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Shevuas ha'Eidus

The *Gemora* asks: The *Mishna* already said, what is an example of *shevuas ha'eidus*? If he said to witnesses, “Come and testify for me,” and they said, “We swear etc.” This implies it is only if he says they must swear, then they must and it is called a *shevuas ha'eidus*, otherwise they are not liable! [*Why, then, did Shmuel need to say his teaching?*]

The *Gemora* answers: The fact that he says they know testimony is not the main factor. If it were, we’d have to say this is also the meaning of the *Mishna* regarding *shevuas ha'pikadon*. The *Mishna* says: What is an example of a *shevuas ha'pikadon*? If he says to the guardian, “Give me the deposit that I have in your hand” etc. This implies that he must claim the deposit and the oath in order for him to swear a *shevuas ha'pikadon*. However, the verse says: *And he will deny his friend*, implying that the main criteria is that he denied owing the deposit (*not that the person who made the deposit demands he make the oath*). Here, as well, it is possible that the *Mishna* did not mean he must demand they swear they do not know testimony. [*Were it not for Shmuel's law, we would not know this.*]

The *Gemora* asks: Why does the *Mishna* constantly say that he said to them etc.? If you say it specifically meant this regarding witnesses, you could say that the *Mishna* merely said it by *shevuas ha'pikadon* so the style of the *Mishna* should be similar. However, if you say both are not accurate, why would it say in both *Mishnayos* that “he said (*i.e. demanded they swear*)?” [*It must be that the Mishna has already taught us Shmuel's law!*]

The *Gemora* answers: Perhaps these *Mishnayos* are merely describing the average case of *shevuas ha'eidus* and *shevuas ha'pikadon*. [*Usually the person demands the oath, and therefore the defendant swears.*]

The *braisa* supports Shmuel's position. The *braisa* states: If the witnesses saw that he was chasing after them and they said, “Why are you coming after us? We swear we do not know any testimony on your behalf!” They are exempt. If they swore in this fashion regarding a deposit, they are liable. (32a)

Denial in Beis Din

The *Mishna* says: If he made them swear five times etc.

The *Gemora* asks: How do we know that one is only liable if he denies in *Beis Din*, not if he denies outside of *Beis Din*? Abaye says, the verse says: *if he does not say, and he will bear his sin*. I only said he is liable for denying in a place where if one says (*i.e. admits*), he will be liable to pay money to the other.

Rav Pappa asked Abaye: If so, I will say that the oath itself can only be taken in *Beis Din*, not outside of *Beis Din*!

The *Gemora* answers: Do not think this way. This is as the *braisa* says: *For one* tells us that one is liable for each one. In *Beis Din*, one is not liable for every oath! This is as the *Mishna* states: If he made the witnesses swear five times in front of *Beis Din* and they denied knowing testimony, they



are only liable once. Rabbi Shimon says: What is the reason for this law? This is because they could not retract after the first time that they swore. This shows us that while the oath can be made outside of *Beis Din*, the denial must be in *Beis Din*. (32a)

Within a Short Time Span

The *Mishna* says: If they denied knowing testimony at the same time, they are liable.

The *Gemora* asks: It is impossible to say they denied at the same time!?

Rav Chisda says: This *Mishna* must be according to Rabbi Yosi ha'Glili, who says that it is possible to say two things happened at the same time.

Rabbi Yochanan answers: Even according to the Rabbis who say this is impossible, the case could be where they both denied knowing within *k'dei dibbur* (a time of an utterance; i.e. a few seconds, see below) of each other, which is considered as if they did so at the same time.

Rav Acha from Difti asked Ravina: How much is *k'dei dibbur*? It is as long as it takes for a student to greet his Rabbi. If they both need to say, "I swear that I do not know any testimony for you," they will combine to longer than *k'dei dibbur*!?

Ravina answered: This means that they say this within *k'dei dibbur* of their friend (not that the total amount of time is *k'dei dibbur*). (32a)

One Witness

The *Mishna* says: If they deny one after the other, the first one is liable and the second one is exempt.

The *Gemora* observes: Our *Mishna* seems to be unlike the following *Tanna*. This is as the *braisa* says: If someone

makes one witness swear that he does not know any testimony, he is exempt. Rabbi Elozar the son of Rabbi Shimon says he is liable. Let us say that they argue as follows. The *Tanna Kamma* says that one witness is only good for making oaths (and is therefore not liable for an oath where he swears he did not know testimony, as he could not have caused the other party to pay anyway). Rabbi Elozar says that one witness can also take away money from the defendant.

The *Gemora* asks: Do you really think this is the position of Rabbi Elozar? Didn't Abaye say: Everyone agrees regarding (these cases will be explained later) the witness of a *sotah*, the witnesses of a *sotah*, and there is an argument regarding the witnesses of a *sotah*. Everyone agrees regarding one witness in general, and regarding a witness who testifies against someone who is suspected of lying? [In other words, regarding a single witness, everyone agrees that he cannot make the defendant pay, and can only make him swear.]

Rather, the *Gemora* answers: Everyone agrees that a single witness can only make someone swear. Their argument is as follows. One holds that something that causes money (an oath that may make someone pay, if two witnesses say the same thing) is considered like money. The other says it is not like money.

The *Gemora* discusses Abaye's statement quoted previously. Abaye said: Everyone agrees regarding the witness of a *sotah*, the witnesses of a *sotah*, and there is an argument regarding the witnesses of a *sotah*. Everyone agrees regarding one witness in general, and regarding a witness who testifies against someone who is suspected of lying.

The *Gemora* explains: When he said everyone agrees regarding the witness of a *sotah*, this is regarding a witness who actually saw that she had an affair. [Rashi explains that this is in a case where there were witnesses that the

husband warned her not to be secluded with a certain man, and that she was secluded with that man. If one witness says he actually saw that she indeed had an affair, she loses her *kesuvah* and must be divorced.] The Torah believed such a witness, as the verse says: *and there was no witness*. This implies that if there was a witness, he would be believed to make her lose her *kesuvah*. Hence, if the husband told this witness to testify and he swore that he did not know testimony, he would be liable.

When he said everyone agrees by the witnesses of a *sotah*, he meant witnesses that her husband said she cannot be secluded with a certain man. Hence, if the husband told these witnesses to testify and they swore that they did not know testimony, they would not be liable. This is because they are only a cause for a cause. [In other words, when a husband warns his wife not to be secluded, nothing happens. Only if witnesses see her secluded, and a witness claims she has an affair, will she lose money.]

When he said there is an argument regarding the witnesses of a *sotah*, he meant the witnesses who see she was secluded. One opinion says that this causes money to be paid, and therefore the witnesses are liable (as they might force her to admit infidelity instead of drink the *sotah* waters, which would mean she forfeits her *kesuvah*). The other opinion says that it only causes money, and therefore the witnesses are not liable.

When he said that everyone agrees regarding a witness who testifies opposite a defendant who is suspected of lying, he meant the case of Rabbi Abba (as explained below).

The *Gemora* asks: What is this case? If it is where the borrower is suspected of lying, and the lender says that if you would have testified for me I would have sworn and taken the money, let the witness say, "Who says you would have sworn?" Rather, it must be that the case is where both people involved are suspected of lying, and being that the borrower cannot swear he must pay.

This is similar to everyone agreeing regarding the case of one witness of Rabbi Abba. [What was the case?] A person took a metal bar from his friend. He went before Rabbi Ami, and Rabbi Abba was sitting before him. One witness testified that the person had indeed snatched away the metal bar from his friend. The defendant said, "It's true, but I took back my own metal bar!" Rabbi Ami said: How should we judge this judgment? We cannot make him pay, as there are not two witnesses that he took it. We cannot say he can keep it, as one witness says he took it. We cannot make him swear, as being that he admits stealing the bar, he is suspected like a thief of lying under oath! Rabbi Abba said: He is obligated to swear, and cannot swear. Anyone in this situation must pay.

Rav Pappa says: Everyone admits regarding a witness in a capital case that he is liable, and at the same time there is a case where he is exempt. What is the case where he is exempt? If he told a woman her husband died, she is now believed to say he died. This is as the *Mishna* says: If a woman says her husband died, she can remarry or have *yibum* done. When is he liable? If he does not tell her, nor the *Beis Din*.

The *Gemora* asks: Does this mean that Rav Pappa holds that if witness know about a land deal they are liable?

The *Gemora* answers: Perhaps the case is where she already seized movable objects. (32a – 32b)

Denied and Admitted

The *Mishna* says: One denied and one admitted etc.

The *Gemora* asks: In a case where both denied, you said that the first is liable and the second one is exempt. Certainly this is so if the first one denied and the second admitted knowing testimony! [Why did the *Mishna* have to say this?]



The *Gemora* answers: The case is where they both denied knowing testimony, and then one of them admitted knowing within *k'dei dibbur* (the time it takes to make an utterance). The *Mishna* is teaching us that within *k'dei dibbur* is considered at the same time (*and it is considered an effective retraction*).

The *Gemora* asks: According to Rav Chisda (*above*) who says that the *Mishna* is according to Rabbi Yosi ha'Glili, we can understand that the first case taught they could have said these statements at the same time, and that the second case taught that within *k'dei dibbur* is as if it is at the same time. However, according to Rabbi Yochanan who says that this is even according to the Rabbis, why do we need two cases teaching us the same lesson that within *k'dei dibbur* is as if it was at the same time?

The *Gemora* answers: One might think that two denials can be considered at the same time. However, an admission after a denial by the same person perhaps may not be considered at the same time. This is why the two cases are necessary. (32b)

INSIGHTS TO THE DAF *Within the Period of an Utterance*

The *Gemora* (Nedarim 87a) issues a *halachic* ruling: The *halachah* is that a statement which follows another statement within the period of an utterance is regarded as if it were made together with the first one except in the case of blasphemy, idolatry, betrothal and divorce. (*If one commits blasphemy or practices idolatry, and immediately, within the period of utterance, retracts, his retraction is unavailing, and he will still incur the death penalty. If a man betroths a woman or divorces her, and immediately thereafter changes his mind, such withdrawal is invalid.*)

The Ra"n comments that he doesn't know why these cases are different and from where did the Rabbis derive this. It would seem, he says, that in regards to other things that are

not as serious, when a person does them, he doesn't do them with absolute intent. Rather, his intention is that he will be able to retract them within the time it takes for an utterance. But these, since they are so serious, a person will not proceed unless he has made up his mind completely, and for this reason, retraction, even within the period of time it takes for an utterance, is not effective.

The Ramban in Meseches Bava Basra quotes Rabbeinu Tam who says that the *halachah* that within the time it takes for an utterance is regarded as a single utterance is a decree that the Rabbis made to allow the student, who is in the middle of making a purchase, to greet his teacher who has just arrived. They issued this ruling for all things except for these.

The Ra"n asks: How could they make a decree in respect to *nedarim* which will permanently uproot something from the Torah in a manner that involves actively doing something?

The Imrei Binah answers according to the Radvaz, who says that we are more lenient with respect to *nedarim* because they can be annulled by a sage. Therefore, the Torah gave the power to the *Chachamim* to permit a Biblical prohibition, even when it involves actively uprooting it.

Reb Shimon Shkop asks on the Ra"n: If the logic that enables one to retract within the period of an utterance is because he lacks absolute intent, how can this apply to the *halachah* of rending one's garments over a death? There is no intention required!

They explain as follows: The principle of "within the time required for an utterance" accomplishes that any act performed can be viewed as continuing for a further amount of time ("the period of an utterance"). Therefore, when he rends his garments and then, within the time required for an utterance, discovers who died, it may be regarded as if he tore his clothes at that time.