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**Mishnah***he paid the dinar, for otherwise, the storekeeper would not have given him the produce on credit.]*

What is meant by the storekeeper regarding his records? It is not that he said to him, "It is written in my records that you owe me two hundred zuz" (*for certainly he would not be liable for that*), but that the householder told the storekeeper, "Give my son two *se'ahs* of wheat (*and I will pay you for it*)" or he said, "Give my worker *perutos* (*small coins*) to the value of a *sela*." The storekeeper responded by saying, "I gave it (*but did not receive my money*)," and they say, "We did not receive from him anything." The *halachah* is: The storekeeper swears (*that he gave them*) and collects (*from the householder*), and they (*the workers*) take an oath (*that they did not receive anything*) and collect (*their wages from the householder*). Ben Nanas said: How can we let one of these parties swear falsely? [*Should we not be concerned about the false oath of one of these people!?*] But rather, the storekeeper takes without an oath and they take without an oath.

If he said to a storekeeper, "Give me a *dinar's* worth of produce," and he gave it to him. The storekeeper said to him: "Give me the *dinar*," and he said to him, "I gave it to you and you put it in your money pouch," the householder must take an oath that he gave the *dinar* (*and then he will be exempt*). If he gave him the *dinar* and said to him, "Give me the produce," and he said, "I gave it to you and you took it home" (*and the produce here is mine*), the storekeeper swears (*that the produce is indeed his, and he keeps it*). Rabbi Yehudah says: "Whoever has the produce has the upper hand." [*In the first case, the purchaser has the produce, so he is not required to swear, for it is assumed that*

If someone said to a money-changer, "Give me change (*in perutos*) for a *dinar*," and he gave him. The money-changer then said to him, "Give me the *dinar*," and he said, "I gave it to you and you put it in your money pouch," the householder must take an oath that he gave the *dinar* (*and then he will be exempt*). If he gave him the *dinar* and said to him, "Give me the *perutos* (*small coins*)," and he said, "I gave it to you and you threw it in your purse" (*and the perutos here are mine*), the money-changer swears (*that the produce is indeed his, and he keeps it*). Rabbi Yehudah says (*arguing on the first case*): It is not usual for a money-changer to give an *issar* (*small coins*) before he receives his *dinar* (*and since he gave the perutos, he most certainly received the dinar; the householder, therefore, is not required to swear*).

Just as they said that a woman who impairs her *kesuvah* (*by admitting that she collected part of it*) cannot receive payment except by taking an oath (*for we cannot rely on the kesuvah any longer*), and (*just as they said*) that if a single witness testifies against her that it has been paid, she may not be paid except by taking an oath, and (*just as they said*) that she may not receive payment from encumbered property or orphans' property except by taking an oath, and (*just as they said*) that if a woman is collecting in her husband's absence (*e.g., if the husband sent her a bill of divorce from overseas*) she can collect only by taking an oath; so too also orphans cannot receive payment except by taking an oath. They say: "We swear that our father did



not instruct us, nor did he tell us, nor did we find among the documents of our father that this debt was paid.” Rabbi Yochanan ben Berokah says: Even if the son was born after his father’s death, he takes an oath (*that he didn’t find any receipt that the debt was paid*) and collects. Rabban Shimon ben Gamliel said: If there are witnesses that at the time of his death the father said, “This debt was not paid,” he collects without taking an oath.

And the following swear even if no claim is lodged against them: partners (*that one did not take from the other*), sharecroppers (*that he did not take more than his share*), administrators (*that they did not take from the property*), the wife who manages the business of the house (*that she did not take from her husband*) and the son of the house (*that he did not take from the share of his brothers*). If he said, “What are you demanding from me?” and they respond, “I want you to swear to me,” he must take an oath. However, if the partners or sharecroppers have divided their portions (*without taking an oath*), no oath may be imposed (*at a later date*). If he became liable to an oath in some other claim, all may be included. [This is through the power of a *gilgul shevuah* - *devolving an oath* - *once we force someone to take one oath, we can extend this obligation to take another oath even though there is no requirement for the other oath*.]

The *Shemittah* year cancels the oath (*just as it would cancel the debt*). (45a1 – 45a3)

### **A Hired Worker**

The *Gemara* cites a Scriptural verse which teaches us that all of those mandated by the Torah to swear must swear and do not pay. The meaning of this verse: *And its owners*

*will accept the oath and (the custodian) shall not pay*, is - that whoever would be liable to pay will swear instead. (45a3 – 45a4)

The *Mishnah* had stated: The following swear and collect money.

The *Gemara* asks: Why is a hired worker different (*from all other claimants*) that the Rabbis decreed that he swears and collects?

Rav Yehudah said in the name of Shmuel: Great halachos did they teach here. - ‘Halachos!’ Are these then halachos (indicating that they are Biblical in nature)? But say: Great enactments did they teach here. — ‘Great’! Hence there are also small [enactments]?<sup>1</sup> — Rather, said Rav Nachman that Shmuel said: Fixed enactments did they teach here: our Rabbis removed the oath from the householder and imposed it upon the hired worker for the sake of his livelihood. - [But] for the sake of the worker's livelihood do we fine the householder? — The householder himself is satisfied that the worker should take the oath and receive [his wages], so that workers may hire themselves out to him. - On the contrary, the hired worker is satisfied that the householder should take the oath, and be released [from payment], so that the householder should hire him?<sup>2</sup> — The householder must of necessity employ [workers]. - The worker also must of necessity be employed!<sup>3</sup> — Well, then, the householder is busy with his workers. — Then, let him give him without an oath! — In order to appease the mind of the householder [an oath is imposed].<sup>4</sup> — Well, let him pay him in the presence of witnesses?<sup>5</sup> — That would be too troublesome for him. - Then let him pay him at the

<sup>1</sup> Surely all enactments instituted by the Sages are equally important and great!

<sup>2</sup> On this occasion when there is a dispute as to whether he has paid him his wages or not, the worker prefers to allow the employer to take the oath (and not pay), so that he may employ him again.

<sup>3</sup> Hence employer and worker are equally dependent upon each other; so that we cannot say the reason why the oath is imposed upon the worker is because the

employer prefers it thus, so that workers may not be afraid of him, and may hire themselves out to him; they would in any case seek employment from him.

<sup>4</sup> To satisfy him that he was mistaken, and that he had not really paid the worker yet.

<sup>5</sup> Let the Rabbis establish a rule that wages must be paid in the presence of witnesses, to avoid the necessity for an oath.

beginning?<sup>6</sup> — Both desire credit. - If so,<sup>7</sup> even in the case where he fixed [the wages], also [let the worker take the oath]; why has it been taught: [If] the artisan says: “Two [zuz] did you stipulate to pay me,” and the other says: “I stipulated to pay you only one;” he who wishes to exact from his fellow must bring proof!<sup>8</sup> — The amount fixed [as wages] he certainly remembers. - If so, even in the case where his time had expired also [let the worker take the oath];<sup>9</sup> why has it been taught: If his time had expired and he had not given him, he does not take an oath to receive [his wages];<sup>10</sup> [for] it is a presumption that the householder would not transgress [the precept]: the wages of a hired worker shall not be held overnight. - Now did you not say that the householder is busy with his workers? — That is only before the time of liability arrives, but when the time of liability arrives it thrusts itself upon him, and he remembers. - Would then the worker transgress [the precept]: you shall not rob? — With the householder there are two presumptions: one, that the householder would not transgress [the precept]: the wages of a hired worker shall not be held overnight,’ and another, that the hired worker would not allow his wages to be delayed. (45a4 – 45b2)

Rav Nachman said in the name of Shmuel: They did not teach this (*that the hired worker swears and collects*) except when he was hired in the presence of witnesses (*and he was seen working for him*), but if he was hired without witnesses, since the householder may say to him, “I never hired you (*in the first place*),” he may say to him, “I hired you and paid you your wages” (*and he would be believed even without taking an oath*). Rav Yitzchak said to him: That is correct! And so said Rabbi Yochanan.

The *Gemara* asks: Are we to infer from here that Rish Lakish disagrees with him?

Some say that he (*Rish Lakish*) was drinking (*when Rabbi Yochanan said his ruling*) and was silent (*and therefore we do not know if he argues or not*); and some say, that he waited for him (*to finish before arguing*), and was silent (*and Rav Yitzchak left before hearing if Rish Lakish argued or not*).

It was stated also: Rav Menashya bar Zevid said in the name of Rav: They did not teach this (*that the hired worker swears and collects*) except when he was hired in the presence of witnesses (*and he was seen working for him*), but if he was hired without witnesses, since the householder may say to him, “I never hired you (*in the first place*),” he may say to him, “I hired you and paid you your wages” (*and he would be believed even without taking an oath*).

Rami bar Chama said: How excellent is this ruling! Rava asked him: Where is its excellence? If such is the case, the oath of guardians, which the Torah imposes, how is it possible to be satisfied? Since he may say to him, “The thing never happened (*you never deposited anything with me*),” he should also be able to say to him, “It was an unavoidable accident.” [*If he would be believed without taking an oath, when does the custodian’s oath apply?*]

Rami bar Chama answers: The oath would apply in the case where he deposited it with him before witnesses.

Rava asks: But since he may say to him, “I returned it to you,” he should also be able to say to him, “An unavoidable accident happened.”

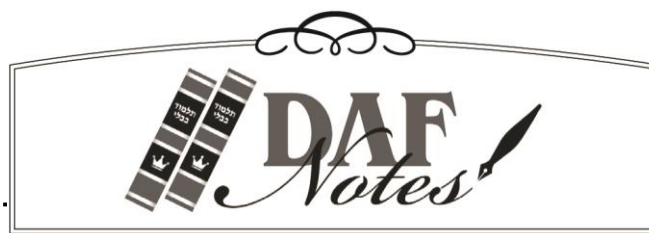
<sup>6</sup> In the morning before he begins work. If then, at the end of the day, the worker claims his daily wage, there will be no need for an oath, for we would assume definitely that the wages had been paid in the morning, since the Rabbis had established that rule, and the worker would not have commenced his work unless he had been paid first.

<sup>7</sup> If you say that the worker takes the oath and receives his wages, because the employer is too busy with his workmen to remember whether he had paid or not.

<sup>8</sup> The artisan who claims an extra one coin must bring witnesses to testify that his claim is correct. Why should he not take an oath and receive his money, without witnesses?

<sup>9</sup> A day worker has time to claim his wages during the whole of the succeeding night; and a night worker, during the whole of the succeeding day.

<sup>10</sup> Why shouldn’t the worker take an oath and receive his wages? Since we say the employer is busy with his workers, he may have forgotten that he has not yet paid him.



Rami bar Chama answers: It would apply in the case where he deposited it with him by a document.

The *Gemara* notes: We can infer that both of them (*Rami bar Chama and Rava*) hold that he who deposits an object with his fellow before witnesses is not required to return it to him before witnesses; but if it was by document, he is obligated to return it to him before witnesses.

Rami bar Chama applied to Rav Sheishes the following verse: *And David placed these words in his heart*. For Rav Sheishes met Rabbah bar Shmuel, and said to him: Have you been taught a *Baraisa* concerning a hired worker (*who claims that he wasn't paid*)? He replied to him: Yes, we were taught the following *Baraisa*: A hired worker, who claims his wages when it is due, takes an oath, and collects his wages. What is the case? If he said to him, "You hired me, and did not pay me my wages," and the other one said, "I hired you and did pay you your wages." However, if he said to him, "You stipulated to pay me two *selaim*," and the other one said, "I stipulated to pay you only one," he who wishes to exact money from his fellow must bring proof. Now, since the second case is concerned with proof, the first case is not concerned with proof! [*Evidently, he doesn't even need proof that the employer hired him! This refutes Rav and Shmuel who said that the worker can swear and collect his wages only if he was hired before witnesses!?*]

Rav Nachman bar Yitzchak answers: The worker must provide proof in both cases. The *Baraisa* only mentions the proof which would obligate the employer to pay, not the proof that will allow the worker to take an oath.

(45b2 - 46a1)

#### INSIGHTS TO THE DAF

##### ***The difference between believing and knowing***

Our *sugya* deals with an employer who at the end of a workday sent his worker to a shop to receive food as payment. The worker subsequently claimed that he received nothing from the shopkeeper and that the employer should therefore pay him his wage. The shopkeeper demanded the employer pay him for the food he gave the worker and as proof, he presented his books, in which the debt was recorded. In this case, our *sugya* determines, and the halachah was so ruled (*Shulchan Aruch, C.M. 91:1*), that both the worker and the shopkeeper are made to swear and that the employer must pay them both.

The *Rosh* (cited by his son, author of the *Tur*, in the name of *Responsa Rosh, kelal 86*) proves a great *chidush* from our *sugya*: a person who keeps exact records of his income and expenditure and demands a debt from another may claim that he is sure that the debt was never repaid, although he doesn't remember it but relies on his records. He proves this from the wording of the mishnah: "...and a shopkeeper on his **records**". In other words, the shopkeeper himself doesn't remember the debt but relies on his records to be regarded as someone who "knows" that another owes him.

An interesting question was brought before the author of *Beis Yitzchak*. The Rishonim (Rashi, Bava Kama 118a; Bava Metzia 97b, s.v. *Rav Nachman*) explain that if a person demands a debt from another and the latter claims that he doesn't know if he owes him, he may exempt himself from payment if he swears that he doesn't know about the debt. It once happened that an honest person asserted that he didn't know if he owed his claimant but that he relied on the latter's honesty and believed him.

How should this odd person be treated? Since he believes the claimant, should he be regarded as "knowing" that he owes him or is it that he himself doesn't know but merely believes the claimant? HaGaon Rav Yitzchak Shmelkes, *Av Beis Din* of Lemberg, ruled most definitely (*Responsa Beis*

*Yitzchak, C.M. 53, os 12*) that that person is regarded as someone who “knows” that he owes a debt. After all, he writes, someone who never saw America doesn’t know that it exists? Is he considered as someone who merely “believes” in its existence? Therefore, he is not allowed to swear that he doesn’t know that he owes a debt but he must pay the amount claimed.

On the other hand, his son-in-law, Rabbi Nasan Levin, *Av Beis Din* of Risha, and his grandson, Rabbi Aharon Levin, also *Av Beis Din* of Risha, disagreed as there is an essential difference between the belief in another’s claim and the belief in the existence of America. Everyone, even those who never set foot in America, receive definite proof of its existence by means of reports, letters and goods that corroborate its existence. However, the knowledge of this honest defendant is not based on reality but only on the claimant’s statement. Such belief cannot be called “knowledge” (a remark in the *Maftuchos* to Responsa *Beis Yitzchak*; *ibid*, in *HaDerash Veba’iyun, Devarim, maamar 47*).

### ***The prohibition of delaying payment to Torah students***

The Torah forbids an employer to delay a worker’s wage by one day and if he delays it, he transgresses a positive and a negative mitzvah. In his *Teshuvos Vehanhagos* (III, 470), HaGaon Rav Moshe Sternbuch writes in the name of Maharsha Alfandari, author of Responsa *Saba Kadisha*, that someone who assembles people to learn Torah and promises them payment must also not delay their remuneration.

An employer who delays payment due to lack of funds does not transgress this prohibition (*Shulchan Aruch, C.M. 339:10*) as the Torah says: “Do not delay the wage of a hireling **with you**” (Vayikra 19:13). In other words, the wage should not stay overnight only if it is in the employer’s possession. Therefore, a *rosh kolel* who doesn’t have the funds does not transgress the prohibition.

Rav Sternbuch adds that it could be that a *rosh kolel* encumbered by debts is allowed to pay the debts before paying his students though hirelings usually have precedence over creditors (see *Teshuvos Vehanhagos, ibid*, which proves such from Responsa *Rav Pe’alim, IV, C.M., §7*). This is because it is reasonable to assume that the students prefer that he shouldn’t sink into debts that could eventually force him to close the *kolel* entirely.

All the above only pertains to someone who assembled students and assumed the responsibility to pay them, but a *rosh kolel* who serves as a collector of charity and never assumed a personal responsibility to pay them, does not transgress the prohibition of delaying payment as the students are not his “workers.”

## **DAILY MASHAL**

### **Only True Parnasah**

While Rabbi Uri of Strelisk zt”l was learning by his mentor, Rabbi Shlomo of Karlin zt”l, his wife was working as a maid for HaGaon Rav Chayim Kohen Rapaport zt”l, Rosh Av Beis Din of Lvov. Toward Pesach Rabbi Uri returned home to Lvov and they were invited to the gaon’s seder. When Rav Rapaport saw Rabbi Uri’s exaltation and sanctification at the seder, he asked him: “Since you are a tzadik and we say in the morning prayers: ‘and you upheld your words because you are a tzadik’, why does your wife toil so hard while you do not uphold what you wrote in her kesubah: ‘...and I shall work and honor and provide for you?’”

“Indeed, you’re right”, replied Rabbi Uri, but afterwards the kesubah says ‘like the ways of Jewish men, who provide for their wives in truth’. Therefore, first of all I traveled to my Rebbe to seek the truth!” (Rav S.Y. Zevin, ‘Al HaTorah, p. 198).