

OVERVIEW of the Daf

1) A deliberate false oath of deposit

R' Kahana asked about the punishment for a deliberate false oath of deposit and elaborates on the different possible punishments.

A group of sages responded based on a Baraisa that the punishment is lashes.

Rava bar Iti argued that the Baraisa cited represents the opinion of R' Shimon and Rabanan disagree with him.

R' Kahana suggests another reason to reject the Baraisa but this suggestion is rejected.

Two other unsuccessful attempts to resolve this issue are recorded.

Rabbah rejects the premise of R' Kahana's inquiry because he maintains that one who denies under oath a monetary claim known to witnesses is exempt from bringing a korban.

R' Chanina cites a Baraisa in support of Rabbah's position.

Rabbah rejects the proof from the Baraisa and the Gemara demonstrates that Rabbah's interpretation of the Baraisa is correct.

Numerous attempts are made to disprove Rabbah's principle and on the final attempt the Gemara succeeds at refuting his position.

R' Yochanan asserts that one who denies under oath a monetary claim known to witnesses is obligated but if he denies a claim recorded in a document he is exempt.

R' Pappa tries, unsuccessfully, to explain R' Yochanan's position.

R' Huna the son of R' Yehoshua offers his own explanation of R' Yehudah.

2) Testimony regarding land

R' Yochanan and R' Elazar disagree whether witnesses who

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REVIEW and Remember

1. According to R' Kahana, why is the oath of deposit more stringent than the oath of testimony?

2. What is כפירת דברים בעלמא?

3. How did the Gemara refute Rabbah's principle?

4. What is the point of dispute between R' Yochanan and R' Elazar?

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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' בנימין מאיר ז"ל

Distinctive INSIGHT

The consequences for intentionally uttering a false oath

מאי אינו לוקה דאינו נפטר במלקות

Rav Kahana met a group of students who were studying Massechta Shevuos in the beis midrash of Rabbah. Rav Kahana presented them with an inquiry. A watchman who was entrusted with an item was about to take an oath denying that the item was in his possession. Witnesses warned him that it was prohibited to take a false oath. What is the halacha if he nevertheless swears falsely? Is he liable for an offering but not lashes, or is he liable for lashes due to the warning but exempt from an offering, or is he liable for lashes and an offering?

The discussion in the Gemara features several attempts to resolve the question of Rav Kahana. A Baraisa is brought where we are introduced to a discussion in progress where the laws of oaths are compared to the laws of a nazir who became defiled and must restart his counting of days. The Baraisa then records the following response, "No! We cannot learn the halachos of oaths from those of a nazir, because the nazir can be liable for lashes, as opposed to the laws of oaths which are liable for an offering, but not lashes." Obviously, notes the Gemara, the contrast between oaths and nazir must be in a case where the person was warned, as this is the only case where a nazir would deserve lashes. And still, the case of oaths does not get lashes, but only an offering.

Rav Kahana responds that there is no proof from that Baraisa to answer his question, because the Baraisa might be saying that even when we administer lashes for a false oath where the person was warned, this alone is not adequate to achieve atonement, because the person has to bring an offering in addition to receiving lashes. A nazir, however, is completely absolved with lashes.

Rambam rules (Hilchos Shevuos 7:8) that if a person was warned and he intentionally uttered a false oath, he must bring an offering, and he does not get lashes. Lechem Mishnah explains that the source for the ruling of Rambam is this Baraisa, where the Gemara understands it to mean that uttering a false oath does not get lashes. Although Rav Kahana dismissed this proof, we still are in doubt regarding how to interpret the Baraisa, so we cannot administer lashes due to the possibility that the Baraisa's true meaning is as we first understood, and that lashes are not to be given for oaths.

The Chinuch (Mitzvah 226) says that if one intentionally utters a false oath he does get lashes. Minchas Chinuch challenges the Chinuch, as our Gemara does not resolve this issue, and it remains unproven whether lashes are given. The opinion of the Chinuch, however, is that a false oath of a watchman is in violation of two sins, that of a false utterance (שבועת ביטוי) and that of lying (לא תשקר איש בעמיתו). Rav Kahana's question was only regarding lashes for a watchman's oath, but there would be lashes for a false utterance in any case. ■

HALACHAH Highlight

Disqualifying a witness as wicked

הזיד בשבועת הפקדון מהו

One who intentionally lied when he took an oath of deposit

Chavos Yair¹ records an uncertainty he had regarding witnesses. Reuven asked Levi to testify on his behalf in a monetary case. Levi knows that he is unfit to testify but also knows that the Beis Din is unaware of the fact that he is unfit to testify and would accept his testimony. Is he permitted to testify in such a case? U'rim V'tumim² cites this uncertainty and rules that if he is unfit due to the fact that he is related to someone involved in the case he must inform Beis Din of his disqualification. If, however, he is unfit due to a transgression that he committed he is obligated to testify on behalf of Reuven. The reason is that even if he were to inform Beis Din that he is a sinner and thus unfit to testify they would not believe him due to the principle **אין אדם משימ עצמו רשע** – a person cannot establish himself as one who is wicked. Therefore, as long as two witnesses do not testify against him to establish his status as one who is wicked, he is obligated to testify on Reuven's behalf.

Chasam Sofer³ proves from our Gemara that a person cannot establish himself as wicked on his own and that the categorization of one as wicked must be done by witnesses. The Gemara asks about the punishment for one who violates the oath of deposit. Rashi and Tosafos discuss why the Gemara did not ask the same question regarding the oath of testimony and Chasam Sofer suggests that there is an easy explanation that they seemingly overlooked. Perhaps the reason a witness should not receive lashes is

lied about knowledge of a land-related matter are liable.

It is demonstrated that R' Yochanan is the one who holds that the witnesses are exempt.

R' Yirmiyah suggests that the dispute between R' Yochanan and R' Elazar parallels a dispute between the Tannaim, R' Eliezer and Rabanan.

The Gemara elaborates on the dispute between R' Eliezer and Rabanan.

R' Avahu rejects the notion that the two disputes are parallel.

R' Pappa in the name of Rava suggests a proof to R' Yochanan's position that witnesses who lied about knowledge of a land-related matter are exempt.

R' Pappi in the name of Rava rejects this proof. ■

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that he knows that the other witness transgressed some prohibition that categorizes him as wicked. Even if the second witness has a reputation (חזקה) as a righteous person we would not be able to administer lashes to the first witness solely based on the reputation of the other witness. The fact that this reason was not given indicates that knowing that the other witness is wicked does not disqualify him from testifying since his wickedness was not established by two witnesses. As such, the first witness is obligated to testify with him despite his awareness of the other's wickedness. This proves that for one to be disqualified as a witness it is necessary to establish that fact based on the testimony of two witnesses and barring that he remains fit and obligated to testify. ■

1. שו"ת חות יאיר סי' ט"ו.

2. אורים סי' כ"ח סק"ג.

3. שו"ת חת"ס יו"ד סי' י"א. ■

STORIES Off the Daf

A False Accusation

"בעל הבית שטען טענת גנב..."

On today's daf we find a discussion about a person who accuses his fellow Jew of thievery.

Once, Rav Zusia of Anipoli, ז"ל, was travelling alone incognito. He stayed at the home of a certain wealthy man, distinguished by his generous hospitality. This man always had numerous guests from whom he demanded no remuneration.

Rav Zusia would go to bed quite late. He was always careful to find a private place where he would recite a tearful Tik-kun Chatzos and learn Torah with great enthusiasm, completely unnoticed by a single soul. He hid himself so well, that

when a valuable item went missing he was immediately suspected of being the culprit. After all, was he not a shady character who went to bed after everyone else? But when the host demanded that he return the stolen object, he insisted that he was innocent of any theft. After several tries, the host summoned him to the rav of their town, a clever man who was known to have a knack for getting unscrupulous people to admit their crimes.

The rav wasted no time. He took out a book filled with arcane looking kabbalistic sheimos and threatened Rav Zusia, figuring he was a common thief. "Know that there is a gehinom where the wicked are judged with terrible fire. I warn you now: if you do not own up to your crime immediately I will use these sheimos to send you there right now!"

Rav Zusia immediately replied, "Is that

so! If you look in such works you must have true wisdom. Know that I am much more afraid of violating Hashem's commandment not to steal than I fear you or gehinom. Transgressing the Torah commandment which admonishes us not to steal is worse than gehinom!"

When the rav heard these words which were spoken directly from the heart he realized that he had made a serious error. "Oy, I did not see properly. I have suspected a kosher upright man, a tzaddik! Please forgive me!"

He turned to the wealthy man. "You must continue to search for the thief. And leave this tzaddik alone. As he said, he does not fear you or me or even gehinom. He fears Hashem!"¹ ■

1. פרי הכרם, בשלח תשנ"ט, ע"ה. ■

