

OVERVIEW of the Daf

1) A hired worker (cont.)

R' Nachman bar Yitzchok defends Rav and Shmuel's ruling against the challenge from R' Sheishes.

2) A dispute regarding the amount that was stipulated as a worker's wage

R' Yirmiyah bar Abba reports that Shmuel ruled that an employer is believed when there is a disagreement concerning the amount that was stipulated as the employee's wage.

Two unsuccessful challenges to Shmuel's ruling are presented.

In response to the second challenge R' Nachman bar Yitzchok asserted that the Baraisa follows the position of R' Yehudah that Chazal enacted that an employee could swear to collect his wages even though Biblically the employer should take the oath. The Gemara searches for the ruling of R' Yehudah that expresses this position.

R' Shisha the son of R' Idi challenges the assumption that this position is not held by Rabanan.

This challenge is rejected and Rava explains the point of dispute between R' Yehudah and Rabanan.

3) A creditor who takes security

The Gemara questions the rationale of the Mishnah's ruling that a debtor could take an oath to collect from a creditor when there is no evidence that the creditor took something for collateral.

Rabba bar bar Chana in the name of R' Yochanan explains the circumstances of the Mishnah's case.

R' Yehudah presents a related ruling.

Five qualifications to this ruling are presented.

Rava enumerates other people of the household who may also take an oath about what the creditor illegally took from the debtor's home.

R' Pappa asks whether hired workers or field-hands are believed and the matter is left unresolved.

R' Ashi puts a limit on what the debtor may claim was stolen from him.

4) Collecting for assault

R' Yehudah in the name of Shmuel asserts that a victim collects with an oath only for those injuries that the victim could inflict upon himself but if it is an injury that he could not inflict upon himself he may collect without swearing.

This qualification is unsuccessfully challenged.

5) Clarifying the Mishnah

The reason the Mishnah emphasizes "even a vain oath" is explained.

This explanation is challenged. ■

Distinctive INSIGHT

Items which are normally lent

כי הא דרבה אפיק זוגא דסרבלא וספרא דאגדתא מיתמי בדברים העשויין להשאיל ולהשכיר

The Mishnah presented a list of cases where someone may take an oath and collect the item about which he swears. One of the cases is the oath of the victim of theft. The Gemara analyzes the circumstances where this oath would be applicable.

The conditions of this oath are where witnesses observed a lender enter into the house of the borrower in order to take an item of collateral, and they saw him come out with something. Any item which the witnesses can clearly identify, the borrower may retrieve without needing to swear. However, the borrower also claims that while in his house, the lender also took some other items which he concealed under his garment when he left. As Tosafos explains, the witnesses confirm that they noticed he had something under his garments, but they cannot say what it was. These are the items about which the borrower may take an oath, and the lender would have to give them back.

The Gemara continues to discuss a related halacha. Rav Yehuda taught if witnesses observed Reuven entering into Shimon's house and exiting carrying something under his garment, if then Shimon claims that he allowed Reuven to come to borrow the item, Reuven would not be believed to say that he bought it from its owner. The Gemara clarifies that if Shimon normally sells such items, Reuven would be believed with his claim. Furthermore, Reuven is not believed when the item is the type which people do not usually hide under their garments, so by hiding it we suspect that Reuven was embarrassed to be seen borrowing. If such items are usually carried under one's garments, we believe Reuven that he bought it. Finally, if this type of item is not normally borrowed, we believe the claim of Reuven that he bought it.

To illustrate this point, the Gemara lists shears for wool and history books (ספרי אגדתא) as examples of items which are normally lent from one person to another.

Rashi explains that the Gemara specifically uses history books as its example, as these are not read by their owners very often, and they are therefore lent to others on occasion. Other books, such as holy books (ספרים) are used by their owners, and are not lent in order that they not get ruined by others. Tosafos notes that people lend history books, and they certainly lend holy books, as the Gemara in Kesubos (50a) highly commends those who avail their sefarim for others to use.

Ritva explains that there is no disagreement between Rashi and Tosafos. All agree that it is a great mitzvah to lend sefarim to others, but Rashi notes that this is only done to people whom the owners trust to care for them. ■

HALACHAH Highlight

Making a chazakah on a car

אבל דברים שאין עשויין להשאיל ולהשכיר נאמן

But [regarding] objects that are not lent out or rented, he is believed.

The Gemara teaches that generally objects that are in a person's possession are presumed to belong to him since we do not assume people to be thieves. However, items that are commonly borrowed or rented are not assumed to belong to the person in whose possession they are found since it is likely that the possessor borrowed or rented the object and it was not necessary to steal the object to gain possession of it. Another exception to this rule is גודרות – animals that are mobile. Rashbam¹ gives two reasons why possession of animals that are mobile is not evidence of ownership. One reason is that the animals may have wandered onto the possessor's property and the second reason is that the possessor may have seized them as they were walking unattended in the street.

Teshuvos Netzach Yisroel² writes that possession of a car does not create a presumption of ownership. The second reason given by Rashbam is that to take possession of the animals it is unnecessary to enter into the property of the previous owner. So too, to take someone's car it is not necessary to enter the owner's property since the car is also found on the street. Even though Rashbam gave two explanations why one cannot assert ownership by virtue of possession of mobile animals, nevertheless, it seems that either explanation is able to stand by itself and it is not necessary to satisfy both explanations.

Sefer Darkhei Choshen³ has a different perspective. Alt-

REVIEW and Remember

1. Who is believed when there is a disagreement how much a craftsman should be paid?
2. According to Rava, what is the point of dispute between R' Yehudah and Rabanan?
3. When is a person believed in his claim that the objects that are in his possession are his?
4. Why does the Mishnah mention the שבועת שוא rather than the שבועת ביטוי?

though a car may be found on the street, similar to mobile animals, the only way to take possession of the car is to "break in." Once it is necessary to break into the car to take possession of it, it is similar to the general principle that something that is in a person's possession is presumed to be his since we do not assume people to be thieves. Upon further consideration he concluded that one should not be able to claim ownership of a car by virtue of possession. Since it is possible to have a car towed onto one's property thereby avoiding the need to "break in," the case of a car is similar to the case of the animals and possession does not indicate ownership. ■

1. רשב"ם בבא בתרא ל"ו. ד"ה הגודרות.
2. שו"ת נצח ישראל סי' מ"א.
3. ספר דרכי חושן ח"א בדיני מוחזק במכוננית.
4. ספר דרכי חושן ח"ג בדיני מוחזק במכוננית. ■

STORIES Off the Daf

Idle Threats?

"עבד איניש דגזים ולא עביד..."

Rav Hillel Gavriel Shain, zt"l, once found himself caught up with an abandoned and violent thief. The thief was a Jew who had strayed very far and he continued to accost and rob people until he was finally caught and judged in a gentile court. He was found guilty and sentenced to twenty years in a distant prison.

After a year, he somehow managed to escape and returned home, to the same town as Rav Shein. By day he would hide in a certain place, and although the au-

thorities searched thoroughly for him they could not locate him. When Rav Shain managed to collect money for a debt this young man owed, the young man was infuriated. He accosted Rav Shein and began to beat him cruelly, threatening to burn his house down with all its occupants. He lashed out at the rav, "And it would serve you right for having the nerve to get involved in my affairs!"

Although Rav Shain was petrified by his threats and one word from him would reveal this young man's clever hiding place and completely neutralize him, he would not inform on him without consulting with a great posek to ensure that this was halacically permitted.

He traveled to consult with Rav Alex-

ander Moshe Lapidos, zt"l, if he was permitted to give this criminal's bolt hole away. Rav Lapidos ruled that this was forbidden. He answered, "In Shevuos 46 we find that at times a person exaggerates and does not fulfill his words. Even if this man is suspected of being perfectly capable of fulfilling his dire threat, that is not enough to hand him over to the authorities who will administer punishment not in accordance with the Torah."

Rav Shain went home and did not inform on the criminal despite his fear. Thankfully, the very next day, the young man was caught and sent back to prison, never to be heard from again.¹ ■

1. אבני שיש, ע"י קי"ז ■