why we need to record two stories. It replies that one teaches that we must be careful about this regarding mishnayos and the other teaches to be careful even regarding verses. Clearly one should never allow himself to be called up to the Torah when curses are said in a language which appears to apply to the one who received the aliyah. If you consider this

proof you will understand that the customs of the Jewish people are like Torah itself."

The Bnei Yissaschar concluded, "Even when I review the Torah portion for myself as the halachah prescribes, I never allow anyone to stand opposite me or nearby while I read these verses. I consider this an obligation that is dina d'gemara."<sup>1</sup> ■

1. אגרא דפרקא, ע' קע"ח ■

(Insight...continued from page 1)

which implies that once witnesses come it is no longer possible for the person to become obligated to bring an offering. The question is, therefore, that this would only be true according to the opinion of Rabbah on 37a, and that opinion is not accepted according to the halacha. ■