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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

How Suspect?

The *Gemora* asks that we can see from the following that one who is suspect of taking someone else's money is not suspect of swearing falsely:

1. Rav Nachman says that if someone totally denied a loan, he must (by Rabbinic enactment) still swear an oath of "incitement" (a shavuas hesses that he does not owe the money). If we suspect that he is lying (to avoid payment) in monetary matters, let us say that he should also be suspect in regard to swearing falsely!? [Since he totally denies the oath, if he is lying, he has no rationalization of delaying payment, and is simply trying to not pay.]

2. Rabbi Chiya taught a Baraisa: If a store owner claims to have given merchandise to someone's worker on credit, but the worker claims he never receives it, both the store owner and the worker swear to the employer, and he must pay both of them. If we suspect that he is lying (to avoid payment) in monetary matters, let us say that he should also be suspect in regard to swearing falsely!?

3. Rav Sheishes says that if an unpaid custodian claims the item deposited was stolen, he must swear:
   1. That he was not negligent.
   2. That he did not take it for himself.
   3. That it is not in his possession.

If we suspect that he is lying (to avoid payment) in monetary matters, let us say that he should also be suspect in regard to swearing falsely!?

Rather, we do not say that someone who is suspect of lying (to avoid payment) in monetary matters is also suspect in regard to swearing falsely. [Therefore, Rabbi Yochanan's statement (that we obligate each party holding the garment to swear in order to prevent people from brazenly grabbing items) is logical, since we do not suspect someone who would grab something that's not his with swearing falsely.] (6a1)

How sure are you?

Abaye (holds that we may suspect one who takes someone's money of swearing falsely) says: The oath in the *Mishnah* is because we are concerned that the one who does not own the garment is owed a debt by the owner of the garment, and has grabbed it as payment. [Therefore, he is not suspect of taking something that is not due to him, but he must swear to ensure that he doesn't take it from its rightful owner.] – If so, let him take (half) the garment even without an oath!? - Rather, we are concerned that he is not sure if he has a loan owed to him by the garment's owner. – But we do not say that one who will take money based on a doubt will also swear based on that doubt? – Rav Sheishes the son of Rav Iddi says: People will withdraw from taking an oath in regard to a doubtful claim, while they will not withdraw from appropriating money their right to which is doubtful. For what reason? — Money can be given back [later]; an oath cannot be taken back. (6a1 – 6a2)

Grabbing

Rabbi Zeira asked what the rule would be if one of the litigants grabbed the entire garment in front of the court. How could such a situation arise? If [the other litigant] remained silent, he really admitted [his opponent's claim]; and if he protested, what more could he do? — His inquiry was required for the following case: Initially, the other party was silent, possibly indicating admission of the grabber's ownership, but he later protested. Rabbi Zeira questions

whether we take his initial silence as admission of the other litigant's ownership, or whether we assume that he felt no need to protest, since the whole court saw the litigant grab it.

Rav Nachman brings a Baraisa that limits the Mishnah's rule of splitting the garment to a case when both are holding it. However, if only one party is holding it, he is in possession, and the other party must prove his claim. Now, [let us consider:] how could the case [of one litigant producing the garment] arise? If we say that it was just as stated, then it is self-evident. It must therefore be that one of them seized [the garment] in our presence? — No. Here we deal with a case where both of them came before us holding [the garment], and we said to them, "Go and divide it." They went out, and when they came back one of them was holding it. One said, "He really admitted [my claim]," and the other said, "I let him have it on condition that he pays me for it." Now we say to him: "Until now you implied that he was a robber, and now you dispose of the garment to him without witnesses!"

Alternatively, I could also say that [the Baraisa deals with a case where], as stated, one of them was holding it, and the other was just hanging on to it. In such a case [it is necessary to inform us that] even Sumchos, who maintains that disputed money of doubtful ownership should be divided among the disputants without an oath, would agree, for mere hanging on [to a disputed article] counts for nothing. (6a2 – 6a3)

Sanctification

If we assume that if one of them grabbed the garment before us, we remove it from his possession, if he consecrates it, it is not consecrated. The *Gemora* asks: If we assume that if one of them grabbed the garment before us, we do not remove it from his possession, - what do we rule if one of them consecrates it without grabbing it? On the one hand, since the master stated: consecration is tantamount to property transfer, so it may be considered more significant than grabbing, but on the other hand, the consecration was done without full possession, and it is written: And if a man shall consecrate his house to be holy, etc., [from which we might conclude that] just as his house is in his possession, so must everything [that he may wish to consecrate] be in his possession — which would exclude this case [of the garment which he has not seized and] is not in his possession? — Come and hear [from the following]: There was a bathhouse that was in dispute between two parties. One said, "It is mine," and the other said, "It is mine"; then one of them rose up sanctified the bathhouse, whereupon Rav Chananyah, Rav Oshaya and all the sages avoided using the bathhouse. Rav Oshaya said to Rabbah: When you go to Rav Chisda in Kafrei, ask him how to rule on this bathhouse. When Rabbah passed by Sura, he asked Rav Hamnuna, who attempted to resolve it from the following Mishnah: In any doubt in the realm of a first born – of a person or an animal – either kosher or non-kosher, the proof is on the one who seeks to remove something from the possession of another. And a Baraisa was taught regarding this Mishnah: An animal in this situation is treated as a first born regarding the prohibitions of shearing and working the animal. Now here (in that Mishnah) it said that if the *Kohen* grabs it, we do not take it away from him, for the Mishnah stated: the proof is on the one who seeks to remove something from the possession of another, and yet, if he did not grab it (we still treat it as potentially consecrated), for it is forbidden with regard to shearing and working!

Rabbah said to him: You speak of the sanctity of a bechor — [this proves nothing]. I could well maintain that even if the Kohen has seized it we take it away from him, and still it would be forbidden to shear or to work [this animal], because the sanctity that comes of itself is different.[1]

[1] Rabbah countered that even if we remove it from the *Kohen* if he grabs it, a first born animal's prohibitions are different, since the sanctification is automatic, and therefore it (sanctification) more easily descends on the animal. However, sanctification that depends on one's action may not work.

Rav Chananyah said to Rabbah: There is [a Baraisa] taught supporting your view: The [sheep with which the] doubtful [firstborns of donkeys have been redeemed] enter the pen to be tithed. Now, if the view were held that when the Kohen has seized [a doubtful bechor] we do not take it away from him, why [does the Baraisa teach that sheep with which doubtful firstborns of donkeys have been redeemed] enter the pen [to be tithed]? Wouldn't the result be that this [owner, who owns the pen] would relieve himself of his liability [involved in the tithe] with the property of the Kohen, [who has a claim on it]? — Abaye answered him: There is really nothing in that [Baraisa] to support the master [Rabbah], for it deals with a case where [the Jew] has only nine sheep, and this [makes the tenth], so that in any case [the owner is justified]: if he is obliged [to tithe the sheep] he has tithed them rightly, but if he is not obliged [to tithe them because the tenth sheep is not really his], then [he has had no advantage, as he only owned nine sheep, and] nine are not subject to tithe.

Later Abaye said: My objection is really groundless. For in [a case where the liability of an animal to be tithed is in] doubt, tithing does not take place, as we have learned in a Mishnah: If one of the sheep which were being counted [for the purpose of tithing] jumped back into the pen, the whole flock is free [from tithing]. Now, if the view were held that doubtful cases are subject to tithe, [the owner] ought to tithe [the remaining sheep] in any case: if he is obliged [to tithe them] he will have tithed them rightly, but if he is not obliged to tithe them, those already counted will be free because they were properly numbered, for Rava said: Proper numbering frees [the sheep from being tithed].

You must therefore conclude that [the decision of the Mishnah is prompted by another consideration, viz.] that the Merciful One states 'the tenth,' [which means] the certain [tenth] but not the doubtful tenth, the same consideration applies here; the Merciful One states the certain tenth, but not the doubtful tenth.

Rav Acha of Difti said to Ravina: What kind of doubtful cases [does the above Baraisa refer to]? If it refers to doubtful firstlings, the Merciful One says: [The tenth] shall be holy, excluding the animal which is already holy. — It must therefore refer to [the lamb which has been used for] the redemption of the doubtful firstborn of a donkey, and in accordance with [the view of] Rav Nachman, for Rav Nachman said in the name of Rabbah bar Avuha: If a Yisrael has ten doubtful firstborns of donkeys in his house, he sets apart ten lambs as substitutes for them, and he tithes these [lambs], and they belong to him. (6a3 – 7a1)

INSIGHTS TO THE DAF

Demanding money from in-laws beyond former agreements

Our sugya is one of the few in the Talmud Bavli or Yerushalmi that discusses the prohibition to covet (Shemos 20:14) and the disagreement of the Rishonim as to its parameters is based thereon. Before entering the details, we must emphasize that if someone covets another's property and schemes to get it, he transgresses theprohibition of "You should not desire" – lo tisaveh (Devarim 5:18). As long as he refrains from acquiring it, however, he does not transgress the prohibition to covet (Rambam, Hlchos Gezeilah 1:9-10).

Parameters of "You should not covet": According to our sugya, people commonly think that if someone steals property, he commits both the sins of thievery and coveting. They believe, though, that if he leaves money to pay for the value of the property in the house he robbed, he is not regarded as having coveted. Does the Gemara mean to say that the common opinion is true or false? The Rishonim express three major opinions:

i) Tosfos (Sanhedrin 25b, s.v. Me'ikara) indeed hold that coveting only applies to a thief who failed to pay for property that he stole.

ii) Raavad (ibid) maintains that a thief who leaves payment for the property he robbed is also guilty of coveting as the property was taken without permission. One,

however, who persuades and presses the owner of an article until he agrees to sell it, is not regarded as having coveted. iii) Rambam (ibid) takes the strictest view, which forbids pressuring another to sell him something even if the owner eventually agrees wholeheartedly (see Sefer Yereim, chapter 115; Sefer HaChinuch, mitzvah 38, etc.). Shulchan 'Aruch (C.M.92:4) also determines that "anyone who covets…another's things…and sent friends to persuade or beseech him till he bought it, is guilty of coveting".

What is considered annoyance? Nonetheless, even Rambam would agree that one may ask another person if he is willing to sell a certain article. We just have to define the difference between asking and pleading in order to prevent the applicant from transgressing the prohibition of coveting. Betzel HaChochmah (Responsa, III, 43) says that one may ask three times; a fourth time is defined as coveting.

Coveting property for the sake of a mitzvah: A Torah scholar wanted to study a book that belonged to another and beseeched him to sell it till he agreed. It would appear that he sinned and coveted the book but Rabbi Yosef Chaim zt"l (Rav Berochos, 92) inclines to exempt him as he coveted it for the sake of a mitzvah and not for selfish needs. Others, though, forbid such behavior for any purpose (Betzel HaChochmah, ibid; etc.)

How to avoid the prohibition to covet: One who wants to acquire something identical to that in another's possession is not regarded as coveting as he does not covet another's actual property. Nonetheless, those who strive for piety should utterly avoid jealousy (Derech Pikudecha, mitzvah 38). How can we reach such a level of control over our emotions? The question is ancient and even Ibn Ezra (Shemos 30:14) remarked that "many wonder about this mitzvah: how could someone not covet a thing he likes?" and explained that its observation depends on our faith and trust in HaShem: If we know and constantly remember that He ordains everything, how could we covet property which HaShem gave to another?

Agreements between in-laws: It is interesting to cite the Chaftez Chayim (Shemiras HaLashon, II, 84) who warns that this prohibition is commonly transgressed by in-laws who sign obligations (tena'im) involving the wedding and later press the other side to add to the amount. Likewise, a chasan who stubbornly imposes on his father-in-law to give him property or money not previously agreed upon transgresses this prohibition. Remo (E.H. 2:!) stresses that a chasan "should not argue concerning his bride's property and he who does so will not have a successful marriage…Rather, he should accept anything his in-laws give him gladly and then he will succeed." The Chazon Ish (Kovetz Igrot I, 167) wrote in a letter that Remo's promise is more reliable than any effort to procure finances.

DAILY MASHAL

They think it means without paying

Tosfos on our sugya (s.v. Belo damei) explain that a thief transgresses both the prohibition of thievery and that of coveting.

The Brisker Rav zt"l once told a relevant story: A gaon in the previous generation was studying at home. Suddenly he heard a rustle from one of the rooms and, after a clandestine examination, discovered that a thief had come to steal valuable property. The gaon was old and weak and knew he could not prevent the theft. He therefore stood andyelled, "Hefker! Hefker!" ("I relinquish all ownership!"), saving the thief from sin.

The Brisker Rav added that the gaon wanted to save the thief from two sins. After all, he could have just announced that he was giving his property to the thief, saving him from the sin of thievery. He preferred to shout "Hefker!" and as the property was now ownerless, there was no sin of coveting (in the preface to 'Anfei Erez).