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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

Rav Nachman bar Yitzchak said that Shmuel said: They did not teach this<sup>1</sup> except in the case of a claim of a creditor and admission [of a portion] on the part of the debtor; but in the case of a claim of a creditor and the testimony of one witness, even if he claimed only a perutah, he is liable<sup>2</sup>. What is the reason? Because it is written: One witness shall not rise up against a man for any iniquity, or for any sin; for any iniquity, or for any sin, he does not rise up, but he rises up for an oath; and it was taught: Wherever two [witnesses] make him liable for money, one witness makes him liable for an oath.

And Rav Nachman said that Shmuel said: If he claimed from him wheat and barley, and the other admitted one of them, he is liable. Rabbi Yitzchak said to him: Well said! And so said Rabbi Yochanan.

The Gemara analyzes: Do we infer that Rish Lakish disagrees with him? — Some say, he [Rish Lakish] was waiting [for R' Yochanan] and was silent; and some say that he was drinking and was silent.

Shall we say this supports him: If he claimed from him wheat, and the other admitted barley, he is exempt; but

Rabban Gamliel makes him liable<sup>3</sup>. — The reason [he is exempt] is because he claimed from him wheat, and he admitted barley; but [if he claimed from him] wheat and barley, and he admitted one of them, he is liable! — No! The same rule applies: even [if he claimed] wheat and barley, [and the other admitted one,] he is also exempt; and why they disagree in the case of wheat is to show you the power of Rabban Gamliel<sup>4</sup>.

Come and hear: If he claimed from him vessels and lands, and he admitted the vessels, and denied the lands; or [admitted] the lands, and denied the vessels, he is exempt; if he admitted a portion of the lands, he is exempt; a portion of the vessels, he is liable. Now, the reason [he is exempt] in the case of vessels and lands is because for land no oath is imposed; but for vessels and vessels similar to vessels and lands he is liable<sup>5</sup>! [No!] The same rule applies: even in the case of vessels and vessels he is also exempt; and the reason it states vessels and lands is because it wishes to teach us that if he admits a portion of the vessels, he is liable also for the lands.

<sup>1</sup> That the claim must be at least two ma'ahs to make the debtor liable for an oath, if he admits a portion and denies the rest.

<sup>2</sup> If the debtor denies the whole claim, and one witness testifies that he owes the money, he must take an oath, even if the whole claim was only for a perutah; for if there had been two witnesses, the debtor would have had to pay; and wherever two witnesses impose payment, one witness imposes an oath.

<sup>3</sup> For, since it is a loan, he may have spent the money, and, in order to gain time, he denies it; but he is not really dishonest; and though witnesses testify that he owes he money (and he had denied it, but not

on oath), we still assume that he merely wishes to gain time, and will pay later, and he is therefore still qualified to be accepted as a witness in a case.

<sup>4</sup> That even when the admission is not of the same kind as the claim he holds that he is liable.

<sup>5</sup> If he claimed two different vessels, and the other admitted one (which is similar to claiming vessels and lands, the other admitting one of them), he is liable. Hence, it supports Rav Nachman.



What does he [intend to] teach us [thereby]? The law of subjection<sup>6</sup>! We have already learned it! They (movable property) can subject real property, to take an oath for them. — Here is the primary place [for the enunciation of this law]; there he mentions it merely incidentally.

The Gemara asks: And Rabbi Chiya bar Abba said that Rabbi Yochanan said: If he claimed from him wheat and barley, and the other admitted to him one of them, he is exempt. — But didn't Rabbi Yitzchak say: Well said! and so said Rabbi Yochanan.

The Gemara answers: They are Amoriam who disagree as to Rabbi Yochanan's view.

Come and hear from the Mishnah: If he claimed from him wheat, and the other admitted to him barley, he is exempt; and Rabban Gamliel makes him liable. — The reason [he is exempt] is because he claimed from him wheat, and he admitted barley; but [if he claimed from him] wheat and barley, and he admitted one of them, he is liable<sup>7</sup>!

The Gemara defends him: [No!] The same rule applies: even [if he claimed] wheat and barley, [and the other admitted one,] he is also exempt; and the reason it states it thus is to show you the power of Rabban Gamliel's opinion.

Come and hear: If he claimed from him vessels and lands, and he admitted the vessels, and denied the lands; or [admitted] the lands, and denied the vessels, he is exempt; if he admitted a portion of the lands, he is exempt; a portion of the vessels, he is liable. — The reason [he is exempt] in the case of vessels and lands is because for land no oath is

imposed; but for vessels, and vessels similar to vessels, and lands he is liable!

The Gemara replies: [No!] The same rule applies: even in the case of vessels and vessels he is also exempt; but this he teaches us that if he admits a portion of the vessels, he is liable also for the lands.

What does he [intend to] teach us [thereby]? The law of subjection! We have already learned it! They (movable property) can subject real property, to take an oath for them. — Here is the primary place [for the enunciation of this law]; there he mentions it merely incidentally.

Rabbi Abba bar Mammal raised an objection against Rabbi Chiya bar Abba: If he claimed from him an ox, and he admitted to him a lamb; or [he claimed] a lamb, and he admitted an ox, he is exempt; if he claimed from him an ox and a lamb, and he admitted one of them, he is liable! — He said to him: This [Baraisa] is the view of Rabban Gamliel. If it is Rabban Gamliel's view, even in the first clause [he should be liable]! — But it is the view of Admon<sup>8</sup>; and I am not putting you off [with an incorrect answer], for it is an accepted teaching in the mouth of Rabbi Yochanan: it is the view of Admon.

Rav Anan said that Shmuel said: If he claimed from him wheat [and was about to claim barley also]; and the other quickly came forward, and admitted to him barley<sup>9</sup>, then, if he appears to act guilefully<sup>10</sup>, he is liable<sup>11</sup>, but if he merely intends [to reply to the claim], he is exempt<sup>12</sup>.

And Rav Anan said that Shmuel said: If he claimed from him two needles, and he admitted one of them, he is liable; for

<sup>6</sup> That the vessels may 'subject' the lands, i.e., that because he must take an oath for the vessels in any case, the lands are joined and included in the oath.

<sup>7</sup> This is a challenge to R' Chiya bar Abba's opinion.

<sup>8</sup> Who though he requires the admission to be of the same kind as the claim, considers the claim of two objects of different species and the admission of one of them to be an admission in like kind to the claim.

<sup>9</sup> Before the claimant had mentioned barley.

<sup>10</sup> Admitting barley quickly before the claimant mentions it, so that it appears that the claimant demanded wheat, and he admitted barley, and therefore he would be exempt from an oath.

<sup>11</sup> For the claimant in fact demands both, and he admits one.

<sup>12</sup> The claimant having, as yet, only demanded wheat; and he replies, denying wheat, but admitting barley.



therefore were 'vessels' expressly mentioned — whatever their value<sup>13</sup>.<sup>17</sup>

Rav Pappa said: If he claimed from him vessels and a perutah, and he admitted the vessels, and denied the perutah, he is exempt; if he admitted the perutah, and denied the vessels, he is liable.

The Gemara explains: In one law he agrees with Rav, and in the other with Shmuel. In one law he agrees with Rav, who holds that the denial in the claim must be two ma'ahs<sup>14</sup>; and in the other he agrees with Shmuel, who holds that if he claimed from him wheat and barley and he admitted one of them, he is liable<sup>15</sup>. (40a2 – 40b3)

The Mishnah had stated: "A maneh of mine you have in your possession." — "I have nothing of yours in my possession," he is exempt.

Rav Nachman said: But they impose upon him a *hesseis* oath<sup>16</sup>. What is the reason? Because it is a presumption that a man will not claim [from another] unless he has a claim upon him.

The Gemara asks: On the contrary, it is a presumption that a man will not be so brazen [to deny] before his creditor<sup>17</sup>!

The Gemara answers: He is merely trying to slip away from him [for the moment], thinking, "When I will have money, I will pay him<sup>18</sup>."

<sup>13</sup> The verse (Shmos 22:6) states: If a man give to his fellow silver or vessels to keep; and we deduce that 'silver' implies a thing of value, and 'vessels' implies two. But the Torah could have said 'silvers' and we could have deduced both laws (that the claim must be for two things of value). Hence, since the Torah specifically mentions 'vessels' separately, we infer that vessels need not be of value.

<sup>14</sup> Therefore for the denial of a perutah, he is exempt.

<sup>15</sup> Therefore if he claimed a perutah and vessels, and he admitted the perutah but denied the vessels, he is liable (and the vessels need not be of the value of two ma'ahs, as has been explained).

Know [that this is so], for Rav Idi bar Avin said that Rav Chisda said: He who denies a loan, is fit for testimony; a deposit, is unfit for testimony<sup>19</sup>.

Rav Chaviva taught [Rav Nachman's law] as applicable to the later clause: "A maneh of mine you have in your possession;" he said to him, "yes." On the next day he said to him: "Give them to me;" [and the other replied,] "I have already given them to you;" he is exempt. — And Rav Nachman said: But they impose upon him a *hesseis* oath.

The Gemara notes: He who applies [Rav Nachman's law] to the first clause will certainly apply it to the second clause; but he who applies it to the second clause [may say] here it is applicable because there is money at stake; but there where there is no money at stake, it is not applicable. (40b3 – 41a1)

#### INSIGHT TO THE DAF

When a person asks someone to watch something for him and it is stolen, any item about which the watchman says "ki hu zeh" triggers a requirement for the watchman to swear to the owner. Chazal learn from the words "ki hu zeh": Namely, that an oath is not imposed on a person unless he admits part of the obligation.

The Gemara derives from these words the halachic requirement of "modeh b'miktzas" – admitting part of a financial obligation. This applies classically to a loan situation. Reuven claims that he lent Shimon \$200 and he

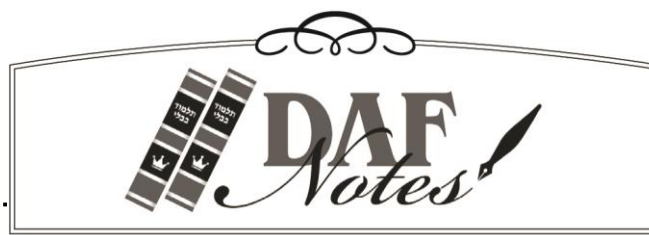
<sup>16</sup> Though, being a 'kofer hakal' – one who denies everything, he is legally exempt from an

oath, the Beis Din, as a matter of equity, impose an oath.

<sup>17</sup> And since he does deny the whole claim, he must be speaking the truth; then why an oath?

<sup>18</sup> The denial is therefore not effrontery, but an excuse to gain time; hence, he may not be speaking the truth, and he must take an oath.

<sup>19</sup> For a deposit is not intended to be spent; and where witnesses testified that at the time of denial it was in his possession, he must be considered dishonest



has not yet been repaid. If Shimon denies the loan ever took place, or he claims he already fully paid back the loan ("kofer hakol"), he does not need to pay and he does not even need to swear on a Biblical level (unless Reuven has some type of proof to back up his claim). However, where there is a partial admission of debt, Shimon must take an oath to support his claim of partial payment. This is derived exegetically from this pasuk of "...Asher yomar 'ki hu zeh...'".

The sefer Toldos Yitzchak explains how this expression teaches the halachha of "modeh b'miktzas". In order to appreciate the Toldos Yitzchak, we need to understand a little bit about Hebrew grammar. The word "hu" (he) is what is known as lashon nistar. It is "third person" (like he, she, them and that) and refers to someone out there, as opposed to someone in front of me. On the other hand, the word "zeh" (this) is what is known as lashon nochach. It is "second person" (like you and this) and refers to someone or something in front of me. The complete denial of debt is lashon nistar ("hu") because it is third person or distant from me. The admission of debt is lashon nochach ("zeh") because it is second person or right in front of me. The combination of "zeh" and "hu" indicates something that is both right here and not right here – a partial admission ("modeh b'miktzas").

#### DAILY MASHAL

Rav Meir Shapiro, based upon the above, interpreted a passuk in Megilas Esther. The Megila writes that when Esther invited Haman and Achashverosh to her meal and told the king about the plot to kill her people, Achashverosh asked: Mi hu zeh, v'eizeh hu? (Who is this and which one is he?) (Esther 7:5) Esther responds, "It is...this wicked Haman..." (Esther 7:6)

Rav Meir Shapiro explains beautifully: Achashverosh hated the Jews just as much as Haman, so when he asks Esther "Mi hu ZEH, v'eizeh HU?" his question is "Who are you referring to? Are you referring to ZEH – the Haman that you KNOW

wants to kill the Jews, as is obvious in front of you – or are you referring to the HU – the person who is also trying to kill the Jews but in a way that is not so obvious – that is hidden (Achashverosh himself)? Achashverosh is trying to understand – does she really know the 'score,' that I hate the Jews as much as Haman does?

Esther knew the score. Esther knew that it was the ZEH (Haman) and she knew that it was also the HU (Achashverosh). She pointed her finger and said "Haman harah haZEH" (THIS wicked Haman). The Gemara says she was really pointing at Achashverosh but amalach (an angel) came and pushed her finger away in the direction of Haman, so that she would not reveal to the king what she really understood about him.