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Mishna

Oaths apply to one’s own possessions and to the possessions of others, and regarding things that are tangible and are not tangible. What are examples of these cases? A person swears that he will give something to a certain person or that he will not give something to them, or that he did or did not give them something, that he will sleep or will not sleep, that he slept or did not sleep, that he will throw a rock in the sea or will not throw a rock into the sea, that he has thrown or he has not thrown a rock into the sea. Rabbi Yishmael says: He is only liable for oaths made regarding what he will do in the future (*not what he has done in the past*). This is as the verse says, *to do evil or good*. Rabbi Akiva asked him: If so, oaths can only be about things that are either good or bad. How would we know that things that are not either good or bad are included? Rabbi Yishmael replied: This derived from the verse (*Rashi explains this refers to the verse, for anything that he will state.*) Rabbi Akiva replied: If the verse includes things that are neither good or bad, it should also include things that already happened. (25a)

Gemora

The *braisa* states: *Nedarim* (vows) are more stringent than *shevuos* (oaths), and *shevuos* are more stringent than *nedarim*. *Nedarim* are more stringent than *shevuos*, as one can make a *neder* even regarding *mitzvos*, as opposed to *shevuos*. *Shevuos* are more stringent, as they

can even be made about things that are intangible, as opposed to *nedarim*.

The *Mishna* says: What are examples of these cases? A person swears that he will give something to a certain person or that he will not give something to them.

The *Gemora* asks: What does this mean? If it refers to giving charity to a poor person, he is already sworn from Mount Sinai that he must do so! This is as the verse says, *you shall surely give him!*

The *Gemora* answers: Rather, it must be talking about giving a gift to a wealthy person.

The *Mishna* says: A person swears...that he will sleep or will not sleep.

The *Gemora* asks: Is this true? Doesn’t Rabbi Yochanan say that if someone swears that he will not sleep for three days, we give him lashes and he can sleep immediately?

The *Gemora* answers: Rabbi Yochanan’s case is when he says he will not sleep for three days. Here, he did not say three days.

The *Mishna* says: If he swears...that he will throw a rock in the sea or will not throw a rock into the sea.

It was taught: A person said that he swears someone threw a rock into the sea, or did not throw a rock into the sea. Rav says he is liable (*if he is lying*), and Shmuel says he is exempt. Rav says he is liable as it is something that either could have or could not have been done. Shmuel says he is exempt, as it is not in his power whether or not someone will throw something in the sea. (*Similarly, he cannot be liable for an oath regarding someone else doing something in the past.*)

The *Gemora* asks: Let us say that they argue regarding the argument of Rabbi Akiva and Rabbi Yishmael! This is as the *Mishna* says: Rabbi Yishmael says: He is only liable for oaths made regarding what he will do in the future (*not what he has done in the past*). This is as the verse says, *to do evil or good*. Rabbi Akiva asked him: If so, oaths can only be about things that are either good or bad. How would we know that things that are not either good or bad are included? Rabbi Yishmael replied: This is derived from a Scriptural extension. Rabbi Akiva replied: If the verse includes things that are neither good or bad, it should also include things that already happened. It seems that Rav holds like Rabbi Akiva, and Shmuel holds like Rabbi Yishmael.

The *Gemora* answers: There is no question that Rav cannot agree with Rabbi Yishmael. If Rabbi Yishmael says one is exempt for anything that happened in the past, he will certainly say one is exempt if he swears about what someone else did in the past! The argument of Shmuel and Rav is within the position of Rabbi Akiva. Rav can clearly hold like Rabbi Akiva. Shmuel will say that Rabbi Akiva only says one is liable if he swears about something that he did in the past, not if he swears about the actions of someone else, over whom he has no control whether or not they should do that action.

The *Gemora* asks: Let us say that they argue regarding the argument of Rabbi Yehudah ben Beseirah and the Rabbis! This is as the *Mishna* states: If someone swore to nullify a *mitzvah* and he did not, he is exempt. If he swore to fulfill a *mitzvah* and he did not, he is exempt. He should be liable as per the statement of Rabbi Yehudah ben Beseirah who says that if a person is liable for swearing about regular things that he is not commanded about from Mount Sinai, he should certainly be liable about things he was commanded about from Mount Sinai! They replied to him: This is not so. One is liable regarding an optional matter as he had the option to do it or not to do it. However, regarding a *mitzvah* he did not have the option whether or not he should do it. Let us say that Rav holds like Rabbi Yehudah ben Beseirah, and that Shmuel holds like the Rabbis!

The *Gemora* answers: There is no question that Shmuel cannot agree with Rabbi Yehudah ben Beseirah. If Rabbi Yehudah says one is liable for things that were not optional, he will certainly say one is liable if he swears about what someone else did in the past! The argument of Shmuel and Rav is within the position of the Rabbis. Shmuel holds like the Rabbis. Rav will say that the Rabbis only say one is exempt in a case where there was no option, as the verse says, *to do evil or good*. However, in a case regarding either the future or the past which is included by the verse, they will also agree one is liable.

Rav Hamnuna asks a question from a *braisa*. The *braisa* states: If someone says that he did not eat today or that he did not put on *tefillin*, and someone else has him swear to this effect and he answers *amen*, he is liable. It is understandable that he could be liable for swearing that he did not eat, just as he could swear that he will not eat. However, he cannot swear that he will not put on *tefillin* that day, as this would be negating a *mitzvah*!



Rav Hamnuna asked the question, and he then proceeded to answer it. The cases are for two different things. The case of eating is regarding being liable to bring a korban. The case of *tefillin* is regarding being liable to receive lashes. (*In other words, to receive lashes one does not need to be able to either fulfill or not fulfill his oath.*)

Rava asked a question from a *braisa*. The *braisa* states: What is a *shevuas shav*? It is if a person swears to change something known as fact. For example, this is if he swears regarding a pillar of stone that it is made of gold. Ulla says: This is only if three people already knew that what he swore is clearly incorrect. This implies that the reason this is called a *shevuah* in vain is because it is known he is lying. If it is not known, the implication is that this is called a *shevuas bituy* (a false utterance)! Why should this be so? He cannot possibly make it turn into gold!

Rava asked the question and then answered it. If three people knew about it, it is a *shevuah* in vain. If they did not know, it is a *shevuas sheker* (false).

Abaye says: Rav admits that if someone swore that he knew testimony for his friend and he ended up not knowing testimony, he is exempt. This is because the opposite oath, that he does not know testimony, is not a *shevuas bituy*, but is rather a *shevuas ha'eidus*. (*In other words, while Rav holds one is liable for oaths made in the past, he does not hold one is liable if the opposite of his oath is a different category of oath altogether.*) If he swore that he once knew or once did not know testimony, Rav and Shmuel argue whether or not he is liable. If he swore that he testified or did not testify, Rav and Shmuel argue about this as well.

The *Gemora* asks: This is understandable according to Shmuel, who holds that if something is not in his control

in the future he cannot be held liable for swearing about doing so in the past. This is why the Torah made a special category of *shevuah ha'eidus* (as this is regarding something that happened in the past). However, according to Rav, why did the Torah make this a separate category from *shevuas bituy*?

The Rabbis answered in front of Abaye: This was in order to make two prohibitions for swearing falsely about knowing testimony.

Abaye said to them: You cannot say there are two prohibitions here. This is as the *braisa* says, *for one from these (said regarding these prohibitions)*. This teaches that you can make him liable for one, but not for two.

The *Gemora* asks: According to Abaye, why did the Torah make a special prohibition of *shevuas ha'eidus* according to Rav?

The *Gemora* answers this question by citing a *braisa*. The *braisa* states: Regarding all of these (*sins for which one brings a korban olah v'yored*) the verse says *and it became concealed*, but regarding this (*shevuah ha'eidus*) it does not. This teaches that one who purposely swears falsely regarding knowing testimony is considered like someone who swears falsely accidentally. Both must bring a *korban*.

The Rabbis asked Abaye: Perhaps this teaches that if he willfully swears falsely he is liable for one *korban*, and if he unwittingly swears falsely he should be liable twice (*as he should also be liable for the typical shevuas bituy regarding which the verse says, and it became forgotten*)?

Abaye answered: This is what I told you. *For one from these teaches that you can make him liable for one, but*



not for two. One cannot say that he is liable twice if he does so willfully, as there are no two prohibitions that have been transgressed on purpose.

Rava says: It is obvious that one is only liable for one sin regarding *shevuas ha'eidus*. This is because of the principle that if something is taken out of a general rule (*shevuas ha'eidus* from *shevuas bituy*), it only teaches the novelty of its law (*and it is no longer included in the regular law from which it was excluded*).

The *Gemora* asks: This implies that Abaye holds that there is still a theoretical law of *shevuas bituy* on *shevush ha'eidus*. However, didn't Abaye say: Rav admits that if someone says to his friend that he swears that he knows testimony for him and he does not, he is exempt. This is because the opposite oath is not a *shevuas bituy*. (*How can Abaye explain there is no shevuas bituy in the opposite oath when in fact there is, and he is merely not liable for that oath because it is excluded by the verse?*)

The *Gemora* answers: Abaye must have retracted this statement. Alternatively, Rav Pappa said one of those statements. (25a – 26a)

DAILY MASHAL

Chachamim to do bad

The Chozeh of Lublin was once told about a certain tzadik who would fast and afflict himself. The Chozeh said Chazal explained in our sugya “to do bad or to do good – ‘I shall eat’ or ‘I shall not eat’”. There are two ways to serve Hashem – a “bad” way (not to eat) and a “good” way (to eat) but there is no doubt that the good way is preferable and Yirmiyahu thus complains: “They are wise to do bad and to do good they did not know” (Yirmiyahu 4:22). In other words, they choose the way

“to do bad” to serve Hashem instead of the way “to do good”...