



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Warning prior to Swearing

Rav Acha bar Huna and Rav Shmuel the son of Rabbah bar Chanah and Rav Yitzchak the son of Rav Yehudah taught tractate Shevuos by Rabbah. Rav Kahana met them and said: If the witnesses were warned before swearing falsely regarding a deposit, and they willfully swore anyway, what is the *halachah*? [Are they liable for a *korban* besides incurring lashes, or do the lashes exempt them from bringing a *korban*, or perhaps they are just liable for a *korban*?] The *Gemora* explains the inquiry: Since swearing falsely is a novelty in the Torah, for in the entire Torah we do not find that one is liable a *korban* for an intentional sin, and here he does bring a *korban*; perhaps there is no difference if they were warned or not (and they are liable for a *korban*, but they do not incur lashes); or perhaps that is only where they were not warned, but where they are warned, they incur lashes and are not liable to bring a *korban*; or perhaps they receive lashes and are liable for a *korban*?

They answered him from a *braisa*: An oath regarding a deposit is stricter than an oath regarding testimony, for one is liable to incur lashes when he knowingly swears falsely regarding a deposit, and he must bring an *asham* worth at least two *shekalim* of silver when he does so unknowingly (and by an oath regarding testimony, he would only be liable for a *korban* – even if it was done willfully). The *Gemora* infers: Since it said that he incurs lashes when he knowingly swears falsely, evidently, he was warned; and the *braisa* states that he receives lashes – which would imply that he is not liable for a *korban*! The reason this would be a

stringency is because it is more appealing for a person to bring a *korban*, rather than suffering by receiving lashes.

Rava bar Ittai said to the other *Amora* (the one who brought the proof from the *braisa*): Who is the *Tanna* who holds that a willful transgression of an oath of deposit is not atoned for by bringing a *korban*? It is Rabbi Shimon; but according to the Rabbis, he brings a *korban* as well. [He is saying that other *Tannaim* dispute the viewpoint of the *Tanna* of that *braisa*.] Rav Kahana said to them (those who brought the proof from the *braisa*): Leave this *braisa* alone, for I taught it as follows: Both for its willful and unwitting transgression (swearing falsely regarding an oath of deposit) he must bring an *asham* worth at least two *shekalim* of silver. And regarding what is its stringency? Regarding an oath of testimony, he must bring an *asham* of the value of a *danka* (a sixth of a *dinar*); whereas here (by an oath of deposit), he must bring an *asham* worth at least two *shekalim* of silver.

The *Gemora* asks: Let us then deduce from Rav Kahana’s teaching of the *braisa* (that if he knowingly transgresses an oath of deposit, he is liable only for a *korban*)!?

The *Gemora* answers: Perhaps it refers to the case where he was not warned.

The *Gemora* cites a different version of the discussion: They answered him from our *Mishna*: One is not liable for an unknowing transgression (regarding an oath of deposit). What is one liable for when he knowingly transgresses the oath? He must bring an *asham* worth at least two *shekalim* of silver. Is this not referring to a case where he was warned,

and yet, the *Mishna* does not mention that he receives lashes!?

The *Gemora* deflects this proof by saying that perhaps it refers to the case where he was not warned.

The *Gemora* attempts to bring a proof from a different *braisa*: No! [You cannot learn from the tumah of a nazir to the case of an oath regarding a deposit.] If you say in the case of a nazir who had become *tamei* (that a certain law – which the *Gemora* doesn't mention what it is – applies), it is because he receives lashes, but how can you say in the case of the oath of deposit (that the law should apply), since its transgressor does not receive lashes! Since it said that he incurs lashes, evidently, he was warned; and the *braisa* states that by an oath of deposit he does not receive lashes – which would imply that he is liable for a *korban*!

The *Gemora* deflects this proof: When the *braisa* states that he does not receive lashes, it means that he is not absolved with lashes alone (for he must bring a *korban* as well).

The *Gemora* asks: Do we infer then that a *nazir* who had become *tamei* is absolved with lashes alone? Surely he is obligated to bring a *korban* as well!?

The *Gemora* answers: There he brings a *korban* merely in order that his new state of *nezirus* should reconvene in purity. (36b – 37a)

Swearing when there are Witnesses

The Sages said over this inquiry to Rabbah. He said to them: It can be inferred from his inquiry that if they did not warn him, although there are witnesses (that he had taken the deposit), he is liable (to bring a *korban* if he swears falsely). But is it not like a mere useless denial of facts (for the witnesses can refute his claim; and therefore, he should not be liable for any *korban*; accordingly, Rav Kahana's inquiry seems to be based upon a mistaken premise)!?

The *Gemora* notes: This shows that Rabbah maintains that he who denies money for which there are witnesses, is exempt from bringing a *korban*.

Rav Chanina told Rabbah: I have a *braisa* that supports your position, for it was taught: *And he denied it* – this would exclude a case where he admits it to one of two brothers (and denies to the other) or one of the partners (and denies to the other); and swears falsely – this would exclude a case where he borrowed with a document or borrowed in the presence of witnesses and swears falsely (which is precisely like Rabbah said).

He said to him: From this *braisa* you cannot bring support to my opinion, for it refers to a case where the defendant said, "I borrowed, but I did not borrow in the presence of witnesses," or, "I borrowed, but I did not borrow with a document." [Perhaps in a case where he actually denied money, he will be liable.]

The *Gemora* proves that the *braisa* refers to such a case.

[Mnemonic: Liability of sets of the householder, the severity of the nazir] The *Gemora* challenges Rabbah from our *Mishna*: One is not liable for an unknowing transgression (regarding an oath of deposit). What is one liable for when he knowingly transgresses the oath? He must bring an *asham* worth at least two *shekalim* of silver. Now, is this not a case where there were witnesses (and nevertheless, he brings a *korban*)!?

The *Gemora* answers: The case is where he himself knew that he was transgressing (but there were no witnesses).

The *Gemora* challenges Rabbah from a different *Mishna*: If there were two sets of witnesses, and the first denied that they knew testimony, and then the second denied as well, they are both liable, because the testimony could be established by either set. Now, it is understandable that the second set should be liable, for the first set already denied

knowing (*and therefore, they are causing a loss*); but the first set — why should they be liable; the second set was still in existence? [*At the time that they denied they were not causing any loss, for the second set could have testified! This proves that we judge each set by itself. The same should apply regarding an oath of deposit; the defendant's denial should be judged purely by itself, and it should not matter that there are witnesses available to refute his claim!?*]

Ravina answers: Here we are discussing a case where the second set, at the time of the denial of the first set, were related to each other through their wives (*and were therefore disqualified from serving as witnesses*), and their wives were in the throes of death. You might have thought that because the majority of people in such a state actually die, the second set are considered eligible witnesses (*and the first set should not be liable*); therefore he teaches us that the first set is liable, because at that time, the wives are alive and not dead.

The *Gemora* challenges Rabbah from a *braisa*: If an unpaid custodian advanced a claim of theft regarding a deposit and he took an oath to that effect, but subsequently admitted (*that he himself took it*) and witnesses testified (*that he stole it himself*), the *halachah* is as follows: If he admitted before the witnesses came, he pays the principal together with a fifth and an *asham* offering; but if he admitted after the witnesses came, he has to pay double payment together with an *asham* offering. [*Although there are witnesses that know his claim is false, he still is liable to bring the korban!?*]

The *Gemora* answers: This case can also be explained like Ravina (*above*).

Ravina said to Rav Ashi that the following *braisa* disproves Rabbah: An oath regarding a deposit is stricter than an oath regarding testimony, for one is liable to incur lashes when he knowingly swears falsely regarding a deposit, and he must bring an *asham* worth at least two *shekalim* of silver when he does so unknowingly (*and by an oath regarding testimony, he would only be liable for a korban – even if it*

was done willfully). The *Gemora* infers: Since it said that he incurs lashes when he knowingly swears falsely, evidently, there were witnesses; and the *braisa* states that he is liable for a *korban*!

Rav Mordechai said to them: Leave this *braisa* alone, for Rav Kahana taught it as follows: Both for its willful and unwitting transgression (*swearing falsely regarding an oath of deposit*) he must bring an *asham* worth at least two *shekalim* of silver.

The *Gemora* challenges Rabbah from the following *braisa*: No! [*You cannot learn from the tumah of a nazir to the case of an oath regarding a deposit.*] If you say in the case of a *nazir* who had become *tamei* (*that a certain law – which the Gemora doesn't mention what it is – applies*), it is because he receives lashes, but how can you say in the case of the oath of deposit (*that the law should apply*), since its transgressor does not receive lashes! Since it said that he incurs lashes, evidently, there were witnesses; and the *braisa* states that by an oath of deposit he does not receive lashes – which would imply that he is liable for a *korban*! [*Although there are witnesses that know his claim is false, he still is liable to bring the korban!?*] The *Gemora* concluded that this indeed is a refutation of Rabbah. (37a – 37b)

Refuting a Document or Witnesses

Rabbi Yochanan said: He who denies money for which there are witnesses, is liable to bring a *korban*; if the money was written in a document, he is exempt from bringing a *korban*.

Rav Pappa explains: The witnesses might die (*and therefore the defendant's claim is a meaningful one*); the document, on the other hand, is here.

Rav Huna, the son of Rav Yehoshua asked him: But the document may get lost!?



Rather, Rav Huna, the son of Rav Yehoshua explained: A loan through a document creates a lien on the debtor's land, and one does not bring a *korban* when denying a lien on land. (37b)

Swearing about Land

It was stated: He who adjures witnesses regarding a title on some land, Rabbi Yochanan and Rabbi Elozar disagree: One says that they are liable, and the other says they are exempt.

The *Gemora* notes: It may be concluded that it is Rabbi Yochanan who says they are exempt, for Rabbi Yochanan said: He who denies money for which there are witnesses, is liable to bring a *korban*; if the money was written in a document, he is exempt from bringing a *korban*; and as Rav Huna, the son of Rav Yehoshua explained it. The *Gemora* concludes that this is conclusive.

Rabbi Yirmiyah said to Rabbi Avahu: Shall we say that Rabbi Yochanan and Rabbi Elozar disagree on the same principle on which Rabbi Eliezer and the Rabbis disagree? For it was taught in a *braisa*: He who steals a field from his fellow and a river flooded it, must restore a field to him; this is the opinion of Rabbi Eliezer; but the Rabbis say: He may say to him, "that which is yours is before you." And we said: The *Gemora* explains on what they disagree? Now, shall we say that he who makes them liable agrees with Rabbi Eliezer (*who holds that documents cannot be stolen but land could*), and he who exempts them agrees with the Rabbis (*that land and documents cannot be stolen*)!

He said to him: No! He who makes them liable agrees with Rabbi Eliezer; but he who exempts them, may tell you that in this, even Rabbi Eliezer agrees, for the Torah says: *from anything, and not, anything.* [*This teaches us that we must exclude something else regarding an oath of deposit; this "something else" is land.*] (37b)

DAILY MASHAL

SUFFER NO MORE

The *Gemora* infers: Since it said that he incurs lashes when he knowingly swears falsely, evidently, he was warned; and the *braisa* states that he receives lashes – which would imply that he is not liable for a *korban*! The reason this would be a stringency is because it is more appealing for a person to bring a *korban*, rather than suffering by receiving lashes.

In 1945, at the age eight, Rabbi Yisrael Meir Lau, the former Ashkenazi Chief Rabbi of Israel, became the youngest survivor of Buchenwald to be liberated by the Americans. He recounted one of the most powerful stories in his book—the moment of liberation. When the young Lulek saw the American soldiers entering the gates of the camp, he hid behind a pile of corpses, unsure if they were friend or foe. Rabbi Herschel Schacter, the chaplain of the U.S. Third Army, climbed off his jeep to examine the carnage and destruction that the Nazis left behind with their last remaining bullets. Suddenly he caught sight of the boy hiding behind the dead. Shocked to see a sign of life there, let alone a Jewish child, he picked Lulek up and hugged him tightly in a warm embrace, while tears of sadness and joy poured from his eyes.

"How old are you my son," he asked in Yiddish, from behind his tears.

"What difference does it make how old I am?" Lau responded suspiciously. "Anyway, I'm older than you."

"Why do you think that you're older than I am?" Rabbi Schacter asked, now smiling.

"Because you laugh and cry like a child," Lau replied. "I haven't laughed for longer than I can remember and I can't even cry anymore. So which one of us is older?"