



т"оэ

Intro

Today we will Be"H learn מסכת בבא מציעא of ידף ג' of מסכת. Some of the topics we will learn about include:

שנים אוחזין בטלית

יחלוקו בשבועה

If two people are holding a cloak and they both claim ownership, they each swear to their claim and then divide it equally.

The Gemara contrasts this with the case of מנה שלישי

If two people entrusted the same person with different amounts of money, and they are now disputing who gave him the larger sum, it is a מחלוקת whether only the disputed portion, or all of the money, remains by the guardian until someone confesses, or the true owner is otherwise determined.

חנוני על פנקסו

If an employer instructed his storekeeper to give his workers some food or money for their wages and promised to pay him at a later date, and the storekeeper says he gave it to them, while the workers deny having received it, and so both are demanding payment from the בעל הבית:

שניהם נוטלין מבעל הבית

Both collect. However, there's a מחלוקת whether with or without a שבועה.

The Gemara explains why the disputed sum is not handed over to a third party.

מודה במקצת

Someone who admits to part of a claim must swear that he does not owe the remainder of the claim. רבי חייא adds העדאת עדים

One must also swear if witnesses corroborate part of the claim.

הודאת פיו

The Gemara discusses the Halachic ramifications of an admission regarding the following topics:

ממון, a monetary obligation;

קנס, a penalty;

קרבן, the requirement of a Korban for an inadvertent transgression; and

הכחשה והזמה, whether it can be contradicted by witnesses.

עד אחד

A single witness, although he cannot obligate payment, suffices to obligate one to support his denial with an oath.











So let's review...

The Mishnah on שנים אוחזין discusses the case of שנים אוחזין, two people who are holding on to a garment, both claiming ownership, and rules יחלוקו בשבועה

After swearing, they divide it equally.

The Gemara earlier contrasted this Halachah with several similar cases, and now cites another case:

שנים שהפקידו אצל אחד

זה מנה וזה מאתים

If two people entrusted the same person with some money, one with 100 717, and the other with 200 717;

זה אומר מאתים שלי

וזה אומר מאתים שלי

Now, both claim that the 200 m is theirs.

The רבנן rule

נותן לזה מנה ולזה מנה

והשאר יהא מונח עד שיבא אליהו

The נפקד gives each זוז מפקיד, which are certainly his, and the disputed אווי remain with a third party until its true owner is determined.

However, רבי יוסי counters

א"כ מה הפסיד הרמאי

If so, the deceitful party has no incentive to admit to the truth; he has nothing to lose? Therefore, he rules הכל יהא מונח עד שיבא אליהו

The entire sum of 300 m remains with a third party. Thus, the deceitful party has an incentive to admit to the truth, so that he does not lose his principal.





Dedicated By: _





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The Gemara explains that our Mishnah may agree with the רבנן, because although

הא נמי כשאר דמי דספיקא היא

Although, the entire טלים is disputed, it does not remain with a third party, because there is a clear distinction between the two cases:

התם דודאי האי מנה דחד מינייהו הוא

אמרי רבנן יהא מונח

In that case, since the third מנה certainly belongs to only one of them, we cannot give any part of it to the other without proof.

הכא דאיכא למימר דתרוייהו הוא

אמרי רבנן פלגי בשבועה

In our case, it is possible that they picked it up simultaneously and it belongs to both of them, and so the בנון allow them to swear and divide it.









However, it seems that מתניתין דלא כרבי יוסי

Our Mishnah does not agree with רבי יוסי, because ומה התם

דבודאי איכא מנה למר ואיכא מנה למר

אמר רבי יוסי יהא מונח

If in that case, he does not allow them to reclaim the 100 m which is certainly theirs;

הכא דאיכא למימר דחד מינייהו הוא

לא כ"ש

Certainly, he should not allow them to divide the טלית, which may belong to only one of them?

However, the Gemara differentiates as follows: התם ודאי איכא רמאי

One of the depositors is definitely lying. Therefore, רבי יוסי does not allow them to reclaim what is rightfully theirs, so that he should confess. However,

הכא מי יימר דאיכא רמאי

אימא תרוייהו בהדי הדדי אגבהוה

It is possible that neither is lying as they might have picked it up simultaneously, and both truly think they picked it up first. Therefore, we allow them to divide it.









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Having satisfactorily explained the case of יחלוקו, the Gemara now contrasts the other cases it referenced:

בין לרבנן בין לרבי יוסי

מונח עד שיבא אליהו

Everyone agrees that the disputed amount remains with a third party.

If so, in the case of

חנוני על פנקסו

זה נשבע ונוטל וזה נשבע ונוטל

If a storekeeper claims to have given items to workers at their employer's request, and the workers deny receiving them, the אמא rules that they both swear and collect from the בעל הבית.

The Gemara asks...

מ"ש דלא אמרינן

נפקיה לממונא מבעה"ב ויהא מונח

בית דין should collect the disputed sum from the בעל הבית, and leave it with a third party until one of them admits?

The Gemara contrasts other cases it referenced

יווני א פוקסו זה נשבע ונוטל וזה נשבע ונוטל

If a storekeeper claims to have given items to workers at their employer's request, and the workers deny it, The תנא קמא rules

The תנא קמא rules that they both swear and collect from the בעל הבית. אים שפסקיבו אל אחד מונח עד שיבא אליהו

Everyone agrees that the disputed amount remains with a third party.



מ״ש דלא אמרינן נפקיה לממונא מבעה״ב

ויהא מונח

בית דין should collect the disputed sum from the בעל הבית, and leave it with a third party until one of them admits?

5 The Gemara differentiates:

התם אמר ליה חנוני לבעה"ב אנא שליחותא דידך קא עבדינא

The storekeeper can argue that he fulfilled his

instructions, and

מאי אית לי גבי שכיר

לא מהימן לי בשבועה

What do I have with your workers? I am not obligated to believe the worker's oath.

Similarly,

ושכיר נמי א"ל לבעה"ב

אנא עבדי עבידתא גבך

The worker can argue that he did his job, and

מאי אית לי גבי חנוני

לא מהימן לי בשבועה

What do I have with your storekeeper? I am not obligated to believe the storekeeper's oath. Therefore,

תרוייהו משתבעי ושקלי מבעל הבית

They both swear and collect from the בעל הבית, even though one is certainly lying.

In other words, these are two separate cases.

However, in the case of the money entrusted for safekeeping, their claims are part of one case, and since one is certainly lying they cannot collect.

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What do I have with your workers? I am not obligated to believe the worker's oath.

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ושכיר נמי א"ל לבעה"ב אנא עבדי עבידתא גבך

The worker can argue that he did his job, and

מאי אית לי גבי תנוני לא מהימן לי בשבו<u>עה</u>

What do I have with your storekeeper?

Therefore,

תרוייהו משתבעי ושקלי מבעל הבית

They both swear and collect from the בעל הבית, even though one is certainly lying.

In other words, these are two separate cases.

However, in the case of the money entrusted for safekeeping, their claims are part of one case, and since one is certainly lying they cannot collect.







The Gemara now deduces another Halachah from our Mishnah:

We know

מודה במקצת הטענה ישבע

One who admits to part of a claim must swear that he does not owe the remainder of the claim.

Similarly, רבי חייא adds

מנה לי בידך

והלה אומר אין לך בידי כלום

One who initially denied the entire claim.

ווז מעידים אותו שיש לו חמשים זוז

And witnesses then testify that he owes at least 50 אוז; נותן לו חמשים זוז

וישבע על השאר

He pays 50 m, and must swear that he does not owe him the remaining 50.

The Gemara elaborates, and as Rashi explains; We could ask; why does a מודה במקצת have to swear? After all, he should be considered a משיב אבידה, like someone who voluntarily returns a lost object, who does not have to swear that he did not keep part of it, because he has a מיגו that he could have simply denied finding anything.

So too, every מודה במקצת has a מיגו דכופר הכל, he could have denied it completely? Therefore, he should be פטור פטור

The answer is that a מודה במקצת IS required to swear, because we suspect

האי בכוליה בעי דנכפריה

וחזקה אין אדם מעיז פניו בפני בעל חובו

It is possible that he wanted to deny the entire claim, but could not brazenly deny the existence of the loan to his creditor's face.

Nevertheless, his oath is believed, and we do not say מיגו דחשיד אממונא חשיד אשבועתא

If he will lie regarding the loan, he will also swear falsely, because we assume

האי בכוליה בעי דלדוי ליה

He really would have admitted to the entire loan, but אשתמוטי הוא דקא מישתמט מיניה

סבר עד דהוו לי זוזי ופרענא ליה

He is merely trying to delay payment until he gets some money. However,

העדאת עדים דליכא למימר הכי

אימא לא

If he denied the entire claim, and witnesses testified that he owes part of it, we have no indication that he was merely delaying payment. Therefore, we should not administer an oath, based on

מיגו דחשיד אממונא חשיד אשבועתא

Since he will probably swear falsely as well?











Nevertheless, רבי חייא asserts לא תהא הודאת פיו גדולה מהעדאת עדים

Witnesses can certainly accomplish the same as an admission to require him to swear; and he offers two sources for this assertion:

1.

ק"ו

We can deduce this Halachah from other cases where we require an oath:

מה פיו שאין מחייבו קנס מחייבו שבועה עדים לא כ"ש

If one's own admission, although it cannot obligate him in a penalty, can obligate him to swear; certainly, witnesses who CAN obligate him in a penalty can obligate him to swear?

However, we can rejoin מה לפיז שכן אינו בהכחשה והזמה מה לפיז שכן אינו בהכחשה והזמה האמר בעדים שישנן בהכחשה והזמה One's admission cannot be contradicted by witnesses, while testimony can be contradicted by another set of witnesses?







8 Similarly, we can argue the following "ק"ו

מה עד אחד שאין מחייבו ממון

מחייבו שבועה

עדים לא כ"ש

If a single witness, although he cannot obligate him to pay, suffices to obligate one to support his denial with an oath; certainly witnesses, who CAN obligate payment, can obligate him to swear.

However, we can rejoin

מה לעד אחד שכן על מה שמעיד הוא נשבע

תאמר בעדים שעל מה שכפר הוא נשבע

A single witness obligates the defendant to swear to contradict his testimony. This cannot serve as a basis to require one to swear regarding the rest of the claim?

The Gemara therefore explains

לא ראי זה כראי זה

Each case does NOT have the characteristic of the other case. Therefore, we say

חזר הדיו

הצד השוה שבהן

שעל ידי טענה וכפירה הן באין ונשבע

Both cases swear due to circumstances of claims and denials, and Tosfos adds

ע"י טענה חשובה

דנראה דמשקר

These are cases of credible claims, where it appears that he is lying.

Therefore, we can derive a general principle and assert that witnesses obligate one to swear in such circumstances as well.











תנא תונא, we can support רבי חייא's Halachah from our Mishnah:

שנים אוחזין בטלית כיון דתפיס אנן סהדי דמאי דתפיס האי דידיה הוא ומאי דתפיס האי דידיה הוא וקתני ישבע

Since they are both holding on to the טלית, they are each presumed owners, and it is as if they are each supported by witnesses, and therefore do not receive the entire טלית understands that it is for this reason that they are required to swear regarding the second half, similar to a מודה במקצת.

The Gemara will discuss the validity of these proofs in the next Daf.



תנא תונא

We can support "כני חניא Halachah from our Mishnah:

שנים אוחזין במלית

ביון דתפים אןן סדדי דואי דתפים דאי דידיד דוא אואי דתפים דאי דידיד דוא וקתןי ילדץ

Since they are both holding on to the טלית, they are each presumed owners, and it is as if they are each supported by witnesses, and therefore do not receive the entire טלית.



