

The Geller Edition

שרשרת זהב

Nothing But the Half-Truth?

מודה במקצת



לרפואה שלימה
שמואל יעקב בן רחל



Vol V

COMPILED BY
R' SHMUEL IANN
Dayan at Beis Din Shaarei Horaah

With
Rabbi Mendy Brukirer

Design and Print:



732.475.0101 • machon@bpprintgroup.com

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שרשרת זהב

These booklets are called **Sharsheres Zahav** (*Golden Chain*), based on the verse describing the golden chains of the Choshen (Shemos 28:13–14). Just as those chains connected the Choshen to its proper place, so too these works are intended to be small links in the golden chain of Torah transmission, connecting the learner to the teachings of Chazal, the Rishonim, the Acharonim, and the great Torah scholars of every generation.

In particular, these booklets seek to connect the reader to the illuminating Torah of the **Ketzos HaChoshen**, whose teachings serve as a central foundation throughout. Everything written here is based on the sacred words of our sages and was prepared through sincere effort to clarify and understand the sugyos in the light of their teachings.

May Hashem grant that these words find favor among those who study Torah, and may these works become worthy additions to the eternal chain of Torah transmission from generation to generation.

Amen.

How to Read This Sheet?

Each source appears first in the original Hebrew or Aramaic, with a plain English version directly underneath. A Sugya Note helps explain the source in everyday words.

A Term Note defines an important word or idea. A Takeaway sums up the main point in a line or two.

You do not need any background to follow along. Read each source, then the English, then the note. The sheet is built to walk you through the discussion one step at a time.

Do not worry if you do not finish the sheet in one sitting. A good Torah session is not measured only by how much you finish, but by how deeply you learn to think through the discussion.

Nothing But the Half-Truth? מודה במקצת

Opening Frame

Someone lends money and later comes to collect. He says, "You owe me one hundred dollars." The borrower answers, "I owe you fifty, but not one hundred."

The Torah requires the borrower to swear that he does not owe the other fifty.

At first, this sounds backwards. The borrower has admitted that he owes money. Why should that admission bring an oath upon him? We might expect the opposite.

Someone who admits part of a debt seems more honest, not more suspicious.

This sheet asks one main question: Why does admitting part of a claim create an oath?

Exodus 22:8 | שמות כ"ב:ח'

The Torah, given at Mount Sinai in the Hebrew calendar year 2448 (about 1312 BCE).

For every matter of wrongdoing, concerning an ox, a donkey, a sheep, a garment, or any lost item, where one says, "This is it," the matter of both sides shall come before the judges. The one whom the judges find guilty shall pay double to his fellow.

על כל דבר פשע על שור על חמור על
שה על שלמה על כל אבדה אשר יאמר
כי הוא זה עד האלהים יבא דבר שניהם
אשר ירשיען אלהים ישלם שנים לרעהו.

Rashi | רש"י (שם)

Rashi, Rabbi Shlomo Yitzchaki, Troyes, France, 1040 to 1105. His clear, line-by-line commentary became the starting point for learning both Chumash and Gemara.

Our Sages explain the words "This is it" as teaching that a person is required to swear only when he admits part of the claim. He says, "This amount I owe you, but the rest was stolen from me."

רש"י (שם) וז"ל, ורבותינו ז"ל (ב"ק, ק"ז).
דרשו כי הוא זה ללמד, שאין מחייבין אותו
שבועה אלא אם כן הודה במקצת, לומר כך
וכך אני חייב לך, והמותר נגנב ממני.

Takeaway

The Torah's oath begins when the defendant admits that he owes part of the claim.

Term Note

מודה במקצת | *modeh b'miktzas*

Partial admission. A defendant who agrees that he owes some of what is claimed against him, while denying the rest.

I. Why Should He Swear at All?

Why doesn't the Torah simply trust the borrower who admits part of the claim?
The Gemara and Rashi take up this question.

בבא מציעא ג' ע"א | Bava Metzia 3a

The Gemara is the core text of the Oral Torah, put together in Sassanian Persia, which the Jews called Bavel, around the fifth to sixth century CE.

Rabbah said: Why did the Torah say that one who admits part of the claim must swear? There is an assumption: a person will not be so bold as to deny everything in the face of his creditor. This defendant really would like to deny the whole claim, but he does not deny the whole thing because a person is not bold enough to do that. At the same time, he would really like to admit the whole debt. The reason he does not admit is that he is delaying for now. He thinks: "When I have money, I will pay him." The Torah therefore places an oath on him, so that he will admit the whole truth.

אמר רבה מפני מה אמרה תורה מודה מקצת הטענה ישבע, חזקה אין אדם מעיז פניו בפני בע"ח, והאי בכוליה בעי דנכפריה והא לא כפריה משום דאין אדם מעיז פניו, והאי בכוליה בעי דלודי ליה, והאי דלא אודי אשתמוטי הוא דקא מישטמט מיניה, סבר עד דהוו לי זוזי ופרענא ליה, ואמר רחמנא רמי שבועה עליה כי היכי דלודי ליה בכוליה.

Sugya Note

The Gemara shows that the oath does not come from the admission by itself. It rests on a basic read of human nature: a person will not boldly deny a whole debt to the face of the one who lent to him. Deep down the borrower may want to deny it all, but he cannot bring himself to do that. He may also want to admit it all, but for now he is stalling, planning to pay when he has the money. Because of that worry, the Torah puts an oath on him, so he will be afraid to lie and will admit the full truth.

מבואר בגמרא דיסוד חיוב שבועת מודה במקצת אינו מחמת עצם ההודאה בלבד, אלא משום החזקה ד"אין אדם מעיז פניו בפני בעל חובו". דבאמת רצונו של הנתבע לכפור בכל, אלא שאינו יכול להעיז פניו לכפור לגמרי בפני מי שהיטיב עמו והלווהו. ומאידך גיסא, גם רצונו להודות בכל, אלא שמשתמט הוא לפי שעה מתוך כוונה לפרוע לכשיהיו לו מעות. ומשום חשש זה הטילה עליו התורה שבועה, כדי שיירתע מלשקר ויודה בכל האמת.

Takeaway

Admitting part is not always a sign of honesty. It may be the response of someone who cannot deny everything but is still trying to delay payment. The oath presses him toward the full truth.

רש"י, בבא מציעא ג' ע"א, ד"ה מפני מה אמרה תורה | Rashi, Bava Metzia 3a

Rav Shlomo Yitzchaki (c. 1040–1105, Troyes, France), wrote the basic commentary on the Torah and the Talmud. It is the first guide every learner uses for Gemara.

The Torah did not consider him like a voluntary returner (someone who gives back what belongs to another) and therefore exempt him from an oath, even though he did not deny everything (he admitted to half the claim).

ולא חשבו כמשיב אבידה לפטרו שלא כפר בכולו.

Sugya Note

Rashi explains that the Torah requires the oath not because of the admission by itself, but because this defendant is not viewed as a voluntary returner. Since the plaintiff claimed one hundred, and the defendant admitted only part, the admission did not come from him on his own. It came because of the other person's claim. Since the plaintiff claimed one hundred, and the defendant admitted only part, the admission did not come from him on his own. It came because of the plaintiff's claim. We therefore do not view him as someone who voluntarily returned money that no one could have forced from him. The concern remains that he is only delaying, and that is why the Torah requires the oath.

דפירוש רש"י דהא דחייבה תורה שבועת מודה במקצת אינו משום עצם ההודאה, אלא משום שאין דינו כמשיב אבידה. דכיון שהתובע טענו במנה, והנתבע אינו מודה אלא במקצתו, אין זו הודאה הבאה מעצמו, אלא הודאה הבאה מחמת תביעת חברו. לכן אין לראותו כמי שהשיב מעצמו דבר שלא היו יכולים להוציא ממנו, אלא עדיין קיים החשש דמשתמט הוא, ומשום כך חייבתו תורה שבועה. ונמצא דכל יסוד הפטור דמשיב אבידה אינו שייך אלא כשהודאתו מחמת עצמו, משא"כ במודה במקצת הבא מחמת תביעה, דחייב שבועה.

Takeaway

A voluntary returner comes forward on his own. Here the admission only comes after someone else makes a claim. That is the reason the suspicion does not go away.

II. What Does the Claim Actually Do?

*We have seen that the claim matters. But what exactly does it do?
The Birchas Shmuel takes a closer look.*

Term Note

ברי ושמא | *bari v'shema*

A definite claim versus a doubtful one. A bari claim is one the claimant is sure of ("I know you owe me"). A shema claim is one he is unsure of ("maybe you owe me").

ברכת שמואל, בבא מציעא ס' ד' | Birchas Shmuel, Bava Metzia no. 4

Rav Boruch Ber Leibowitz (1862-1939, Kamenitz) was a leading Lithuanian rosh yeshiva and the foremost student of Rav Chaim of Brisk.

There are two laws of claim in the oath of partial admission. First, one does not swear based on a doubtful claim. Second, the definite claim needed for partial admission has a special role: it must give a real reason to say that he is not a voluntary returner. This law applies only to partial admission. That means specifically when the admission comes through a claim. But if he admitted on his own, he is a voluntary returner, and there is no such reason. I already heard from the great Rav Moshe Chevroni, Rosh Mesivta in Chevron, who told me that a voluntary returner is not an admission. This fits what we said: we need a claim even for it to count as an admission.

דיש שני דיני טענה בחיוב שבועה דמודה במקצת, א' דין דאין נשבעין ע"י טענת שמא. ודין ב', שיהיה טענתו בברי מיוחדת גבי מודה במקצת הטענה שיהיה ע"י הרגלים לדבר שלא יהיה משיב אבידה, ודין זה אינו שייך רק גבי מודה במקצת הטענה וכו', היינו דוקא אם ההודאה הוא ע"י טענה, אבל בהודה בעצמו דהוי משיב אבידה אין זה רגלים לדבר, וכבר שמעתי מפי הרב הגאון ר' משה ר"מ בחברון זצלה"ה שאמר לי דמשיב אבידה אין זה הודאה והוא כנ"ל דבעינן טענה גם לענין שיהיה הודאה.

Sugya Note

Rav Boruch Ber explains that there are two parts to partial admission. First, as a Torah rule, an oath comes only through a definite claim, not a doubtful claim. Second, there must be a real money connection and a reason to suspect that he owes part. That means the partial admission must come because of the plaintiff's claim. Only then is there room for the oath. But when there is

מבואר מדברי רבינו הגאון הרב ברוך בער זצוקלה"ה דיש שני דינים במודה במקצת, האחד מצד גזירת הכתוב דשבועה אינה באה אלא ע"י טענת ברי ולא טענת שמא, והשני שצריך שיהיו כאן דרא ורגלים לדבר, דהיינו שההודאה במקצת תבוא מכח טענת התובע, שאז

no claim and the defendant admits on his own, he is a voluntary returner, and there are no grounds that create the oath.

יש מקום לחיוב שבועה, אבל במקום שאין טענה והנתבע מודה מעצמו הרי הוא בגדר משיב אבידה, וליכא דררא המחייבת שבועה.

Takeaway

The claim has two jobs. It is not only that a doubtful claim cannot create an oath. The claim also changes what the admission means. It keeps the borrower from being viewed as someone who came forward on his own.

Term Note

שבועת עד אחד | *shevuas eid echad*

The oath of one witness. To make someone pay money, the Torah normally needs two witnesses. One witness alone cannot force payment, but he does force the defendant to swear that he does not owe. If the defendant refuses to swear, he must pay instead.

ברכת שמואל שם, סק"ד, בשם מרן הגר"ח

Birchas Shmuel, note 4, citing Rav Chaim

Rav Chaim Soloveitchik (1853-1918, Brisk) shaped the Brisker method, which works out the exact legal category behind each law. He was also famous for his kindness to the poor. When he was asked what a rav's job really is, he answered that it is to right the wrongs done to the lonely and abandoned, to guard the dignity of the poor, and to save the oppressed from the hand of the one who oppresses them.

I heard in the name of my teacher (Rabbi Chaim Soloveitchik) that the law of claim regarding partial admission is not like the law of claim regarding one witness. The law of claim regarding one witness is a special Torah rule. The law of claim regarding partial admission is only so that the defendant should not be a voluntary returner.

The explanation is this: by partial admission, if not for the voluntary-returner law, we would not have needed the plaintiff to come to court. Even if the claim became clear to the court on its own, without the plaintiff coming to court, that would also have helped. What truly requires the plaintiff to come to court is only the voluntary-returner law. But for the oath of one witness, the plaintiff must come to court because the Torah's law of claim requires it.

והנה שמעתי בשם מו"ר זיע"א, דדין טענה שהיא שגבי מודה במקצת לא דמי לדין טענה שהוא גבי ע"א, דדין טענה גבי ע"א הוא מגזה"כ, ודין טענה דגבי מודה במקצת הוא רק שלא יהא משיב אבידה וכו', ביאור הדברים, דגבי מודה במקצת אי לאו דין משיב אבידה לא הוי מצריכין שיבוא התובע לבי"ד, דאפי' שם נראה התביעה לבי"ד מעצמה בלא שיבוא התובע לבי"ד ג"כ היה מועיל, ומה שצריך באמת שיבוא התובע לבי"ד הוא משום דין משיב אבידה, אבל בשבועת ע"א בעינן שיבוא התובע לבי"ד משום דין גזה"כ דטענה.

Sugya Note

The claim required for partial admission is different at its root from the claim required for an oath through one witness. For one witness, the claim is a special Torah rule, so a real plaintiff must come to court. For partial admission, the claim is needed only so the defendant is not considered a voluntary returner. In that case, the claim becoming clear to the court on its own would have been enough. The plaintiff is needed only to remove the voluntary-returner problem. By one witness, the plaintiff is needed because the law of claim itself requires it.

נראה שדין טענה שבמודה במקצת שונה מעיקרו מדין טענה שבשבעת עד אחד, בשבעת ע"א דין הטענה הוא מגזירת הכתוב, ולפיכך בעינן תובע גמור הבא לבי"ד, משא"כ במודה במקצת שאין דין הטענה אלא כדי שלא יהא כמשיב אבידה לא היה צורך כלל שיבוא התובע לבי"ד, ואף בירור התביעה מצד בי"ד היה מועיל. אלא שהצורך בתובע הוא רק כדי שלא ייחשב משיב אבידה, משא"כ בשבעת עד אחד שהצורך בתובע הוא מעיקר דין טענה מגזה"כ.

Takeaway

So far, the claim has been doing most of the work. It is not just a court step. It creates the setting that makes the borrower's words suspicious instead of voluntary, and it keeps him from looking like someone who came forward on his own. So the Torah is not punishing his honesty. It is dealing with a borrower whose half-admission may be a way of putting off the rest.

III. The Rashba: Must He Actually Admit Part?

Even if the claim matters, does the oath still need the borrower to come out and admit that he owes part? Or is it enough that he turns out to owe part, however that happens?

Term Note

חייב מתוך טענתו | *chiyuv mitoch ta'anos*

Owing because of his own words. He ends up owing part not from a direct admission, but from what his own claims add up to.

שו"ת הרשב"א, ח"ב סי' ר"ו | Written Rulings of the Rashba, vol. 2, no. 206

Rav Shlomo ben Avraham ibn Aderes (1235–1310, Barcelona, Spain), was one of the leading authorities on Jewish law in medieval Spain, known as El Rab d'España, the Rabbi of Spain.

One must investigate the oath of partial admission. Does it apply only when the defendant admits that he literally owes part? Or perhaps it applies even when he denies everything, but becomes liable for part from within his own claim? It seems that it applies only when he literally admits part, because the verse says, “that he says, ‘this is it.’”

יש לחקור שבועת מודה מקצת אם היא דוקא במודה שהוא חייב מקצת ממש או דלמא אפילו בכופר בכל אלא שמתחייב במקצת מתוך טענתו, ומסתברא דדוקא מודה במקצת ממש דאשר יאמר כי הוא זה (שמות, כ"ב ח').

Sugya Note

The Rashba's words clearly do not follow the approach of Rav Boruch Ber. The oath applies specifically where the defendant actually admits part before court. It is not enough that he becomes liable for part through the working out of his claims. The Rashba says clearly that without an actual admission before court, there is no place for the oath. According to this, we cannot say that a claim clarified by the court on its own, without the plaintiff coming, would help. We need the plaintiff to come, and we need an actual partial admission before court.

מבואר מדברי הרשב"א להדיא שלא כדברי רבינו הרב ברוך בער זצ"ל, אלא דשבועת מודה במקצת חלה דוקא במקום שהנתבע מודה במקצת ממש בפני בית דין, ולא די בכך שמתחייב במקצת מתוך בירור טענותיו. ומפורש בדבריו שאם אין כאן הודאה ממש בפני בית דין, אין מקום לשבועת מודה במקצת כלל. ולפי זה מבואר שאין לומר שתביעה המתבררת מעצמה בי"ד בלא ביאת התובע תועיל, אלא בעינן ביאת התובע והודאה במקצת ממש בפני בי"ד.

Takeaway

For the Rashba, the oath hangs on what the borrower actually says. The Torah's case is built around his words: “This part is true.” If he never actually admits part before the court, just ending up liable for part may not be enough.

IV. When Do Words Count as an Admission?

Suppose the borrower admits part in front of a single expert judge, where his words may not count as a full legal admission. Is that still enough to create the oath?

Term Note

יחיד מומחה | *yachid mumcheh*

Single expert judge. A money case usually needs a court of three judges, but a single judge who is a recognized expert is allowed to judge it on his own.

Term Note

הודאת בעל דין כמאה עדים | *hoda'as ba'al din k'meah eidim*

When a litigant, meaning a person in the court case, admits something against himself, his *admission counts as strongly as a hundred witnesses*

קצות החושן, סימן ג' ס"ק ב' | Ketzos HaChoshen, Choshen Mishpat 3:2

Rav Aryeh Leib Heller (c. 1745-1812, Galicia) was one of the sharpest Talmudic minds of his generation. His analysis of civil monetary law is learned in yeshivos to this day.

I was uncertain about a single expert judge who judged a case, where the litigant admitted part before him. Is it proper to require the oath of partial admission? Since the admission before him is not a legal admission (a full court of three judges would be needed), perhaps this is not considered partial admission (the admission did not take place in a court setting). Or perhaps as long as he has not retracted his admission, it is considered an admission and he is obligated in the Torah oath.

There is a proof from Rashi's language in Kiddushin 65b: "A litigant's admission is like one hundred witnesses," as it is written, "that he says, 'this is it.'" Rashi relies on partial admission. If the main law that a litigant's admission has the force of witnesses is learned from partial admission, this implies that where his words do not have the force of a litigant's admission, there is no law of partial admission (for example, outside a court setting). This is clear. Therefore, it seems clear that since an admission before a single expert judge is not a legal admission, there is no law of partial admission, and he cannot require the oath of partial admission.

נסתפקתי, יחיד מומחה שדן ובעל דין הודה לפניו במקצת אם ראוי לחייב שבועה דמודה במקצת, כיון דהודאה שהודה לפניו לאו הודאה, א"כ לא הוי מודה במקצת, או נימא כל זמן דלא חזר מהודאתו הוי הודאתו הודאה וחייב שבועת התורה וכו', וראיה מלשון רש"י בפרק האומר ס"ה (ע"ב) ד"ה הודאות בעל דין כמאה עדים דכתיב אשר יאמר כי הוא זה, הרי שסמך על מקצת הודאה עכ"ל, וא"כ כיון דעיקר הודאה בע"ד כמאה עדים ילפינן מדין מודה במקצת משמע דהיכא דאין בו משום הודאת בע"ד כמאה עדים ליכא תורת מודה במקצת וזה ברור וכו', וא"כ נראה ברור דכיון דאין הודאה שמודה לפני היחיד מומחה הודאה ממילא ליכא תורת מודה במקצת ואינו יכול לחייב שבועת מודה במקצת.

Sugya Note

The Ketzos is unsure about a case where a single expert judge heard the defendant admit part. Can that judge require the oath? On one side, since an admission before one judge is not a full legal admission, perhaps there is no partial admission at all. On the other side, as long as the defendant has not retracted, perhaps he did admit part and must take the Torah oath. The Ketzos brings from Rashi that the law of partial admission is tied to the rule that a litigant's own admission has the force of witnesses. According to this, where the admission is not legally counted as an admission, there is no category of partial admission at all.

כלומר נסתפק הקצות אם יחיד מומחה שדן, ובעל דין הודה לפניו במקצת, האם יש מקום לחייבו שבועת מודה במקצת. מצד אחד יש לומר שכיון שהודאה לפני יחיד אינה נחשבת הודאה גמורה בדין, ממילא אין כאן מודה במקצת כלל. ומצד שני יש מקום לומר שכל זמן שלא חזר מהודאתו, סוף סוף הודה במקצת וחייב שבועת התורה. דמבואר מדברי רש"י דיסוד דין מודה במקצת הוא משום שהודאת בעל דין כמאה עדים, ולפי"ז, היכא דאין ההודאה נחשבת הודאה, אין כאן תורת מודה במקצת כלל.

Takeaway

For the Ketzos, the oath is tied to the legal force of the admission. Words on their own are not enough. The words must count as a legal admission.

נתיבות המשפט, שם סק"א | Nesivos HaMishpat, Choshen Mishpat 3:1

Rav Yaakov Lorberbaum (1760-1832, Lissa) was a leading authority on Jewish law in Eastern Europe.

His analysis of civil monetary law is often learned side by side with the Ketzos.

This is certainly not so, for no recognized authority on Jewish law ever wrote this. Also, at least if he admits with a real admission, or in another way where he cannot retract from his admission, he can certainly be required to swear. It is no worse than a case where he is liable from within his own claims.

ודאי ליתא, דלא אישמיט שום פוסק לכתוב כן, ועוד דהא עכ"פ אם יודה בהודאה גמורה או בענין אחר באופן שלא יהיה יכול לחזור מהודאתו, ודאי דיכול לחייב שבועה דלא גרע ממחוייב בתוך טענותיו.

Sugya Note

The Nesivos rejects this uncertainty and says it is certainly not so, since no recognized authority on Jewish law ever wrote that way. He also proves that if the defendant admitted in a way that he cannot retract, or became liable

אמנם הנתיבות המשפט דחה ספק זה, וכתב דפשיטא דליתא, שהרי לא מצינו לשום פוסק שכתב כן. ועוד הוכיח, דאף אם הודה באופן שאינו יכול לחזור בו,

in another fully binding way, he can certainly become obligated in the oath. That is no worse than someone who becomes liable from within his own claims.

The words of the Nesivos show that the oath does not depend specifically on the admission having the force of formal legal proof. Whenever the partial liability becomes clear and fixed through his admission or his claims, the oath can apply.

או שנתחייב בדרך אחרת בחיוב גמור, ודאי שיכול להתחייב שבועה, דלא גרע ממחויב מתוך טענותיו. ומבואר מדבריו שאין חיוב שבועת מודה במקצת תלוי דוקא בחלות הודאת בעל דין לענין ראייה, אלא כל שהחיוב נעשה ברור ומוחלט מכח הודאתו או טענותיו, שייך בו חיוב שבועה.

Takeaway

For the Nesivos, once part of the debt is firmly established through the defendant's own words or claims, the oath can apply. His admission does not need its full legal force as courtroom proof.

V. What Does the Oath Really Need?

We now have two views on the single judge. Let us step back and ask what really stands behind their disagreement. It brings us back to the question we started with: what does the oath need?

Sugya Note

The Nesivos needs explanation. As long as there is no court setting, the admission is not counted as a litigant's legal admission. An admission outside court is not a full legal admission at all. If so, how can the defendant become obligated in the oath of partial admission?

It seems that this itself may be the argument between the Ketzos and the Nesivos. From the Birchas Shmuel in the name of Rav Chaim, partial admission does not carry a Torah requirement of claim in the same formal way. The claim is needed so the defendant should not be a voluntary returner. So the oath itself comes from the real money connection and the reason to suspect that he owes part.

ודברי הנתיבות צ"ב, דסוף סוף כל זמן שאין כאן בית דין אין הודאה נחשב הודאת בעל דין, והרי הודאה בלא בית דין אינה נחשבת הודאה כלל, ואם כן כיצד יתחייב שבועה מודה במקצת, וצ"ע.

נראה לומר לפענ"ד דזהו גופא נחלקו הקצות והנתיבות. דהנה מדברי הברכת שמואל בשם מרן הגר"ח זצ"ל מבואר, דבמודה במקצת אין דין טענה מגזירת הכתוב, אלא כל הצורך בתביעת התובע הוא כדי שלא יהא הנתבע בכלל משיב אבידה. ומשו"ה, מצד עצם חיוב השבועה היינו משום דאיכא דררא דממונא ורגלים לדבר שהוא חייב במקצת.

From the responsum of the Rashba, the opposite appears. He learns from the verse “that he says, ‘this is it’” that we need an actual partial admission. This implies that the category of partial admission depends on an admission made before court. It is not enough that his partial liability becomes clear through his claims.

According to this, the Ketzos follows the direction of the Rashba. We need a claim and an admission before court for the category of partial admission to take effect. That is why he is unsure about an admission before a single expert judge. Since there may be no full admission by the litigant before court, there may be no partial admission. The Nesivos follows the direction explained in the Birchas Shmuel. The main cause of the oath is not the formal proof-power of an admission before court, but the concrete monetary grounds and the reason for suspicion that emerge from his claims. So he holds that the oath can apply even without a full legal admission before court.

אמנם מדברי שו"ת הרשב"א מבואר להיפך, דיליף מקרא ד"אשר יאמר כי הוא זה" דבעינן הודאה במקצת ממש, ומשמע דעצם חלות דין מודה במקצת תלויה בהודאה הנעשית בפני בית דין, ולא סגי במה שנתברר חיובו מתוך טענותיו בלבד. ולפי זה יש לומר, דהקצות אזיל בשיטת הרשב"א, דבעינן דוקא טענה והודאה בפני בית דין כדי שיחול שם מודה במקצת, ומשום הכי נסתפק בהודאה בפני יחיד מומחה, אם כיון שאין כאן הודאת בעל דין גמורה בפני בית דין, שוב ליכא דין מודה במקצת. משא"כ הנתיבות אזיל כהיסוד שנתבאר בברכת שמואל, דעיקר המחייב אינו חלות הודאת בעל דין בפני בית דין, אלא משום דאיכא דררא דממונא ורגלים לדבר מתוך טענותיו, ומשו"ה ס"ל דשייך לחייבו שבועת מודה במקצת אף בלא הודאה גמורה בפני בית דין.

Sugya Note

The Ketzos sides with the Rashba. He writes that the defendant's words do not count as a formal admission before Beis Din. Since there is no legally recognized partial admission, the Torah oath does not apply. On the Rashba's reading, the Torah's oath only works when the borrower clearly says, in front of the court, that he owes part. Since that did not happen here, this is not partial admission, and the Torah oath does not apply.

The Nesivos, disagrees with the Ketzos and rejects his reasoning. He holds that the oath can apply even where there is no express admission, as long as it becomes clear from the defendant's own claims that he is liable for part.

הקצות (שם סק"ב) מכריע בפירוש כדעת הרשב"א וכתב דאין כאן הודאת פיו כלל. ולשון הרשב"א "אשר יאמר כי הוא זה" מורה שדין מודה במקצת האמור בתורה תלוי בהודאה מפורשת בפה בפני ב"ד, וכיון שאין כאן הודאה כזו, אין זה מודה במקצת ואין מקום לחיוב שבועת התורה. אולם הנתיבות (שם, בקונטרס אחרון) חולק על הקצות ודוחה דבריו, וסובר שחיוב שבועת מודה במקצת שייך אף במקום שאין הודאה מפורשת, כל זמן שמתוך טענותיו של הנתבע מתברר שהוא חייב מקצת.

At A GLANCE

The main question is whether the oath requires a formal partial admission before Beis Din, or whether it is enough that part of the debt becomes clear through the defendant's own claims.

The Rashba: The defendant must actually admit part. Merely becoming obligated through the logic of his claims is not enough.

The Ketzos: The admission must carry the legal status of an admission before Beis Din.

Words spoken before a single expert judge may not be enough.

The Birchas Shmuel: The claimant's words create the setting that prevents the defendant from being treated as a voluntary returner.

The Nesivos: Once the defendant's own words or claims firmly establish part of the debt, the oath may apply even without a full formal admission.

Conclusion

We began with a strange law. A borrower admits part of the debt, and instead of being trusted, he must swear.

The Gemara explains that the oath is not punishing honesty. It is dealing with a borrower who may be caught in the middle. He cannot bring himself to deny everything to the face of the person who lent him money, but he is also not ready to pay the full debt. The oath pressures him to tell the whole truth.

The later sources ask a deeper question. What exactly gives this oath its power?

One side focuses on the borrower's actual words before court. The Torah says, "where one says, 'this is it.'" That sounds like a real partial admission, spoken in a proper court setting. This is the direction of the Rashba and

the Ketzos.

The other side focuses on the claim and the partial debt that becomes clear through the borrower's own words. Once there is a real reason to suspect that he is holding back the rest, the oath may apply even without a full legal admission before court. This is the direction that emerges from the Birchas Shmuel and the Nesivos.

In the end, it comes down to the Torah's small phrase: "this is it." Does it mean that the borrower must formally admit part, or does it describe the kind of case where his partial response creates suspicion about the rest? A small question about one judge leads back to the center of the whole topic: what the Torah's oath really rests on.