



## Everyone Suspected of False Shevuot

This week we learnt about *shevuot* that one is biblically obligated to make in the context of a financial dispute. The seventh *perek* however opens by teaching that in general one who makes the biblically obligated *shevuot* exempts themselves from payment. For example, where the defendant partial admits to the amount claimed against him. In that case he is required to make a *shevuah* in order to exempt himself from the full claim.

The *Mishnah* however continues by explaining that there are several rabbinically obligated *shevuot*, after which the person can extract payment or an object from the other party. One of these cases is where the person biblically obligated to make a *shevuah* is not trusted due to violating certain transgressions (*chashud*). In such cases the obligation to make the *shevuah* is transferred from the defendant to the claimant, such that after making the *shevuah* he can extract what he claims is due to him.

The *Mishnah* continues by addressing the case where both parties are not trusted with making a *shevuah*. According to *R' Yossi* the *shevuah* “returns to its place”. *R' Meir* however argues that the disputed funds are shared between the two parties. How do we understand the position of *R' Yossi*? What does he mean that the “*shevuah* returns to its place”?

The *Gemara* (47a) provides two explanations. The first is *Rav* and *Shmuel* who maintain that the *shevuah* returns to *har sinai*. *Rashi* explains that it was there that *Hashem* made *Am Yisrael* swear not to steal, and He will punish those that falsely deny owing another money. As far as *Beit Din* is concerned however, they can neither enforce a *shevuah* or extract funds. *R' Abba* however explains that it returns to the defendant who was obligated to make a *shevuah* to exempt himself from payment. Since he is unable to do so, he must pay.

The *Tifferet Yisrael* (*Boaz* 7:3) ties the debate to two explanations in the *Tosfot* in *Bava Metzia* (5a). There the *Tosfot* asks, why in the case where only the defendant is suspected, do we move the *shevuah* to the claimant? In the case where the claim was for one-hundred and the person

admits to fifty, but is unsure of the additional fifty, he is not able to make a *shevuah*. There we say that since he cannot make a *shevuah* he must pay the full amount - *mitoch*. Why do we not say the same thing in case of a *chashud*? Since he cannot he is suspected and cannot make a *shevuah* he should simply be obligated to pay.

The *Tosfot* provides two answers. The first is that if we said that anyone suspect of false *shevuot* must pay, then it runs a risk that people will continually engineer situations that would require this person to make a *shevuah* to unjustly drain him of his money. So that he can survive – *kedei chayav* – the *shevuah* is moved to the claimant. The second answer is that this case is different. The other case is where the person is simply unable to make a *shevuah* due to lack of knowledge. In this case the defendant is willing to make a *shevuah*, yet *beit din* forbid it. In other words, *mitoch* does not apply and he is really exempt. The *Chachamim* however apply a *kenas* (fine) that the claimant can make a *shevuah* to extract the funds.

The *Tifferet Yisrael* explains that these two understandings of why the *shevuah* is moved to the claimant is behind our debate. *R' Abba* aligns with the first understanding. That is, when only the first defendant is suspected, he is obligated to pay, yet we move the *shevuah* to the claimant *kedei chayav*. If however both parties are suspected, *kedei chayav* is no longer a concern. Firstly, we do not assume that everyone is suspected of false *shevuot* that we need to be concerned for this situation. Secondly, since both parties are suspicious individuals, the party would already take protective measure not to fall into the trap. The being the case, *R' Abba* maintains that we fall back on the base position that the defendant is obligated to pay.

*Rav* and *Shmuel* however maintain the second explanation that the *chashud* is exempt, yet *Chachamim* apply a *knas*. If however, the other party is also *chashud*, then there is more of a reason now to apply a *knas* to the claimant removing that power to extract the funds with a *shevuah*. Therefore it “returns to *sinai*” and we cannot obligate the defendant to pay.

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### Revision Questions

שבועות ו' - א' - ז' :

- What is a *shevuat dayanim* and when does it apply? (ו': א')
- Regarding what case would one not be obligated to make a *shevuat dayanim* as it is considered *meishiv aveidah*? (ו': א')
- What is the law regarding a case where he admitted to owing another money, yet the next day said: (ו': ב')
  - "I gave it to you"? When is the law different?
  - "I never owed you anything"?
- If one person said the other owed him a gold object and the person admitted he owed him a silver one, regarding which object would he be obligated to make a *shevuah* and regarding which object would he be exempt? (ו': ג')
- Complete the following rule and explain: (ו': ה')
 

"הנכסים \_\_\_\_\_ זוקקין  
את הנכסים \_\_\_\_\_ לשבע עליהן"
- A claim made by which three people would not obligate the other party with a *shevuah*? (ו': ד')
- Who do we never obligate to make a *shevuah*? What other efforts are made on behalf of this person? (ו': ט')
- To what items does a *shevuat dayanim* not apply? (ו': ה')
- Which two fines do not apply to these items? (ו': ה')
- How do these items differ in the laws of *shomrim*? (ו': ה')
- About which of the items does *R' Shimon* argue? (ו': ה')
- Complete the following rule of the *Chachamim* and explain: (ו': ו')
 

\_\_\_\_\_ כל המחבר לקרקע
- How does *R' Meir* disagree with this principle? (ו': ו')
- Complete the following rule and explain with examples: (ו': ו')
 

\_\_\_\_\_ אין נשבעין אלא על דבר
- Who makes a *shevuah* (first) if a *pikadon* was lost and its value disputed and in what case is the lender exempt from making a *shevuah*? (ו': ז')
- What other case is similar to the one in the previous question? (ו': ז')
- In what way are the *Shevuot* in the seventh *perek* fundamentally different from those in the sixth *perek*? (ו': ז')
- Explain the case that requires a *Shevuat Mishnah* involving:
  - A *sachir*. (ו': ז')
  - A *nigzal*. (ו': ז')
  - A *nechbal*. (ו': ז')
  - "A person that is not trusted in making a *shevuah*". (ו': ז')
  - A store account. (ו': ז')
- On which of the above cases does *R' Yehuda* argue and why?
- On which of the above cases does *Ben Nanas* argue and why?
- Who makes a *shevuah* in a dispute between a shopkeeper and purchaser whether: (ו': ז')
  - The shopkeeper gave the purchaser his item yet it was definitely paid for?
  - The purchaser paid yet the item was definitely handed over?
- On which case does *R' Yehuda* argue and why? (ו': ז')
- What other case brought is similar? In that case how does *R' Yehuda* argue? (ו': ז')
- In which five cases is a woman required to make a *shevuah* in order to collect her *ketubah*? (ו': ז')

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### Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
9 March ט' אדר	10 March י' אדר	11 March יא' אדר	12 March יב' אדר	13 March יג' אדר	14 March יד' אדר	15 March ט"ו אדר
Shevuot 7:8-8:1	Shevuot 8:2-3	Shevuot 8:4-5	Shevuot 8:6 - Eduyot 1:1	Eduyot 1:2-3	Eduyot 1:4-5	Eduyot 1:6-7

