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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

***Collateral worth less than the Loan***

The *Gemora* suggests that Shmuel’s *halachah* (that if a person lent his friend one thousand zuz and took as collateral the handle of a sickle, if the lender loses the collateral, he loses the right to collect the loan; he cannot pay the borrower for the worth of the sickle and then collect his debt, for the collateral is in place of the loan) is in fact a *Tannaic* dispute, for it was taught in a *braisa*: If a man lends his fellow money on a collateral, and the collateral was lost, he (the lender) swears (that it was lost), and takes his money; these are the words of Rabbi Eliezer. Rabbi Akiva says: He may say to him, “Did you not lend me because of the collateral? Since the collateral is lost, your money is lost.” However, if one lends a thousand zuz with a document, and he deposited a collateral with him, all agree that if the collateral is lost, the money is lost (for he has proof on the debt from the document; the collateral, obviously, was given as payment for the loan). Now, what were the circumstances? If the collateral was equal to the amount of the loan, what is the reason of Rabbi Eliezer? [Obviously, the collateral was given as payment if he is not going to pay the loan!?] You must therefore say that we are referring to a case where it was not equal to the amount of the loan, and they disagree regarding Shmuel’s ruling!

The *Gemora* rejects this and says that it is clear that both Rabbi Akiva and Rabbi Eliezer do not hold of Shmuel’s

law. Instead, the *Gemora* entertains that they argue concerning a case where the collateral is worth the loan. Their argument is regarding the law of Rabbi Yitzchak. Rabbi Yitzchak says: How do we know that a lender acquires collateral? The verse states: *And for you it will be charity (to give back the collateral during the time of the loan when the borrower needs to use it)*. If he wouldn’t acquire it, why would it be considered charity? Rather, it must be that he acquires the collateral (to a certain extent). [Rabbi Akiva holds like Rabbi Yitzchak that he acquires the collateral, and therefore, if he loses it, he is liable, and consequently he loses his money. Rabbi Eliezer, however, disagrees and maintains that although it is a full-fledged collateral that he may collect with it if the borrower defaults on the loan, he has not acquired it, and he is merely a unpaid guardian on it; he therefore swears that he was not negligent with it and he receives his money for the debt.]

The *Gemora* asks: Do you think this is really correct? Rabbi Yitzchak said his law only regarding collateral taken after the loan was already issued. [Rashi explains that the verse is referring to collateral forcibly taken by a messenger of Beis Din, which is clearly meant for purposes of collection.] However, he did not say his law regarding collateral taken at the time of a loan (which Rabbi Eliezer and Rabbi Akiva are clearly arguing about).

The *Gemora* therefore says: Everyone agrees that Rabbi Yitzchak is correct regarding collateral that is taken after



the loan. The argument between Rabbi Eliezer and Rabbi Akiva concerns collateral taken at the time of the loan. Their argument hinges on the status of a guardian of a lost object. It was taught: The guardian of a lost object, according to Rabbah, is a *shomer chinam* (unpaid guardian). Rav Yosef says: He is a *shomer sachar* (a paid guardian). Let us say that they argue regarding the law of Rav Yosef! [See Tosfos who argues with Rashi regarding the reason why the Gemora does not suggest that they argue regarding Rabbah's position.]

The Gemora rejects this, and says that both Rabbi Akiva and Rabbi Eliezer agree that Rav Yosef is correct. Their argument is regarding a case where the lender uses the collateral during the time of the loan (and subtracts the value of the usage from the loan). Rabbi Akiva holds that it is still a *mitzvah* that he lent him the money, and he therefore still has a status of a *shomer sachar*. [This is because Rav Yosef's reason that he is a *shomer sachar* is that the guardian benefits from the collateral, as when he is actively taking care of the collateral he is not obligated to give charity.] Rabbi Eliezer holds that being that his intent is to use the item for his own purposes as well, he is considered to have selfish interests in mind. He is therefore a *shomer chinam*.

The Gemora suggests that Shmuel's *halachah* is in fact a different *Tannaic* dispute, for it was taught in a *braisa*: If one lends his fellow money on a collateral, and the *Shemittah* year arrives (where usually all debts are cancelled, for the Torah says that the lender may not go and "collect" his debt; a loan with a collateral, however, is not cancelled, for it is already by the lender and he does not have to "collect" it), even if it is only worth half of the loan, it does not cancel the debt; these are the words of Rabban Shimon ben Gamliel. Rabbi Yehudah the Nasi says: If his collateral was equal in value to the debt, it does not cancel it; but if not, it cancels it. Now, what does

the *Tanna Kamma* mean when he said that 'it does not cancel it'? Shall we say that it cancels only up to its value? But this would imply that Rabbi Yehudah the Nasi holds that it cancels also that portion (of the debt) up to its value! Then for what purpose is he holding the collateral (if not to prevent the cancellation of the debt)? Rather it must mean (that the portion of the debt equal to the collateral is not cancelled according to everyone, and the argument is regarding) all of it, and they disagree about Shmuel's ruling! [The *Tanna Kamma* holds like Shmuel that even if the collateral is not equal to the amount of the debt – it is regarded as collateral for the entire loan, and *Shemittah* cannot cancel the entire debt; Rabbi Yehudah HaNasi does not hold like Shmuel, and maintains that a collateral which is not equal to the entire loan is only regarded as collateral for that portion of the loan, but not for the part of the loan which exceeds the value of the collateral, and therefore *Shemittah* will cancel that portion of the loan.]

The Gemora rejects this argument: Really, the *Tanna Kamma*, when he said that 'it does not cancel it,' he means that it does not cancel only up to its value (and Rabbi Yehudah Hanasi disagrees regarding this as well), and in this they disagree: the *Tanna Kamma* holds that it does not cancel up to its value, and Rabbi Yehudah the Nasi holds that it cancels also up to its value; and as to your question: Why is he holding the collateral (if the debt is cancelled anyway)? That is merely as a reminder (that he is liable to him, and that he should not deny it; it is not, however, regarded as if it is collected already). (43b – 44b)

WE SHALL RETURN TO YOU,  
SHEVUAS HADAYANIN



### **Mishna**

All who swear according to Torah law, swear and do not have to pay. The following swear and collect money (*based upon a Rabbinic decree*): a hired worker, a victim of theft, one who was injured, someone whose opponent is suspected of lying when taking an oath, a storekeeper regarding his records

What is the case of the hired worker? If a hired worker said: "Give me my wages which are in your possession," and the employer says, "I have given them to you already," and the other says, "I have not yet received them," he takes an oath and collects. Rabbi Yehudah says: Only if there is partial admission. What is the case? If he said to him, "Give me my wages of fifty *dinars* which are in your possession," and the employer says, "You have already received a golden *dinar* (*twenty-five silver dinars*).

What is the case of the victim of theft? If witnesses testified that he went into somebody's house to seize a collateral without authority. The debtor says: "You took my utensils," and the creditor says: "I did not take anything," he (*the debtor*) takes an oath and collects. Rabbi Yehudah says: Only if there is partial admission. What is the case? If he said to him: "You took two utensils," and he says, "I only took one."

What is the case of the one who was injured? If they testified that a person entered someone else's domain whole and came out injured, and he said to him, "You injured me," and he says, "I did not injure you," he takes an oath and collects. Rabbi Yehudah says: Only if there is partial admission. What is the case? If he said to him, "You inflicted two injuries upon me," and the other says: "I inflicted on you only one injury."

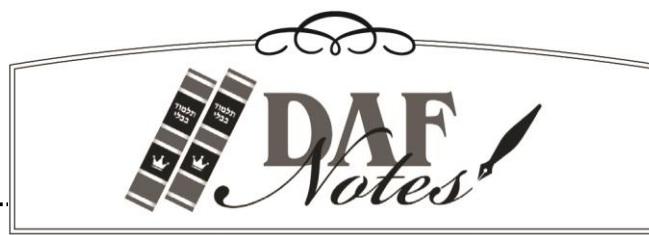
What is the case of someone whose opponent is suspected of lying when taking an oath? If the defendant previously swore falsely either an oath regarding testimony, or an oath regarding a deposit, or even an oath in vain, he is disqualified from swearing now. If one of them was a dice-player, or lent money with interest, or was a pigeon-flier, or a dealer in *Shemittah* produce, his opponent takes the oath and collects. If both are suspect, the oath returns to its place; these are the words of Rabbi Yosi. Rabbi Meir says: They divide it. (44b – 45a)

### **INSIGHTS TO THE DAF**

#### ***Osek b'Mitzvah***

In the *sefer*, *Nasiach B'chukecha* (pg. 61), Reb Avi Lebovitz quotes the Mishnah Berurah (38:24), who quotes the Magen Avraham that when one is doing a *mitzvah* and also profiting such as *tefillin* merchants, they are considered *osek b'mitzvah* to be exempt from another *mitzvah* only when their primary intent is the *mitzvah*. The Magen Avraham infers from Rashi in Sukkah (26a) that if their primary intent is for profit, they do not have the status of *osek b'mitzvah* to exempt them from another *mitzvah*.

The Biur Halacha asks on this from our *Gemora*. The *Gemora* concludes that although a lender who takes a *mashkon* (*security*) is technically a *shomer sachar* on the *mashkon* based on the same *halachah* of a *shomer aveidah* (*a watcher of a lost article*) - namely, he is involved in a *mitzvah* and therefore exempt from giving *tzedakah*. But, when he takes the *mashkon* for his personal use (*and will deduct some amount from the loan to avoid the ribbis problem, as Rashi writes*), we have a dispute between Rabbi Eliezer and Rabbi Akiva. Rabbi Eliezer holds that since his intent is really for personal benefit, he is not considered to be doing a *mitzvah* and



therefore he doesn't become a *shomer sachar* on the *mashkon*. We rule according to Rabbi Akiva that he is considered to be doing a *mitzvah* and therefore does become a *shomer sachar* on the *mashkon*.

The Biur Halachah points out that this seems to imply that even if one's primary intent is for profit, he is considered to be doing a *mitzvah* and therefore becomes a *shomer sachar*, which is against the Magen Avraham!?

The Biur Halachah suggests that the case must be where his primary intent is not for personal benefit; rather to do a *mitzvah* of lending and that is why Rabbi Akiva still considers him to be *osek b'mitzvah*.

The approach of the Biur Halachah doesn't fit well with Rashi. Rashi explains that when the lender takes a *mashkon* to use for personal benefit, Rabbi Akiva holds that he is doing a *mitzvah* and he is therefore a *shomer sachar*. Rashi doesn't say that his primary intent is to do a *mitzvah*, rather Rashi says that even though he is intending for his benefit, as the *Gemora* says, nonetheless, it is an act of a *mitzvah* to consider him an *osek b'mitzvah*. Rashi implies that Rabbi Akiva doesn't disagree with Rabbi Eliezer about the premise of his primary intent being for personal benefit, just that he holds that even so, since he is doing a *mitzvah*, he is considered *osek b'mitzvah* to be exempt from *tzedakah* and he is regarded as a *shomer sachar*. This seems to be pretty clearly against the approach of the Biur Halachah.

#### DAILY MASHAL

Rabbi Yitzchak says: How do we know that a lender acquires collateral? The verse states: *And for you it will be charity (to give back the collateral during the time of the loan when the borrower needs to use it)*. If he wouldn't acquire it, why would it be considered charity?

Rather, it must be that he acquires the collateral (to a certain extent).

Why are there so many kollelim nowadays?" wealthy Mr. Tauber asked Harav Aaron Leib Steinman zt"l. "There were never that many back in the good old days." "I'd like to ask you a question," responded the Torah giant. "Why are there so many wealthy Jews nowadays? It never used to be like that. The answer is that there are so many wealthy Jews because there are so many kollelim that need to be supported. If there were less kollelim, there'd be less wealthy Jews."