

OVERVIEW of the Daf

1) Contradictory pairs of witnesses (cont.)

R' Chisda's position that contradictory pairs of witnesses may not testify on their own is unsuccessfully challenged.

2) Clarifying the Mishnah

A Baraisa is cited in which R' Yehudah elaborates on his position that the one with the produce has the upper hand.

The Gemara explains why it was necessary for the Mishnah to discuss a case of produce and a case of money.

The case in which orphans must swear to collect money owed their father is explained.

Rav and Shmuel qualify the ruling that obligates orphans to swear in order to collect.

R' Elazar disagreed with Rav and Shmuel's ruling that there is a circumstance in which the orphans will not be able to collect the debt owed to their father.

R' Ami concurred with R' Elazar and added an additional clarification to the halacha.

R' Nachman challenges R' Ami's statement and comes out in support of Rav and Shmuel.

A contradiction between two statements of R' Nachman is noted and resolved.

Four unsuccessful challenges to Rav and Shmuel's position are presented.

R' Nachman instructs R' Chisda and Rabbah bar R' Huna not to uproot the ruling of Rav and Shmuel; rather they should just not apply it to other cases.

An example of a circumstance in which Rav and Shmuel's ruling should be applied is cited.

Two more related incidents are presented.

R' Chama rules that a judge has the choice to follow the position of Rav and Shmuel or R' Elazar's position.

R' Pappa provides instructions for a judge when a case such as the one under discussion comes up.

A final related incident is recorded.

3) Swearing without a claim

The Mishnah's ruling regarding those who swear without a claim against them is clarified.

A Baraisa clarifies the case of the member of the household.

The reason the people mentioned in the Mishnah swear with-

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Today's Daf Digest is dedicated
By Mr. and Mrs. Volvie Hollander
In loving memory of their father
ר' ברוך בן אברהם עביר, ע"ה

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Distinctive INSIGHT

The shopkeeper and the money changer

אמר לשולחני תן לי בדינר מעות וכו'

The Mishnah (45a) taught two cases where a customer and business proprietor dispute the details of a transaction which took place. In one case, the customer offered a store owner (חנוני) money for fruit, and he received the fruit. When the store owner then asked for the money, the customer claims that he already paid, and the store owner apparently put the money in his wallet without thinking. In this case, the customer may take an oath that he paid, and he is exempt. Rav Yehuda disagrees and holds that whoever is in possession of the fruit is trusted without an oath, which means that the customer does not take an oath. The assumption is that a store owner does not hand over his merchandise before he gets paid. If the customer has the fruit, this means that he did, in fact, pay the money first, as he claims.

In a related case, the money was paid and the customer then asks for his fruit. Here, the store owner insists that he already delivered the product, and that the customer must have taken it home. In this case, the store owner may take an oath that he delivered the fruit, and he is exempt.

The second case involves a customer who brings money to a money-changer (שולחני). The customer offers a large coin and asks for change. After getting his change, the changer asks for the large coin, but the customer insists that he already gave it. The customer may take an oath that he already gave the large coin, and he is exempt. Rabbi Yehuda disagrees and says that a money changer is assumed not to hand over the change until he first gets his coin, so the customer is exempt from payment without an oath.

Similarly, the case may be where the customer first gives the coin, and then asks for the change. The money changer claims that he already gave it, and the customer must have put the money into his pocket without thinking. Here, the proprietor may take an oath and he is exempt.

According to most Rishonim, the disagreements between Tanna Kamma and R' Yehuda in the cases of the store keeper and the money changer are parallel. Although we have two illustrations of the disagreement, the arguments are the same in both cases. According to Rabeinu Tam and Tosafos HaRosh, the dispute is where the customer's money is on the counter between the two parties. Ri"ף and Rambam, however, learn that the case is where the fruit or money in question is not in the store, but in the street. In one case, the proprietor claims that he gave the fruit or the change, but the customer says that he already paid. In the other case the customer claims that he paid for the change or fruit which is packaged up in the street, but the store owner or money changer claims that he did not yet get paid. ■

HALACHAH Highlight

Making someone swear falsely

ואין אדם מוריש שבועה לבניו

And a person cannot bequeath an oath to his children

Teshuvos Mutzal Mei'eish¹ asks whether a person who makes a claim against his friend and realizes that his friend will swear falsely should exempt him from taking that oath since it will be false. Seemingly, to have someone take an oath when one knows that he will lie violates the prohibition against placing a "stumbling block before the blind" – לפני עור – Chazal² taught that to fulfill a positive command one is not required to spend more than one-fifth of one's assets but to avoid violating a prohibition one must be willing to give up all of his assets. Seemingly, one should forgo his claim against the other person in order to avoid a violation of the transgression against taking a false oath. He answers that once he knows the other party is prepared to swear falsely he is considered a thief and one does not have to be concerned about the transgressions of the wicked as the Gemara instructs (Bava Kama 69a), הלעיטוהו לרשע וימות – feed the wicked and let him die.

Teshuvos Divrei Chaim³ agrees that the plaintiff will not violate the prohibition of לפני עור but there is still a minor punishment in store for the one who had another person swear falsely. Even though his intent was to recover money that is his, nevertheless, once he saw that the other party was prepared to swear falsely, he should have found a compromise or released the other party without taking an oath. He bases his position on the Gemara earlier (39b) that derives from the pasuk (Shemos 22:10), שבועת ה' תהיה בין שניהם – "The oath of Hashem should be between them," that the prohibition against taking a false oath is the responsibility of both parties, even the one who is claiming truthfully since he should have been willing to forgo the other party from swearing falsely.

Teshuvos Shoel U'Meishiv suggests that this issue relates to the dispute of what happens when neither litigant can swear. According to Rav and Shmuel when neither litigant can swear the plaintiff may not collect and the verse ה' שבועת ה' is extra to teach that when

REVIEW and Remember

1. What is the point of dispute between the explanation of Rav and Shmuel and the position of R' Elazar?
2. Does R' Nachman agree with Rav and Shmuel or not?
3. How did R' Chama rule regarding the dispute between Rav and Shmuel versus R' Elazar?
4. What is the rationale that obligates certain people to take an oath even if the claim against them is not definitive?

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out a definitive claim against them is explained.

R' Yosef bar Minyomi adds another qualification to the Mishnah's ruling.

This qualification is challenged and consequently revised.

4) Devolving other oaths from a Rabbinical oath

The Gemara inquires whether we devolve other oaths from a Rabbinical oath.

It is proven that we do devolve other oaths from a Rabbinical oath. ■

someone swears both litigants are responsible for that oath. According to those who disagree with Rav and Shmuel when neither party can swear the defendant pays even though an oath was not taken and the verse of ה' שבועת ה' is used to exclude the case of heirs, since the verse is used for another exposition it is not available to teach that one litigant is responsible when the other litigant is willing to swear falsely. ■

1. שו"ת מוצל מאש סי' מ"ה.
2. ע"י שו"ע או"ח סי' תרנ"ו סעי' א'.
3. שו"ת דברי חיים ח"ב חו"מ סי' ח'.
4. שו"ת שואל ומשיב מהדו"ד ח"א סוסי"י כ"ג. ■

STORIES Off the Daf

The Merit of the Fathers

"יפה כח הבן מכח האב..."

Rav Yosef Alter of Radowitz zt"l, once made a very insightful comment on a statement on today's daf. "The verse in Nitzavim states, והביאך ה' אלקיך אל הארץ אשר ירשו, אבותיך — Hashem will bring you to the land which your fathers inherited.' The word land can also denote a test in earthiness or physicality. We must understand that Hashem enables us to overcome spiritual tests in the merit of our fathers, who stood up to

these tests already. Overcoming such tests is a part of their heritage and ours as well. The verse continues, והטיבך והרבך מאבותיך — He will make things better for you and make you more numerous than your fathers.' This can also be understood in context of the words of our sages in Shevuos 48, 'יפה כח הבן מכח האב — The strength of the son is greater than that of the father.' Sometimes the children can achieve things that the fathers were unable to reach. But such greatness is only in the merit of the fathers. Since the children stand on the merit of their forefathers as well, they can reach even greater heights."¹

The Rebbe of Munkacz, zt"l, explained

differently, "If we ask Hashem to bring the promised redemption in our merit, this is the height of arrogance. Surely this will arouse heavenly accusers and instigate a serious inventory of all our merits and failing from on high to determine if we are really worthy. The proper way is for people to ask for redemption in the merit of our righteous fathers. We must know that everything we have is in the merit of our fathers before us. In this merit Hashem will, 'remember the lovingkindness of the fathers and bring the redemption to their children's children.'"²

1. שלחן מלכים—ויזניך, נצבים
2. דברי תורה, מהדורא חמישאה, אות ז' ■