

OVERVIEW of the Daf

1) Partial admission (cont.)

Support for Rav's position is suggested. (Rav holds that the defendant's denial must be at least the value of two silver maos and interpreted the Mishnah in accordance with that position.)

R' Elazar suggests another interpretation of the Mishnah that is consistent with Shmuel's position.

Proof to this interpretation is suggested but rejected by Rav.

It is suggested that since R' Elazar follows Shmuel in his interpretation of the end of the Mishnah he must hold like him regarding the earlier part of the Mishnah as well.

This assumption is rejected.

Another unsuccessful attempt to prove Rav's position correct is recorded.

R' Chiya cites a Baraisa that supports Rav's position.

R' Nachman bar Yitzchok in the name of Shmuel teaches that if a single witness testifies that the defendant owes a portion of the money being claimed from him the defendant must swear even if the claim was only a perutah.

R' Nachman in the name of Shmuel rules that if the claimant demands wheat and barley and the defendant admitted to only one of those claims he is obligated to swear.

Other Amoraim are cited as concurring with this ruling.

The Gemara wonders whether Reish Lakish, who did not comment, disagrees. The conclusion is that nothing should be inferred from his silence.

Proof to the ruling of R' Nachman in the name of Shmuel is presented but rejected.

Another unsuccessful attempt is made to support Shmuel's ruling.

2) Claiming wheat and barley

The Gemara notes contradictory citations from R' Yochanan whether a claim of wheat and barley and an admission to one of them constitutes a partial admission.

The Gemara answers that there is a dispute between R' Chiya bar Abba and R' Yitzchok concerning this matter.

Three unsuccessful attempts are made to refute R' Chiya's understanding that this case does not qualify as a partial admission.

R' Anan in the name of Shmuel presents the parameters for a case in which the plaintiff claims wheat and the defendant quickly responded that he owes barley.

R' Anan in the name of Shmuel teaches that if the claim is for two needles and the admission is one needle an oath of partial admission must be taken.

R' Pappa discusses a case in which the plaintiff claims utensils and a perutah and the defendant admits to one of the claims.

The Gemara explains that one of R' Pappa's rulings follows Rav and the other follows Shmuel.

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Distinctive INSIGHT

Why does Rabban Gamliel consider the response **מודה במקצת**?

טענו חטין והודה לו בשעורין פטור, ורבן גמליאל מחייב

The Gemara refers to the case where Reuven claims that Shimon owes him a certain amount of wheat. Shimon responds by denying that he owes any wheat at all, but he does admit that he owes barley. Tanna Kamma holds that Shimon has totally denied the claim of wheat which is what was being asked, and he is therefore not in the category of **מודה במקצת**. He does not have to pay the barley, because it was not what Reuven asked for, and he is exempt from the oath of **מודה במקצת**. Rabban Gamliel contends that Shimon is considered to be a **מודה במקצת**. Meiri explains that because barley is a type of grain, as is wheat, this is enough of a reason for Shimon's response to be viewed as a partial confession. Tosafos (ד"ה ור"ג), however, explains that the opinion of Rabban Gamliel would apply even where Reuven claims that Shimon owes him oil, and Shimon admits that he owes him [empty] jugs. We see from Tosafos that the underlying reason for Rabban Gamliel applies even if the claim and admission are not within some overlapping category, as Meiri had said.

Shitta M'kubbetzes (Kesuvos 108b) writes that it seems that the opinion of Rabban Gamliel is that the partial admission of the defendant does not have to be of the type of item claimed, as is evidenced by the case where Shimon admitted that he owed barley, which was not included in the original claim. Yet, Shitta acknowledges that Rashi explains that Rabban Gamliel does require that the partial admission be of the type of item claimed, and that the claim of wheat and the response of barley are considered within the same category either because wheat is more valuable than barley, or that the claim for "wheat," was not being specific, and the claimant really meant barley. The reason he was not being specific is that either way, Shimon owed him a certain value of grain.

Shitta M'kubbetzes adds that according to this, if Reuven did specify and say that he was claiming wheat and not barley, and Shimon admitted that he owed some barley, even Rabban Gamliel would agree that this is not a case of **מודה במקצת**, and there would be no oath.

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REVIEW and Remember

1. Why was it necessary to teach that a perutah is also a coin?

2. Why did the Gemara decide that there was nothing to infer from Reish Lakish's silence?

3. What is the disagreement concerning R' Yochanan's position?

4. What is a **שבועת היסת**?

HALACHAH Highlight

Drinking in the presence of others

מישתא הוה שתי ליה ושתיק ליה

He was drinking and that was the reason he was silent

Magen Avrohom¹ in the name of Tosafos² explains that during a meal one is required to turn his face to the side when drinking water and when one is not in the midst of a meal one is required to turn to the side even when drinking other liquids. Elya Rabba³ disagrees and asserts that Tosafos holds the opposite. Regarding drinking water there is a difference whether one is in the middle of a meal or not. In the middle of a meal one must turn away, but regarding other liquids there is no requirement to ever turn away to take a drink.

A commentator to Elya Rabba⁴ cites proof to Elya Rabba's position from Rashi's comment to our Gemara. The Gemara discusses whether one should infer from Reish Lakish's silence that he disagrees with the other Amoraim. In one of the responses the Gemara relates that one should not infer anything from Reish Lakish's silence since he was drinking at the time that R' Yochanan made his statement. Rashi⁵ mentions that Reish Lakish was drinking water when R' Yochanan made this statement. How did Rashi know that he was drinking water as opposed to any other liquid? Furthermore, even if he was drinking water why couldn't he voice his disagreement when he finished drinking? It must be that he was drinking water which required him to either turn away or perhaps even leave the table altogether in order to not violate

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3) Complete denial

R' Nachman asserts that when the defendant completely denies the claim against him he must take a hessis oath.

The rationale behind R' Nachman's ruling is unsuccessfully challenged.

Support for this explanation is cited.

According to R' Chaviva R' Nachman's comment was made in reference to a later ruling of the Mishnah.

It is noted that the two versions of R' Nachman do not necessarily agree with one another. ■

this halacha. As such, he was not focused on R' Yochanan's teaching as it was presented. According to this he must have been drinking water since according to Magen Avrohom one would be required to turn away regardless of what he was drinking.

Birkei Yosef⁶ writes that since the only authority who cites this halacha is Magen Avrohom it must be that other authorities maintain that this is a practice reserved for particularly modest people but not mandated of everyone. Mishnah Berurah⁷, however, cites this practice as appropriate for all Torah scholars even those who are not particularly modest. ■

1. מג"א סי' ק"ע סק"ז.
2. תוס' בכורות מ"ד: ד"ה ואין.
3. אליה רבה שם סק"ח.
4. הגהות מוהר"ר יעקב יהודה אויש מפראג ומובא דבריו בלבוש מהד' זכרון אהרון.
5. רש"י ד"ה איכא.
6. ברכי יוסף שם סק"ג.
7. מ"ב שם ס"ק י"ג. ■

STORIES Off the Daf

The Need for Boldness

"חזקה אין אדם מעיז פניו בעל חובו..."

Someone once asked Rav Chaim Friedlander, ז"ל, a question about the nusach of vidui. "What is the point of saying, 'ואין אנן עזי פנים וקשי עורף לומר לפניך...צדיקים אהננו... ולא חטאנו...' — And we are not so brazen and obstinate as to say before You...we are righteous and did not sin? Why should we begin this way? Why not just get right to the point and confess our sins?"

Rav Friedlander answered, "Actually this is the one merit we can declare before Hashem despite having sinned: that we don't have the nerve to lie about it. The gemara in Shevuos 40 rules that generally one does not have the nerve to completely deny his debt in front of his benefactor. Even a practiced liar would never dare such a thing, since his

friend knows he is lying, as the Rivah explains in Tosafos on the issue. The epitome of chutzpah is to deny a loan in front of the one who loaned the money, who knows he is lying."¹

Rav Nosson of Breslov, ז"ל, explains this gemara similarly, but with an added nuance. "Although denying a debt demands nerve, admitting that one owes the money but cannot afford to pay also requires a degree of chutzpah. Wicked people often overlook their sins, feeling that they have done nothing wrong or even justify the most heinous actions with all sorts of excuses. The bottom line is that they prefer to deny their debts to Hashem than admit them and repent.

"This is the meaning of the apparent contradiction in the words of our sages. On the one hand we find, 'עז פנים לגיהנם' — the brazenfaced are headed for gehinnom.' On the other we are taught 'הוי עז כנמר' — be bold as a leopard' to serve Hashem. But which is the proper way? The answer is that

every expression of shame and humility also takes nerve. We must use our shamelessness for holiness by overcoming our natural diffidence to admitting our spiritual errors and making amends to the best of our ability. This is the proper use of chutzpah which our sages exhort us to attain. Our sages teach that using chutzpah to deny our defects, however, is the way to gehinnom."² ■

1. שפע חיים, מועדים, ח"א, ביאור תפילות ימים הנוראים
2. ליקוטי הלכות ■

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We see that Shitta M'kubbetzes holds that Rabban Shimon always considers a partial admission to be liable for an oath, as Tosafos explained above, but not necessarily that we do not require the response to be of the type that was claimed. Rather, the reason is that we always interpret every claim to be a financial claim, and the response is that the defendant admits that he will pay part of the value which is being asked from him. ■