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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

[A widow may not collect her *kesuvah* payment from the (*inherited*) property of the orphans without taking an oath first (*that she did not receive any payment from the husband*). There came a time that they refrained from imposing an oath on her (*as the Gemora will explain, and hence, they were not able to collect their kesuvah*). Rabban Gamliel the Elder decreed that she should make a *neder* (a vow) on whatever the orphans want (*a certain object will be prohibited to her if she did receive payment*), and then, she may collect her *kesuvah*.]

The Mishnah states: If a husband gave to his wife a document, which stated, “I have no claim upon you for either a vow or an oath,” he cannot impose an oath upon her. He may, however, impose an oath upon her heirs and upon her successors.

If he wrote, “I have no claim upon you for either a vow or an oath - either upon you, or upon your heirs or upon your successors, he may not impose an oath either upon her or upon her heirs or upon her successors. His heirs, however, may impose an oath upon her, upon her heirs or upon her successors.

[If he wrote:]] “I have neither a vow nor an oath, nor do my heirs nor do my successors - upon you or upon your heirs or upon your successors,” neither he nor his heirs nor his successors may impose an oath either upon her or upon her heirs or upon her successors.

The Mishnah explains: If she (the widow) went from her husband's grave to her father's house (stopping to manage the husband's properties from that point and on), or

returned to her father-in-law's house but was not made administrator (over her husband's property), the heirs are not entitled to impose an oath upon her (that she did not embezzle anything; for the husband specifically exempted her from any oath imposed by him or his heirs), but if she was made administrator, the heirs may impose an oath upon her in respect of the future, but not in respect of the past. (86b3)

The Gemora asks: What is the nature of the oath?

Rav Yehudah replied in the name of Rav: It is one that is incumbent upon a woman who during the lifetime of her husband was made administrator of his affairs. [It is from such an oath only that a husband exempts his wife, but not from one which a woman incurs when she impairs her *kesuvah*. A Mishnah below teaches that if a woman, when demanding her *kesuvah*, admits that she received partial payment and the husband claims that he paid it in full, she can collect the part that she claims is unpaid only if she swears to that effect. The husband's exemption will not apply for this oath. A husband, according to this view, only exempts his wife from an obligation which is in his power to impose upon her, but not from one which she has brought upon herself.]

Rav Nachman replied in the name of Rabbah bar Avuha: It is one that is incumbent upon a woman who impairs her *kesuvah* (and certainly, it applies for the administrator's oath).

Rav Mordechai went and asked the following question in front of Rav Ashi: It is understandable according to the opinion that maintains that the exemption applies even to a

case where she impairs her kesuvah - (the husband will issue a waiver), for the wife might think (in the beginning of the marriage), "Perhaps I will need money (someday), and I will need to take some money from my kesuvah." She therefore tells her husband, "Write for me that you will not impose an oath on me (when I wish to collect the remainder of the kesuvah)." However, according to the opinion that the exemption is regarding a case where she is appointed administrator of her husband's possessions in his lifetime – (why would he do this?), did she know that she would be appointed administrator that she would say to him (beforehand – in the beginning of marriage), "Write for me that you will not impose the administrator's oath on me"?

Rav Ashi replied to him: You have this difficulty because you learned that Rav Yehudah's statement referred to the first part of our Mishnah. We understood that it is referring to the second part of the Mishnah (and therefore there is no difficulty). The Mishnah stated: If she (the widow) went from her husband's grave to her father's house (stopping to manage the husband's properties from that point and on), or returned to her father-in-law's house but was not made administrator (over her husband's property), the heirs are not entitled to impose an oath upon her (that she did not embezzle anything; for the husband specifically exempted her from any oath imposed by him or his heirs), but if she was made administrator, the heirs may impose an oath upon her in respect of the future, but not in respect of the past. The Gemora asks: What exactly is deemed "past" issues?

Rav Yehudah replied in the name of Rav: Regarding her administrative position where she was appointed during her husband's lifetime (she is exempt from an oath); regarding, however, her position between his death and the burial, the heirs may require her to take an oath (for at that time, the property was theirs).

Rav Masna said: Even regarding her position between his death and the burial, the heirs may require her to take an oath. For they said in Nehardea: For taxes, support and burial, we sell the property of orphans without an

announcement (since the cash is needed immediately). [Accordingly, we do not impose the administrator's oath on her, for she probably did cause a loss by selling so suddenly, and this would result in her swearing falsely.] (86b4 – 87a2)

Exact Terminology for Vow Exemption

Rabbah says in the name of Rabbi Chiya: If he writes, "without a vow and without an oath," he cannot impose an oath upon her, but the inheritors may impose an oath upon her. If he writes, "clean of vow and clean of oath," whether he or his heirs cannot impose an oath upon her, as he is telling her, "You are cleansed from taking an oath (regarding this issue)."

Rav Yosef, however, said in the name of Rabbi Chiya: If he writes, "without a vow and without an oath," he cannot impose an oath upon her, but the inheritors may impose an oath upon her. If he writes, "clean of vow and clean of oath," whether he or his heirs may impose an oath upon her, as he is telling her, "You will be cleansed (if you come under suspicion) by taking an oath."

Rabbi Zakkai sent to Mar Ukva: Whether the husband wrote, "without oath," or "clean of oath," or whether he wrote, "without vow," or "clean of vow," if he adds, "regarding **my** property," he cannot impose an oath upon her but the inheritors may impose an oath upon her. If he writes, "regarding **these** properties," both he and the inheritors cannot impose an oath upon her.

Rav Nachman said in the name of Shmuel, who said in the name of Abba Shmuel son of Imma Miriam: Whether the husband wrote, "without oath," or "clean of oath," or whether he wrote, "without vow," or "clean of vow," whether he said, "regarding **my** property," or whether he said, "regarding **these** properties," both he and the inheritors cannot impose an oath upon her. However, what can I do, as the Sages said: If someone comes to collect from the property of orphans (that they inherited from the debtor), they cannot collect without taking an oath (even if the husband exempted her)?

Some say the teaching was taught as a Baraisa: Abba Shmuel son of Imma Miriam said: Whether the husband wrote, “without oath,” or “clean of oath,” or whether he wrote, “without vow,” or “clean of vow,” whether he said, “regarding my property,” or whether he said, “regarding these properties,” both he and the inheritors cannot impose an oath upon her. However, what can I do, as the Sages said: If someone comes to collect from the property of orphans (that they inherited from the debtor), they cannot collect without taking an oath (even if the husband exempted her)?

Rav Nachman said in the name of Shmuel: The halachah follows the son of Imma Miriam. (87a2 – 87a3)

Mishnah

A woman who impairs her *kesuvah* (by admitting that she collected part of it) cannot receive payment except by taking an oath (for we cannot rely on the *kesuvah* any longer). If a single witness testifies against her that it has been paid, she may not be paid except by taking an oath. She may not collect her *kesuvah* from orphans’ property or encumbered property or if a woman is collecting in her husband’s absence (e.g., if the husband sent her a bill of divorce from overseas) - except by taking an oath.

What is the case of a woman who impairs her *kesuvah*? If her *kesuvah* was for one thousand zuz and (when she came to collect it) her husband said to her, “You have already collected your *kesuvah* in full,” and she said, “I only received a maneh (one hundred zuz) payment,” she may only collect the remainder with an oath.

What is the case where one witness says her *kesuvah* was paid? If her *kesuvah* was for one thousand zuz and (when she came to collect it) her husband said to her, “You have already collected your *kesuvah* in full,” and she said, “I did not receive anything,” and one witness testifies that it was paid, she may only collect with an oath.

What is the case where she collects from encumbered property? If her husband had sold property to others, and she comes to collect the property (for her *kesuvah*) from the buyers, she may only collect with an oath.

What is the case of collecting property from orphans? If her husband died leaving the property to orphans, and she comes to collect the property (for her *kesuvah*) from the orphans, she may only collect with an oath.

What is the case of her collecting in her husband’s absence? If he went overseas, and she comes to collect (for her *kesuvah*, and she presents proof of divorce), she may only collect with an oath.

Rabbi Shimon says: Whenever she claims her *kesuvah*, the inheritors may impose an oath upon her, but whenever she does not claim her *kesuvah*, the inheritors cannot impose an oath upon her. [The Gemora will explain what Rabbi Shimon is addressing.] (87a3 - 87b1)

The Woman’s Oath: Biblical or Rabbinic in Nature?

Rami bar Chama thought to say that the Mishnah is discussing a Biblical oath. For the Mishnah is referring to a case where the man claims that he paid two hundred (zuz), and she admits regarding one hundred. This would be a case where there is an admission to a portion of the claim, and when someone admits to a portion of the claim must swear (on a biblical level that the remainder was not collected).

Rava says that there are two refutations to this assertion: One reason is that (it was taught in a Mishnah in Shavuot that) all who swear according to Biblical law swear and (therefore) do not pay, but she is swearing and collecting! Additionally, no oath is taken in a dispute connected with a lien on land (and here, the woman has a lien on the husband’s land on account of the *kesuvah*).

Rather, Rava says that the woman’s oath is Rabbinic in nature (for, on a Biblical level, she is believed, for she is in possession of her *kesuvah*). [The Rabbis imposed the oath

for the following reason:] Usually, the one who pays is more careful that he paid, while the one who is being paid is not as careful. The Rabbis therefore compelled the woman to take an oath, in order for her to be attentive (when she is being paid). (87b1)

Impaired Kesuvos

The Gemora inquires: What is the law if she impairs her kesuvah in conjunction with witnesses (*who witnessed the partial payment; the husband claims that he paid the remainder without witnesses*)? Do we say that if he would have paid her the rest, he would have also paid it with witnesses (and therefore his claim is discounted)? Or perhaps, he merely happened to have witnesses on the first payment (and it is no indication whatsoever that he usually pays in the presence of witnesses)?

The Gemora attempts to resolve this from the following Baraisa: All who swear according to Biblical law, swear and do not pay. The following swear and collect money (*based upon a Rabbinic decree*): a hired worker, a victim of theft, one who was injured, someone whose opponent is suspected of lying when taking an oath, a storekeeper regarding his records, and someone who impairs his document without witnesses. We may infer that it is “without witnesses,” where one is required to take an oath, but if there were witnesses (present by the initial payment), this ruling would not apply (and he is not required to swear).

The Gemora deflects the proof: The Baraisa is written in a “it is not necessary” format, as follows: It is not necessary to state a case where the payment was made in the presence of witnesses, for definitely the plaintiff is required to swear (that the remainder was not received), but in a case without witnesses, I might say that she (who is in possession of her kesuvah, and nevertheless, admitted to receiving a partial payment) should be like a person who returns a lost object to its rightful owner, and she should be able to collect (the remainder) without taking an oath; the Baraisa therefore teaches us (that in order to collect the remainder, she is required to swear).

The Gemora inquires: If a woman impairs her kesuvah in installments of less than a perutah (she details how she received the hundred zuz in small increments, even as small as less than a perutah), what is the law? Do we say that because she is clearly precise about her reckoning of the debt, she is saying the truth (and she may collect without taking an oath)? Or perhaps she is simply being clever (in a deceptive type of way, and therefore the law of taking an oath would still apply)? The Gemora leaves this question unresolved.

The Gemora inquires: If a woman lessens the amount stated in the kesuvah (which the Gemora will explain in a moment), what is the law? Is this the same as a woman who impairs her kesuvah? Or perhaps, a woman who impairs her kesuvah is making a partial admission; here, she is not making a partial admission (for she claims that she hasn’t received anything from him)?

The Gemora attempts to resolve this question from the following Baraisa: What is the case? Her kesuvah was (written) for one thousand zuz, and the husband said to her, “you received the kesuvah in full.” She says, “I did not receive anything, but (in truth), the kesuvah is only for a maneh (one hundred zuz), she collects (the maneh) without taking an oath.

The Gemora asks: Where does her ability to collect stem from? It is through this document, but (how can that be, seeing that) this document is like a piece of shard (i.e., useless, because she is admitting that it is forged)!?

Rava the son of Rabbah answers: The case is where she says (that the kesuvah was indeed signed and witnessed, and therefore not a forgery), “There was an understanding between myself and him” (that I would only claim one hundred zuz). (87b2 – 87b3)



The Mishnah had stated: If a single witness testifies against her that it has been paid [she may not be paid except by taking an oath].

Rami bar Chama thought to say that this is a case where the oath is Biblical in nature, for it is written: *A single witness shall not stand up against a man for any punishment or for any penalty.* This implies that he (one witness) cannot stand up for any punishment or for any penalty, but he can stand up to force (a litigant for) the taking of an oath. And a master stated in a Baraisa: Wherever two witnesses would obligate one to pay money, one witness obligates him to take an oath. [Accordingly, in our Mishnah, where two witnesses would accomplish that the woman would not be able to collect anything, one witness should accomplish that she should be required to swear before collecting.]

Rava says that there are two refutations to this assertion: One reason is that (it was taught in a Mishnah in Shavuot that) all who swear according to Biblical law swear and (therefore) do not pay, but she is swearing and collecting!? Additionally, no oath is taken in a dispute connected with a lien on land (and here, the woman has a lien on the husband's land on account of the kesuvah).

Rather, Rava says that the woman's oath is Rabbinic in nature; it was established in order to appease her husband. (87b3 – 87b4)

INSIGHTS TO THE DAF

Migu with an Impaired Document

The *Mishnah* had stated: If a woman impairs her *kesuvah* (*she admitted that a portion of it was paid*), she can only collect the remaining portion if she takes an oath that the complete *kesuvah* has not been paid.

The Shitah Mekubetzes cites Rabbeinu Yonah, who asks the following question: Why is it necessary for her to take an oath? Shouldn't she be believed with a *migu*; "Believe me

that I was only paid in part, for if I would want to lie, I could have said that I wasn't paid at all"?

He answers: There is a principle that we do not believe someone with a *migu* to extract money from someone else. Secondly, we do not apply the principle of *migu* to exempt someone from taking an oath.

The Ketzos Hachoshen (82:10) asks: There are several Rishonim who maintain that we do apply the principle of *migu* to extract money in cases when a legal document is present; since her *kesuvah* document is intact, let us use the *migu* to collect the remaining portion of her *kesuvah*?

He answers: Since the woman admitted that the *kesuvah* is impaired, she will no longer be allowed to collect from encumbered properties (*even from the portion that has not been collected*). Only a valid document that has the ability to collect from encumbered properties can assist a *migu* to extract money. This document will not help her in this respect and therefore, she is compelled to take an oath.

DAILY MASHAL

In one of the narrow lanes of the Jerusalem neighborhood Beit Yisrael stands a large, handsomely built synagogue. For a hundred years, a marble plaque affixed to its north wall has borne the legend: "For everlasting remembrance in the House of G-d. This synagogue has been erected by the generosity of a donor, whose name shall remain hidden and concealed, who contributed a sum of 110 napoleons of gold." For many years it was presumed that the funds were provided by one of the wealthy citizens of Jerusalem who wished to preserve his charity from the taint of pride by remaining anonymous. Few knew the true identity of the donor and the story behind his donation.

Rabbi Shlomo Zalman Porush was a man of modest means, though large sums of money passed through his hands. He was the secretary of one of the *kollel* societies which supported the poor Jews of Jerusalem with funds collected

for that purpose throughout the Diaspora. Rabbi Shlomo Zalman was responsible for the sustenance of several hundred families whose support had been pledged by the Jewish community of Minsk and its environs in White Russia.

One year, as Passover approached, the arrival of funds was delayed. Rabbi Shlomo knew that the money would be forthcoming, but in the meantime the families for whom he was responsible had to be provided with matzos, wine and other festival needs. He therefore turned to a neighbor of his, Reb Faivish Stoller, a carpenter who had worked hard all his life and had managed to put aside a considerable sum. Faivish agreed to lend him his life savings—200 napoleons of gold—until the money would arrive from abroad.

Shortly after Passover, the long-awaited messenger arrived from Minsk. The purse he brought contained only 110 napoleons, but an accompanying letter promised that the remainder was on the way. Rabbi Shlomo lost no time in bringing the money to his neighbor.

Several weeks later, the rest of the money arrived. But when Rabbi Shlomo brought the 90 gold coins to Reb Faivish, a most unpleasant surprise awaited him. The elderly carpenter, whose memory had begun to fail him, had lost all recollection of the first payment, and was adamant in his insistence that he had received nothing of the 200 napoleons owed. No written contract recorded the loan or the payment, for the two men had had absolute trust in each other. Now they had no recourse but to present their case before the *beis din* (rabbinical court) of the venerated chief rabbi of Jerusalem, Rabbi Shmuel Salant.

From a halachic standpoint, this was a textbook case: the borrower admits the loan, but claims that a partial payment has been made, which the lender denies. This is a classic example of *modeh b'miktzas* ("one who partially admits" an otherwise unsupportable claim); in such a case, the burden of proof rests with the lender, but the borrower must take a "biblical oath" in affirmation of his argument.

Upon hearing the verdict of the *beis din*, Rabbi Shlomo Zalman turned pale. Never in his life did he imagine that he would be required to take an oath in court, never mind a "biblical oath" performed upon a Torah scroll! He begged to be given several days to think over the matter.

When the *beis din* reconvened, Rabbi Shlomo Zalman announced that he was prepared to pay the disputed 110 napoleons out of his own pocket rather than take an oath. He only asked that he be given a few weeks to raise the money. Faivish Stoller agreed, and it appeared that the matter had been settled. But Rabbi Shmuel Salant would not allow this arrangement. "I'm sorry," he said to Rabbi Shlomo Zalman, "but this is not a private matter that can be settled between the litigants. It involves communal funds. As one who is entrusted with charity monies, your honesty must be beyond reproach. Unless it is decisively established that the money was paid as you claim, people will talk. I therefore insist that you take the oath." Again Rabbi Shlomo Zalman requested, and was granted, a short respite. For three days he fasted, wept and recited Psalms. On the fourth day he came before the *beis din* and swore that he had paid 110 napoleons to Faivish Stoller.

Shortly thereafter, Rabbi Shlomo Zalman put up his modest home for sale. To his family he explained that he had intended to sell the house in order to avoid taking the oath, and now he did not want to benefit from money he had "saved" by swearing on a Torah scroll. To the proceeds of the sale he added almost all of his savings to make the sum of 110 napoleons, which he presented to a committee that was raising money to build a new synagogue. His only stipulation was that no mention should be made of the source of the money.

Several months later, Faivish Stoller appeared in the small apartment to which Rabbi Shlomo had moved after the sale of his home. Without a word, he placed on Rabbi Shlomo Zalman's table a purse containing 110 napoleons of gold, which he had uncovered in a drawer in his workshop.

As Told by Zalman Ruderman