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Bava Kamma Daf 107

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### **Partial Denial**

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: If one claimed regarding a deposit that it was stolen (*and he in fact stole it himself*), he will not be liable (*to pay the kefel*) until he denies part of the claim and admits to part of it. This is because it is written: *This is it (I owe you this, but not more than that)*.

This opinion, however, is in disagreement with that of Rav Chiya bar Yosef, for he said: There is here a ‘mixture of sections’ (*for the verse “this is it,” which is what teaches us that the defendant must make a partial admission, does not belong in the passage dealing with the unpaid custodian, but rather, it belongs in the section dealing with loans*), as the words, “this is it” written here have reference to loans (*for one is not liable to take an oath unless he admits to part of the claim; he is exempt from any liability if he denies the claim completely*). And why does this apply particularly to a loan (*and not to a deposit*)? It is in accordance with that which Rabbah explained, for Rabbah stated: Why did the Torah say that one who admits part of a claim must swear? It is because we assume that no man would be so insolent to deny his obligation in the face of his creditor. He would wish to deny the whole debt, but he does not do so because no one is so insolent. (*This is why he is required to swear on the remainder*.) Indeed, he would like to admit to the entire claim, only

he does not do so in order to evade the creditor for the moment, and he thinks, “As soon as I will have money, I will repay the debt.” This is why the Torah said: Impose an oath on him, so that he should admit to the entire claim. Now, it is only in the case of a loan that such reasoning could apply, whereas regarding a deposit, the custodian would surely be so insolent to deny the claim entirely in front of the depositor (*for he did not do any favors to him*). [Evidently, he disagrees with Rabbi Yochanan and holds that a custodian will swear even without a partial admission.]

Rami bar Chama taught the following *braisa*: The following four custodians require a partial denial and a partial admission (*in order to be liable for an oath*): An unpaid custodian, a borrower, a paid custodian and a renter. Rava cites the Scriptural sources for this. (106b – 107b)

### **Misappropriation**

And Rav Chiya bar Yosef said: He who falsely advances the claim of theft in the case of a deposit would not be liable (*for kefel*) unless he had first misappropriated it (*used it for his own purposes*). The reason for this is because it is written: *The householder shall come near to the judges to swear that he did not put his hand upon his fellow’s property*. This implies that if he did put his hand upon it, he would be liable, and thus indicating



that we are dealing here with a case where he had already misappropriated it.

But Rabbi Chiya bar Abba said to them: But Rabbi Yochanan said that the ruling (*that he is liable for kefel*) applies where the animal was still standing at the trough (*even if it was not misappropriated*)!?

Rabbi Zeira said to Rabbi Chiya bar Abba: Did he mean to say that this is so only where it was still standing at the trough, whereas if the custodian did misappropriate it, the deposit would thereby have been transferred to his possession, so that the subsequent oath would have accomplished nothing (*for he does not become a thief with this claim – and he would not be liable for kefel*), or did he perhaps mean to say that this is so even where it was still standing at the trough?

He replied: This I have not heard, but something similar to this I have heard. For Rabbi Assi said that Rabbi Yochanan stated: One who had claimed that it was lost from him and he swore to that effect, but came afterwards and swore that it was stolen, and witnesses testified that he himself stole it, he would be exempt (*from paying kefel*). Now, is the reason for this ruling not because the deposit had already been transferred to his possession through the first oath?

Rabbi Zeira replied to him: No! The reason (*that he is not liable*) is because he had already discharged his duty to the owner by having taken the first oath (*and there was no reason for the second oath*).

It was indeed similarly stated: Rabbi Avin said that Rabbi Il'a stated in the name of Rabbi Yochanan: One who had claimed regarding a deposit that it was lost from him and he swore to that effect, but came

afterwards and swore that it was stolen, and witnesses testified that he himself stole it, he would be exempt (*from paying kefel*) because he had already discharged his duty to the owner by having taken the first oath.

Rav Sheishes said: He who falsely advances the claim of theft in the case of a deposit, if he misappropriated it before taking an oath, he would be exempt (*from paying kefel*). The reason for this is because it is written: *The householder shall come near to the judges to swear that he did not put his hand upon his fellow's property*. This implies that if he did put his hand upon it, he would be exempt.

Rav Nachman asked him: There are three oaths imposed upon an unpaid custodian: an oath that he was not negligent, an oath that he did not misappropriate it and an oath that the deposit is no longer in his possession. Does this not mean that the oath 'that he did not misappropriate it' should be compared to the oath 'that the deposit is no longer in his possession,' so that just as where he swears 'that the deposit is no longer in his possession,' as soon as it becomes known that the deposit was really at that time in his possession, he would be liable for double payment, so also where he swore 'that he did not misappropriate it,' when the matter becomes known that he did misappropriate it, he would be liable (*which would contradict Rav Sheishes*)?

He replied: No! The oath 'that he did not misappropriate it' was meant to be compared to the oath 'that he was not negligent.' Just as where he swears 'that he was not negligent,' even if it should become known that he was negligent, he would be exempt from the double payment; so also where he swears 'that he did not misappropriate it,' even if it



becomes known that he did misappropriate it, he would still be exempt from the double payment. (107b)

### DAILY MASHAL

#### ***Save us from Brazenness***

We conclude the daily morning blessings with the following: Blessed are You, Hashem, who bestows beneficent kindness upon His people Israel (*Hagomel chasadim tovim l'amo Yisroel*). This is immediately followed by the *tefillah*, May it be Your will, Hashem, my God, and the God of my forefathers, that You rescue me today and every day from brazen men and from brazenness etc. What is the connection between the two *tefilos*?

Reb Shmuel Leider in *Nitei Eishel* explains as follows: Our *Gemora* states: Rabbah said: Why did the Torah say that one who admits part of a claim must swear? It is because we assume that no man would be so insolent to deny his obligation in the face of his creditor. And since the Holy One, Blessed be He has showered us with beneficent kindness without any limits whatsoever, so much so that we cannot even thank Him sufficiently. As we say in *nishmas*: Even if our mouths would be as full of song as the sea, and our tongue as full of joyous song as its multitude of waves, and our lips as full of praise as the breadth of the heavens etc., we still could not thank You sufficiently for even one of the thousand thousand, thousands of thousands and myriad of favors that You performed for our ancestors and for us. Accordingly, we are debtors to Hashem, so immediately after we thank Hashem for all the kindness He does for us, we pray that He should save us from brazenness, i.e. we should not Heaven forbid act insolently towards Hashem after all the kindness that He bestows upon us.

### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What did Ilfa mean when he said that "an oath acquires"?

A: Once someone takes an oath, he is exempt from paying.

Q: According to Rav, in which case will someone be exempt from paying after taking an oath?

A: Only in a case where a custodian claims that it was lost and witnesses testify that he himself stole it.

Q: Can one be liable for *kefel* on a deposit that belongs to a minor?

A: No.