

A בס"ד

Intro

Today we will Be"H learn מ"ז of שבועות of דף מז. Some of the topics we will learn about include:

The Gemara discusses several scenarios involving oaths, including:

חשוד על השבועה

If we suspect that the defendant might swear falsely, the claimant swears and collects;

היו שניהן חשודין

If both the defendant and the claimant are suspected of swearing falsely;

היתומין מן היתומין

The lender's orphans can only collect from the borrower's orphans with an oath, and they swear that to the best of their knowledge, the debt is still unpaid;

אין חטפי ודידי חטפי

If there is a single witness that someone grabbed something from another person, and the defendant admits this, but claims that he took that which was his;

B נסכא דרבי אבא

The case of the silver ingot upon which רבי אבא ruled כל המחויב שבועה ואינו יכול לישבע משלם

If one is unable to swear to contradict an עד אחד as in the above case, he liable to pay.

חנוני על פנקסו

When a storekeeper and a worker argue whether the storekeeper gave merchandise to the worker on his employer's behalf, whether they both swear to collect from the employer?

שתי כיתי עדים המכחישות זו את זו

Whether two pairs of witnesses who contradict each other are believed in other unrelated cases? Gemara discusses several cases,

A

חשוד על השבועה

היו שניהן חשודין

היתומין מן היתומין

אין חטפי ודידי חטפי

B

נסכא דרבי אבא

כל המחויב שבועה ואינו יכול לישבע משלם

חנוני על פנקסו

שתי כיתי עדים המכחישות זו את זו

C including:
 אומן אומר שתיים קצצת לי
 והלה אומר לא קצצתי לך אלא אחת
 If the worker claims that they agreed to a fee of two סלע,
 while the employer claims that they agreed to a fee of one
 סלע;
 Or
 אמר לו לא שכרתיך מעולם
 If the employer claims he never hired him.

2.
 נגזל
 A victim of theft swears and collects, and the Gemara
 explains

בטוענו כלים הניטלין תחת כנפיו
 The witnesses observed him taking utensils, but he hid
 them under his clothing, and so they could not see if he
 took one or two.

The Gemara also discusses
 ראווה שהטמין כלים תחת כנפיו ויצא
 ואמר לקוחין הן בידי

If someone was observed hiding utensils underneath his
 clothing and leaving another person's house, whether he is
 believed to claim that he purchased them?

3.
 נחבל
 A victim of assault swears and collects.

4.
 חשוד על השבועה
 If we suspect that the defendant might swear falsely, we
 transfer the oath to the claimant.

The Gemara lists
 פסולא דאורייתא

Those who are disqualified from swearing התורה, since
 they previously swore falsely, and
 פסולא דרבנן

Those who are disqualified from swearing מדרבנן.

C
 אומן אומר
 שתיים קצצת לי
 והלה אומר
 לא קצצתי לך אלא אחת

אמר לו
 לא שכרתיך מעולם

נגזל

נחבל

חשוד על השבועה

1 So, let's review:

The Mishnah on דף מ"ה ruled
 חשוד על השבועה
 שכנגדו נשבע ונוטל
 If we suspect that the defendant might swear falsely, the
 claimant swears and collects.

However, if
 היו שניהן חשודין
 חזרה השבועה למקומה
 דברי רבי יוסי
 If both the defendant and the claimant are suspected of
 swearing falsely, the oath returns to its rightful place. The
 Gemara will explain this ruling.
 However,
 רבי מאיר אומר
 יחלוקו
 They cannot swear, and so they divide the disputed sum.

The Gemara cites another version of the Mishnah:
 היו שניהן חשודין
 חזרה השבועה למקומה
 דברי רבי מאיר
 רבי יוסי אומר
 יחלוקו
 Interchanging the opinions;
 And relates that
 עבד רב נחמן עובדא יחלוקו
 עבד רב נחמן ruled that they divide the disputed sum.

1

The previous Mishnah taught

**חשוד על השבועה
 שכנגדו נשבע ונוטל**

*If we suspect that the defendant might swear falsely,
 the claimant swears and collects.*

However, if

היו שניהן חשודין

רבי מאיר

יחלוקו

*They cannot swear,
 and they divide
 the disputed sum.*

רבי יוסי

חזרה השבועה למקומה

*If both the defendant
 and the claimant are suspected
 of swearing falsely - the oath
 returns to its rightful place.*

Another version of the Mishnah:

היו שניהן חשודין

רבי יוסי

יחלוקו

רבי מאיר

חזרה השבועה למקומה

עבד רב נחמן עובדא יחלוקו

עבד רב נחמן ruled that they divide the disputed sum.

2 The Gemara now cites two opinions in explanation of חזרה השבועה למקומה

להיכן חזרה

Where does the oath revert to?

רבותינו שבבבל אמרו

חזרה שבועה לסיני

רבותינו שבארץ ישראל אמרו

חזרה שבועה למחויב לה

The חכמים in Bavel ruled that the oath reverts to the original oath of the Torah given at סיני, which forbids stealing.

In other words, בית דין does not administer an oath, nor enforce payment;

And if the defendant owes the money, he will be dealt with מן השמים for his transgression.

While the חכמים in Eretz Yisroel hold that the oath reverts to the defendant, because it was originally his obligation.

And since he cannot swear to exempt himself from payment, he must pay.

The Gemara elaborates and identifies

רבותינו שבבבל

As

רב ושמואל

And

רבותינו שבארץ ישראל

As

רבי אבא

Based on their following rulings;

2

חזרה השבועה למקומה

להיכן חזרה

Where does the oath revert to?

רבותינו שבארץ ישראל אמרו
חזרה שבועה למחויב לה

The חכמים in Eretz Yisroel hold that the oath reverts to the defendant, because it was originally his obligation.

And since he cannot swear to exempt himself from payment, he must pay.

רבי אבא

רבותינו שבבבל אמרו
חזרה שבועה לסיני

The חכמים in Bavel ruled that the oath reverts to the original oath of the Torah given at סיני, which forbids stealing.

In other words, בית דין does not administer an oath, nor enforce payment; And if the defendant owes the money, he will be dealt with מן השמים.

רב ושמואל

3

רבותינו שבבבל
 רב ושמואל
 Because the Mishnah on מ"ה דף said
 וכן היתומין
 לא יפרעו אלא בשבועה
 Even orphans can only collect with an oath;
 And the Gemara later explains that this refers to
 וכן היתומין מן היתומין
 לא יפרעו אלא בשבועה
 Even the lender's orphans can only collect from the
 borrower's orphans with an oath that to the best of their
 knowledge the debt is still unpaid, as the Mishnah there
 explains.

However, רב ושמואל, who were from בבבל, explained
 לא שנו אלא
 שמת מלוה בחיי לווה
 אבל מת לווה בחיי מלוה
 כבר נתחייב מלוה לבני לווה שבועה
 ואין אדם מוריש שבועה לבניו
 They can collect with a שבועה only if the lender died
 before the borrower.
 However, if the borrower died before the lender, since, at
 that time, the lender himself was obligated to swear to the
 orphans with certainty that the debt had not yet been paid,
 his orphans are also obligated in this שבועה. However,
 since they cannot swear with certainty that the debt was
 not paid, they cannot collect.

This case of יתומים is akin to שניהן חשודין in that neither
 side can make the שבועה, and therefore, Bais Din does
 nothing. Hence,
 רבותינו שבבבל
 רב ושמואל

3

רבותינו שבבבל
 רב ושמואל

מלך דף מ"ה

וכן היתומין
 לא יפרעו אלא בשבועה

Even orphans can only collect with an oath;

And the Gemara explains this refers to

וכן היתומין מן היתומין
 לא יפרעו אלא בשבועה

Even the lender's orphans can only collect
 from the borrower's orphans with an oath
 that to the best of their knowledge the debt is still unpaid,
 as the Mishnah there explains.

רב ושמואל, who were from בבבל, explained

לא שנו אלא

שמת מלוה בחיי לווה

אבל מת לווה בחיי מלוה

כבר נתחייב מלוה לבני לווה שבועה

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They can collect with a שבועה
 only if the lender died before the borrower.

However, if the borrower died before the lender,
 since, at that time, the lender himself
 was obligated to swear to the orphans with certainty
 that the debt had not yet been paid,
 his orphans are also obligated in this שבועה.

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 the debt was not paid, they cannot collect.

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 in that neither side can make the שבועה,
 and therefore, Bais Din does nothing. Hence,

רבותינו שבבבל
 רב ושמואל

4

And

רבותינו שבארץ ישראל
רבי אבא

Based on the well-known case of אבא דר' נסכא in מסכת בבא in נסכא דר' אבא, which the Gemara relates here as well;

And, רבי אבא, who is from ארץ ישראל, ruled

הוי מחויב שבועה שאינו יכול לישבע

וכל המחויב שבועה ואינו יכול לישבע

משלם

He is obligated to swear to contradict the עד אחד and exempt himself from payment, but since he cannot do so, he must pay.

Likewise, in our case of שניהן חשודין, the original חייב שבועה is on the נתבע, the defendant, and since he cannot swear, he must pay. Hence,

רבותינו שבארץ ישראל

רבי אבא

4

רבותינו שבארץ ישראל

רבי אבא

Based on the case of אבא דר' נסכא in מסכת בבא בתרא, which the Gemara relates here as well;

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רבותינו שבארץ ישראל

רבי אבא



5 The Gemara cites a ברייתא that agrees with אבא:
 The Pasuk says
 שבועת ה' תהיה בין שניהם
 And we expound
 ולא בין הירשין
 The heirs do not swear to each other.
 And the Gemara explains that they claimed
 מנה לאבא ביד אביך
 Your father owed our father money; and the others
 responded
 חמשין ידענא וחמשין לא ידענא
 We know he owed 50, but we do not know about the other
 50.

Apparently,
 אבין

כי האי גוונא מיחייב
 איצטריך קרא למיפטר גבי יורשין
 If the father had been alive, he would be a במקצת and
 obligated to swear regarding the other part.
 However, since he cannot swear because he said he was
 not sure about the other part;
 according to אבא, he is therefore obligated to pay.
 Likewise, the heirs cannot swear either, and so they, too,
 would have to pay. Therefore, we need the Pasuk to
 exempt them from this oath, and as a result, from
 payment.

However, רב ושמואל interpret this Pasuk differently, as,
 שמעון בן טרפון אומר
 שבועת ה' תהיה בין שניהם
 מלמד שהשבועה חלה על שניהם
 Both the defendant AND the claimant are responsible if
 the defendant swears falsely, because the claimant caused
 the defendant to swear falsely, for he should have been
 more careful with whom he entrusts his money.
 =====

5 *The Gemara cites a ברייתא that agrees with אבא*

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*We know he owed 50,
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However, רב ושמואל interpret this Pasuk differently, as,

שמעון בן טרפון אומר

שבועת ה' תהיה בין שניהם

מלמד שהשבועה חלה על שניהם

*Both the defendant and the claimant
 are responsible if the defendant swears falsely,
 because the claimant caused the defendant to swear falsely,
 for he should have been more careful
 with whom he entrusts his money.*

6 The Mishnah continues

והחנוני על פנקסו כיצד
 What is the case when a storekeeper swears and collects?
 לא שיאמר לו
 כתוב על פנקסי
 שאתה חייב לי מאתים זוז
 The storekeeper cannot tell someone, "It is written in my
 ledger that you owe me 200 זוז," and then swear and collect.
 Rather,
 אלא אומר לו
 תן לבני סאתים חטין
 תן לפועלי סלע מעות
 If someone asked the storekeeper to give his son two סאה
 of wheat, or to give his worker a סלע in change, on credit;
 and
 הוא אומר נתתי
 והן אומרים לא נטלנו
 If the storekeeper claims that he gave it, while they claim
 they never received it;
 הוא נשבע ונטל
 והן נשבעין ונטלין
 The storekeeper AND the workers both, swear to their
 claims and collect from the employer.

However,
 אמר בן ננס
 כיצד אלו ואלו
 באין לידי שבועת שוא
 How can we have them both swear, if one of them is
 certainly swearing falsely?
 Rather,
 אלא הוא נוטל שלא בשבועה
 והן נוטלין שלא בשבועה
 They can both collect without swearing.

6

The Mishnah continues



והחנוני על פנקסו כיצד
 What is the case when a storekeeper swears
 and collects?

לא שיאמר לו

כתוב על פנקסי

שאתה חייב לי מאתים זוז

*The storekeeper cannot tell someone,
 "It is written in my ledger that you owe me 200 זוז,"
 and then swear and collect.*

אלא אומר לו

תן לבני סאתים חטין

תן לפועלי סלע מעות

*If someone asked the storekeeper
 to give his son two סאה of wheat,
 or to give his worker a סלע in change, on credit;*

הוא אומר נתתי

והן אומרים לא נטלנו

*If the storekeeper claims that he gave it,
 while they claim they never received it;*

הוא נשבע ונטל

והן נשבעין ונטלין

*The storekeeper and the workers both,
 swear to their claims and collect from the employer.*

However,

אמר בן ננס

כיצד אלו ואלו

באין לידי שבועת שוא

*How can we have them both swear,
 if one of them is certainly swearing falsely?*

Rather,

אלא הוא נוטל שלא בשבועה

והן נוטלין שלא בשבועה

They can both collect without swearing.

7 Now, רבי commented
טורח שבועה זו למה
Why should we burden them with this oath, if one party
will certainly swear falsely?
And the Gemara offers two interpretations of this
comment:

1.
פועלין נשבעין לחנוני
He disagrees with the רבנן and with ננס, and holds that
the workers swear to the storekeeper that they did not
receive it and collect from him. And the storekeeper
cannot then demand payment from the employer.

2.
פועלים נשבעין לבעל הבית
במעמד חנוני
כי היכי דליכספו מיניה
The workers swear to the employer that they did not
receive it and they collect from him, in accordance with
the opinion of the רבנן. However, they must do so in the
presence of the storekeeper, so they should be embar-
rassed from him and refrain from swearing falsely.
=====

8 The Gemara begins an apparently unrelated discussion –
a Machlokes whether contradictory witnesses are later
believed in other cases – which it will then relate to our
Mishnah:
איתמר
שתי כיתי עדים המכחישות זו את זו
If two pairs of witnesses contradict each in one case;
אמר רב הונא
זו באה בפני עצמה ומעידה
וזו באה בפני עצמה ומעידה
Each pair, separately, is later believed in other cases, but
one witness from each pair cannot combine to testify
together, since one of them certainly testified falsely.
However,
רב חסדא אמר
בהדי סהדי שקרי למה לי
Since one pair certainly lied, neither is believed in other
cases.

7
טורח שבועה זו למה
*Why should we burden them with this oath,
if one party will certainly swear falsely?*

1
פועלין נשבעין לחנוני
*He disagrees with the רבנן and with ננס,
and holds that the workers swear to the storekeeper
that they did not receive it and collect from him.
And the storekeeper cannot then demand payment
from the employer.*

2
**פועלים נשבעין לבעל הבית
במעמד חנוני
כי היכי דליכספו מיניה**
*The workers swear to the employer
that they did not receive it and they collect from him,
in accordance with the opinion of the רבנן.
They must do so in the presence of the storekeeper,
so they should be embarrassed from him
and refrain from swearing falsely.*

8
איתמר
שתי כיתי עדים המכחישות זו את זו
If two pairs of witnesses contradict each in one case;

אמר רב הונא
**זו באה בפני עצמה ומעידה
וזו באה בפני עצמה ומעידה**
*Each pair, separately, is later believed in other cases,
but one witness from each pair cannot combine
to testify together,
since one of them certainly testified falsely.*

רב חסדא אמר
בהדי סהדי שקרי למה לי
*Since one pair certainly lied,
neither is believed in other cases.*

9 And the Gemara elaborates with various scenarios:

1.

שני מלוין ושני לוין ושני שטרות
היינו פלוגתייהו

If these two pairs of witnesses sign separate documents for two loans of two different sets of debtors and creditors, this is precisely the case of their מחלוקת.

2.

מלוה ולוה ושני שטרות
יד בעל השטר על התחבונה

If they sign separate documents recording two loans between the same debtor and creditor, the creditor cannot claim both debts, since we know that only one document is valid. Therefore, he can only collect the lesser debt.

3.

שני מלוין ולוה אחד ושני שטרות
היינו מתניתין

If they sign separate documents recording two loans between two creditors and the same debtor, this is precisely the case of our Mishnah with the חנוני, where there is one defendant, and yet we allow them both to swear. Therefore, according to רב הונא, they are both valid.

4.

The Gemara asks, however,
שני לוין ומלוה אחד ושני שטרות
מאי

If they sign separate documents recording two loans between two debtors and the same creditor, what is the Halachah? Can each debtor push him off by saying, "Perhaps the witnesses on my document are disqualified?"

The Gemara answers

תיקו

Leaving the matter unresolved.

9

1

שני מלוין ושני לוין ושני שטרות היינו פלוגתייהו

If these two pairs of witnesses sign separate documents for two loans of two different sets of debtors and creditors, this is precisely the case of their מחלוקת.

2

מלוה ולוה ושני שטרות יד בעל השטר על התחבונה

If they sign separate documents recording two loans between the same debtor and creditor, the creditor cannot claim both debts, since we know that only one document is valid. Therefore, he can only collect the lesser debt.

3

שני מלוין ולוה אחד ושני שטרות היינו מתניתין

If they sign separate documents recording two loans between two creditors and the same debtor, this is precisely the case of our Mishnah with the חנוני, where there is one defendant, and yet we allow them both to swear. Therefore, according to רב הונא, they are both valid.

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שני לוין ומלוה אחד ושני שטרות מאי

If they sign separate documents recording two loans between two debtors and the same creditor, what is the Halachah?

Can each debtor push him off by saying, "Perhaps the witnesses on my document are disqualified?"

תיקו

10

So, let's review...

The Gemara earlier cited two rulings of רבא:

1.

שבועה שלא אוכל ככר זו
כיון שאכל ממנה כזית
חייב

שלא אוכלנה

אינו חייב עד שיאכל את כולה

If one swears, "I will not eat this loaf," he is liable for eating a single כזית, but if he swears, "I will not eat it," he is only liable if he consumes the entire loaf.

2.

אין שבועה חל על שבועה

A subsequent oath cannot take effect on a previous identical oath.

However,

אם נשאל על הראשונה

עלתה לו שניה תחתיה

If he nullifies the first oath retroactively, the subsequent oath would then take effect.

10

