

Daf Notes

Insights into the Daily Daf
Bava Metzia Daf 6

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Daily Daf

How Suspect?

The *Gemora* brings three proofs that one who is suspect of taking someone else's money is not suspect of swearing falsely:

1. Rav Nachman says that if someone totally denied a loan, he must still swear to that, even though we suspect that he is lying to avoid payment. Since he totally denies the oath, if he is lying, he has no rationalization of delaying payment, and is simply trying to not pay.
2. Rabbi Chiya says that if a store owner claims to have given merchandise to someone's worker on credit, but the worker claims he never receives it, both the store owner and the worker swear to the employer, and he must pay both of them. Even though each one is suspect of lying to take money unjustly, we accept their oath.
3. Rav Sheishes says that if an unpaid custodian claims the item deposited was stolen, he must swear:

1. That he was not negligent
2. That he he did not take it for himself
3. That it is not in his possession

Although we suspect he may have taken the item (as evidenced from the last oath), we still accept his oath.

Therefore, Rabbi Yochanan's statement that we obligate each party holding the garment to swear, to prevent people from brazenly grabbing items, is logical, since we do not suspect someone who would grab something that's not his with swearing falsely.

How sure are you?

Abaye says that we may suspect one who takes someone's money of swearing falsely. The oath in the *Mishna* is because we are concerned that the one who does not own the garment is owed a debt by the owner of the garment, and has grabbed it as payment. Therefore, he is not suspect to take something that is not due to him, but he must swear, to ensure he doesn't take it from its rightful owner. The *Gemora* explains that if we would assume he has a bona fide loan, we would give him his half without swearing. Rather, we are concerned that he is not sure if he has a loan owed to him by the garment's owner. Even though he is not suspect to take money that's not his, he is suspect of taking money that only may be his. However, he will not swear to something that may be false, and therefore he will abandon the garment when we force him to swear.

Grabbing

Rabbi Zeira asked what the rule would be if one of the litigants grabbed the whole garment in front of the court. Initially, the other party was silent, possibly indicating admission of the grabber's ownership, but he later protested. Rabbi Zeira questions whether we take his initial silence as admission of the other litigant's ownership, or whether we assume that he felt no need to protest, since the whole court saw the litigant grab it. The *Gemora* brings a braisa that limits the *Mishna's* rule of splitting the garment to a case when both are

holding it. However, if only one party is holding it, he is in possession, and the other party must prove his claim. The *Gemora* assumes that the braisa did not need to tell us a simple case of only one side being in possession, and therefore must be referring to Rabbi Zeira's case, teaching us that even in this case he is considered the assumed owner. The *Gemora* deflects this with two alternate explanations:

1. After we told the two holding litigants to split it, they return to court, with one holding it. He claims that the other litigant admitted it was his, while the other litigant claims that he rented his half to the one holding it. We tell the one not holding it that if he suspected his counter litigant of grabbing something that is not his, he should not have trusted him to rent the garment without witnesses, and we therefore assume the one in possession is the true owner.

2. One is holding the garment, and the other one is holding only the fringes. The braisa is teaching us that all agree (*even Somchos, who splits an item even without requiring an oath*) that holding fringes does not indicate any possession, and the garment is given to the one holding the garment.

Sanctification

The *Gemora* asks - if we assume that we do not give one who grabbed it in court ownership - what do we rule if one of them sanctifies it without grabbing it. On the one hand, sanctification is tantamount to property transfer, so it may be considered more significant than grabbing, but on the other hand, the sanctification was done without full possession, which is usually a prerequisite for sanctification to take effect. The *Gemora* attempts to resolve this question with a story.

The Disputed Bathhouse

There was a bathhouse that was in dispute between two parties. One of the disputants sanctified the bathhouse, whereupon all the sages avoided using the bathhouse. Rav Oshaya asked Rabba to ask Rav Chisda how to rule on this bathhouse. When Rabbah passed by Sura, he asked Rav Hamnuna, who attempted to resolve it from a braisa. The braisa says that in any doubt in the realm of a first born - people or animal - we assume the owner is the one currently in possession. However, an animal in this situation is treated as a first born regarding the

prohibitions of shearing and working the animal. Even though the braisa's initial statement indicates that if the *Kohen* grabs it, we do not retrieve it from him, we still treat it as potentially sanctified. Rabbah countered that even if we remove it from the *Kohen* if he grabs it, a first born animal's prohibitions are different, since the sanctification is automatic, and therefore more easily descends on the animal. However, sanctification that depends on one's action may not work. Rav Chananya brought a braisa that proves Rabbah's distinction. The braisa says that animals which are possibly first born are included in the group of animals from whom the owner takes *ma'aser*. If we assume that a *Kohen* who grabs the animal is considered the owner, how can the current owner use this doubtful animal to exempt his other animals from *ma'aser*? Abaye deflected this proof by limiting the braisa to a case of a flock of only ten animals, one of whom was the doubtful first born. If the animal was the property of the *Kohen*, the current owner would not be obligated in *ma'aser* at all. Abaye recanted this statement, since we do not take *ma'aser* on a flock which we are not sure is obligated in *ma'aser*, as indicated by the *Mishna* in Bechoros. The *Mishna* says that if one of the animals already counted for *ma'aser* jumps back in line with the uncounted animals, all the animals are exempt from *ma'aser*. If we tell someone to take *ma'aser* because of a doubt, we should tell the owner to take *ma'aser* from the remaining animals, since each animal that is brought out is exempted by the tenth - if the ten in this group do not contain the animal who jumped, they follow the rules of *ma'aser*, and if they do contain that exempt animal, their being counted as part of a large group of *ma'aser* animals exempts them. Rather, the Torah tells us that only a tenth that is definitely a tenth qualifies for *ma'aser*, and Rav Chananya's proof still stands. Ravina clarifies that the braisa that says that ten doubtful animals are counted for *ma'aser* must refer to ten animals, which are in doubt of being the animal that redeems a first born donkey, since such animals have no sanctification. An animal which is in doubt of being a first born animal, and truly sanctified, is not fit for *ma'aser*, since the verse specifies the tenth *yih'ye kodesh* - will be holy, excluding a first born, which is already holy.