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Bava Metzia Daf 58

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Swearing in Order to Get Paid

The *Mishna* had stated that an unpaid custodian does not swear (i.e., take an oath) when he is watching property belonging to the temple.

The *Gemora* asks a contradiction from a *Mishna*: The *Mishna* states: People of a city sent their *shekalim* (for the sacrifices of the year) with messengers and they were stolen or lost from the messengers. If the new funds were already divided and started to be taken when they came to *Beis Din*, they (the messengers) swear to the treasurers of the Temple (that they were not negligent). If the new funds were not yet divided and taken, the messengers swear to the people of the city, who must give new *shekalim*. If the *shekalim* were found or returned, they are *kodesh* and cannot be used for next year. [The question is that our *Mishna* says that a guardian does not swear for *hekdesh* items that he was watching, while this *Mishna* is *Shekalim* says that he does.]

Shmuel answers: This *Mishna* is discussing a guardian who gets paid to watch the items. The oath he is taking is in order that he should get paid.

The *Gemora* asks: If so, why should he ever swear to the treasurers? He should swear only to the people of the city!?

Rabbah answers: The *Mishna* means that they swear to the people of the city with the treasurers of *hekdesh* present (as *hekdesh* suffers a loss in this case). This is in order to remove suspicion.

Alternatively, the *Gemora* answers: This is in order so that they should not be called negligent.

The *Gemora* asks: Isn't the case where it was stolen or lost? Guardians who are paid are liable for things that are stolen or lost! Even though here they are exempt because it was *hekdesh*, this means only that they are not obligated to pay for the items that were stolen or lost. However, they should certainly lose their wages!?

Rabbah answers: The case of the *shekalim* being stolen is that the messengers were held up by armed bandits. The case where it was lost is where they were traveling on a boat and it sank. [In both cases, it was actually an "ones" -- "forced circumstances," for which they would not even be liable if it was not *hekdesh*. They therefore should get paid.]

Rabbi Yochanan answers: This is the opinion of Rabbi Shimon who says that *kodoshim* that one must replace (i.e. if they go missing) are subject to the law of *ona'ah* and one must swear about them (this is why the messenger must swear).

The *Gemora* asks: This is understandable for the case where the messenger swears before the new funds were taken. However, if the new funds were already taken, the *shekalim* are no longer considered something that the townspeople must replace. This is as the *braisa* states: The funds were separated also for those who lost their *shekalim*, and for those whose *shekalim* were collected

(and are on their way to be delivered to the Beis Hamikdash), and for those whose *shekalim* will be collected in the future (and were not yet collected due to forced circumstances).

Rather, Rabbi Elozar says: This oath is a Rabbinic institution, in order that people should not be negligent when they are watching *hekdesh*. (57b – 58a)

The *Mishna* says that a paid guardian does not pay when he is watching Temple property.

Rav Yosef bar Chama asked Rabbah: The *Mishna* says that a guardian who is paid does not pay etc. However, the *braisa* states: If the Temple treasurer hires a day laborer to look after the child (*that he should not become tamei; it was customary for a child to draw the water from the spring to sanctify the ashes of the red heifer*); the red heifer; or to watch over the shoots (*for the korban omer*), he may not pay him for *Shabbos*. Therefore, if the heifer or the shoots were lost on *Shabbos*, he is not responsible to pay compensation (*since he is regarded as an unpaid custodian*). If, however, he was hired by the week, or month, or year, or seven-year period, he may pay him for *Shabbos*. Therefore, he would be liable if the items were lost. The *braisa* must mean when it says “he is responsible” that he pays!?

The *Gemora* answers: No, it just means he will lose his wages.

The *Gemora* asks: If so, then when the first part of the *braisa* says that he is not responsible, this must also mean that he will not lose his wages. However, this cannot be, as it explicitly said he does not get paid for *Shabbos*!?

Rabbah was quiet. Rav Yosef asked him: Did you hear anything about this subject?

Rabbah answered: Rav Sheishes said that the case is where a *kinyan* was made that the guardian would pay. This was also stated by Rabbi Yochanan. (58a)

Kodoshim That Must Be Replaced

Rabbi Shimon says: *Kodoshim* that one must replace (*i.e. if they go missing*) have a law of *ona'ah*. If the owner does not need to replace them, they are not subject to the law of *ona'ah*.

A *Tanna* taught before Rabbi Yitzchak bar Abba: One is liable for *kodoshim* that one must replace, because the verse says, “*with Hashem, and he will deny.*” If he does not need to replace them he is exempt, as the verse states, “*with his friend, he will deny.*” [*The Tanna is discussing whether or not a guardian who swears falsely regarding hekdesh must bring an asham gezeilos sacrifice.*]

Rabbi Yitzchak asked him: Where is this logic going? The opposite is logical! [*It is more logical to say that when he is not obligated to replace it is called belonging to Hashem (see Rashi)!]*

The *Tanna* asked him: Should I take it away (*and regard it as a mistaken braisa*)?

Rabbi Yitzchak answered: No. This is what the *braisa* means: One is liable for *kodoshim* that one must replace, because the verse, “*with Hashem, and he will deny*” includes these sacrifices. If he does not need to replace them, the verse excludes these sacrifices by stating, “*with his friend, he will deny.*” [*Rashi explains that the reason one is liable in the first case is because it is regarded as if the sacrifices belong to him. However, even if one will say they somewhat belong to Hashem as they are hekdesh, the verse “with Hashem, he will deny,” includes that even such a person must swear. The opposite is true for the second teaching.*] (58a – 58b)

Items that are not Subject to Ona'ah

Rabbi Yehudah had stated: Even someone who sells a *sefer torah*, diamond, or an animal, the law of *ona'ah* does not apply. The *braisa* states: Rabbi Yehudah says that even someone who sells a *sefer torah* is not subject to the law of *ona'ah*, as there is no limited amount for its value. An animal and diamond are not subject to *ona'ah*, as a person wants to match them up (*to something that he already owns*). They said to him: Doesn't everyone want to match everything? The *Gemora* explains: Rabbi Yehudah's reasoning is that these things are more important to him.

The *Gemora* asks: Until what amount is there no *ona'ah*?

Ameimar answers: Until double their value. The *braisa* states: Rabbi Yehudah ben Beseirah says that even someone who sells a horse, sword, or shield during war, is not subject to the laws of *ona'ah*, because a person's life depends on it. (58b)

Mishna

Just as there is a prohibition of *ona'ah* regarding buying and selling, there is also a prohibition of *ona'ah* regarding paining someone with words (*using words is the common example, but causing pain is the prohibition*). A person should not ask (*a storekeeper*), "How much is this object," when he really has no interest in buying it. If someone has repented, one should not say to him, "Remember your earlier actions." If he is the son of converts, one should not say to him, "Remember the actions of your fathers." This is as the verse says, "*And a convert you should not afflict or oppress.*" (58b)

Paining with Words

The *braisa* states: "*A man should not pain his friend.*" This is referring to paining with words. You say it is paining with words, but perhaps it refers to *ona'ah* regarding sales? When the verse says, "*And when you will sell something to your friend or buy something from the hand*

of your friend," it already discusses sales. What must the verse mean when it says, "*A man should not pain his friend*"? It must be referring to paining with words.

What is an example? If someone has repented, one should not say to him, "Remember your earlier actions." If he is the son of converts, one should not say to him, "Remember the actions of your fathers." If he is a convert and is coming to learn Torah, one should not say to him, "The mouth that used to eat improperly slaughtered animals, sick animals, disgusting and crawling creatures is now going to come to learn Torah stated by the mouth of Hashem?!" If one is enduring afflictions or sickness, or he is burying his children, one should not say in the manner that *Iyov's friend's* said to him, "*Your fear is your foolishness (meaning, you do not really fear Hashem), as is your hope and the end of your ways. Remember who is really clean and gets destroyed (meaning, nobody who is really clean is destroyed).*" If donkey drivers ask him for feed for their donkeys, he should not tell them to go to someone who sells feed when he knows the person never sold feed in his life.

Rabbi Yehudah says: A person should not set his eyes on merchandise when he knows he has no money. This is why the verse states, "*And you will fear Hashem,*" when it says this prohibition, as only Hashem knows what a person is thinking when he says these things (*as it is not always apparent if he intends to pain the other person*).

Rabbi Yochanan says in the name of Rabbi Shimon ben Yochai: The prohibition against paining someone is more severe than cheating him with *ona'ah* of sales. Regarding paining it states, "*And you should fear from Hashem,*" while regarding sales it does not say this.

Rabbi Elozar says: Paining affects his body, while in sales, it is just his money.



Rabbi Shmuel bar Nachmeini says: One can return overcharging from sales, but cannot return pain.

The *Tanna* taught before Rav Nachman bar Yitzchak: Whoever makes his friend's face turn white through embarrassment in public is as if he murdered him. Rav Nachman said: You have said correctly, as we see that the blood drains out of his face and he becomes pale.

Abaye said to Rav Dimi: What are they careful about in Israel? He replied: They are careful not to embarrass people. This is as Rabbi Chanina said: Everyone goes to *Gehinnom* besides three people. Everyone!? Rather, he meant that anyone who goes eventually comes back up besides for three people. They are: a person who cohabits with a married woman, a person who embarrasses his friend in public, and a person who calls his friend by an embarrassing nickname.

The *Gemora* asks: Isn't calling him by a nickname essentially embarrassing in public?

The *Gemora* answers: This is even if he is already used to it. (58b)

INSIGHTS TO THE DAF

Paining a Rasha

By: Reb Avi Lebowitz

The *Mishna* tells us that just as there is a prohibition of *ona'ah* to cheat someone through money, there is also a prohibition to cause them pain verbally.

The Mordechai (306) says that based on the *Gemora* that considers *ona'as devarim* to be "not returnable," it would follow that one receives *malkus* (*lashes*) for violating *ona'as devarim*.

The obvious difficulty with this is that *ona'as devarim* is a *la'av she'ein bo ma'aseh* (a prohibition without an action) which one does not receive *malkus* for violating.

The Sefer Hachinuch explicitly argues with this Mordechai and says that since it is a *la'av she'ein bo ma'aseh*, there isn't any punishment of *malkus*.

The Nimukei Yosef explains based on the *Gemora* (59a) that only עַם שְׂאֵתָךְ בְּתוֹרָה וּבְמִצְוֹת are included in *ona'as devarim*, that the prohibition of *ona'as devarim* doesn't apply when one speaks harshly about one who does not fear Heaven (*ya'arei shamayim*).

Although the *Gemora* excludes an evil person from this prohibition (*meaning that it is permitted to offend him*), it seems a little strange why the Nimukei Yosef raises the bar so high, and insists that there isn't a violation to speak against someone who is not a *ya'arei shamayim*.

We find that the *Gemora* expounds in Bava Metzia 48b and 62a - וּנְשִׂיא בְעַמֶּךָ לֹא תֹאֵר, בעושה מעשה עמך - to the exclusion of an evil person.

We also find in the Hagahos Maimon (deios 6:1) on the *mitzvah* of לֹא תִשָּׂא אֶת אַחֶיךָ בְּלִבְבְּךָ וְכוּ' וְאֵהַבְתָּ לְרַעֲךָ כְּמוֹךָ that we expound - דוּקָא שְׂהוּא רַעֲךָ בְּתוֹרָה וּבְמִצְוֹת אֲבָל אָדָם - רִשְׁעֵי שְׂאִינוּ מִקְבֵּל תּוֹכַחַת מִצְוָה לְשִׁנְאוֹתוֹ to hate a wicked person. The source that one can hate such a person is in Pesachim 113b - that one can hate someone who commits transgressions.

We also find in the Rambam (Rotzeiach end of perek 4) who expounds - לֹא תַעֲמֹד עַל דַּם רַעֲךָ, וְאִין זֶה רִיעֶךָ - and learns from here that shepherds who are considered thieves are not included in this *mitzvah* to save them.

All these sources that use the terms "*amcha*," "*rei'acha*" or "*achicha*" seem to exclude only real wicked people. But the Nimukei Yosef seems to understand that the term



“*amisecha*” in the context of *ona’ah* excludes anyone who is not a *ya’arei shamayim*. The term implies a higher standard than the other terms.

QUESTIONS AND ANSWERS FROM YESTERDAY’S DAF

to refresh your memory

Q: Is there a voidance of sale by land?

A: Yes.

Q: Is there a voidance of sale by *hekdesch*?

A: R’ Yonah – yes; R’ Yirmiyah – no.

Q: When are the *halachos* regarding a private person stricter than *hekdesch*?

A: By interest; and according to Rav Chisda – even by *ona’ah*.

A HALACHIC RULING

Teki’ah Gedolah

An exclusive hotel hired a *ba’al tokea’* for a large sum. When the moment arrived to prove his skill, he failed to produce even one decent note and after several tries, one of the congregation lost his patience, grabbed the shofar and blew it properly. After the holiday, the *ba’al tokea’* demanded his wage, claiming that since he mustn’t be paid for work on Rosh HaShanah, the management surely meant to pay him for rehearsing before the holiday. The case was brought to Rabbi Zilberstein who immediately ruled that the wage was indeed for rehearsals, providing the *ba’al tokea’* could later produce a *teki’ah*!

DAILY MASHAL

Malbim or Malbin?

HaGaon Rabbi Meir Shapira of Lublin zt”l was sitting with his pupils and, as usual, his chiddushim and clever, uplifting interpretations flowed freely. Suddenly, a pupil interrupted and said, “That last chiddush is explicitly mentioned by Malbim.” “I don’t see any Malbim here”, replied Rabbi Meir, “but there sure is a malbin (insulter)!”

Regarded as having spilled blood

Chaza”l said that he who shames another in public is regarded as having spilled blood. Ben Yehoyada’ comments that “blood” may appear in the singular (*dam*) or plural (*damim*). Here Chaza”l used the plural *damim* as each time the insulted person remembers how he was embarrassed, he again feels shamed *ad infinitum*.