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Forcing her to Take a Biblical Oath

Rav Pappa said (regarding the case where there is one witness testifying that the woman collected her *kesuvah*): A wise husband could bring his wife to take a Biblical oath with the following method: He pays her the *kesuvah* (a second time) in front of another witness (and now, if she will deny receiving the *kesuvah*, there will be two witnesses against her) and he claims that the first monies that he paid her were actually a loan (and if she denies the loan, there will be one witness testifying against her; she will be Biblically obligated to take an oath; this will be a case of taking an oath in order to retain the money, and it will be a case which doesn't involve a lien on land)!

Rav Shisha the son of Rav Idi asks: How can the two witnesses combine to offer testimony against her (they did not observe the same event)? Rather, Rav Shisha the son of Rav Idi explains: The husband gives her the *kesuvah* (a second time) in front of the first witness and a second one and he claims that the first monies that he paid her were actually a loan!

Rav Ashi asks: The woman will be able to defend this claim by stating that there were two *kesuvos* (and there was no loan here at all)? Rather, Rav Ashi explains: The husband notifies the two witnesses his intentions prior to giving her the money a second time. (87b4 – 88a1)

Orphan's Collecting with an Oath

The *Mishnah* had stated: If she collects from encumbered properties or from the properties of orphans, she is required to take an oath (that she didn't previously collect her *kesuvah*).

The *Gemora* cites a *Mishnah* in Shavuot: When orphans collect a debt (owed to their father), they are required to take an oath. From whom? If it be suggested: From a borrower [it may be objected], since their father would have received payment without an oath should they require an oath? — It is this, however, that was meant: And so also orphans cannot exact payment (owed to their father) from orphans (of the borrower) unless they first take an oath. Rav Zereika said in the name of Rav Yehudah: This ruling is only applicable in a case where the borrower's children said, "Our father told us, 'I borrowed the money, but I repaid it.'" However, if they said, "Our father told us, 'I never borrowed the money,'" the lender's orphans may not collect even with an oath.

Rava demurred: On the contrary! Wherever a man says, "I have not borrowed," it is as if he had said, "I have not paid"! — [The fact,] however, [is that] if such a statement was at all made it was made in these terms: Rav Zereika said in the name of Rav Yehudah: This ruling is only applicable in a case where the borrower's children said, "Our father told us, 'I borrowed the money, but I repaid it.'" However, if they said, "Our father told us, 'I never borrowed the money,'" the lender's orphans may collect without an oath. This is because anyone who says that he did not borrow is as if he said that he did not repay it (and since it is evident (from the document) that he did in fact borrow, the orphans are required to pay). (88a1 – 88a2)

Collecting a Debt when the Debtor is not Present

The *Mishnah* had stated: If the woman collects her *kesuvah* when the husband is not present, she is required to take an oath.

Rav Acha, Lord of the Birah said: There was such an incident that came before Rabbi Yitzchak from Antochya, and he said: Only in regards to a woman's *kesuvah*, may she collect even though the husband is not present. This is because of favor (in order that the women will not be concerned that they will not be able to collect their *kesuvah*, and therefore, they will not refrain from getting married). However, a creditor is not able to collect from the debtor when he is not present.

Rava said in the name of Rav Nachman: Even a creditor may collect a debt without the debtor being present. This is because, otherwise, people will borrow money and go overseas, which would result in the fact that people will stop lending money. (88a2 – 88a3)

Rabbi Shimon's Disagreement

The *Mishnah* had stated: Rabbi Shimon said: If she demands her *kesuvah*, the inheritors may impose an oath on her; if she does not demand her *kesuvah*, they may not impose an oath on her.

The *Gemora* asks: To what case is Rabbi Shimon referring to?

Rabbi Yirmiyah answers: It is referring to the last ruling of the *Mishnah*: The *Tanna Kamma* said: If the woman collects her *kesuvah* when the husband is not present, she is required to take an oath. This is applicable whether the woman is demanding that a portion of the husband's property should be sold in order for her to be supported with the proceeds or whether she is demanding the money for her *kesuvah* (for the husband divorced her from abroad). Rabbi Shimon maintains that whenever she demands her *kesuvah*, the inheritors may impose an oath on her; if she does not demand her *kesuvah*, but rather, she is demanding to be supported, they may not impose an oath on her.

This argument would be the very same disagreement as Chanan and the sons of the *Kohanim Gedolim* had, which is cited in a *Mishnah* later (104b): If someone went overseas, and his wife demands to be supported, Chanan said: She

(when it is reported that her husband has died and she wishes to collect her *kesuvah*) swears at the end (that she has nothing in her possession belonging to the husband), but she does not swear in the beginning (when she is demanding support). The sons of the *Kohanim Gedolim* disagreed with him, and they said: She swears at the beginning and at the end. Rabbi Shimon would be following the opinion of Chanan and the Rabbis are ruling according to the sons of the *Kohanim Gedolim*.

Rav Sheishes asks: Why does the *Mishnah* state, "the inheritors may impose an oath on her"? It is the *Beis Din* that is imposing the oath, not the inheritors (for the husband is still alive in this case)?

Rather, Rav Sheishes explains: They are referring to an earlier ruling of the *Mishnah*: The *Tanna Kamma* said: If she went from her husband's grave to her father's house, or she returned to her father-in-law's house, but she did not become an administrator, the inheritors cannot impose an oath on her (since the husband released her from any vows), and if she did become an administrator, the inheritors may impose an oath on her regarding the future, but they cannot impose an oath on her regarding the past. Rabbi Shimon disagrees and maintains that whenever she demands her *kesuvah*, the inheritors may impose an oath on her; if she does not demand her *kesuvah*, they may not impose an oath on her even if she is an administrator; (this is because she is the agent of their father and Rabbi Shimon holds that she has been released from taking the administrator's oath).

This argument would be the very same disagreement as Abba Shaul and the Rabbis had (which is cited in a *Mishnah* in Gittin (52a)): A guardian appointed by the father of the orphans must swear (*that he didn't take anything from the orphans*). If he was appointed by *Beis Din*, he is not required to swear. Abba Shaul says the opposite is the rule: If he was appointed by *Beis Din*, he must swear. If, however, he was appointed by their father, he is not required to swear. Rabbi Shimon would be following the opinion of Abba Shaul and the Rabbis are ruling according to the Rabbis.



Abaye asks: Why does Rabbi Shimon say, “whenever she demands her *kesuvah*,” implying that he is being stricter? He should have said, “if she demands her *kesuvah*.”

Rather, Abaye explains: They are referring to an earlier ruling of the *Mishnah*: The *Tanna Kamma* said: If the husband wrote a document for his wife saying that he is releasing her from any vows or oaths that may come about later, he may not impose an oath on her. If he writes that he is releasing her from any vows or oaths that his inheritors wish to impose on her, they may not compel her to take an oath. Rabbi Shimon disagrees and maintains that whenever she demands her *kesuvah*, the inheritors may impose an oath on her (even if the husband explicitly released her from this vow). And they [consequently] differ on the same principles as those on which Abba Shaul the son of Imma Miriam, and the Rabbis differed. Rabbi Shimon agreeing with Abba haul and the Rabbis [of our *Mishnah*] with the Rabbis.

Rav Pappa demurred: This would satisfactorily explain [the expression]: Whenever she claims her *kesuvah*. What, however, can be said [in justification of]: But where she does not claim her *kesuvah*?

Rather, Rav Pappa explains: Rabbi Shimon is disagreeing with Rabbi Eliezer’s ruling as well. Rabbi Eliezer said that a woman may be forced to swear regarding her spindle and her dough. Rabbi Shimon disagrees and maintains that the woman is never forced to take the administrator’s oath (this is because she will ultimately be compelled to swear at the time that she demands payment for the *kesuvah*). (88a3 – 88b3)

INSIGHTS TO THE DAF

Biblical and Rabbinical Oath

The *Gemora* had stated: Rav Papa said (regarding the case where there is one witness testifying that the woman collected her *kesuvah*): A wise husband could bring his wife to take a Biblical oath with the following method: He pays

her the *kesuvah* (a second time) in front of another witness (and now, if she will deny receiving the *kesuvah*, there will be two witnesses against her) and he claims that the first monies that he paid her were actually a loan (and if she denies the loan, there will be one witness testifying against her; she will be Biblically obligated to take an oath; this will be a case of taking an oath in order to retain the money and it will be a case which doesn’t involve a lien on land!)

The Raavad explains: Even if there is no severity in the Biblical oath more than the Rabbinical one, it is still regarded as advantageous for the husband to force her to be subject to a Biblical oath besides a Rabbinical one.

Rashi explains that there is a halachic severity in taking a Biblical oath. One is required to use the Name of God and hold a Torah scroll when he takes a Biblical oath; a Rabbinical oath does not have this stringency.

Tosfos points out that Rashi himself maintains that a Rabbinical oath of our *Mishnah* is of the same severity as a Biblical oath; it is only an oath instituted by the Amoraim that is treated leniently.

The Rishonim discuss at great length other differences between the two oaths.

DAILY MASHAL

If someone went overseas, and his wife demands to be supported, Chanan said: She (when it is reported that her husband has died and she wishes to collect her *kesuvah*) swears at the end (that she has nothing in her possession belonging to the husband), but she does not swear in the beginning (when she is demanding support). The sons of the Kohanim Gedolim disagreed with him, and they said: She swears at the beginning and at the end.

The *Mishnah* in *Maseches Yoma* (1:5) says that in preparation for the Yom Kippur Service, the elders of the *Beis Din* transferred the *Kohen Gadol* to the elders of the Kohanim, who brought him to the attic of the Chamber of

Avtinah, where they made him take an oath. They made him swear in the Name of “the One who caused His Presence to dwell in this House” that he would not deviate in the slightest way from the prescribed order of the Yom Kippur Service, as taught to him by the elders of the *Beis Din*.

The Mishnah concludes that following administration of this oath, the *Kohen Gadol* would turn aside and cry (that he was suspected of being a *Tzeduki* (member of the Sadducee sect, who rejected the Oral Law) and not carrying out the directions of the *Ziknei Beis Din*) and the elders of the *Kohanim* would turn aside and cry (for having to suspect the *Kohen Gadol* of such a violation, inasmuch as the Talmud says elsewhere (Shabbat 97a) that someone who unjustly suspects a worthy person will receive corporal punishment). Throughout the period of the Second Beis HaMikdash, the *Tzedukim* promoted improper changes to halachic practices, including variations to the Yom Kippur service in the Bais Hamikdash. Unfortunately, there were many Kohanim Gedolim during portions of the Second Bais Hamikdash period who were adherents of the *Tzeduki* philosophy. Therefore, the *Beis Din* always needed to be on guard, lest the *Kohen Gadol* pull a fast one in the privacy of the *Kodesh Kodoshim* (where no one could observe his performance of the Yom Kippur ritual) and carry out the procedure there in accordance with *Tzeduki* interpretation. Inasmuch as even the *Tzedukim* were fearful of taking a false oath, this oath was used to preempt any attempt at corruption of Halacha, as proscribed by the *Beis Din*, which was under control of the *Perushim* (Pharisees) who accepted the Oral Law.

The Rambam (Hilchos Avodas Yom HaKippurim 1:7) elaborates on this Mishnah in Yoma, explaining that the *Tzedukim*, who denied the Oral Tradition of *Chazal*, went with the literal interpretation of the *pesukim* in Parshas Achrei Mos. For example, they said that the Yom Kippur *Ketores*-incense should be placed on coals **outside** the *Kodesh Kodoshim*, and the *Kohen Gadol* should only enter the *Kodesh Hakodoshim* when the cloud of smoke was already ascending from the shovel

containing the incense. The *mesorah* of *Chazal* is that the incense should only be placed on the coals “*Lifnei Hashem*” – within the confines of the *Kodesh Kodoshim*.

When the Rambam describes the adjuration of the *Kohen Gadol* not to deviate from *Chazal*'s prescribed procedure, he includes the fact that both the *Kohen Gadol* and those who adjured him turned aside to cry following the administration of the oath—he because he was suspected, and they because they feared they might be falsely suspecting a worthy person. The Rambam's Mishnah Torah is a Code of Jewish Law. It is not a history book. Why was it necessary for the Rambam to describe what (unfortunately) took place during the Second Bais Hamikdash era due to the concern of the *Beis Din* that *Tzeduki* philosophies might have infiltrated the practice of the *Kohanim Gedolim* of that era? May it be G-d's Will that the third Bais Hamikdash will be rebuilt speedily in our day and we will re-institute the Yom Kippur Service according to *halacha*. There will not be any *Tzedukim* during the time of the Third Bais Hamikdash! Their existence was a historical phenomenon that occurred during the period of the Second Bais Hamikdash, which will never occur again. The Mishnah needed to describe what happened because the Mishnah was describing the entire order of Yom Kippur as it took place during the Second Bais Hamikdash period. But why does the Rambam need to mention the oath? Furthermore, why did the Rambam need to tell us that “they turned away crying”? Why do we need to know this fact, which has absolutely no practical halachic ramification?

More to the point, there is a very interesting Mishnah in *Masechtas Derech Eretz* (3:3). The Mishnah there says that we should view every person as if he were a robber and yet honor him as if he were *Rabban Gamliel*. When a stranger comes into your house and you do not know who he is, you should honor him as if he were the great sage and Prince, *Rabban Gamliel*. Give him the royal treatment and five-star hospitality. And yet, you need to consider the possibility that he might be a thief.

The Mishnah relates that there was an incident involving Rabbi Yehoshua where a stranger came to his house. Rabbi Yehoshua fed the fellow and gave him drink and offered him the guest room on the second floor, in the attic. The guest went up the ladder to the guest room at night. Lo and behold, in the middle of the night he took a bag and started stealing all the silverware from upstairs. He wanted to make his midnight escape. He descended the ladder from the second floor to the first floor. However, Rabbi Yehoshua (following the above stated advice) had removed the ladder. The “guest” started climbing down and suddenly realized there was no ladder. He fell to the ground with a loud thud, and was caught red-handed with the silverware that he was trying to steal from his host.

So we see that the Mishnah strongly endorses this concept that if a person does not know about another person’s character, he should definitely be suspicious of him and—with all due respect—treat him cautiously and suspiciously. If so, what were the *Ziknei Beis Din* crying about? They had every right to administer this oath and be suspicious of the Kohen Gadol during the time of the Second Bais Hamikdash when *Tzeduki* heresy was widespread in Israel in general, and in the Priestly class in particular. *Beis Din* had an obligation to be suspicious! Many Rishonim ask on this Mishnah in Yoma from the teaching in Maseches Derech Eretz: Why did they turn aside and cry?

So, in addition to the questions why the Rambam mentioned the oath and why the Rambam mentioned the crying, we have a third question: Why in fact did they need to turn away and cry at all? They were doing what they were supposed to do!

Rabbi Yissochor Frand quotes the Tolner Rebbe who raises these questions and suggests the following answer, based on an important teaching from the Sefas Emes: The Gemara in Yoma (87b) relates that the Amora who we know as Rav was saying over a shiur in front of Rabbi. Rav Chiya walked in and Rav restarted his shiur. Bar Kappara then arrived, also late. Rav restarted his shiur a third time. Then Rav Shimon

b’Rebi walked in, and Rav restarted his shiur a fourth time. Finally, Rabbi Chanina b’Reb Chama came in, and Rav finally had enough. He refused to start his shiur a fifth time, and just continued the shiur. The Gemara comments that Rabbi Chanina got upset that Rav did not show him the same courtesy that he had shown the other late arrivals.

The Gemara then relates that for the next thirteen years, Rav approached Rabbi Chanina each Erev Yom Kippur to ask for forgiveness. Rabbi Chanina refused to be *mochel* him. We are not going to get into why Rabbi Chanina was so upset and refused to forgive Rav, but those are the facts.

The Sefas Emes asks, why did Rav need to ask for forgiveness in the first place? Rav was in the right! He could justifiably tell Rabbi Chanina, “How many times do I need to restart my shiur? You were late for shiur. You were very late because there were already three people ahead of you who were also late for shiur! Restarting for them was a *midas chassidus*. I am not obligated to repeat such a *midas chassidus* over and over again, troubling the entire audience for the sake of latecomers!”

If someone is upset at you but you are 100% right, and this is not just your opinion, but you ask your Rav and you ask other people and they all tell you that you are 100% right, do you need to ask *mechila*? No! If you are right, you are right! The Sefas Emes answers with a very important principle: The entire year, if you are 100% in the right, you are not obligated to ask for forgiveness. But Yom Kippur is different! On Yom Kippur, you are obligated to ask for *mechila* even if you are right and the other person is wrong. Why is that? It is because we read in Tehillim (139:16) “...the days are created (*yomim yutzaru*) and not one of them (*v’lo echad mei’hem*).” There is a *kri u’kesiv* on this last phrase (*v’lo echad mei’hem*). Does the word *v’lo* end with an *aleph* (*lamed aleph* meaning **no** or **not**) or with a *vov* (*lamed vov* meaning **him**)? The *kesiv* (the way it is written) is with an *aleph*, meaning ‘and one of them’ (one of the days created) is **not it**. The *kri* (the way it is read) is *lo* with a *vov*.

The Tanna d'bei Eliyahu expounds: *v'lo echad mei'hem* is referring to Yom Kippur (the day which is not one of those other created days). There are 364 days plus one in the year. Yom Kippur is its own day. It is not a regular day. The Satan has no effect on us on this day. We are like *Malachim* on this day.

The Sefas Emes interprets *v'lo ecahd mei'hem* as follows: Yom Kippur needs to be a day of *achdus* (Jewish unity). We come together as Klal Yisrael with the *Ribono shel Olam* and we need to come together as a people as one unit. Normally, when someone does something to you and you are in the right and he is 100% wrong, you do not need to be worried about it. However, on Yom Kippur you need to try to accomplish something else—you need to try to bring everyone together. Therefore, even though you are in the right, you need to try to appease this other person, to create national unity.

This explains why Rav only went to Rabbi Chanina on Erev Yom Kippur. Why didn't Rav ask for *mechila* immediately after finishing the shiur? Why didn't he wait a couple of days until Rabbi Chanina cooled off and then ask for *mechila*? Why did he **always** go Erev Yom Kippur? The answer is that Rav did not need to ask for forgiveness during the rest of the year because Rav was right and Rabbi Chanina was wrong. But on Erev Yom Kippur, the mission is to remove all "*pirud*"—the things that separate people. The mission is not to gain *mechila*, the mission is to create *Shalom* (peace).

This now also explains why the *Ziknei Beis Din* turned away to cry after adjuring the *Kohen Gadol*. We saw in Maseches Derech Eretz that it is proper to be suspicious! What was wrong with suspecting him, such that they needed to cry about it? The answer is that they were aware that their action caused *pirud*—disunity—in *Klal Yisrael*. True, they did what they were supposed to do, but they knew that inevitably, their actions would cause resentment in the (conceivably totally virtuous) *Kohen Gadol*. They cried

because of the inevitable dissension they were causing in *Klal Yisrael* on Erev Yom HaKippurim.

Finally, the Tolner Rebbe says, we can now understand why the Rambam wrote this entire story. Although the story of the oath and certainly their turning aside and crying will not be at all relevant, please G-d, during the time of the Third *Beis HaMikdash*, the Rambam is trying to teach us this lesson. The reason they cried is because their action caused dissension on Erev Yom Kippur, and any dissension is not good at that time.

The lesson for all of us is that even though throughout the course of the year, we may have had issues with people—be it family, be it friends, be it neighbors, whoever it may be—even if we are 100% in the right, we need to try to make *shalom* in order to create this *achdus*. That is why it is important to know that "they turned aside and cried." They did not turn aside and cry because they were wrong. They were doing exactly what they were supposed to do. But the fact is that they caused disunity, which we must try hard to avoid on Yom Kippur.

Chazal say that on Yom Kippur we are like angels. Amongst angels, there is no jealousy and no competition. That is the type of spirit we need to try to foster. Let bygones be bygones. So many times, people think, "I am in the right. I don't need to ask *mechila*. He needs to ask *mechila*!" True. That is in terms of the laws of *Mechila* and the laws of proper behavior between man and his fellow man. But Yom Kippur is a different day. *V'lo Echad Mei'hem*. It is a special day—a day that unifies *Klal Yisrael* before the *Ribono shel Olam* and a day when *Klal Yisrael* needs to come together as one people, without jealousy, without competition, and without *machlokes*.