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Rabbi Chiya's Kal Vachomer

[*Rabbi Chiya taught the following halachah: If one says to his fellow: You have in your possession a maneh belonging to me, and the other replies: I have nothing of yours, but witnesses testify that the defendant has fifty zuz belonging to the plaintiff; the defendant pays the plaintiff fifty zuz, and takes an oath regarding the remainder, for the admission of his own mouth ought not to be greater than the testimony of witnesses, which can be proven by a kal vachomer*.] Rav Pappa explains that Rabbi Chiya derived his *kal vachomer* from the *gilgul shevuah* (*devolving an oath - once we force someone to take one oath, we can extend this obligation to take another oath even though there is no requirement for the other oath*) caused by the testimony of a single witness. [*If the testimony of a single witness, which does not obligate him to pay money, nevertheless, it can obligate him to take an oath through devolvement – even to deny the unsubstantiated part of the claim; how much more so by the testimony of witnesses, which can obligate him to pay money, certainly it can obligate him to take an oath - even to deny the unsubstantiated part of the claim!*]

The *Gemora* asks: How can it be derived from the *gilgul shevuah* of a single witness, when there it is one oath that causes the other oath? Can the same be said with regard to two witnesses, who obligate someone to pay money (*not to take an oath*)!?

[*The Gemora reverts back to its original assertion that the kal vachomer is from the testimony of a single witness: If one witness, whose testimony does not obligate a defendant to pay money, nevertheless, it obligates him to take an oath, how much more so should two witnesses, whose testimony does obligate a defendant to pay money, they should certainly obligate him to take an oath! The Gemora presented the following challenge: The oath that is imposed by the testimony of one witness refers only to the part of the debt to which the witness testifies (to deny that which the one witness testified about), while the oath that you would impose by the testimony of two witnesses refers to the part which is denied by the defendant?*] The *Gemora* answers: The oath brought about by the admission from his own mouth proves that we can impose an oath even if it refers only to the part of the claim which is denied by the defendant.

The *Gemora* asks: Doen't a person's own mouth have more strength than the witnesses in that it cannot be refuted by a contradiction?

The *Gemora* answers: The oath brought about through the testimony of a single witness proves that even though he is subject to contradiction (*by two witnesses*), nevertheless, he has the strength to obligate the defendant to take an oath.

The *Gemora* asks: The oath that is imposed by the testimony of one witness refers only to the part of the debt to which the witness testifies (*to deny that which the one witness testified about*), while the oath that you would impose by the testimony of two witnesses refers to the part which is denied by the defendant?

The *Gemora* answers: The oath brought about by the admission from his own mouth proves that we can impose an oath even if it refers only to the part of the claim which is denied by the defendant. And the argument keeps repeating itself. The nature of each case (*his own admission and the testimony of a single witness*) is not like the other one. The common characteristic (*tzad hashavah - the common characteristic of two or more halachos*), however, of both of them is that the litigants come to court because of a claim and a denial and the defendant swears; so too with regard to witnesses, where the litigants come to court because of a claim and a denial, the defendant should be obligated to swear!

The *Gemora* asks: How can we learn from the *tzad hashavah*, when in both of those cases (*his own admission and the testimony of a single witness*), the defendant has not been established to be a denier (*and that is why an oath is imposed*)? This cannot be said with regard to the case of witnesses, when the defendant has been established as a denier (*and perhaps we cannot impose an oath on him*)!?

The *Gemora* challenges the question: Is it true that he is regarded to be a denier when witnesses testify against him? But Rav Idi bar Avin said in the name of Rav Chisda: One who falsely denies a loan is still qualified to give testimony (*for he is just stalling for time until he can come up with the money to repay the debt*), but one who falsely denies a deposit is disqualified from giving testimony.

Rather, challenge as follows: How can we learn from the *tzad hashavah*, when in both of those cases (*his own admission and the testimony of a single witness*), they are not subject to the laws of *hazamah*? (*When witnesses offer testimony and other witnesses refute them claiming that the first set of witnesses could not possible testify regarding the alleged crime since they were together with them at a different location at the precise time that they claimed to witness the crime somewhere else; The Torah teaches us that we believe the second pair in this instance; the first witnesses are called "eidim zomemim" "scheming witnesses," and they receive the exact punishment that they endeavored to have meted out to the one they accused. If, however, they would testify that the person who admitted was somewhere else, nothing would be accomplished and he would still be liable. This halachah does not apply by a single witness, or by one's own mouth.*) Witnesses, on the other hand, can be refuted by a contradiction or by *hazamah*!?

The *Gemora* answers: This is not a challenge, for Rabbi Chiya does not attach any importance to the laws of *hazamah* (*in this regard*). (4a1 – 4a2)

Heilech

Rabbi Chiya had said that his *halachah* can be proven from our *Mishnah*. The *Gemora* asks: Can the two cases be comparable to each other? In Rabbi Chiya's case, the lender has witnesses to support his claim (*at least on part of it*), whereas the borrower has to witnesses supporting his claim that the lender did not lend him any money; for if the borrower would have witnesses that the lender did not lend him anything, Rabbi Chiya would not have imposed an oath upon him. However,

here in our *Mishnah*, just as we are witnesses that half of the cloak belongs to one of them, we are witnesses that half of the cloak belongs to the other person, and nevertheless, the *Mishnah* requires them both to take an oath (*which obviously can have nothing to do with a shevuah of modeh b'miktzas*)!?

Rather, the *Gemora* says, our *Mishnah* is a proof to a different *halachah* of Rabbi Chiya, for Rabbi Chiya said: If one says to his fellow: You have in your possession a *maneh* belonging to me, and the other replies: I only owe you fifty *zuz*, and here it is (*heilech*), he is liable to take an oath on the other fifty (*just like an ordinary modeh b'miktzas*). What is the reason for this? It is because he is admitting to a portion of the claim. And our *Tanna* (*of our Mishnah*) supports this: Two people are holding on to a cloak. This one says that he found it, and the other says that he found it. Now this is similar to Rabbi Chiya's case, for since they are each holding the cloak, and when we see this person holding something, it is as if there are witnesses testifying that half the cloak is his, which is as if the other person is saying to him, "Here, it is yours," and yet the *Mishnah* rules that each claimant must swear.

But Rav Sheishes holds that the defendant is exempt from taking an oath in a case of *heilech*. What is the reason for this? It is because the declaration, "Here, it is yours" made by the defendant enables us to regard those fifty *zuz*, which he has admitted to be owing, as if they were already in the hands of the plaintiff, while the remaining fifty *zuz*, the defendant does not admit to be owing, and therefore there is no "partial admission" (*that necessitates an oath*).

The *Gemora* asks: But doesn't our *Mishnah* cause a difficulty for Rav Sheishes?

The *Gemora* answers: Rav Sheishes would answer that the oath mentioned in the *Mishnah* is only a Rabbinic decree (*in order that each and every person should not grab his fellow's cloak and claim, "It is mine"*)

The *Gemora* explains Rabbi Chiya's proof from the *Mishnah*: It is correct that the oath mentioned in the *Mishnah* is a Rabbinic decree (*and nothing to do with a partial admission*). However, if Biblically, one would be liable to take an oath in a case of *heilech*, the Rabbis could impose a *shevuah* in a similar case which imitates the biblical *halachah*. But if biblically there is no oath imposed in a case of *heilech*, would the Rabbis enact a decree that has no equivalent in Biblical *halachah*?

The *Gemora* asks on Rabbi Chiya from the following *Baraisa*: If a lender produces a promissory note that the borrower owes *sela'im* or *dinarim* (*without any specific amount mentioned*), and the lender says, "The borrower owes me five (*sela'im or dinarim*)," and the borrower says, "I only owe you three," Rabbi Shimon ben Elozar says: Since the borrower has admitted part of the claim, he must take an oath on the rest. Rabbi Akiva says: He is like a returner of lost property (*for he could have claimed that he only owes two*), and he is exempt from swearing.

In any case, the *Baraisa* had stated that Rabbi Shimon ben Elazar says that since the borrower has admitted part of the claim, he must take an oath on the rest. Now the reason is presumably because the borrower had said "three," but if he would have said "two," he would have been exempt from taking an oath. And it must be that with the document, his admission of "two" is regarded as *heilech* (*for when there is a document, there is automatically a lien on the defendant's property; this can therefore be regarded as if the land is already in the possession of the borrower*), and this

would prove that one is exempt from an oath in a case of *heilech*!?

The *Gemora* answers: Really when he says "two," he also would be required to take an oath, and the only reason why the *Baraisa* mentions a case of "three" is to exclude the opinion of Rabbi Akiva, who maintains that if the borrower says "three," he is regarded like a returner of lost property and therefore exempt from taking an oath. The *Baraisa* informs us that he is like one who admits a portion of the claim, and that he is required to take an oath.

The *Gemora* asks: But if this is so, Rabbi Shimon ben Elazar should have said instead: He must swear even in this case!?

Therefore it must be assumed that he is exempt from an oath when he claims that he owes "two," and he is required to swear in a case of *heilech*. But our present case is different, for the written document supports his claim of two (*and therefore he is exempt from taking an oath*). Alternatively, it is because the written document has the effect of pledging the borrower's land to the plaintiff, and no oath is taken in a dispute connected with a lien on land.

There are those who ask on Rav Sheishes from the latter part of the *Baraisa*: Rabbi Akiva says: He is like a returner of lost property (*for he could have claimed that he only owes two*), and he is exempt from swearing. Now the reason is presumably because the borrower had said "three," but if he would have said "two," he would have been obligated to take an oath. And it must be that with the document, his admission of "two" is regarded as *heilech* (*for when there is a document, there is automatically a lien on the defendant's property; this can therefore be regarded as if the land is already in the possession of the borrower*), and this would prove that one is obligated to take an oath in a case of *heilech*!?

The *Gemora* answers: Really when he says "two," he also would be exempt from taking an oath, and the only reason why the *Baraisa* mentions a case of "three" is to exclude the opinion of Rabbi Shimon ben Elozar, who maintains that since the borrower has admitted part of the claim, he must take an oath on the rest. The *Baraisa* informs us that he is like a returner of lost property, and he is exempt from swearing.

The *Gemora* adds that this is also logical, for if you would hold that he is obligated to swear when he claims "two," how can Rabbi Akiva hold that he is exempt in a case of three? Could he surely be employing a ruse, in that he might think: If I say "two," I will be obligated to swear? I will therefore say "three," so that I shall be like a returner of lost property, and I shall be exempt. Therefore we must conclude that if he says "two," he is also exempt.

If so, the *Gemora* asks, it is a challenge to Rabbi Chiya!?

The *Gemora* answers: Our present case is different, for the written document supports his claim of two (*and therefore he is exempt from taking an oath*). Alternatively, it is because the written document has the effect of pledging the borrower's land to the plaintiff, and no oath is taken in a dispute connected with a lien on land.

Mar Zutra, the son of Rav Nachman, then asked: [We learned in a Mishnah:] If one claims utensils and land, and the claim in regard to the utensils is admitted, but the claim in regard to the land is disputed, or the claim

in regard to the land is admitted, but the claim in regard to the utensils is disputed, the defendant is exempt [from taking an oath in regard to the disputed claim]. If he admits part of the claim in regard to the land, he is exempt [from taking an oath]; if he admits part of the claim in regard to the utensils he is obligated [to take an oath]. Now the reason why [he is exempt when the claim concerns both land and utensils] is [presumably] that an oath does not apply to land, but where the claim concerns two sets of utensils, in the same way as the claim regarding the land and the utensils, he is obligated to [take an oath]: how is this to be understood? Is it not that the defendant said to the plaintiff, “Here, it is yours”? So it follows that “Here, it is yours” necessitates an oath! — No; I can quite well maintain that [when] two sets of utensils [are claimed] he is also exempt [from taking an oath], but the reason why ‘utensils and land’ are mentioned is to let us know that when [the defendant] admits part of the claim regarding the utensils he is obligated [to take an oath] even regarding the land. What new information does he proffer us? The law of extension of obligation (i.e., gilgul shavuah)? We have learned this already in a Mishnah: Movable property can subject real property that one take an oath regarding it!? — [The Mishnah quoted] here is the principal place [for this law]; there it is only mentioned incidentally. (4a3 – 4b4)

DAILY MASHAL

"O'mein o'mein" - Rashi lists a number of oaths of non-guilt that the sotah must make. These are derived from the double expression.

The Targum Yerushalmi says a most startling thing. She makes an oath that she did not defile herself with the act of adultery in the past and that she will not do so in the FUTURE. Rabbi Tzvi Yaakov Fleisher asks: How can an oath against sinning in the future be binding? The Gemoros in Nedarim and Shavuos are replete with the rule that anything that is already binding by the oath of acceptance of the Torah cannot have an additional oath added. Is a "gilgul shavuah" effective on a "mushba v'omeid meiHar Sinai?"