



Volume 10. Issue 31

Shevuat Dayanim – Holding On

With the beginning of the sixth *perek* we began learning about *shevuat ha'dayanim*. These are *shevuot* that judges can obligate one to make. The first of these we learnt was biblical in origin. Broadly speaking it is when one partially admits to a financial claim against him. What qualifies as a claim and admission that would obligate one to make a *shevuah* is discussed in the *perek*.

The *Bartenura* explains that what differentiates this *shevuah* from a *shevuat heiset* (which is rabbinic in origin) is that the person making the *shevuah* must hold an object of *mitzvah* when making the *shevuah*, e.g. a *sefer Torah* or *tefillin*. This is not the case when making a rabbinic *shevuah*. Let us try to understand this requirement.

The *Gemara* (38b) explains that the obligation is learnt from the *shevua* that *Avraham* required of *Eliezer* when he was sent to find a wife for *Yitzchak*.¹ It appears then that the requirement to hold something is biblical; this is the first understanding brought by the *Rosh*.

The *Tosfot* however asks a question. *Shevuot eidut, bitui* and *pikdon* when prompted by others (*mi'pi acheirim*) are similar to *shevuat pikadon*. Why then is the requirement to hold something exclusive to *shevuat dayanim*?

The *Rosh* however provides another understanding of the *Gemara* that answers this question. He explains that the requirement to hold an object is rabbinic and the *pasuk* cited in the *Gemara* is an *asmachta*. The law to

make the person hold a *sefer Torah* was instituted to create a sense of dread. The person should realise that making a *shevua* is not something that should be taken lightly. The requirement was instituted exclusively for *shevuat dayanim* since the *Chachamim* felt that that situation required it.

Why was the sense of dread necessary?² The *Chatam Sofer* explains that it was to dissuade those that would potentially lie from taking the *Shevua*. The *Rambam* (*Shevuot* 11:16) details how the *dayanim* would warn one about to make a *shevua*. The warning elaborates in detail the severity of a sin committed by one that makes a false *shevua*. Presumably, holding a *sefer Torah* serves as another tool dissuading one contemplating making a false *shevua*.

The *Ohr Sameach* however provides a different answer. The intimidation is actually for the benefit of the litigants. If the party that was willing to lie is then scared he can decline to make a *shevua* without admitting he was wrong. The seriousness of the *shevua* can even dissuade someone who is telling the truth from making a *shevua*. If a person refuses to make a *shevuat dayanim*, *beit din* will subsequently forcibly extract the funds in question. This process therefore gives the person, who might have backed himself into a corner, a way out. He can refuse to take a *shevua* "because of its seriousness" and the funds are returned without him admitting the truth.

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¹ In that case *Eliezer* held the *Mila*. The *Tosfot* explains that even though the *Gemara* teaches that a *talmid chacham* should ideally hold *tefillin*, that was the only explicit *mitzvah* that had been given at the time. *Rashi* explains that it was used since it was his first

mitzvah and came to him through pain and was therefore dear to him.

² These opinions that follow were taken from the *Otzar Iyunim, Shevuot* (22), *Metivta*.

Revision Questions

שבועות ה'די ז'ה:

- Explain the debate regarding a *shevuat pikadon* in a case of *ones*. (ה'י:ד)
- Regarding which case involving a person's ox killing something would the owner's denial qualify as a *shevuat pikadon* and in which case would it not? (ה'י:ה)
- Complete the following rule: (ה'י:ה)

" כל המשלם על פי עצמו _____ ושאינו משלם על פי עצמו _____ "
- What is a *shevuat dayanim* and when does it apply? (ה'י:א)
- Regarding what case would one not be obligated to make a *shevuat dayanim* as it is considered *meishiv aveidah*? (ה'י:א)
- What is the law regarding a case where he admitted to owing another money, yet the next day said: (ה'י: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? (ה'י:ג)
- Complete the following rule and explain: (ה'י:ג)

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

כל המחבר לקרקע _____
- How does *R' Meir* disagree with this principle? (ה'י:ו)
- Complete the following rule and explain with examples: (ה'י: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*? (ה'י:ז)
- What other case is similar to the one in the previous question? (ה'י:ז)
- In what way are the *Shevuot* in the seventh *perek* fundamentally different from those in the sixth *perek*? (ה'י:ז)
- Explain the case that requires a *Shevuat Mishnah* involving:
 - A *sachir*. (ה'י:ז)
 - A *nigzal*. (ה'י:ז)
 - A *nechbal*. (ה'י:ז)
 - "A person that is not trusted in making a *shevuah*". (ה'י:ז)
 - A store account. (ה'י: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?

Local Shiurim

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
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Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
15 th September י"א תשרי	16 th September י"ב תשרי	17 th September י"ג תשרי	18 th September י"ד תשרי	19 th September ט"ו תשרי	20 th September ט"ז תשרי	21 th September י"ז תשרי
Shevuot 7:6-7	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

