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Customer Versus Worker

Rabbi Yirmiyah bar Abba says that they sent the following question from the house of Rav to Shmuel. If a worker claims that the customer said he would pay two (*coins*) for a job and the customer claims he agreed to one coin, who swears?

Shmuel answered: In this matter the customer should swear and the worker should lose, as people certainly remember how much they said they would pay for a job.

The *Gemora* asks: Is this true? Didn't Rabbah bar Shmuel teach a *braisa* that said that whoever desires to exact money (*the worker*) from his fellow must bring proof, and if he does not bring proof the claim goes away? Why shouldn't the customer have to swear according to Shmuel? [*This is how the Ritva understands the Gemara, unlike some other Rishonim.*]

Rav Nachman answers: The *braisa* means that either is a possibility. Either the worker can bring a proof and take his money, or the customer can swear and be exempt.

The *Gemora* asks a question from a *braisa*. The *braisa* states: If a worker claims that the customer said he would pay two (*coins*) for a job and the customer claims he agreed to one coin, as long as the cloak is in the hands of the worker, the customer must bring proof. If the worker gave the cloak back to the customer when he was supposed to be paid, the worker can swear and take the money. If it is after he was supposed to be paid, the worker must bring proof. However, the *braisa* clearly says that if he gave it back on time, the worker can swear and take the money. Why don't we say that the customer can swear and make the worker lose?

Rav Nachman bar Yitzchak answers: This is the opinion of Rabbi Yehudah, who says that as long as the customer really should be taking the oath (*as he partially admits*), the worker takes the oath (*based on the decree of the Chachamim that a worker swears, and not the employer*).

The *Gemora* asks: Which statement of Rabbi Yehudah indicates that this is his position? If you say it is his opinion in our *Mishna*, this cannot be, as he is very stringent (*to take away the oath from the worker in our Mishna*). This is as the *Mishna* says: He only swears when there is a partial admission.

Rather, the *Gemora* answers: This must be Rabbi Yehudah who authored the following *braisa*. The *braisa* states: Anytime that a worker has not received his wages at the time that he is supposed to be paid, he can swear and take them. If it is past the time when he was supposed to receive his wages, he cannot swear and take. Rabbi Yehudah says: This is when the worker says that he should be given his wages of fifty silver *dinar*, and the customer says he already gave him a golden *dinar*. Alternatively, the worker demands two and the customer says he only receives one. However, if the customer says that he never hired him, or he hired him and already paid the full amount, we say that the worker must bring proof.

Rav Shisha the son of Rav Idi asked: Are we going to say that the *braisa* discussing where each claims that they settled on a different price is Rabbi Yehudah and not the *Chachamim*?! If Rabbi Yehudah is strict where the *Chachamim* are lenient, are we going to say the *Chachamim* are strict when Rabbi Yehudah is lenient?!

Rather, the *Gemora* answers: It is more understandable to say this is according to the *Chachamim*.

The *Gemora* asks: If this is so, who is the author of the *braisa* of Rabbah bar Shmuel that if they set a price we say that the one who wants to take money away has to bring proof? It is unlike Rabbi Yehudah and unlike the *Chachamim*! [*The Ritva deals at length with the question of why we could not merely answer, as we did above, that Rabbah bar Shmuel is merely saying a possibility that the worker can bring proof.*]

Rather, Rava says: They argue regarding the following matter. Rabbi Yehudah holds that when there is a Torah oath that is supposed to be taken, we institute that the worker takes the oath instead. However, regarding a Rabbinic oath, this would be like making a decree to a decree, which we do not do. The *Chachamim* hold that we do make this decree regarding a Rabbinic oath, but we also say that the customer knows the price that was agreed upon. [*Rashi explains that Rabbah bar Shmuel in fact holds like the Chachamim, that the customer knows the price and therefore the worker loses without proof. There is no question from the fact that the Chachamim usually enable a worker to take an oath more often than Rabbi Yehudah, as the logic of their argument dictates that sometimes Rabbi Yehudah will allow a worker to take an oath when the Chachamim will not, and vice versa. Rabbi Yehudah does not agree with the Chachamim's logic that a customer knows the price, and therefore will not agree that the worker cannot swear in a case where there is partial admission about the wages. However, the Chachamim will allow the worker to swear in a case where the oath is only a Rabbinic oath, whereas Rabbi Yehudah will not. This is why Rav Shisha's question is not difficult.*] (46a)

A Victim of Theft

The *Mishna* asked about the case regarding a victim of theft. The *Mishna* said that the case was where there were witnesses who saw the lender come into his house to take collateral etc.

The *Gemora* asks: Perhaps he did not take anything? Didn't Rav Nachman say that if someone takes an ax and says that he is going to cut down someone else's palm tree, and we see that

the tree has indeed been cut down, that we cannot assume the person who made the threat cut it down? This implies that people will make empty threats! Here, as well, we should say the person did not actually take anything!

The *Gemora* answers: The *Mishna* should read, "And he did take collateral."

The *Gemora* asks: If so, why don't the witnesses tell us what he took as collateral?

Rabbah bar Chanah says in the name of Rabbi Yochanan: The homeowner claims that the lender took small vessels that can be concealed in clothing.

Rav Yehudah says: If they saw that a person put vessels under his cloak and left, and he then said that he had bought these vessels (*the owner says he merely lent them to him*), he is not believed. The *Gemora* qualifies this ruling:

1. However, this is only if the homeowner usually sells his belongings. If he does, the person is believed.
2. If he does not normally sell his belongings, the person is not believed - if these vessels are not normally put under one's cloak.
3. If they are normally put under one's cloak, he is believed.
4. Even if they are not normally put under one's cloak, only a regular person is not believed. A secretive person would be believed, as this is his nature (*to put his vessels under his cloak*).
5. This entire case is only when the homeowner says they are lent and the person says he bought them. However, if the homeowner says they were stolen by this person, we do not assume the person is a thief.
6. This is also only regarding things that are normally lent and rented. However, regarding things that are not normally lent and rented, he is believed. This is as Rav Huna bar Avin sent: If the things were normally lent and rented and he claims that he bought them, he is not believed.

This is akin to the incident where a person claimed he had lent a scissors used to comb clothes and a book of *Aggadah* to a person who then died and left some orphans. Rava made the orphans give them back, as they are normally lent and rented (and even if their father would claim he bought them, he would not be believed). [Rashi and Tosfos argue regarding whether many of the cases above are exceptions to the rule, and if one of them applies he is not believed, or all of them must apply in order for him not to be believed.]

Rava says: Even the guard of the house or his wife can swear (that certain vessels were taken by this person in order to make the person who took these items return them to the estate).

Rav Pappa asks: What if he is a worker or crop picker? [Can he swear as well?] The *Gemora* leaves this question unresolved.

Rav Yeimar asked Rav Ashi: What happens if he claims that he took a silver cup?

Rav Ashi answered: We see if he is a person who is wealthy or a person who people commonly deposit items of value into his possession. If so, he swears and is believed. If not, he is not believed. (46a – 46b)

A Victim of Injury

The *Mishna* also discusses a case of a person who was injured.

Rav Yehudah says in the name of Shmuel: He must only swear in a case where he could have injured himself. However, if his injury is in a place where he could not have injured himself, he does not have to swear.

The *Gemora* asks: Why don't we suspect he rubbed against a wall (and got injured that way, not at the hands of this person)?

Rabbi Chiya taught: The case is where he has a bite mark on his back or armpits.

The *Gemora* asks: Perhaps someone else did this to him?

The *Gemora* answers: Nobody else was present at the time. (46b)

Opposing Litigant is Suspect of Making a False Oath

The *Mishna* discusses someone who swears because the other person in the case is suspected of lying under oath etc. even a vain oath.

The *Gemora* asks: What does the *Mishna* mean when it says, "even a vain oath"?

The *Gemora* answers: It means that not only a person who has lied under oath regarding denying money is not trusted. Even a person who has made false oaths in general is not trusted.

The *Gemora* asks: Why doesn't the *Mishna* cite an example of an oath of utterance? [Why specifically give an example of a vain oath?]

The *Gemora* answers: The *Mishna* only mentions this regarding an oath, such as a vain oath, where the person knows he is lying when he swears. However, when a person made an oath of utterance and failed to keep it, this does not apply (for at the time of the oath, he was swearing truthfully).

The *Gemora* asks: This does not answer a case where he swore that he ate, or he didn't eat (for then he knew that he swore falsely at the time that he uttered it)!

The *Gemora* answers: The *Tanna* mentioned the case of a vain oath, and all other cases similar to it (concerning something that happened already). (46b - 47a)

INSIGHTS TO THE DAF

By: Meoros HaDaf HaYomi

A son's accreditation in bank records



A well-to-do American Jew deposited many bonds at a bank and was asked to whom they should be accredited in case of his demise. The man indicated his firstborn son, Chanoch. After the father's demise, Chanoch claimed the funds. His brothers claimed that their father didn't intend to bequeath the funds only to Chanoch and that his being mentioned in the bank's records was intended only for official purposes.

The question includes a number of halachic topics, one of them being the leading rule as to all doubts in financial cases: "someone who claims from another must bring proof". According to this rule, we leave the funds with the person holding them, in this case Chanoch, the only beneficiary of the account.

The question was brought before HaGaon Rav Moshe Feinstein zt"l (Responsa *Igros Moshe*, C.M., I, 17), who explained the situation as follows. We know that "someone who claims from another must bring proof" as a person's holding of an article is the best proof of his ownership and he has no need for further proof. But if the claimant contends on the strength of two witnesses that he was the article's previous owner and that the article was in his possession yesterday, the defendant's claim of ownership by virtue of his holding (*chazakah*) becomes invalid, as the previous owner claims that he never sold the article to him. Apparently, then, the holder of the article must return it to the previous owner, as he has no proof to refute the claimant's ownership, proved by witnesses. Nonetheless, our *sugya* rules that the defendant does not have to produce witnesses that the article is his as "we do not assume that a person is a thief". In other words, a person is not suspected of being a thief because of people's natural reluctance to such an act, involving awful shame if they get caught. Again we see that a person's possession of an article does prove his ownership, as he is presumably not a thief. All this pertains to articles that must be stolen, but articles that are commonly lent or rented, could easily find their way into another person's custody without an act of stealing. Here we can't apply the rule assuming that a person is not a thief and the burden of the proof remains on the person holding the article (see *Kovetz Shi'urim*, II, 9).

Rav Feinstein therefore ruled that Chanoch can't oppose his brothers with the contention of "someone who claims from another must bring proof" as they represent the previous owner – their father – and Chanoch must **prove** that their father bequeathed the bonds to him. He also can't be aided by the rule that "we do not assume that a person is a thief" as the bonds were deposited elegantly into his account and he had no need to commit any criminal act. Therefore, the proof of ownership remains his responsibility.

DAILY MASHAL

To Steal, Deny and Swear

Our Mishnah explains the case of an employer who sent his worker to a shopkeeper to receive food as payment. The shopkeeper declared that he gave him the food whereas the worker declared that he received nothing. Both the shopkeeper and the worker are made to swear and the employer must pay both of them. According to the Malbim, the instance is indicated in the verses "You shall not steal and you shall not deny and you shall not lie...and you shall not swear by My name falsely" (Vayikra 19:11-12). Denial is when someone claims that something is untrue, though the other knows that it is true. A lie is something that the other doesn't know if it is true or not.

In the said instance, both the worker and the shopkeeper know quite well who is lying while the employer doesn't know. Therefore, the Torah warns them in the plural: "Do not steal" (lo tignovu) and "do not deny" (lo techachashu) and "do not lie" to the employer and "do not swear by My name falsely" as one of them is certainly swearing falsely (Yemin Yosef).

Proof from the Torah for Intelligence

The Chidushei HaRim zt"l praised the statement in Sefer Hayashar, attributed to Rabeinu Tam, that thievery is to be disdained as the Torah forbids it. He praised the statement because we should not verify the Torah with our intelligence but rather validate our intelligence from the Torah (Degel Yehudah).