

Daf Notes

Insights into the Daily Daf
Bava Metzia Daf 5

6 Iyar 5769

April 30, 2009

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Produced by Rabbi Avrohom Adler
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Daily Daf

Heilech

The Gemora asks: According to the opinion that one who says “heilech” (I am admitting to part of your claim and here it is) is exempt (from swearing due to partial admittance), why do we need a verse stating one does not swear for partial admittance regarding land? Every case of partial admittance regarding land is a case of “heilech” (as land does not go anywhere)!!?

The Gemora answers: A verse is required in a case where he dug pits and caves in the land (as he ruined it, and it is not like the land he was given; he therefore cannot say, “Here it is”).

Alternatively, the Gemora answers: It is required in a case where one claims land and movable objects, and he admitted regarding the objects, but denied owing the land.

The Gemora attempts to answer this question (regarding whether or not heilech is like partial admittance) from a braisa taught by Rami bar Chama. The braisa says: Four guardians require partial denial and partial admittance (in order for them to have to take an oath). They are: A person who watches an object for free, a borrower, a person who gets paid to watch an object and a renter. [According to this braisa, the owner must claim that the guardian was watching three objects. The

guardian denies ever watching one, admits to having one, and says the last one was either stolen or lost (watches for free), taken by circumstances beyond his control (renter or watches for pay), or died while working (borrower).] What is the case of the admittance? It must be referring to a case where the guardian says, “Take it wherever it is” (and this is called admittance).

The Gemora answers: No, the case is where the owner claims to have given the guardian three cows which all died due to the guardian’s negligence. The guardian claims that he only received two cows, one of which died due to forced circumstances, and one which died due to his negligence. The admittance is the one that died due to negligence, not a case of heilech.

The Gemora proves from a statement of the father of Rabbi Aporiki in a braisa that the earlier statement of Rabbi Chiya (that his admission should not be more than testimony) is difficult. He said: A person claims that his friend owes him a maneh and the friend denies it, but witnesses say that he indeed owes fifty zuz. One might think he should swear on the rest of the money (the other fifty zuz). This is why the verse says: Regarding any lost object about which he says that this is it. This implies that we only obligate him based on his admission, not on the admission of witnesses.

The Gemora answers: You are asking a question on Rabbi Chiya from a braisa? Rabbi Chiya is a Tanna, and can argue on a braisa.

The Gemora asks: Isn't the braisa's teaching derived from the verse?

The Gemora answers: The verse teaches that partial admittance is required (and we derive that testimony of witnesses serves the same purpose).

The father of Rabbi Aporiki will argue that the verse says, "this" and "it." One teaches us that his admittance obligates him to swear, and the other teaches us that the testimony of witnesses does not make him swear.

Rabbi Chiya understands that one of these verses is for partial admittance, while the other teaches that the partial admittance has to be regarding the same type of goods that he denies (if the plaintiff claimed that he is owed twenty bushels of wheat and the defendant admits that he owes him ten bushels of a grain, he is not obligated to take an oath).

The father of Rabbi Aporiki does not hold that the partial admittance has to be regarding the same type of goods that he denies. This is like the opinion of Rabban Gamliel in the following braisa. The braisa states: If someone claimed wheat and his friend admitted to owing barley, he does not have to swear (an oath of partial admittance). Rabban Gamliel says he does. (5a)

Eligible to Take an Oath

There was a shepherd who would daily receive animals from the people in the town in the presence of witnesses. One day, he received animals without witnesses being present. At the end of the day, he denied ever receiving the animals. Witnesses testified that he ate two of these animals (which he denied receiving). Rabbi Zeira said: If Rabbi Chiya's first statement is correct, he must swear regarding the rest of the animals (for this is a similar case – he denied everything and witnesses testified that he definitely owes some).

Abaye asked him: Is this correct? Isn't he a proven thief (and therefore unfit to swear)?

Rabbi Zeira answered: I meant that his opponent can take the oath (and collect the money).

The Gemora asks: Even if we do not hold like Rabbi Chiya, we can still allow the claimant to take an oath and collect based on Rav Nachman's law. The Mishna states: If someone claims a maneh and his friend denies it, he is exempt. Rav Nachman said: We make him take a "shevuas heses." [This is a Rabbinical oath instituted due to the fact that a person will not normally make a claim unless there is grounds to the claim.]

The Gemora rejects this train of thought. Being that a "shevuas heses" is a Rabbinical oath and having the claimant swear and collect is a Rabbinical institution, we do not apply one decree to another one.

The Gemora asks: Why didn't they originally say he cannot take an oath because he is a shepherd, and Rav Yehudah says that a shepherd is disqualified from being a witness (for he steals by allowing the animals to graze in fields that do not belong to him)?

The Gemora answers: Rav Yehudah only said this regarding someone who is a shepherd for his own animals (as he takes them to graze in the field of others). However, if he is a shepherd for the sheep of others, he does not take them to the field of others (and therefore is not a thief who cannot take an oath).

The Gemora continues: If this were not the case, how could we ever give our animals to a shepherd? Wouldn't this be causing him to sin (if it were so clear he would take our animals to steal the grass of others)? Rather, we say that a person generally does not sin when it is not in his interests. (5a – 5b)

Oath by the Cloak

The Mishna says that this one should swear that he does not own less than half etc.

The Gemora asks: Is he swearing on what he owns, or what he does not own?

Rav Huna says: He swears that he has ownership in the cloak, and that ownership is not less than half.

The Gemora asks: Why not make each swear that they own the whole cloak (as this is their claim)?

The Gemora answers: We are not going to give each one the whole cloak anyway (so why make them swear to this effect).

The Gemora asks: Why don't we merely have him swear that he owns half?

The Gemora answers: You are making him lessen his (previous) claim.

The Gemora asks: Now, as well, he is lessening his claim (as it sounds like he is only a partial owner)!?

The Gemora answers: He says that the entire cloak is his, but according to you that you do not believe me, I swear that I have ownership in the cloak, and that this ownership is not less than half.

The Gemora asks: Being that each is holding onto the cloak, why make them take an oath?

Rabbi Yochanan answers: This is in order that everyone should not merely grab onto his friend's clothes and claim that it is his.

The Gemora asks: If we suspect that everyone will grab onto his friend's clothing, we should also suspect that they will lie under oath!?

The Gemora answers: We do not say that the two are connected (that if one is suspected of stealing he is suspected to lie under oath). If you would say they are connected, how could the Torah say that someone who partially admits to owing money should swear? We should say that being that he is suspected of not paying his debt, he should be suspected of lying under oath as well.

The Gemora asks: The case of partial admittance is

different, as stated by Rabbah that he is just stalling for time to get the rest of the money to pay back the loan.

The Gemora continues: You should know that this is correct, as Rav Idi bar Avin said in the name of Rav Chisda that someone who denies (falsely) owing money can testify, but if he denies that an object given to him to watch is in his possession, he is unfit to testify. [This is because when he denied owing money, he was just stalling.]

The Gemora asks: Rami bar Chama quotes a braisa as stating that four guardians require partial denial and partial admittance (in order for them to have to take an oath). They are: A person who watches an object for free, a borrower, a person who gets paid to watch an object and a renter. According to Rav Chisda, why don't we say that just as they are suspected regarding monetary matters, they are unfit to testify?

The Gemora answers: In this case, as well, he is merely stalling. He figures that he will catch the thief and give back the object. Alternatively, he will find it in the meadow and return it.

The Gemora asks: If so, why did Rav Chisda say that someone who denies (falsely) owing an object that he was watching is disqualified to testify? Why don't we say that he is merely stalling until he will recover it and return it to its owner?

The Gemora answers: We say such a person is unfit for testimony if the witnesses testify (not only that he is lying, but also) that the object is presently in his house. Alternatively, they testify that he is holding it now.

The Gemora asks: According to Rav Huna who says that a guardian who pays must still take an oath that it is not in his possession (and he is choosing to pay instead of returning it because he wants it), why don't we say that if he is suspected of stealing, he should be suspected to swear falsely?

The Gemora answers: In this case, he thinks that he is not doing anything wrong, as he is paying the

owner for the object. [He is therefore not called “suspected to steal,” as he does not think he is stealing.]

Rav Acha from Difti asked Ravina: Isn't it clear that he is transgressing the prohibition against coveting (a friend's object)? [He should therefore not be allowed to swear!]

Ravina answered: People do not think that this prohibition applies if you pay the person money (even though it does). (5b)

INSIGHTS TO THE DAF

Heilech

By: Rabbi Avi Lebowitz

Rabbi Chiya says that included in the case of modeh b'miktzas where the person partially admits and partially denies is also a case of “heilech”. Meaning, Reuven claims that Shimon owes him one hundred zuz. Shimon responds by denying fifty and admitting on the other fifty, saying “heilech”. Rabbi Chiya holds that Shimon is required to take an oath on the fifty that he denies. Rav Sheishes disagrees and holds that heilech is exempt, because the fifty that he is admitting on is as if it has already been returned to the lender and the entire claim is only on the fifty that is being denied, so it is a case of kofar hakol, which does not require an oath.

Rashi implies that in order to qualify as heilech in a case of a loan, the borrower must say that he didn't spend the money, but if he would have spent the money and is presenting the lender with other money, that would not qualify as heilech.

The Hagahos Ashri understands Rashi exactly like this, and therefore holds that if the borrower spent the money and is now replacing it by returning other money, even though we rule in accordance with Rav Sheishes that heilech is exempt, the borrower would have to swear because this isn't a case of heilech.

However, the Bach on the Rosh says that Rashi is not coming to define heilech, rather he is coming to

explain Rabbi Chiya who says that even by heilech the borrower must swear. Rashi is coming to say that even if the money has never been spent and it is a supercharged heilech, Rsbbi Chiya would still hold that the borrower must swear. But it is entirely possible that Rashi would hold that according to Rav Sheishes that heilech is exempt, it would even be exempt if the original money was spent so long as now the borrower is presenting the lender with other money in its place.

The Gr”a quotes from the Ran that a case of a loan is always considered as if the money has been spent since it is given to spend, and therefore a loan never qualifies as heilech. The only situation of heilech is when one gives another something to watch, and then presents him with only part of it at the time he returns it and denies the other part of it. Based on these Rishonim, in a case of a loan, even if it hasn't yet been spent, the borrower would have to swear.