

OVERVIEW of the Daf

1) **MISHNAH (cont.):** The last two cases in which one swears and collects are explained. Two cases similar to the case of the storekeeper are presented. Cases in which a plaintiff is obligated to swear before collecting are enumerated followed by cases in which one must swear even if there is no claim. The Mishnah concludes with the ruling that Shemittah cancels an obligation to take an oath.

2) Biblical oaths

The source that, Biblically, one swears in order not to pay is presented.

3) A hired worker

The Gemara searches for the reason and rationale behind Chazal's enactment that a hired worker should swear to be able to collect.

A number of unsuccessful challenges to this principle are presented.

R' Nachman in the name of Shmuel limits the Mishnah's case to where the worker was hired in the presence of witnesses but if he was hired without the presence of witnesses the employer is believed to say that he paid his worker's wages.

R' Yitzchok reported that R' Yochanan ruled the same way.

The Gemara analyzes whether one should draw an inference that Reish Lakish did not have something to say about this matter.

Rav is also quoted as qualifying the Mishnah's ruling in the same manner as Shmuel.

Rami bar Chama praised this ruling.

Rava unsuccessfully challenged Rami bar Chama's assessment that this is an excellent ruling.

The Gemara infers from this discussion that Rami bar Chama and Rava maintain that a custodian who received an object with witnesses is not required to return the object in the presence of witnesses.

R' Sheishes challenges the ruling of Rav and Shmuel. ■

REVIEW and Remember

1. What is the case of the storekeeper's ledger?

2. What categories of people are obligated to take an oath even without a claim against them?

3. According to the Gemara's conclusion, why is an employer believed over the claim of his employee?

4. Is a custodian obligated to return the deposited object in the presence of witnesses?

Distinctive INSIGHT

The Gambler

היה אחד מהן משחק בקוביא

One of the cases in the Mishnah (44b) listed in the category of those who take an oath and collect is the case of "שכנגדו חשוד על השבועה—the other litigant is suspect to take a false oath." As the Mishnah continues on our daf, it elaborates upon this case.

If a person appears in court and is obligated to take an oath, if he cannot do so because he is suspect due to prior circumstances, the one claiming from him is given the option of taking the oath instead, and by doing so the claimant is allowed to collect. The illustrations of how a person could have the status of being suspect to swear falsely is where he previously swore falsely in a case of an oath of testimony, an oath of a deposit, or even an oath taken in vain. Also, if one of the litigants in a case has a history of being a gambler (משחק בקוביא), he cannot take an oath now, and his challenger has the right to swear and collect.

Amoraim (Sanhedrin 24b) present varying opinions why gamblers are disqualified from swearing in a Jewish court. One view is that gamblers are not involved in the building of society (יישובו של עולם). If gambling is their only method of livelihood they are disqualified from being a judge or from testifying. This is because it is assumed that they are not contributors to the welfare of the world and they lack a sensitivity for other's property. Alternatively, we assume that they do not appreciate other people's hard work and the difficulty of earning an honest living, and they do not care when other people lose because of them. Gamblers do not refrain from lying, as much of the strategy they use to win money involves deception and maneuvering in order to take advantage of others. Still, others explain that the problem is that they are guilty of theft on a rabbinic level, as they collect money from others without their full consent (אסמכתא).

Tosafos (ibid., ד"ה ואלו) explains that this is only considered theft on a rabbinic level because the gambler does not think that he is doing anything wrong, because the one who loses the wager hands the money over in a manner that seems to be willingly.

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HALACHAH Highlight

The obligation to redeem one's son

חזקה אין בעל הבית עובר בבל תלין

There is a presumption that an employer would not violate the prohibition to hold wages overnight.

The Gemara teaches that shortly after the completion of a term of employment an employer is believed when he claims that he already paid since there is a presumption - חזקה - that a person would not violate the prohibition of not paying a worker on time. The Gemara in Bechoros (49a) teaches that if a father dies after his son reached the age of pidyon haben, we assume that the child was redeemed. If, however, there is a report that the child was not redeemed the child is obligated to redeem himself. Rashi¹ explains that the child must redeem himself even if someone reports that he heard the baby's father declare that he did not redeem his son. Actual testimony is not needed since the presumption that a father redeemed his son is not so strong since many people do not redeem their sons on time. Rashi's comment is difficult to understand. According to our Gemara there is a presumption that an employer would not violate the prohibition to not pay his worker on time, so too, there should be a presumption that a person would not violate the positive command to redeem his son.

Based on this question, Teshuvos L'horos Nosson² proves that there is no obligation for a father to redeem his son on the thirtieth day. The wording of the verse (Bamidbar 18:16) is that from the thirtieth day one should redeem his son but not that it is ob-

(Insight...continued from page 1)

Rashi explains that theft on a Torah level is only where the thief takes an object forcefully from its owner, similar to that which we find in Sefer Shmuel (2 23:21), "And he stole the spear from the hand of the Egyptian."

According to Rashi, when a gambler collects on a wager, he is only in violation on a rabbinic level, but according to Tosafos he is in violation of theft on a Torah level, but he himself does not realize it. ■

ligatory to redeem the child specifically on that day. In that manner the mitzvah of pidyon haben is different than the mitzvah of paying a worker on time which must be done on the day the employment is completed. It is appropriate to perform the mitzvah on the thirtieth day based on the principle that one should never delay the performance of the mitzvah but that principle is not so strong as the presumption that an employer would not delay payment of his employee's salary and violate a prohibition. Using this approach he explains an unusual ruling of Magen Avrohom. Magen Avrohom³ rules that a pidyon haben that is delayed should not be held on Erev Shabbos out of concern that one will not be hungry for the Shabbos meal. Seemingly, the mitzvah obligation should override this concern. L'horos Nosson explains that there is no obligation to perform the mitzvah of pidyon haben other than the prohibition against delaying the performance of a mitzvah. Accordingly, the mitzvah of giving honor to Shabbos overrides the concern about delaying the fulfillment of a mitzvah. ■

1. רש"י בכורות מ"ט. ד"ה עד.
2. שו"ת להורות נתן ח"ו סי' צ"י סק"ד.
3. מג"א סי' רמ"ט סק"ה. ■

STORIES Off the Daf

A Tzaddik's Prayer

"נושאת ונותנת בתוך ביתה..."

A woman who manages her husband's money for household expenses may not use it for anything else without her husband's explicit permission. On today's daf we find that the husband may force her to swear to ensure that she did not give money without his authorization.

A childless woman, in charge of her wealthy husband's considerable household and business concerns, approached her rabbi in Hungary. She gave the surprised rabbi the staggering sum of four hundred gold coins and explained that she wished him to give it as a pidyon nefesh to one of the tzaddikim. "Please include my name and my husband's name so he can pray for us to be

blessed with children."

The rabbi recommended sending the money to Rav Yosef Chaim Sonnenfeld, zt"l, in Yerushalayim. The woman agreed and the money was immediately sent out.

Three weeks later, this woman's husband visited the rabbi. He was obviously upset and immediately complained to the rabbi. "How could you have taken such a large sum of money from my wife for tzedakah without clearing it with me?"

The rabbi explained that he had felt certain that she would never have given the money without permission.

"I demand that you get the money back from the Rav of Yerushalayim immediately!" the husband thundered.

The rabbi spoke in a conciliatory tone. "The blunder was mine and I apologize. If you insist, I will repay you myself a little at a time."

While the husband was considering

this proposal the postman came into the room and gave the rabbi a heavy package from Yerushalayim. Inside were four hundred gold coins and a note from Rav Yosef Chaim Sonnenfeld. The rabbi immediately returned the money to the gratified husband, who requested that he read the note."

The rabbi read aloud, "I received the money along with your note. But since you say that you received the money from a married woman I am afraid that she did not get her husband's permission, so I returned it immediately with the first post. But of course, I will not fail to fulfill the woman's request that I pray for the couple to have children because the money must be returned.

The letter concluded, "May Hashem help that my prayers be accepted on high!"

As the rabbi read the last line, both men's eyes filled with tears.¹ ■

1. עמודא דנהורא, ע"כ"ה ■