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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

Pay up!

The *Mishna* said that if a buyer took produce, and claimed that he paid, he must swear to the seller who disputes him. Rabbi Yehudah says that whomever has the produce in his possession need not prove his ownership, as a seller generally does not give produce until he is paid.

The *Gemora* cites a *braisa* in which Rabbi Yehudah says that the only time a promise is necessary is when the produce is stacked up in the street between the buyer and seller, and we therefore have no indication whether the buyer paid. However, if the buyer already took the produce, we assume he paid, and the seller must prove otherwise. (48a)

Produce vs. Money

The *Mishna* records Rabbi Yehudah's position in the case of produce and a money changer.

The *Gemora* explains that both cases are necessary to explain the extent of both opinions. Since produce rots over time, a seller is more likely to want the buyer to take possession, even if he did not pay. We therefore may have thought that Rabbi Yehudah agrees to the Sages in that case, or that the Sages agree to Rabbi Yehudah in the case of a money changer, so the *Mishna* had to record the dispute in both cases. (48a)

Heirs swearing and collecting

The *Mishna* said that when heirs collect a debt, they must swear.

The *Gemora* explains that if they are collecting directly from the debtor, they need not swear, just as their father would not swear. The *Mishna* is discussing a case where they are collecting from the estate of the debtor, and they therefore must swear. (48a)

Money, but with an oath

Rav and Shmuel say that they can only swear and collect when their father died before the debtor. If the debtor died first, their father had to swear to the debtor's heirs, and one does not inherit money which can only be collected through swearing.

The Torah scholars sent a message to Rabbi Elozar, asking how an oath can be powerful enough to exclude money from being inherited, and Rabbi Elozar said that indeed the heirs can swear and collect, even when the debtor died first. They also sent the same question to Rabbi Ami, who said that if he had a satisfactory explanation of Rav and Shmuel's opinion, he would have sent one. Instead, he said that their exclusion should only apply if the creditor brought the debtor's heirs to court, and was obligated to swear. However, if he did not go to court, his heirs inherit the money.

Rav Nachman challenged this distinction, since the court does not create the obligation to swear, but the debtor's death itself does. Rather, Rav and Shmuel's statement, whether we accept it or not, applies whether or not the creditor took the debtor's heirs to court.

The *Gemora* explains that Rav Nachman himself rules that when both sides of a dispute cannot swear, they must split the money, but was discussing Rav and Shmuel's statement according to the opinion that rules that when neither side can swear no money is transferred.

The *Gemora* mounts the following challenges to Rav and Shmuel's statement:
The *braisa* says that if a widow dies, her heirs can collect her *kesuvah* for twenty-five years, indicating that the heirs can collect, even though she would have had to swear. The *Gemora* deflects this by saying this *braisa* is a case where she swore before her death, reverting the *kesuvah* to a normal debt. (Rav Oshaya)
The *Mishna* says that if a man married a woman, who then died, and then married a second wife, and then he died, the second wife and her heirs collect her *kesuvah* before the heirs of the first wife. This again seems to indicate that the second wife's heirs may collect, even though she would have had to swear. The *Gemora* again deflects this by saying this is a case where she already swore.
The *Mishna* says that if a man released his wife from an oath - that is not binding on his heirs. Therefore, his heirs can force her, her heirs, or anyone else who takes her place, to swear that they have not received the *kesuvah*. Rav Shmaya deflects this by saying that the case of her swearing can be where she was widowed, but her heirs swearing is a case of her being divorced, and she died before her ex-husband. Since her ex-husband was alive when she died, she had no obligation to swear, and her heirs inherit the *kesuvah*.

The *braisa* says that a son has stronger standing in court than his father, as his father must swear, but the son may collect with or without swearing. The *Gemora* explains that the *braisa* is a case where the debtor died first, and the father would therefore have swear. The *braisa* is teaching that the son can swear the standard oath of an heir, and then collect. If he has witnesses that his father said that the debt was not paid, the son need not swear, following the opinion of Rabban Shimon ben Gamliel. Rav Yosef deflects this proof by saying that this *braisa* follows Bais Shamai, who consider a debt with a contract to be effectively in possession of the creditor (*even if he must swear to collect*), thus allowing his heirs to inherit it.

Rav Nachman went to Sura. Rav Chisda and Rabbah bar Rav Huna approached him, requesting that he uproot Rav and Shmuel's statement. Rav Nachman said that he did not travel such a long distance to do that, but he said that we only accept their statement as far as the case they discussed, but do not extend it any further.

Rav Pappa gives an example of a case where we will not apply their statement. if a creditor admitted that part of his loan document was paid and then died, although he had to swear to collect the rest, the heirs inherit the debt, and simply make the standard heirs' oath.

The *Gemora* cites two cases that *are* included in Rav and Shmuel's statement:
A creditor died after his creditor, but there was a guarantor on the debt. Rav Pappa thought that this is not included, as they are not collecting from the heirs, but Rav Huna the son of Rav Yehoshua objected, since after collecting from the guarantor, he will in turn collect from the heirs.
A childless creditor died after his creditor, leaving his estate to his brother. Rami bar Chama thought that this is not included, as it is not the children of the creditor who are collecting, but Rava objected, since both

children and a brother cannot make the oath of the creditor, but can only swear that the deceased did not tell them the debt was paid. Just as the difference in the oath makes it impossible for the children to collect, so it makes it impossible for the brother to collect.

Rav Chama says that a judge is justified if he rules like Rav and Shmuel or like Rabbi Elozar, as the dispute was not resolved.

Rav Pappa therefore says that if heirs have a debt contract against a debtor who died before their father, we do not collect the debt, nor destroy the document. We cannot collect, because perhaps Rav and Shmuel are correct, but we do not destroy the document, since perhaps the case will be adjudicated by a court that rules like Rabbi Elozar.

A judge ruled like Rabbi Elozar, and a young Torah scholar objected, saying that he could bring a letter from *Eretz Yisroel* stating that we do not rule like Rabbi Elozar. The judge rejected his objection, and challenged him to bring the letter. When the Torah scholar told Rav Chama about the judge, he said that a judge is justified to rule like Rabbi Elozar. (48a – 48b)

Maybe...

The *Mishna* lists the people who swear even in the absence of a claim.

The *Gemora* explains that no one is expected to swear in the absence of any claim. Rather, the *Mishna* means that they swear in the absence of a *certain* claim, but rather in response to a doubtful claim.

The *Gemora* cites a *braisa* which explains that the category of "one who enters and exits the family estate" refers to business dealings, i.e., brings in workers, and moves around merchandise.

The *Gemora* explains that all the people listed deal with someone else's money, and may rationalize any embezzlement, so we are strict with them, and require them to swear even in response to a doubtful claim.

Rav Yosef bar Minyomi quotes Rav Nachman saying that the doubtful claim must meet the minimum requirements for any claim that triggers an oath – enough for the counter party to deny two silver *me'ahs*. (48b)

Cascading oaths

The *Mishna* says that once the business relationship is terminated, they need not swear, but if they had to swear for another claim, that oath can cascade an oath on the prior business dealings through *gilgul* – *cascading an oath*.

The *Gemora* asks whether a Rabbinic oath can cascade another oath, or if *gilgul* is limited to Torah oaths.

The *Gemora* resolves this from a *braisa*, which says that if someone borrowed money before *Shemittah*, and then became the creditor's partner or sharecropper after *Shemittah*, the creditor cannot cascade from the oath about the business dealings to an oath about the loan, since the loan was canceled by *Shemittah*. The *Gemora* infers that if not for *Shemittah*, the oath about the business dealings, which is Rabbinic, would have cascaded another oath, proving that *gilgul* applies to all oaths.

The *Gemora* attempts to deflect this by saying that the only inference from the *braisa* is that if the two occurred in the opposite order – he was a partner only before *Shemittah*, and then borrowed after *Shemittah* – an oath on the debt can cascade an oath on the partnership. However, the *braisa* states this case

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explicitly, leaving only the original inference from this part of the *braisa*, and proving that *gilgul* is applicable to all oaths.

Rav Huna says that all oaths cascade other oaths, except for the oath imposed on a worker collecting his wages.

Rav Chisda says that we are lenient in the case of cascading oaths only in the case of a worker swearing to collect his wages.

The *Gemora* explains that Rav Huna and Rav Chisda differ on whether the court independently introduces *gilgul*, or only does so if the claimant requests it. Rav Huna discusses the court's application of *gilgul*, while Rav Chisda only discusses the response of the court to a request for *gilgul*. (48b – 49a)

Debt – and oath – cancellation

The *Mishna* states that *Shemittah* cancels an oath that was incurred from a debt.

Rav Gidal quotes Rav who says the source for this is the verse which refers to *devar hashemita – the word of Shemittah*, which teaches that *Shemittah* cancels even *dibur – speech*, i.e., oaths related to canceled debts. (49a)

INSIGHTS TO THE DAF

Buyer vs. seller disputes

The *Mishna* states the dispute of Rabbi Yehudah with the Sages in the case of a buyer and seller who dispute the details of their transaction. The *Gemora* cites a *braisa* in which Rabbi Yehudah seems to further limit the case being discussed.

The Rishonim differ in their understanding of both aspects of Rabbi Yehudah's statements, and therefore the details of his and the Sages' positions.

The Rif and Rambam learn that Rabbi Yehudah in the *braisa* is qualifying the case that he and the Sages are discussing. Thus, Rabbi Yehudah is teaching that all agree that if the produce is in possession of one of the parties, and not in the public domain, that no oath is necessary. However, if it is in the public domain, an oath is necessary. The Sages say that in the case where the seller agrees that he is selling the produce to the buyer, but the buyer claims he already paid, the buyer swears and takes possession. However, if the buyer is now paying, and the seller claims that he already gave him the produce, the seller swears and takes possession of the produce in the public domain. Rabbi Yehudah disputes only the second case, and says that in this case as well, the buyer swears and takes possession of the produce.

The Rif explains that these cases fall in the same category of the other oaths in this chapter, i.e., an oath in order to collect. The nature of these oaths is that the Sages considered one party's claim to be more plausible, and therefore allowed him to collect, simply by swearing to his position. The dispute of the Sages and Rabbi Yehudah is whose claim is more plausible when the buyer is now paying, but may have collected the produce. Rabbi Yehudah says that since sellers generally do not deliver produce before payment, the buyer's position is more plausible, while the Sages say the seller's position is more plausible, as all agree that the money the buyer is presenting is due to the seller.

Tosfos (48a Nishba) quotes Rabbeinu Tam, who says that the two cases of the *Mishna* are only when the *item* in dispute – produce in the first case and money in the second case – are not in anyone's direct possession, but piled up. This would be where the produce was

measured into the buyer's utensils, but they are still in the seller's domain, or if the money was placed in the store, but not taken by the seller. The Sages say that in the case of disputed produce, the buyer can swear to take possession, while in the case of disputed money, the seller can swear to take possession, following the pattern of oaths to collect. Rabbi Yehudah disputes both cases, saying that the buyer always takes possession of the produce without an oath, since it's implausible the seller would deliver produce before being paid. In the *braisa*, Rabbi Yehudah is defining that the Sages dispute and require an oath only when no one has direct possession, but they all agree that no one need swear once one party has taken direct possession.

The Ba'al Hamaor says that the oath is an oath to retain, not an oath to collect, and is therefore placed at the end of the *Mishna*'s cases. The Sages say that if the seller placed the produce in the buyer's container, the buyer must swear to retain the produce, since he has not left the store. In the case of the buyer paying, and the seller claiming he already delivered the produce, the seller must swear to retain the produce in his shop. Rabbi Yehudah says that in the first case, the buyer is in possession of the produce, and therefore need not swear. However, in the second case, the seller swears, as a seller must is more savvy, and it is implausible he delivered the produce before being paid. In the *braisa*, Rabbi Yehudah is defining where he agrees to the Sages. He states that in the case where the produce has not been placed in the buyer's container, i.e., the second case, he agrees that the seller must swear, but if the produce was already delivered, and the dispute is over the money, i.e., the first case, then the buyer need not swear.

Rashi says that the oath taken by the buyer and seller is a classic heses oath, since the swearing party totally rejects the claim on him. They must thus swear even if they are in full possession of the disputed item, be it produce or money. Rabbi Yehudah says that if the produce was already taken (i.e., the first case), the buyer need not swear. However, in the *braisa*, Rabbi Yehudah states that if it is still piled up, the buyer must swear.

The Gra (HM 91:27) lists 5 ways that Rabbeinu Tam's position differs from the Rif and Rambam:
The latter case is restricted by the location of the money, not the produce.
It need not be in the public domain, just not in direct possession of either party
Rabbi Yehudah says that the buyer need not swear
Rabbi Yehudah argues in both cases
Rabbi Yehudah's qualification in the *braisa* is only defining the Sages

See Shach (HM 91:33) for details of five different positions he identifies among the Rishonim.

DAILY MASHAL

What the Meir La'Olam Did on His Vacation

The *Meir La'Olam* once went on vacation. One day he was seen beating a book of Tehillim and a *talis katan* with a cane. It turned out that 20 years previously a fire broke out in his town and those objects were found in the street and were given to him for safekeeping. Since a keeper must shake out a book or a garment every 30 days, he took them with him to observe the mitzvah (*Bimechitzasam shel Gedolei HaDor*).