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Kesuvos Daf 18

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Daf Notes is currently being dedicated to the neshamot of

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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

The *Mishnah* had stated: And Rabbi Yehoshua agrees regarding the one who says to his friend, “This field belonged to your father, and I purchased it from him,” that he is believed, for the very mouth that forbade is the mouth that permitted. But if there are witnesses that it was his father's, and he says, “I purchased it from him,” he is not believed.

The *Gemora* asks: Why doesn't the *Mishnah* say the following case: Rabbi Yehoshua would admit if one said to his friend, “I borrowed one hundred *zuz* from you, but I paid you,” he is believed!?

The *Gemora* answers: It is because then, the last part of the *Mishnah* would be taught as follows: If there are witnesses, however, that he borrowed the one hundred *zuz*, and the borrower claims that the debt has been repaid, he would not be believed (*for we do not need his words in respect to the borrowing*). The *Mishnah* could not have ruled this way, for we have established that the *halachah* is that if one lends his friend money in the presence of witnesses, he is not obligated to repay the debt in front of witnesses (*and consequently, the borrower would be believed that he repaid the debt privately*). (18a1)

The *Gemora* asks: Why doesn't the *Mishnah* say the following case: Rabbi Yehoshua would admit if one says to his friend, “I owed to your father one hundred *zuz* and I returned to him half,” he is believed (*since it was said at his own initiative*)!?

The *Gemora* answers: According to whose opinion? If it is in accordance with the *Chachamim*, surely they say that he is regarded as one who returns a lost article (*and even if the admission is not made on his own initiative, but made on the claim of the son, he is free from paying the other half, and from taking an oath*); and if it is in accordance with Rabbi Eliezer ben Yaakov, surely he says that he must take an oath! For it has been taught in the following *Baraisa*: Rabbi Eliezer ben Yaakov says: Sometimes it may happen that a man has to take an oath because of his own claim. What is the case? If one says to his friend, an orphan, “I owed to your father a *maneh* and I returned to him half,” he must take an oath (*that he does not owe the other half*). And this is a case where one takes an oath because of one's own claim. But the *Chachamim* say: He is regarded only as one who returns a lost article and he is exempt from taking an oath. (18a1 – 18a2)

The *Gemora* asks: And why doesn't Rabbi Eliezer ben Yaakov hold that one who returns a lost article and he is exempt from taking an oath (*surely this is against the well-established principle that he is exempt*)?

Rav answers: We are referring here of a case when a minor claimed from him (*and his claim was therefore, not entirely his own*).

The *Gemora* asks: But didn't we learn the following: One does not take an oath because of a claim by a deaf-mute, an imbecile, or a minor!?

The *Gemora* answers: What is meant by a minor? An adult. And why is he referred to as a minor? It is because with regard to the affairs of his father, he is regarded as a minor.

The *Gemora* counters: If so, how can you say that this is his own claim, why surely it is a claim made by others?

The *Gemora* answers: It is a claim made by others and also by his own admission.

The *Gemora* asks: But all claims consist of a claim made by others and one's own admission?

The *Gemora*, based on the above questions, reject this explanation and returns to its original understanding of Rav that the claim was made by an actual minor, and nevertheless, one would be obligated to swear because it was regarding a debt of an adult. The *Gemora* explains the dispute: They differ regarding an opinion of Rabbah, for Rabbah said: Why did the Torah say that one who admits part of a claim must take an oath? It is because we assume that no man would be so insolent to deny his obligation in the face of his creditor. He would wish to deny the whole debt, but he does not do so because no one is so insolent. (*This is why he is required to swear on the remainder.*) Indeed, he would like to admit to the entire claim, only he does not do so in order to evade the creditor for the moment, and he thinks, "As soon as I will have money, I will repay the debt." This is why the Torah said: Impose an oath on him, so that he should admit to the entire claim.

Rabbi Eliezer ben Yaakov holds that he is not insolent against him nor against his son, and therefore he is not regarded as one who returns a lost article. The *Chachamim* maintain that against the creditor, he is not insolent, but against his son, he might be insolent, and since he is not insolent (*by admitting to a portion of the*

debt), he is regarded as one who returns a lost article (*and he is believed without an oath*). (18a2 – 18b1)

The *Mishnah* states: If witnesses say, "These are our signatures, but we were coerced," "we were minors," "we were disqualified for testimony," they are believed (*since we need their testimony that these are their signatures to validate the document, they are also believed regarding the continuation of their testimony, that they were coerced, or they were minors, or they were disqualified for testimony, for "the mouth that forbade is the mouth that permitted"*). But if there are witnesses that these are their signatures, or their signatures come forth from another place, they are not believed. (18b1 – 18b2)

Rami bar Chama said: This *Mishnah* (*that if their signatures are confirmed through another document, they are not believed to disqualify their signature on the present document*) was taught only when they said, "We were forced by threats with regard to our finances" (*since a threat regarding money should not have caused them to sign falsely*), but, if they said, "We were forced by threats with regard to our lives," they would be believed.

Rava asked him: Is it so? There is a well-established principle that after one has testified, he cannot again retract his statement by testifying again! And if you will suggest that this applies only to an oral testimony, but not to a written testimony (*in a document*), didn't Rish Lakish say: If witnesses are signed on a document, it is as if their testimony had been examined in court!?

The *Gemora* revises Rami bar Chama's statement: He was referring to the first part of the *Mishnah*, which stated: If witnesses say, "These are our signatures, but we were coerced," "we were minors," "we were disqualified for testimony," they are believed. Whereupon Rami bar Chama said: This was taught only when they said, "We were forced by threats with regard to our lives" (*since they are thereby not incriminating themselves*), but, if

they said, “We were forced by threats with regard to our finances,” they would not be believed.

The *Gemora* asks: What is the reason for this?

The *Gemora* answers: It is because that a person is not believed to establish himself as an evil person. (*Rashi explains that every witness is assumed to be reliable; by issuing a self-incriminating statement, he will be disqualifying himself from further testimony. Just as a person cannot testify regarding his relative, he may not testify about himself because he is related to himself.*) (18b2 – 18b3)

INSIGHTS TO THE DAF

BLACKMAILING FATHER TESTIFIES THAT HE MARRIED OFF HIS MINOR DAUGHTER

The *Gemora* (Kesuvos 18b) states: If two witnesses said that they were coerced to testify falsely on account of a threat to their finances, they are not believed.

The *Gemora* asks: What is the reason for this?

The *Gemora* answers: It is because that a person is not believed to establish himself as an evil person. (*Rashi explains that every witness is assumed to be reliable; by issuing a self-incriminating statement, he will be disqualifying himself from further testimony. Just as a person cannot testify regarding his relative, he may not testify about himself because he is related to himself.*)

The following question was raised to the *poskim* years ago: A man testified in *Beis Din* that he married off his minor daughter, but he refused to state the identity of this man. His intention was to put pressure on his wife for her to accept a divorce without receiving any alimony payments and to have equal visitation rights for the

children. Do we accept his testimony and consider the girl as a married woman?

Rav Eliyahu Pesach Ramnik, Rosh Yeshiva of Ohavei torah in Far Rockaway applied the principle of ‘a person is not believed to establish himself as an evil person’ as the basis for his ruling. He explained: The father, who is testifying that he married off his minor daughter is establishing himself as a wicked person for several different reasons. Firstly, if in truth, he has married her off in order to extort money from his wife, using a mechanism of the Torah in this manner causes a tremendous desecration of Hashem’s name, and if the wife does not concede to his demands, the child will remain an *agunah* her entire life. This will result in an even bigger *chilul Hashem*. Secondly, he is transgressing the prohibition of paining another fellow Jew. The pain and the embarrassment that he is causing his wife and daughter to endure is indescribable. Thirdly, the *Gemora* in Sanhedrin (76a) states that one who marries his daughter to an elderly man transgresses a Biblical prohibition of causing his daughter to sin, since she will not be satisfied in that marriage; certainly in this case, the father will be violating this prohibition, for the daughter does not even know the identity of her true husband. Based on these above reasons, it emerges that by accepting the father’s testimony, he would be rendered a *rasha*, and therefore, his testimony should not be accepted and his daughter would not be regarded as a married woman.

Rav Yitzchak Zilberstein, in his sefer *Chashukei Chemed* questions the above conclusion. He cites several Acharonim who rule that when a man has already been established as a *rasha* regarding other matters, his testimony can still be valid (*provided that he is not disqualified from offering testimony*) even though it also renders him a *rasha*. The Chacham Tzvi (responsa 3) rules that if someone has violated a light transgression in our presence, he would still be believed that he has violated an even stricter prohibition. This is because his testimony

is not rendering him a *rasha*, he already has established himself a *rasha*. It is for this reason that we will be compelled to accept the father's testimony that he married off his daughter, for this man has already been established as a *rasha*. He is desecrating the name of Hashem by using the Torah's mechanisms for evil purposes and by causing pain and grief to his wife and to his daughter.

DAILY MASHAL

Save us from Brazenness

We say in davening every morning: Blessed are You, Hashem, Who bestows kindness that are beneficent to His people Israel. Immediately following that, we say: May it be the will of Hashem.....that you rescue me today and every day from those who are brazen-faced and from brazen-facedness, etc.

What is the connection between the two prayers?

In the sefer, Nitei Eishel, Reb Shmuel Aharon Lieder explains based upon our Gemora which states: Rabbah said: Why did the Torah say that one who admits part of a claim must swear? It is because we assume that no man would be so insolent to deny his obligation in the face of his creditor. And since the Holy One, Blessed be He has showered us with beneficent kindness without any limits whatsoever, so much so that we cannot even thank Him sufficiently. As we say in *nishmas*: Even if our mouths would be as full of song as the sea, and our tongue as full of joyous song as its multitude of waves, and our lips as full of praise as the breadth of the heavens etc., we still could not thank You sufficiently for even one of the thousand, thousands of thousands and myriad of favors that You performed for our ancestors and for us. Accordingly, we are debtors to Hashem, so immediately after we thank Hashem for all the kindness He does for us, we pray that He should save us from brazenness, i.e. we

should not Heaven forbid act insolently towards Hashem after all the kindness that He bestows upon us.

Yes, we did it, But....

The Mishnah had stated: If witnesses say, "These are our signatures, but we were coerced," "we were minors," they are believed.

Reb Refoel Zilber heard a certain darshan explain this Mishnah, as follows: In the holy books it is written that a person, while he is sleeping, ascends to Heaven, and signs his signature on all the sins that he committed on that day.

This is what the Mishnah means: **If witnesses say, "These are our signatures,"** while it is true that these are our signatures, and it provides proof that we have testified regarding our sins, but, nevertheless, **"we were coerced,"** for we were raised in a certain manner, or for any other reasons that caused us to sin, or **"we were minors,"** for we have not yet acquired the knowledge as to how to protect ourselves from sinning, **they are believed,** provided that they have repented from their sins.