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Bava Metzia Daf 6

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

How Suspect?

The *Gemora* brings three proofs that one who is suspect of taking someone else's money is not suspect of swearing falsely:

1. Rav Nachman says that if someone totally denied a loan, he must still swear to that, even though we suspect that he is lying to avoid payment. Since he totally denies the oath, if he is lying, he has no rationalization of delaying payment, and is simply trying to not pay.
2. Rabbi Chiya says that if a store owner claims to have given merchandise to someone's worker on credit, but the worker claims he never receives it, both the store owner and the worker swear to the employer, and he must pay both of them. Even though they are suspect of lying to take money unjustly, we accept their oath.
3. Rav Sheishes says that if an unpaid custodian claims the item deposited was stolen, he must swear:
 1. That he was not negligent.
 2. That he did not take it for himself.
 3. That it is not in his possession.

Although we suspect he may have taken the item (as evidenced from the last oath), we still accept his oath.

Therefore, Rabbi Yochanan's statement (that we obligate each party holding the garment to swear in order to prevent people from brazenly grabbing items) is logical, since we do not suspect someone who would grab something that's not his with swearing falsely.

How sure are you?

Abaye says that we may suspect one who takes someone's money of swearing falsely. The oath in the *Mishna* is because we are concerned that the one who does not own the garment is owed a debt by the owner of the garment, and has grabbed it as payment. Therefore, he is not suspect of taking something that is not due to him, but he must swear to ensure that he doesn't take it from its rightful owner. The *Gemora* explains that if we would assume that he has a bona fide loan, we would give him his half without swearing. Rather, we are concerned that he is not sure if he has a loan owed to him by the garment's owner. Even though he is not suspect of taking money that's not his, he is suspect of taking money that only may be his. However, he will not swear to something that may be false, and therefore he will abandon the garment when we force him to swear.

Grabbing

Rabbi Zeira asked what the rule would be if one of the litigants grabbed the entire garment in front of the court. Initially, the other party was silent, possibly indicating admission of the grabber's ownership, but he later protested. Rabbi Zeira questions whether we take his initial silence as admission of the other litigant's ownership, or whether we assume that he felt no need to protest, since the whole court saw the litigant grab it.



The *Gemora* brings a braisa that limits the Mishna's rule of splitting the garment to a case when both are holding it. However, if only one party is holding it, he is in possession, and the other party must prove his claim. The *Gemora* assumes that the braisa did not need to tell us a simple case of only one side being in possession, and therefore must be referring to Rabbi Zeira's case, teaching us that even in this case he is considered the assumed owner.

The *Gemora* deflects this with two alternate explanations:

1. After we told the two holding litigants to split it, they return to court, with one holding it. He claims that the other litigant admitted it was his, while the other litigant claims that he rented his half to the one holding it. We tell the one not holding it that if he suspected his counter litigant of grabbing something that is not his, he should not have trusted him to rent the garment without witnesses, and we therefore assume the one in possession is the true owner.
2. One is holding the garment, and the other one is holding only the fringes. The braisa is teaching us that all agree (*even Somchos, who splits an item even without requiring an oath*) that holding fringes does not indicate any possession, and the garment is given to the one holding the garment.

Sanctification

The *Gemora* asks: if we assume that we do not give one who grabbed it in court ownership - what do we rule if one of them sanctifies it without grabbing it? On the one hand, sanctification is tantamount to property transfer, so it may be considered more significant than grabbing, but on the other hand, the sanctification was done without full possession, which is usually a prerequisite for sanctification to take effect. The *Gemora* attempts to resolve this question with a story.

The Disputed Bathhouse

There was a bathhouse that was in dispute between two parties. One of the disputants sanctified the bathhouse, whereupon all the sages avoided using the bathhouse. Rav Oshaya asked Rabbah to ask Rav Chisda how to rule on this bathhouse. When Rabbah passed by Sura, he asked Rav Hamnuna, who attempted to resolve it from a braisa. The braisa says that in any doubt in the realm of a first born – people or animal – we assume that the owner is the one currently in possession. However, an animal in this situation is treated as a first born regarding the prohibitions of shearing and working the animal. Even though the braisa's initial statement indicates that if the *Kohen* grabs it, we do not retrieve it from him, we still treat it as potentially sanctified.

Rabbah countered that even if we remove it from the *Kohen* if he grabs it, a first born animal's prohibitions are different, since the sanctification is automatic, and therefore it (sanctification) more easily descends on the animal. However, sanctification that depends on one's action may not work.

Rav Chananya brought a braisa that proves Rabbah's distinction. The braisa says that animals which are possibly first born are included in the group of animals from whom the owner takes *ma'aser*. If we assume that a *Kohen* who grabs the animal is considered the owner, how can the current owner use this doubtful animal to exempt his other animals from *ma'aser*?

Abaye deflected this proof by limiting the braisa to a case of a flock of only ten animals, one of whom was the doubtful first born. If the animal was the property of the *Kohen*, the current owner would not be obligated in *ma'aser* at all.

Abaye recanted this statement, since we do not take *ma'aser* on a flock which we are not sure is obligated in



ma'aser, as indicated by the *Mishna* in Bechoros. The *Mishna* says that if one of the animals already counted for *ma'aser* jumps back in line with the uncounted animals, all the animals are exempt from *ma'aser*. If we tell someone to take *ma'aser* because of a doubt, we should tell the owner to take *ma'aser* from the remaining animals, since each animal that is brought out is exempted by the tenth – if the ten in this group do not contain the animal who jumped, they follow the rules of *ma'aser*, and if they do contain that exempt animal, their being counted as part of a large group of *ma'aser* animals exempts them. Rather, the Torah tells us that only a tenth that is definitely a tenth qualifies for *ma'aser*, and Rav Chananya's proof still stands.

Ravina clarifies that the braisa that says that ten doubtful animals are counted for *ma'aser* must refer to ten animals, which are in doubt of being the animal that redeems a first born donkey, since such animals have no sanctification. An animal which is in doubt of being a first born animal, and truly sanctified, is not fit for *ma'aser*, since the verse specifies the tenth *yih'ye kodesh* – will be holy, excluding a first born, which is already holy.

INSIGHTS TO THE DAF

Demanding money from in-laws beyond former agreements

Our sugya is one of the few in the Talmud Bavli or Yerushalmi that discusses the prohibition to covet (Shemos 20:14) and the disagreement of the Rishonim as to its parameters is based thereon. Before entering the details, we must emphasize that if someone covets another's property and schemes to get it, he transgresses the prohibition of "You should not desire" – *lo tisaveh* (Devarim 5:18). As long as he refrains from acquiring it, however, he does not transgress the prohibition to covet (Rambam, *Hlchos Gezeilah* 1:9-10).

Parameters of "You should not covet": According to our sugya, people commonly think that if someone steals property, he commits both the sins of thievery and coveting. They believe, though, that if he leaves money to pay for the value of the property in the house he robbed, he is not regarded as having coveted. Does the Gemara mean to say that the common opinion is true or false? The Rishonim express three major opinions:

- i) Tosfos (*Sanhedrin* 25b, s.v. *Me'ikara*) indeed hold that coveting only applies to a thief who failed to pay for property that he stole.
- ii) Raavad (*ibid*) maintains that a thief who leaves payment for the property he robbed is also guilty of coveting as the property was taken without permission. One, however, who persuades and presses the owner of an article until he agrees to sell it, is not regarded as having coveted.
- iii) Rambam (*ibid*) takes the strictest view, which forbids pressuring another to sell him something even if the owner eventually agrees wholeheartedly (see *Sefer Yereim*, chapter 115; *Sefer HaChinuch*, *mitzvah* 38, etc.). *Shulchan 'Aruch* (C.M.92:4) also determines that "anyone who covets...another's things...and sent friends to persuade or beseech him till he bought it, is guilty of coveting".

What is considered annoyance? Nonetheless, even Rambam would agree that one may ask another person if he is willing to sell a certain article. We just have to define the difference between asking and pleading in order to prevent the applicant from transgressing the prohibition of coveting. *Betzel HaChochmah* (*Responsa*, III, 43) says that one may ask three times; a fourth time is defined as coveting.

Coveting property for the sake of a *mitzvah*: A Torah scholar wanted to study a book that belonged to another and beseeched him to sell it till he agreed. It would appear that he sinned and coveted the book but Rabbi



Yosef Chaim zt"l (Rav Berochos, 92) inclines to exempt him as he coveted it for the sake of a mitzvah and not for selfish needs. Others, though, forbid such behavior for any purpose (Betzel HaChochmah, ibid; etc.)

How to avoid the prohibition to covet: One who wants to acquire something identical to that in another's possession is not regarded as coveting as he does not covet another's actual property. Nonetheless, those who strive for piety should utterly avoid jealousy (Derech Pikudecha, mitzvah 38). How can we reach such a level of control over our emotions? The question is ancient and even Ibn Ezra (Shemos 30:14) remarked that "many wonder about this mitzvah: how could someone not covet a thing he likes?" and explained that its observation depends on our faith and trust in HaShem: If we know and constantly remember that He ordains everything, how could we covet property which HaShem gave to another?

Agreements between in-laws: It is interesting to cite the Chafetz Chayim (Shemiras HaLashon, II, 84) who warns that this prohibition is commonly transgressed by in-laws who sign obligations (tena'im) involving the wedding and later press the other side to add to the amount. Likewise, a chasan who stubbornly imposes on his father-in-law to give him property or money not previously agreed upon transgresses this prohibition. Remo (E.H. 2:!) stresses that a chasan "should not argue concerning his bride's property and he who does so will not have a successful marriage...Rather, he should accept anything his in-laws give him gladly and then he will succeed." The Chazon Ish (Kovetz Igrot I, 167) wrote in a letter that Remo's promise is more reliable than any effort to procure finances.

DAILY MASHAL

They think it means without paying

Tosfos on our sugya (s.v. Belo damei) explain that a thief transgresses both the prohibition of thievery and that of coveting. The Brisker Rav zt"l once told a relevant story: A gaon in the previous generation was studying at home. Suddenly he heard a rustle from one of the rooms and, after a clandestine examination, discovered that a thief had come to steal valuable property. The gaon was old and weak and knew he could not prevent the theft. He therefore stood and yelled, "Hefker! Hefker!" ("I relinquish all ownership!"), saving the thief from sin.

The Brisker Rav added that the gaon wanted to save the thief from two sins. After all, he could have just announced that he was giving his property to the thief, saving him from the sin of thievery. He preferred to shout "Hefker!" and as the property was now ownerless, there was no sin of coveting (in the preface to 'Anfei Erez).