

A בס"ד

Intro

Today we will Be"H begin פרק כל הנשבעין, the seventh Perek of מסכת שבועות, and learn מ"ה דף. Some of the topics we will learn about include:

כל הנשבעין שבתורה נשבעין ולא משלמין

Whenever the Torah requires an oath to decide a case between a claimant and a defendant, it is the defendant who swears to avoid paying.

However,

ואלו נשבעין ונוטלין

The Mishnah lists several cases where the רבנן initiated that the claimant swears and collects, including:

השכיר

A hired worker;

The Gemara differentiates between several cases, including:

1.

הוא אומר נתתי

והלה אומר לא נטלתי

The employer claims he paid, while the worker claims he never received it.

OR

אומן אומר שתיים קצצת לי

והלה אומר לא קצצתי לך אלא אחת

If a craftsman claims that they agreed to a fee of two סלעים, while the owner claims that they agreed to a fee of one סלע;

B

2.

עבר זמנו ולא נתן לו

If the time for payment has passed;

3.

שכרו בעדים

Whether the worker was hired in the presence of witnesses or not;

המפקיד אצל חבירו

One who gives a custodian a deposit;

The Gemara discusses

בעדים או בשטר

Whether the Torah obligates him to swear to a deposit only if there are witnesses, or if the deposit was documented; and

צריך להחזיר לו בעדים

Whether he can claim that he returned the deposit without corroboration from witnesses.

A

כל הנשבעין שבתורה נשבעין ולא משלמין

ואלו נשבעין ונוטלין השכיר

הוא אומר נתתי והלה אומר לא נטלתי

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

B

עבר זמנו ולא נתן לו

שכרו בעדים

המפקיד אצל חבירו בעדים או בשטר

צריך להחזיר לו בעדים

1 So, let's review...

Zugt di Mishnah:

כל הנשבעין שבתורה
נשבעין ולא משלמין

Whenever the Torah requires an oath to decide a case between a claimant and a defendant, it is the defendant who swears to avoid paying, as the Pasuk says regarding a שומר שכר;

... שבועת ה' תהיה בין שניהם
ולקה בעליו ולא ישלם

The owner accepts the oath and the שומר does not pay.

And we expound
מי שעליו לשלם

לו שבועה

The one who would be obligated to pay is always the one who swears and thereby becomes exempt from payment.

However, the Mishnah continues,

ואלו נשבעין ונוטלין

In the following cases, the רבנן initiated that the claimant swears and collects:

1.

השכיר

A hired worker;

2.

והנגזל

A victim of theft;

3.

והנחבל

A victim of assault;

4.

ושכנגדו חשוד על השבועה

When the defendant is disqualified from swearing; and

5.

וחנוני על פנקסו

A storekeeper regarding his ledger;

The Mishnah then elaborates on all these cases, as we will learn throughout the next few Dafim.

1

כל הנשבעין

כל הנשבעין שבתורה נשבעין ולא משלמין

Whenever the Torah requires an oath to decide a case between a claimant and a defendant, it is the defendant who swears to avoid paying,

as the Pasuk says regarding a שכר;

שבועת ה' תהיה בין שניהם ...
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In the following cases, the רבנן initiated that the claimant swears and collects:

- 1 -

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When the defendant is disqualified from swearing;

- 5 -

וחנוני על פנקסו

A storekeeper regarding his ledger;

2 The Mishnah continues:

השכיר כיצד

A hired worker swears to collect his wages in the following case:

אמר לו

תן לי שכרי שיש לי בידך

If the worker asked for his wages, and

הוא אומר נתתי

והלה אומר לא נטלתי

The employer claims he paid, while the worker claims he never received it;

הוא נשבע ונוטל

The worker swears and collects.

However,

רבי יהודה אומר

עד שתהא שם מקצת הודאה

He only swears if the defendant admits to part of the claim;

And the Mishnah explains:

כיצד

אמר לו תן לי שכרי

חמשים דינר שיש לי בידך

והוא אומר

התקבלת דינר זהב

The worker claims that he is owed his full wages of 50 silver דינר, while the employer claims that he already paid one gold דינר, which equals 25 silver דינר.

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2

השכיר כיצד

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The worker claims he is owed his full wages of 50 silver דינר,

The employer claims that he already paid one gold דינר, which equals 25 silver דינר.

3 The Gemara comments
תקנות קבועות שנו כאן
The Mishnah establishes a decree of such importance that
it can contravene the
Torah procedure for oaths. And
מאי שנא שכיר
דתקיננו ליה רבנן דמשתבע ושקיל
Why, indeed, did the רבנן decree that a hired worker swears
and collects?

And the Gemara explains;
עקרוה רבנן לשבועה מבעל הבית
ושדייה אשכיר
The רבנן took the oath away from the employer, and
imposed it on the worker instead, because
בעה"ב טרוד בפועליו הוא
The employer is occupied with his many workers.
Therefore, it is likely that he forgot whether he paid, and
will mistakenly swear falsely.
Nevertheless, we obligate the worker to swear in his place,
and he cannot collect without swearing,
כדי להפיס דעתו של בעה"ב
To reassure the employer that this was indeed the case.
However, we do not require wages to be paid in advance
to avoid this oath, because
שניהן רוצין בהקפה
The employer prefers credit, since he does not always
have the available funds, and the worker prefers credit, so
that he does not lose the money while he works.

3

תקנות קבועות שנו כאן
*The Mishnah establishes a decree of such importance
that it can contravene the Torah procedure for oaths.*

**מאי שנא שכיר
דתקיננו ליה רבנן דמשתבע
ושקיל**

*Why, indeed, did the רבנן decree
that a hired worker swears and collects?*

The Gemara explains;
**עקרוה רבנן לשבועה מבעל הבית
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*The רבנן took the oath away from the employer,
and imposed it on the worker instead,*

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בעה"ב טרוד בפועליו הוא
*The employer is occupied with his many workers.
Therefore, it is likely that he forgot whether he paid,
and will mistakenly swear falsely.*

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*The employer prefers credit,
since he does not always
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money while he works.*

4

Nevertheless, a ברייתא rules
אומן אומר שתיים קצצת לי
והלה אומר לא קצצתי לך אלא אחת
המוציא מחבירו עליו הראיה

If a craftsman claims that they agreed to a fee of two
סלעים, while the owner claims that they agreed to a fee of
one סלע, the burden of proof is on the worker, because
קציצה ודאי מידכר דכיר ליה

Although the owner is preoccupied and may forget
whether he paid yet, but he certainly does remember their
arrangement.

The Braisa adds, however,

עבר זמנו ולא נתן לו
הרי זה אינו נשבע ונוטל

If the time for payment has passed, as the Mishnah rules in
מסכת בבא מציעא

שכיר יום גובה כל הלילה
שכיר לילה גובה כל היום

A day worker must be paid during the following night,
and a night worker must be paid during the following day;
If the worker claims he was not paid, he cannot swear and
collect, because

חזקה אין בעל הבית עובר בבל תלין
וכי מטי זמן חיובא רמי אנפשיה ומידכר

We assume that the employer would not violate the
prohibition of תלין, delaying payment of wages, and so
when the wages are due, he makes sure to remember
whether he paid.

Furthermore,

אין שכיר משהא שכרו

We assume that the worker would not delay asking for his
wages. Therefore, since he is demanding payment
AFTER the set time, we believe the employer.

=====

4

Nevertheless, a ברייתא rules

**אומן אומר שתיים קצצת לי
והלה אומר לא קצצתי לך אלא אחת
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רמי אנפשיה ומידכר**

*We assume that the employer would not violate
the prohibition of תלין, delaying payment of wages,
and so when the wages are due,
he makes sure to remember whether he paid.*

Furthermore,

אין שכיר משהא שכרו

*We assume that the worker would not delay asking
for his wages. Therefore, since he is demanding
payment after the set time, we believe the employer.*

5 The Gemara cites a limitation to our Mishnah's ruling:

אמר רב נחמן אמר שמואל
לא שנו אלא ששכרו בעדים

The Mishnah's ruling of נוטל ונוטל applies only if the worker was hired in the presence of witnesses.

אבל שכרו שלא בעדים

מתוך שיכול לומר לו

לא שכרתיך מעולם

יכול לומר לו

שכרתיך ונתתי לך שכרך

However, if he was not hired in front of witnesses, the employer is believed to say that he hired him and paid him, because of a מיגו that he would be believed to say that he never hired him.

However, אב"י questioned this ruling:

The Pasuk says

ומת או נשבר או נשבה

שבועת ה' תהיה בין שניהם

A paid custodian must swear that the deposit suffered a אונס, an unavoidable mishap.

However,

א"כ

שבועת שומרין דחייב רחמנא

היכי משכחת לה

According to this reasoning, how is it possible for the Torah to obligate him to swear?

After all,

מתוך שיכול לומר לו

לא היו דברים מעולם

יכול לומר לו

נאנסו

Since he is believed to deny the deposit, he should also be believed to say that the deposit was lost, and he was not negligent?

5

אמר רב נחמן אמר שמואל

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The Mishnah's ruling of נוטל ונוטל applies only if the worker was hired in the presence of witnesses.

אבל שכרו שלא בעדים

מתוך שיכול לומר לו

לא שכרתיך מעולם

יכול לומר לו

שכרתיך ונתתי לך שכרך

However, if he was not hired in front of witnesses, the employer is believed that he hired him and paid him, because of a מיגו that he would be believed to say that he never hired him.

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The Pasuk says

ומת או נשבר או נשבה

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A paid custodian must swear that the deposit suffered a אונס.

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מתוך שיכול לומר לו

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יכול לומר לו נאנסו

Since he is believed to deny the deposit,
he should also be believed to say that the deposit was lost,
and he was not negligent?



6 At first, the Gemara answers
 דאפקיד ליה בעדים
 The Torah obligates him to swear if there are witnesses to the deposit. However, if there aren't any witnesses, he is indeed believed.

However, the Gemara asks
 מתוך שיכול לומר לו
 החזרתיו לך
 יכול לומר לו
 נאנסו
 Since he would be believed to say that he returned the deposit, he should also be believed to say that it suffered a mishap?

Therefore, the Gemara answers
 דאפקיד ליה בשטרא
 The deposit was documented, and so he cannot claim to have returned the deposit without corroboration, because the שטר is still in the hands of the owner.

Since the Gemara switched scenarios, we infer
 המפקיד אצל חבירו בעדים
 אין צריך להחזיר לו בעדים
 בשטר
 צריך להחזיר לו בעדים
 A custodian who received a deposit in the presence of witnesses can still claim that he returned the deposit, even without corroboration from witnesses. However, if the deposit was documented, he must provide witnesses that he returned the deposit.

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 דאפקיד ליה בעדים
 The Torah obligates him to swear if there are witnesses to the deposit. However, if there aren't any witnesses, he is believed.

מתוך שיכול לומר לו
 החזרתיו לך
 יכול לומר לו נאנסו

Since he would be believed to say that he returned the deposit, he should also be believed to say that it suffered a mishap?

דאפקיד ליה בשטרא
 The deposit was documented, and so he cannot claim to have returned the deposit without corroboration, because the שטר is still in the hands of the owner.

Since the Gemara switched scenarios, we infer

המפקיד אצל חבירו
 בשטר
 צריך להחזיר לו בעדים
 אין צריך להחזיר לו בעדים

However, if the deposit was documented, he must provide witnesses that he returned the deposit.

A custodian who received a deposit in the presence of witnesses can still claim that he returned the deposit, even without corroboration from witnesses.

