

INSIGHTS FROM OUR CHABUROS

There is
No Oath

מפני מה אמרה תורה במקצת הטענה ישבע

The Rishonim search for the source from where we know that when an alleged borrower responds with a total denial to a claim (כופר הכל), he is exempt from having to take an oath. Perhaps we should say that just as we know that a response that he owes part of what is being claimed (מודה במקצת) results in having to swear, so too should the Torah expect an oath for a complete denial. How do we know this is not true?

Tosafos (ד"ה מפני מה) learns that we know that כופר הכל does not swear based upon a גזירת הכתוב - a scriptural edict, from the verse in Shemos (22:8) which describes the conditions for an oath as "כי הוא זה" - that it is this. In order for there to be an oath, the response to a claim must have some element of admitting, as well as some degree of denial. This teaches that מודה במקצת must swear, but not where the denial is complete. Ramban adds that this must mean that when someone denies the claim against him completely he is exempt from the oath. Otherwise, the Torah would have expressed the case of having to swear in the case of total denial, and we would have determined that a partial denial must also swear (or else a person would always admit at least part, and exempt himself from swearing).

Tosafos also explains that once a person admits that he owes some of the money claimed, this confession creates a legal responsibility to deal with the sum which is denied as well, a type of גלגול, and an obligation to take an oath is generated. However, in a case where the alleged borrower denies any dealings with the lender, there is no legal association established between the litigants at all, and the defendant can simply walk away from the case. This is why no oath is administered in a case of a complete denial.

PARSHA CONNECTION

In this week's daf we find the concept of "אין אדם משים עצמו רשע", which means that we cannot accept testimony that includes the witness' admission to doing a עבירה. While in the context of giving testimony one cannot incriminate themselves, we see in this week's Parsha that one can actually become a רשע merely for intending to hit another person. This is based on the סנהדרין נח עמוד ב' in ארמג, which points out that when משה saw two Jews fighting he said למה תכה רעך, the word תכה is future tense meaning shall hit. In other words even though he had not hit yet משה already called him a רשע. The מדרש says that רעך means that your adversary is a רשע like you. Why is the one being hit assumed to be a רשע? Maybe he is a victim and only the aggressor is a רשע? The יקר כלי suggests that הכאה can mean physically hitting someone or "hitting" can mean using language that hurts another person as it says מכה רעהו בסתר, which מכה רשע explains refers to speaking לשון הרע about someone else. He therefore explains that משה heard both of them using derogatory language towards one another and this is why he called "both" רשעים.

STORIES OFF THE DAF

The False
Signature

"כתב ידיהם יוצא ממקום אחר"

During the time of the Netziv, זת"ל, there were constant altercations between the maskilim and those faithful to the Torah about the future of the great Yeshiva of Volozhin. The maskilim wished to see Volozhin teaching secular studies by government mandate if necessary, but the faithful wanted to leave Volozhin alone to continue what it had been doing since it opened: producing Gedolei Torah. Eventually, the maskilim succeeded and the Gedolim had no choice but to close Volozhin for good. When the maskilim saw how much this demoralized the Jews of Czarist Russia regardless of their commitment to religious observance, they professed regret. By that time, however, it was too late to change anything.

While the battle was still being waged over the yeshiva's fate, the maskilim were continually thwarted by the famed Rosh Yeshiva, the Netziv, זת"ל. They therefore tried to discredit him so that what they regarded as the biggest thorn in the side of "progress" would be neutralized once and for all.

One attempt to discredit the Netziv involved a plot to inform the Russian government that although the Netziv appeared to be a scholarly saint, he was actually a criminal, trafficking in forgeries. After this lie was passed to the Russian police, agents searched the Rav's home thoroughly and uncovered a highly incriminating letter signed by the Netziv himself.

The Netziv defended himself by using a principle expounded in Kesuvos 18b: "We have a rule that one can judge the veracity of a person's signature from other documents he was known to have written and signed. While I'll admit that this letter and the handwriting is very convincing, take note that it is signed: נפתלי צבי יהודה. If you examine every letter I have ever written, you will find that I invariably sign my name Tzvi Yehuda as a single word, with one yud serving in the formation of both names: נפטלי צביהודה. So while this seems convincing, it is clearly a forgery!"

The government inspectors were convinced. and the Netziv was declared innocent!

HALACHA HIGHLIGHT

The Claim of a Child

אין נשבעין על טענת חרש שוטה וקטן

One does not take an oath in response to the claim of a deaf-mute, one who is insane or a child

Rambam¹ rules that although Biblically one does not take an oath in response to the claim of a minor, nevertheless his teachers ruled that one should take a Rabbinic oath (שבועת היסט) in response to the claim of a minor. Even if the minor is not intellectually sharp or knowledgeable in business matters it is still appropriate for the adult to take an oath. The reason is that it protects children from adults taking advantage of them, for without this enactment there is nothing to stop adults from taking money from children. This language of Rambam indicates that when a minor makes a claim against an adult an oath must be taken regardless of whether it is a case of a partial admission (מודה במקצת), or whether the adult denied the claim altogether (כופר בכל). Nor does it matter whether there is any witness corroboration to the claim. This is the ruling of Shuchan Aruch² when he writes that one takes an oath in response to the claim of a child regardless of the intellect or business acumen of the child. Rema³, however, mentions other authorities who maintain that one does not take an oath in response to the claim of a child unless he has reached the age of understanding and is knowledgeable in business (עונת פטוּרָה).

Poskim discuss whether an adult is required to take an oath in response to the claim of a child if it seems evident that the child is making his claim specifically so that the adult should have to take an oath. In other words, is an oath in response to this claim required if it appears as if the child is being punitive or spiteful in his desire that the adult should swear?

After analyzing the relevant issues, Radvaz⁴ writes that if it seems to Beis Din that the child's claim has no basis and it is merely childish behavior on his part, an oath will not be administered in order to avoid taking Hashem's name in vain. In the event that after the child becomes an adult he continues to maintain his claim, an oath will be administered even though the claim was initially filed when he was a child.

1. רמב"ם פ"ה הל' טוען ונטען ה"י
2. שו"ע חו"מ סי' צ"ו סעי' ב'
3. רמ"א שם
4. שו"ת רדב"ז ח"ד סי' ר"ל

POINT TO PONDER

The Gemara asks why the משנה didn't use a case of מנה לאביו בידו והאכלתיו פרס. In the previous case the Gemara discussed why the משנה didn't give the example of מנה לויתי ממך וכו' which means that he owes him the money directly, not because he borrowed from his father. Why did the גמרא now change back to a case where he claims that his father lent him a מנה and he repaid half, and not a similar case to before where he borrowed from him and repaid half?

Response to last week's Point to Ponder:

The גמרא writes that when the Rabbis gave מנה לאביו ולא שרק וכו' they said רבי זירא סמיכה who was receiving סמיכה because of his vast knowledge of הלכה?

The מהרש"א explains that it's a reference to a person who is transparent and doesn't hide behind a "painted" image of themselves. A רב should be completely open and transparent in his actions.

REVIEW AND REMEMBER

1. Is one required to repay a loan in the presence of witnesses?
2. When is an adult considered a child?
3. What is the rationale why someone who admits to part of a claim must swear?
4. Explain אדם משים עצמו רשע אין.

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

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