



בס"ד Intro

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

מודה במקצת

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

The Gemara discusses several aspects of this Halachah, including

הילך

One who admits to part of a claim, but asserts that the money is still intact and available for immediate collection:

And there's a מחלוקת whether

הילך חייב

He is required to swear, because he is considered a מודה

OR

הילך פטור

He is not required to swear, because the claim consists only of the portion that he denies, and so he is a כופר הכל.

В

קרקעות

One does not swear if the claim pertains to land;

ארבעה שומרים

דמי בר חמא maintains that a custodian must only swear to support his claim that the animal he was guarding was lost or damaged due to circumstances for which he is not liable, IF he is also a מודה במקצת, having partially admitted to the claim;

מודה ממין הטענה

It is a מחלוקת whether one only swears if he admits to a portion of the claim, and not to owing a completely different item.

The Gemara references several other oaths, including: שבועת היסת

The כופר הכל, one who categorically denies a claim, to swear as well; and

שבועה שאינה ברשותו

A guardian who refuses to swear that he was not negligent, and chooses to pay instead, must still swear that the item is not currently in his possession.

חשיד אממונא

חשיד אשבועתא

The Gemara discusses whether one who is suspected of stealing is also suspected of swearing falsely.











So let's review...

The Gemara in the previous Daf discussed

מנה לי בידך

והלה אומר אין לך בידי אלא חמשים זוז

והילך

One who admits to part of a claim, but asserts that the money is still intact and available for immediate collection:

And cited a מחלוקת whether

הילך חייב

He is required to swear, because he is considered a מודה במקצת;

OR

הילך פטור

He is not required to swear, because the claim consists only of the portion that he denies, and so he is a כופר הכל.

The Gemara now asks למ"ד הילך פטור

According to the opinion that he is exempt,

אמאי איצטריך קרא

למעוטי קרקע משבועה

הא כל קרקע הילך הוא

Why is it necessary for a בית to teach us that כלל ופרט וכלל each us that דין does not administer oaths for claims regarding land? Every such case involves הילך, because the land is already in his possession!









The Gemara suggests two scenarios:

1.

דחפר בה בורות שיחין ומערות

He damaged the land. Therefore, although the claim originally pertained to land, he is now admitting liability for monetary compensation, and it is NOT a case of הילך.

דטענו כלים וקרקעות

והודה בכלים וכפר בקרקעות

The claim was for both land and utensils, and he only admitted to utensils. Therefore, the oath indeed pertains to land, but it is NOT a case of הילך, since he is only returning utensils, which are not automatically in their owner's possession.

=====









The Gemara tries to resolve this מחלוקת from the following ברייתא regarding שבועת השומרים:

A שומר must swear to support his claim that the animal he was guarding was lost or damaged due to circumstances for which he is not liable.

However, רמי בר חמא maintains

ארבעה שומרין

צריכין כפירה במקצת והודאה במקצת

They are only required to swear if they are also a מודה having admitted to part of the claim.

This is possible only if

אמר ליה ג' פרות מסרתי לך

The מפקיד claims he gave him three cows, and the שומר admitted to having one animal, denied the second, and claimed an exemption regarding the third.

If so, the Gemara points out לאו דא"ל הילך

The cow is a פקדון and is automatically in the owner's possession, constituting a case of הילך, and yet this is considered a מודה במקצת?



The Gemara answers דטען מתו כולהו בפשיעה

The מפקיד claimed that all three animals died due to the small sence, and the שומר responded

חדא לא היו דברים מעולם

וחדא מתה באונס

וחדא מתה בפשיעה דבעינא שלומי לך

He denied one completely, admitted that one died due to negligence, for which he's liable, and claimed the third died due to unavoidable circumstances, for which he's exempt. Therefore,

לאו הילך הוא

Because, he merely admitted to owing money;

======









The Gemara now returns to explain the Mishnah on דף ב':
שנים אוחזין בטלית

זה ישבע שאין לו בה פחות מחציה וזה ישבע שאין לו בה פחות מחציה ויחלוקו

Each one must swear that he owns at least half of the garment, and they then divide it.

The Gemara elaborates on the wording of this oath: Although they are each claiming that the טלית is completely theirs, they do not swear

שבועה שכולה שלי

I own the entire טלית, because

מי יהבינן ליה כולה

Neither claimant will receive the whole טלית, and as Rashi explains

הרי לעז לב"ד

People will question that the ruling of בית דין does not conform to the oath they administered.

Furthermore, they do not swear שבועה שחציה שלי שבועה טלית own half the טלית, because מרע ליה לדיבוריה

That would constitute an admission that he does not own the entire טלית, contradicting his original claim.



Therefore, he swears
שאין לו בה פחות מחציה
Which the Gemara explains as
דאמר כולה שלי
דאמר כולה שלי
ולדבריכם שבועה שיש לי בה
ואין לי בה פחות מחציה
He affirms that he is claiming the entire טלית. However,
due to the opposing claim, he swears that he has an
interest in the טלית of at least half of it.









The Gemara asks

מאחר שזה תפוס ועומד וזה תפוס ועומד

שבועה זו למה

Since both are holding the טלית, they are both presumed owners, and should divide it without swearing?

The Gemara explains

תקנת חכמים היא שלא יהא כל אחד ואחד הולך ותוקף בטליתו של חבירו ואומר שלי הוא

The הכמים required this oath to prevent people from capriciously claiming other people's belongings.

=======



The Gemara questions the oath's validity:

מיגו דחשיד אממונא

חשיד נמי אשבועתא

If we suspect him of stealing, we should suspect that he would also swear falsely?

Therefore, we can infer from our Mishnah לא אמרינן

מיגו דחשיד אממונא

חשיד אשבועתא

וושיו אשבועונא

Even one who is guilty of financial crimes would not swear falsely.

As Rashi explains;

דחמיר הוא לאינשי איסור שבועה מאיסור גזילה

People consider swearing falsely a more severe sin. And as Tosfos adds from the Gemara elsewhere;

ארו משל זייט מולים מולי מיני משל מיני בשעה שאמר הקב"ה בסיני שכל העולם כולו נזדעזע בשעה שאמר הקב"ה

לא תשא את שם ה' אלהיך לשוא

The world shuddered when Hashem declared the לאו of swearing falsely.









The Gemara first cites three examples of oaths in order to prove this principle but rejects them:

מודה מקצת הטענה ישבע

One swears if he admits to part of a claim. Clearly, we suspect he is stealing, and yet we administer an oath?

The Gemara rejects this proof התם אשתמוטי קא משתמיט ליה It is possible he does not intend to steal, but merely to defer payment.

The Gemara first cites three examples but rejects them: מודה מקצת הטענה ישבע We suspect he is stealing, yet we administer an oath? התם אשתמוטי קא משתמיט ליה He does not intend to steal, merely to defer payment

ארבעה שומריו

צריכין כפירה במקצת והודאה במקצת רמי בר חמא asserts that a guardian swears only if he also

admits to part of the claim. Clearly, we suspect he is stealing, yet we administer an oath?

Here, too, the Gemara answers

אשתמוטי קא משתמיט

He merely seeks to buy some time, hoping to track down the thief or locate the missing item.

Although רב חסדא said הכופר בפקדון פסול לעדות

One who denies that he received an item for safekeeping is invalidated as a witness?

The Gemara answers

כגון דאתו סהדי ואסהידו ביה דההיא שעתא איתיה לפקדון בביתיה והוה ידע

או דהוה נקיט ליה בידיה

This is only if witnesses testify that he was aware that the item was in his house at the time, or that he was holding it; therefore, he clearly intended to steal it. Otherwise, we would assume he merely intended to defer payment.









3.

משביעין אותו שבועה שאינה ברשותו

A guardian who refuses to swear that he was not negligent, and chooses to pay instead, must still swear that the item is not currently in his possession. Clearly, we suspect him of stealing the item, and yet we administer an oath?

The Gemara rejects this proof as well:

מורה ואמר

דמי קא יהבנא ליה

He may justify his actions by reasoning that he is not stealing, since he will pay for the item.

Although

קא עבר על לאו דלא תחמוד

The Torah explicitly prohibits taking something forcibly, even with payment,

לא תחמוד לאינשי

בלא דמי משמע להו

People often assume that the Pasuk only refers to taking something without paying.



12

The Gemara continues into the next Daf to conclusively prove this principle from three other oaths:

1.

כופר הכל

משביעין אותו שבועת היסת

One who categorically denies a claim is obligated to swear מדרבנן. In this case, there is no basis to assume that he was merely deferring payment, and yet we allow him to swear?









2.

שניהם נשבעין ונוטלין מבעל הבית

The Gemara on ידף ב' cited a case of הדוני; an employer instructed his shopkeeper to pay his employee, and the shopkeeper and the employee argue whether he paid them:

The Tanna Kama maintains that they both swear and collect payment from the בעל הבית. In this case, חד מינייהו ודאי חשיד אממונא

One of them certainly intends to steal, and yet we allow them to swear?

13



שניהם נשבעין ונוטלין מבעל הבית

An employer instructed his shopkeeper to pay his employee, and the shopkeeper and the employee argue whether he paid them;

> איא: שניהם נשכעין ונוטלין מכעל הכית



In this case,

חד מינייהו ודאי חשיד אממונא

yet we allow them to swear?

14

שלש שבועות משביעין אותו שלש

A שומר, who claims that an item was lost or stolen due to unavoidable circumstances which exempt him from payment, must take three oaths:

שבועה שלא פשעתי בה

I was not negligent;

שבועה שלא שלחתי בה יד

I did not use it inappropriately; and שבועה שאינה ברשותי

It is not currently in my possession;

This third oath indicates that we suspect him of stealing, and yet בית דין administers an oath?

Thus, the Gemara proves conclusively לא אמרינן מיגו דחשיד אממונא חשיד אשבועתא 14



שלש שבועות משביעין אותו

A שומר, who claims that an item was lost or stolen due to unavoidable circumstances which exempt him from payment, must take three oaths:

לבוצה לא כלצתי בה

לבוצה לא לתחני בה יד

לבנץ כלאינו ברלנתי

This indicates we suspect him of stealing, yet בית דין administers an oath?

Thus, the Gemara proves conclusively...

לא אמרינן

מיגו דחשיד אממונא חשיד אשבועתא



Dedicated By: __







However, אב" maintains

מיגו דחשיד אממונא חשיד אשבועתא

Therefore, if we indeed suspected him of attempting to steal someone's טלית, we would not allow him to swear.

Rather, we allow him to swear, because

חיישינין שמא ספק מלוה ישנה יש לו עליו

We suspect that he seized the טלית as payment for a possible outstanding debt, and

פרשי אינשי מספק שבועה

ולא פרשי מספק ממונא

Although he was willing to take money that was possibly not his, he would not swear under such circumstances,

ממון איתיה בחזרה

שבועה ליתיה בחזרה

He reasons that he can always return the money, but cannot take back the oath.





