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Different Money

There was a certain person who said to his fellow, “Give me the hundred *zuz* that I claim from you, and here is the document.” The borrower said to him, “I have already paid you.” The other said to him, “Those monies were for a different claim.”

Rav Nachman said: The document is impaired (*because he admitted that he had accepted payment, and he may not collect with it*). Rav Pappa said: The document is not impaired (*because he is believed that the payment was for something else*).

The *Gemara* asks: According to Rav Pappa, in what way does this differ from the case of a man who said to his fellow, “Give me the hundred *zuz* that I claim from you, and here is the document,” and the other responded, “Did you not give it to me to buy oxen (*for slaughter, and the profits from the sale would be divided between the two of them*), and did you not come and sit by the butcher’s stall and receive your money?” And he replied to him, “Those monies were for a different obligation,” and Rav Pappa ruled: The document is impaired (*and the lender is not believed that the money was for something else*)!?

The *Gemara* answers: There, since he said, “You gave the money to me for oxen, and you received repayment from the purchase of the oxen (*and the other does not deny this aspect*), the document is impaired (*for we assume that the money being returned was for the money originally given for*

the purchase of the oxen), but here, perhaps they were for a different obligation!

The *Gemara* asks: What then is the ruling with reference to this? Rav Pappi said: The document is not impaired. Rav Sheishes the son of Rav Idi said: The document is impaired. And the *halachah* is: The document is impaired. However, this is so only if he paid him in front of witnesses, and did not mention the document (*but rather, he left it by the lender*); but if he paid him privately, since the lender could have said, “The thing never happened” (*he would be believed to say that he never accepted any money*); he can also say, “The monies were for a different obligation,” as in the case of Avimi the son of Rabbi Avahu (*which is recorded in Kesuvos 85a*). (42a1 – 42a2)

“I Believe You”

There was a certain person who said to his fellow, “You are believed by me whenever you say to me that I have not paid you.” The borrower went and paid him before witnesses (*and later, the lender claimed that he was never paid*). Abaye and Rava both said: Behold, the borrower believes him (*and therefore, he must pay*).

Rav Pappa asked: Granted, he believes him more than himself, but does he believe him more than witnesses!?

There was a certain person who said to his fellow, “You are believed by me like two witnesses whenever you say that I have not paid you.” The borrower went and paid him before three witnesses. Rav Pappa said: Like two he believed him,



but like three he did not believe him (*and therefore we believe the three witnesses*).

Rav Huna the son of Rav Yehoshua said to Rav Pappa: The Rabbis say that we go according to the majority opinions only in the case of property assessments, where the more there are, the more expert is their opinion; but in the case of testimony, a hundred witnesses are like two, and two are like a hundred (*so there would be no difference between two and three*)!

An alternate version: There was a certain person who said to his fellow, "You are believed by me like two witnesses whenever you say that I have not paid you." The borrower went and paid him before three witnesses. Rav Pappa said: Like two he believed him, but like three he did not believe him (*and therefore we believe the three witnesses*).

Rav Huna the son of Rav Yehoshua asked Rav Pappa: But two witnesses are like a hundred and a hundred are like two!?

Rav Huna added: But if he said to him, "You are believed by me like three," and he went and paid him before four witnesses, the lender cannot dispute them, for since he specified the number of opinions, he definitely means that number of opinions. (42a2 – 42a3)

Swearing to a Minor

The *Mishnah* had stated: We do not swear in response to the claim of a deaf-mute, a deranged person, or a minor. And a minor is not adjured

The *Gemara* cites the reason for this: It is written: *If a man gives to his fellow silver or vessels to keep*. And the giving of a minor is regarded as nothing (*so an oath cannot be imposed*).

The *Mishnah* continues: But one does swear to a minor and to the Temple treasury.

The *Gemara* asks: But the *Mishnah* said in the first clause: We do not swear in response to the claim of a deaf-mute, a deranged person, or a minor!?

Rav said: The *Mishnah's* latter ruling applies in a case where he comes on behalf of his father's claim (*so the property was given by an adult*), and it is in accordance with the opinion of Rabbi Eliezer ben Yaakov, for it was taught in a *braisa*: 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.

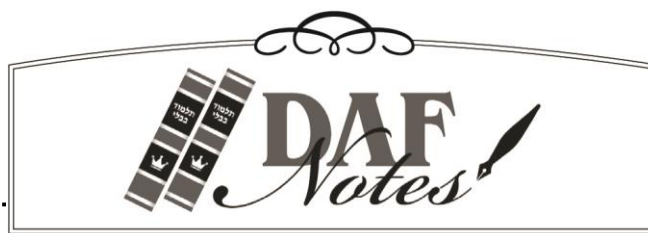
The *Gemara* asks: And why doesn't Rabbi Eliezer ben Yaakov hold that one who returns a lost article and he is exempt from taking an oath (*surely this is against the well-established principle that he is exempt*)?

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

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



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

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

The *Gemara*, 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 *Gemara* 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*).

Shmuel answers (*the original question*): When the *Mishnah* had stated that one swears to a minor, it is referring to a case where one is collecting payment from the estate of a minor (*and he must swear that he did not receive payment from the minor's father*); and when the *Mishnah* had stated that he swears to the Temple treasury, it means that he

must swear if he wishes to collect payment from the estate of the Temple.

The *Gemara* asks: But why is this teaching necessary? It has been taught in a different *Mishnah* that one cannot collect from the estate of orphans except with an oath.

The *Gemara* answers: The *Tanna* is teaching us that the *halachah* follows Abaye the Elder for Abaye the Elder stated: The orphans discussed (*that one who collects from them can only collect if he takes a vow*) are adult orphans, and this is certainly true regarding orphans who are minors. This applies to the laws of an oath, or for the law of collect payment from the most inferior grade of land.

The *Gemara* challenges Shmuel: Why do we need this *Mishnah* to teach us that one must swear when he is collecting payment from the estate of the Temple? This was already taught in a *Mishnah* elsewhere, for we learned: From encumbered property, they cannot collect except with an oath!? And what is the difference whether they are encumbered to a regular person or assigned to the Most High?

The *Gemara* answers: It is necessary to teach here, for I might have thought that an oath is necessary in the case of property encumbered to a regular person, for a man may make a conspiracy to defraud a regular person, but in the case of the Temple an oath would not be required, for a man will not make a conspiracy to defraud the Temple; therefore, he teaches us that an oath is necessary.

The *Gemara* asks: But Rav Huna said: If a person on his deathbed says that he is dedicating all of his possessions to *hekdes*, but that he owes a *maneh* to someone, he is believed. This is because the presumption is that people do not conspire to take away money from *hekdes*.

The *Gemara* answers: I will tell you that Rav Huna's ruling is only in the case of a dying man, for a man will not sin

without benefit to himself; but in the case of a healthy man we certainly are concerned for conspiracy (*even with regard to the Temple*). (42a3 – 42b3)

Mishnah

With respect to the following no oath is imposed: slaves, documents, land and sacred property. Twofold, fourfold, or fivefold restitution does not apply to them as well. An unpaid custodian does not take an oath, and a paid custodian does not pay (*if these are lost or stolen*). Rabbi Shimon says: For sacred things for which he is responsible (*if the item becomes lost or disqualified, or if the animal died*), an oath is imposed; for those for which he is not responsible, no oath is imposed.

Rabbi Meir says: There are things that are attached to the ground but they are not like land (*with regards to an oath*); but the Sages do not agree with him. How so? If one claims that he owes ten fully ripened vines, and he says that he only owes five, he must swear, since the ripe grapes, which are ready to harvest, are considered detached, while the Sages say that he does not swear, since they are still considered attached.

One swears only about things that have a measure, weight, or number. How so? If one said, "I delivered a houseful (*of produce*) to you," or, "I delivered a purseful to you," and the other says, "I do not know how much it was, but whatever you left here, take it (*for that is what you gave me*)," he is exempt. If one said that the produce filled the house until the ceiling beam, and the other said that it was merely up to the window, he is liable to swear (*for both the claim and the admission are a certain measure of produce*). (42b3 – 42b4)

Scriptural Sources

The *Gemara* cites the Scriptural source which teaches us that one does not pay the twofold penalty for those items

mentioned in the *Mishnah*: The *Baraisa* analyzes the verse (*found in the topic of an unpaid guardian*) describing what items are subject to *kefel*. [*The Gemara will later discuss which case of kefel this is – that of a thief, or of a false claim of theft by the guardian*]. The verse states that *kefel* is applicable in the case of:

Al kol dvar pesha – on any criminal item:

al shor – on an ox

al chamor – on a donkey

al seh – on a sheep

al salmah – on clothing

al kol aveidah – on any lost item

The *braisa* breaks this verse into three main sections: a *klal* (*general introductory clause*), a *prat* (*specific instance*), and a *klal* (*general summarizing clause*). In this verse, the sections are:

Introductory Klal (general)	Prat (instance)	Summarizing Klal (general)
<i>Al kol dvar pesha</i> (any criminal item)	<i>Al shor (ox)</i> <i>al chamor (donkey)</i> <i>al seh (sheep)</i> <i>al salmah (clothing)</i>	<i>Al kol aveidah</i> (any lost item)

The construct of a *klal*, *prat*, and *klal* (*one of the thirteen constructs listed by Rabbi Yishmael*) tells us that we can abstract from the instance to anything that is *me'ein* the *prat* – similar to the instance in its essential characteristics. In this case, the *braisa* states the essential characteristics of the specific instance: They are movable and intrinsically valuable. The first characteristic excludes land (*and, by extension, slaves, which are equated with land in halachah*), and the second excludes contracts, which enable their holder to collect money, but are not intrinsically worth anything.



Finally, the *Baraisa* states that the end of the verse – *yeshalem shnayim l'rayayhu* – he should pay double to his peer, excludes *hekdesch*, which is not his peer.

The *Mishnah* had stated that a thief will not pay four or five times the amount if he steals and slaughters a consecrated animal.

The *Gemara* notes the reason for this: A thief can only pay four or five, and not three or four (*and since he cannot pay double, like we just learned, he can't pay three or four*). (42b4 – 42b5)

The *Mishnah* had stated that an unpaid custodian does not swear if he was watching any of these things.

The *Gemara* cites the source for this: It is written a *klal* (general introductory clause), a *prat* (specific instance), and a *klal* (general summarizing clause). In this verse, the sections are:

Introductory <i>Klal</i> (general)	<i>Prat</i> (instance)	Summarizing <i>Klal</i> (general)
<i>Ki yiten ish el re'ehu</i> (if a man gives his fellow)	<i>Kesef o' keilim</i> (money or utensils)	<i>lishmor</i> (to watch)

The construct of a *klal*, *prat*, and *klal* (one of the thirteen constructs listed by Rabbi Yishmael) tells us that we can abstract from the instance to anything that is *me'ein* the *prat* – similar to the instance in its essential characteristics. In this case, the *Baraisa* states the essential characteristics of the specific instance: They are movable and intrinsically valuable. The first characteristic excludes land (*and, by extension, slaves, which are equated with land in halachah*), and the second excludes contracts, which enable their holder to collect money, but are not intrinsically worth anything.

Finally, the *braisa* states that the end of the verse – *rayayhu* –to his peer, excludes *hekdesch*, which is not his peer.

The *Gemara* expounds similarly to teach us the *halachah* mentioned in the *Mishnah* regarding a paid watchman. (42b5 – 43a1)

DAILY MASHAL

Save us from Brazenness

We conclude the daily morning blessings with the following: Blessed are You, Hashem, who bestows beneficent kindness upon His people Israel (*Hagomel chasadim tovim l'amo Yisroel*). This is immediately followed by the *tefillah*, May it be Your will, Hashem, my God, and the God of my forefathers, that You rescue me today and every day from brazen men and from brazenness etc. What is the connection between the two *tefilos*?

Reb Shmuel Leider in *Nitei Eishel* explains as follows: Our *Gemara* 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 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.