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Daf Notes is currently being dedicated to the neshamot of

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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

Disqualified Testimony

The *Mishnah* had stated: 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).

The *Gemara* asks: why are all the other cases necessary?

The *Gemara* answers: First the *Mishnah* mentions cases where one is biblically disqualified from taking an oath, and then the *Mishnah* mentions cases of Rabbinical disqualifications. (47a1)

Both are Suspect

The *Mishnah* had stated: If both are suspect (the oath returns to its place; these are the words of Rabbi Yosi. Rabbi Meir says: They divide it).

Rava asked Rav Nachman: How did we learn in the *Mishnah* (who was the Tanna that said that the money should be divided)? He said to him: I do not know. Rava asked him: What is the *halachah*? He said to him: I do not know.

It was stated: Rav Yosef bar Minyomi said in the name of Rav Nachman: [The correct version in the *Mishnah* is:] Rabbi Yosi says: They divide it. And Rav Zevid son of Oshaya taught a *Baraisa* that also stated: Rabbi Yosi says: They divide it. There were those who said: Rav Zevid in the name of Rabbi Oshaya taught a *Baraisa* that also stated: Rabbi Yosi says: They divide it. Rav Yosef bar Minyomi said: Rav Nachman decided in such a case (where they were both suspect) that they should divide it.

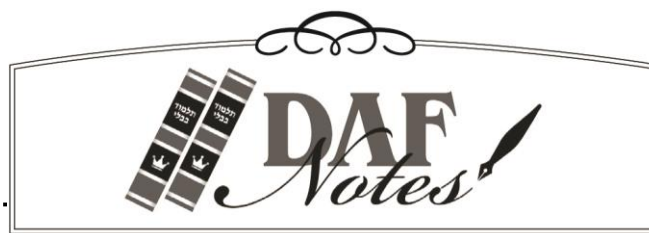
The *Mishnah* had stated: If both are suspect, the oath returns to its place.

The *Gemara* asks: To where does the oath return?

Rabbi Ami said: Our teachers in Bavel said: The oath returns to Sinai. [Since both claimant and defendant are suspected of swearing falsely, neither can be asked to take the oath, and the defendant is not liable to pay either; it returns to the oath that all Jews accepted at Sinai that "one should not steal." The dishonest one needs to be concerned about Divine retribution.] However, our teachers in Eretz Yisroel said: The oath returns to him upon whom who was originally obligated to take it. [Since he cannot take the oath, he is obligated to pay.] (47a1 – 47a2)

Our Teachers in Eretz Yisroel and Bavel

Rav Pappa said: Our teachers in Bavel are Rav and Shmuel; our teachers in Eretz Yisroel is Rabbi Abba. Our teachers in Bavel are Rav and Shmuel may be proven from the following: It was taught in a *Mishnah*: Orphans cannot receive payment except by taking an oath. And we asked on this: From whom are they collecting from? It cannot be from the borrower, for just as their father would have collected without an oath, they are not required to take an oath! Rather it means: And so also orphans, when they are collecting from other orphans, cannot exact payment unless they take an oath. And Rav and Shmuel both said: They did not teach this except if the lender died during the lifetime of the borrower (for then the orphans inherited the debt, and they are enabled to collect it without taking an oath;



consequently, if afterwards the borrower dies, they can swear to the borrower's children and collect the debt); but if the borrower died during the lifetime of the lender, the lender was already obligated to take an oath to the sons of the borrower (for one cannot collect from orphans without taking an oath) and a man cannot bequeath (money which he is liable to take) an oath to his sons (for he was required to swear that he did not receive payment yet, and the children are unable to take such an oath; the oath of the orphans is merely that they did not find a receipt amongst their father's documents; therefore, the sons are not obligated to pay). [We see from here that Rav and Shmuel maintain that in a case where there is an obligation for an oath, but no one can take it, there is no liability to pay; this proves that "our teachers in Bavel" that explained our Mishnah to mean that the oath returns to Sinai, refer to Rav and Shmuel.]

Our teachers in Eretz Yisroel refer to Rabbi Abba may be proven from the following: A person took a metal bar from his friend. He went before Rabbi Ami, and Rabbi Abba was sitting before him. One witness testified that the person had indeed snatched away the metal bar from his friend. The defendant said, "It's true, but I took back my own metal bar!" Rabbi Ami said: How should we judge this judgment? We cannot make him pay, as there are not two witnesses that he took it. We cannot say he can keep it, as one witness says he took it. We cannot make him swear, as being that he admits stealing the bar, he is suspected like a thief of lying under oath! Rabbi Abba said: He is obligated to swear, and cannot swear. Anyone in this situation must pay. [We see from here that Rabbi Abba is the one who holds that the oath, in such a case, returns to the one who was originally obligated to swear.]

Rava said: It is reasonable to say that Rabbi Abba is correct, for Rabbi Ami learned: *The oath of Hashem shall be between them both - but not between the heirs.* [An oath is imposed only if the argument occurred during the lifetime of the original disputants; not when it only happened after their

demise.] The Gemara asks: What are the circumstances of this case? Shall we say that he said to him, "Your father owed my father a hundred zuz," and the other replied to him, "Fifty he owed him, but not the other fifty." What then is the difference between him and his father? [Just as the father would be required to take an oath for his partial admission, so also the heir will be obligated to swear on account of his partial admission!?] Rather, it must mean that he said to him, "Your father owed my father a hundred zuz," and the other replied to him, "Fifty I know that he owed, but the other fifty I do not know." Now, if you would say, that his father in such circumstances, would have been liable to take an oath (and since he would not be able to swear, for he does not know about the other fifty, he would be obligated to pay (like Rabbi Abba)), it is therefore necessary for the Torah to exempt the heirs; but if you say, that the father in such circumstances would also have been exempt (for one who cannot swear is not obligated to pay), for what reason do we need the Torah to exempt the heirs?!

The Gemara asks: How do Rav and Shmuel expound this verse: *The oath of Hashem shall be between them both?*

The Gemara answers: They use it for that which was taught in the following Baraisa: Shimon ben Tarfon says that the verse: *The oath of Hashem shall be between them both* teaches us that the punishment for the false oath is on both of them. [Even the claimant, though his claim might be legitimate, is guilty to some extent for causing this false oath, for he should not have trusted this unreliable individual; this brought about a desecration of God's Name.] (47a2 – 47b1)

Shimon ben Tarfon

Shimon ben Tarfon said: From where do we know that there is a prohibition to the agent (one who helps another to sin) of an adulterer? It is because it is written: *You shall not commit adultery* – this means that you shall not cause adultery to be committed.

It is written: *And you slandered in your tents.* Shimon ben Tarfon said: You spied out the Land of Israel and put to shame the tent of the Omnipresent.

It is written: As far as the great river, the Euphrates River. Shimon ben Tarfon said: Go near one anointed with oil, and be anointed as well. [*The Euphrates is referred to as a "great" river, for it is associated with Eretz Yisroel.*]

In the Academy of Rabbi Yishmael it was taught: The servant of a king is like a king. (47b1)

The Storekeeper and his Records

The *Mishnah* had stated: and a storekeeper regarding his records. [*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.*]

The *Gemara* cites a *Baraisa*: Rebbe said: What is the point of troubling them both with this oath (*when one of them will be swearing in vain*)?

Rabbi Chiya said to him: You taught us the *Mishnah* that both the storekeeper and the workers swear to the householder, and he must pay both of them.

The *Gemara* asks: Did he accept it from him, or did he not accept it from him?

The *Gemara* answers: Come and hear from the following *Baraisa*: Rebbe says: The workers take an oath to the storekeeper (*that he did not receive anything from him, and the storekeeper will lose, for he should have given it before witnesses*). Now if it were so (*that Rebbe retracted, and holds like the Mishnah*), the oath should be to the householder (*and not to the storekeeper, for the storekeeper will swear and collect from the householder, and the workers will not have any dealing with the storekeeper; evidently, he did not retract, and he maintains that the workers swear and the storekeeper loses*)!?

Rava answers: [*Rebbe did retract*] The workers swear to the householder in the presence of the storekeeper, so that they may be embarrassed because of him (*for if they did receive anything, they would be ashamed to swear falsely in front of the storekeeper, who knows that they are lying*). (47b1 – 47b2)

Contradictory Witnesses

It was stated: What is the law regarding two sets of witnesses that contradicted each other? Rav Huna says: Each can still testify in separate cases regarding anything else. Rav Chisda says: These witnesses are never valid anymore (*being that they might be liars, we cannot do anything based on their testimony*).

The *Gemara* explains: They disagree where there are two lenders and two borrowers and two documents (*if each set can testify by themselves at a later date*).

In the case of one lender and one borrower and two documents (*and one is valid and one is not – he certainly cannot claim both of them*), the holder of the document is at a disadvantage (*and he can only collect the lower amount, for that is definitely owed*).

In the case where there are two lenders and one borrower and two documents, that is similar to the case of our *Mishnah*. [*Rav Huna holds that both documents can be*



enforced, for the case is similar to that of our Mishnah where both the storekeeper and workers take the oath and enforce their claims against the householder, though we know definitely that one of them is swearing falsely; but we cannot deprive either of them of his money; so here too, both lenders can enforce their claims. According to Rav Chisda, however, neither of them can enforce his claim.]

What is the *halachah* in the case of two borrowers and one lender and two documents? [Does Rav Huna hold that since it is one man who produces both documents (one of which is definitely signed by false witnesses), the court cannot uphold his claim at all, for each borrower may maintain that the document against him is the false one; or since his claim is against two separate people, he produces one document at a time and enforces his claim, for Rav Huna holds that both sets of witnesses are believed separately. According to Rav Chisda, of course, the claims cannot be enforced, for he holds that both sets of witnesses, even separately, are disqualified.] The Gemara leaves this question unresolved. (47b2 – 47b3)

INSIGHTS TO THE DAF

A King's Servant Is Like the King

"If you touch someone anointed with oil, you will also be anointed." With this statement Shimon ben Tarfon explains why the Torah defines the Euphrates as "the big river" (Devarim 1:7) despite its relative smallness (Rashi, Bereishis 15:18), because it borders on *Eretz Yisroel*. On the other hand, according to Rabbi Yishmael, the Euphrates is called "big" because "a king's servant is like the king." In other words, the servant – the Euphrates – is regarded like the king – *Eretz Yisroel*.

Apparently, these definitions are similar and their conclusion is the same and we don't need two parables to explain the word "big." However, the author of *Ben Yehoyada* explains that the Euphrates forms the border of

Eretz Yisroel, but that when Ezra came from Babylonia, he didn't resanctify the areas reaching the Euphrates. Shimon ben Tarfon refers to the river's glorious past as the border of *Eretz Yisroel* while Rabbi Yishmael refers to the river's present role as serving the promised land – "a king's servant is like the king."

DAILY MASHAL

Eretz Yisroel Makes Us Great

HaGaon Rav Ch. Shmuelewitz zt"l used to say: We learn a tremendous lesson from this: If the smallest river which has some connection with *Eretz Yisroel* is called "big," it is a *kal vachomer* that someone who lives in *Eretz Yisroel* and follows the Torah has the merit to rise to greatness. And if you wonder why we don't notice this, it is because we don't properly evaluate the sanctity of the land (*Telalei Oros*).