

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

To'ein Rabbani Shiur 73

To'en v' Nitan Lesson 1

Mareh Makomos for this Shiur

Shavuos 31a

Sanhedrin 29a

Rambam (To'en v'Nitan, 6:1)

Magid Mishneh

Rashba (Responsa Chelek 3, Siman 98)

Rosh (Responsa 70:4-5)

Mordechai (Bava Metzia 222-224)



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*Both parties are obligated
to clarify their arguments*



Siman 75 Seif One

1 If one sues his friend in *Beis Din* claiming that he owes him a *Maneh*, *Beis Din* instructs him, “Clarify your words. Why does he owe you? Did you lend him money or entrust him with an object or did he damage your property?” As it is possible that he thinks that his opponent owes him money, but in fact, he may not owe him. The same applies to the defendant. If he responds, “I don’t have anything of yours” or “I don’t owe you money”, he must clarify his words because perhaps he is in error and thinks that he doesn’t owe anything but he does owe him. Even if he is a great *Talmid Chacham*, we inform him that he has nothing to lose by replying to the arguments and by letting us know why he feels that he has no obligation to the plaintiff.

Rema: If he refuses to clarify his statements, if it appears to the Dayan that he has devious motives, he will lose. However, if it appears to the Dayan that this is not his intent, but that he is incapable of clarifying his arguments or similar circumstances, we do not rule against him solely because he did not clarify his arguments. We only require him to clarify his statement in order to reach true justice since there are many liars. See what we wrote previously in Siman 72:17.

Introduction to To'en v'Nittan

SIMAN 75:1

While obviously each litigant wishes to win his case, this does not grant him license to lie when presenting his arguments. Not only is he forbidden to lie to pervert justice, a litigant is also forbidden to advance a claim that is untrue in order to lead

to a conclusion which is ultimately just. This is forbidden due to the famous words of the **Passuk** (*Shemos* 23:7):

מדבר שקר תרחק

You should distance yourself from falsehood

The **Gemara** (*Shavuos* 31a) gives a number of examples of dishonest arguments that a litigant might feel are justified since they do not lead to a perversion of justice, and the **Gemara** forbids them all.

Reuven claims that Shimon owes him money, but Reuven only has a single witness to this effect. Shimon denies the debt altogether. Reuven has an idea that he can bring a second individual together with the witness when he goes to *Beis Din*, and Shimon will assume he is a second witness and will feel pressured to admit to the loan. This additional person will not say a word and will not explicitly claim to be a witness, but his actions are likely to deceive Shimon into believing his case is doomed.

Reuven claims that Shimon owes him money, and Shimon denies it in a manner that does not obligate him to swear an oath in *Beis Din*. Additionally, Shimon owes Reuven 100 זוז due to an unrelated and undisputed debt. Reuven has the clever idea to claim that the second loan was in fact 200 זוז instead of 100, and since Shimon admits to the debt in part he will be obligated to swear a Biblical oath as a *Modeh b'Miktzas*, and due to the *Halachos* of *Gilgul Shanna*, Reuven will be able to compel him to also swear on the first claim as well.

Reuven claims that Shimon owes him 200 זוז, while in fact the loan was only for 100 זוז. Shimon wishes to avoid swearing a Biblical oath as a *Modeh b'Miktzas*, so he has the idea to deny the entire debt in *Beis Din* which will exempt himself from the Biblical oath, and afterwards he will privately give Reuven the 100 זוז he really owes him.

A group of three individuals jointly lent 100 זוז to Reuven, who now denies the loan altogether. The frustrated creditors have the idea that they will present one of them as the sole lender and the other two as independent witnesses to the loan, and afterwards they will split the repayment among them.

In all of these cases, one of the litigants is acting deceitfully but is not cheating his opponent out of money. Nevertheless, the **Gemara** concludes that all of these examples are forbidden since any lack of honesty transgresses *Midvar Sheker Tirchak*.

The **Shach** (*s.k.* 1) cites this **Gemara**, and expresses surprise that the **Tur** and **Shulchan Aruch** omitted this Halacha.

Litigants Must Clarify their Arguments

The source of this *Halacha* is from the **Mishna Sanhedrin 29a** which addresses the testimony of witness.

The **Mishna** there states:

[When witnesses come to *Beis Din* to testify that Reuven owes money to Shimon, the *Dayanim*] say to the witness, “Tell us how you know that this individual owes money to this one.”

The **Magid Mishna** explains that the reason the *Dayanim* ask the witnesses to clarify their testimony is that if we accept their undefined statement that “Reuven owes money to Shimon”, there is a risk that this statement is based upon a misunderstanding. In order to clarify their testimony and insure its accuracy, *Beis Din* requires them to elaborate and detail what precisely they observed that led them to the conclusion that the defendant owes money to the plaintiff.

The **Magid Mishna** continues that if this concern exists regarding the testimony of the witnesses, all the more so it applies to the claims and arguments of the litigants. Accordingly, he considers the above mentioned **Mishna** to be the source for the **Rambam's** ruling (*To'en v'Nitan* 6:1) that:

Litigants who come to *Beis Din* and one of them claims, “He owes me a *Maneh* that I lent him or entrusted to him for safekeeping or he stole from me or he owes me wages etc.” and the defendant replied “I owe nothing” or “You have nothing by me” or “You are lying”, this is not an acceptable response. Rather, *Beis Din* says to the respondent “Reply to his claims and explain your response just like he explained his claim and state whether or not you borrowed from him, received a trust from him, robbed him, hired him or whatever is relevant to his claim.” Why don't we accept this response? Perhaps he is in error and will come to swear a false oath, as it is possible that he borrowed money as the plaintiff claimed and returned the money to the plaintiff's son or wife or gave him a present against the value of the loan and thinks that this exempts him from the debt. Therefore, we tell him, “Why do you think that you don't owe anything? Perhaps according to Halacha you are obligated to pay and you don't know.” Accordingly, he must inform the *Dayanim* the intent of his words, and they will inform him

whether he owes money or not. Even if he is a great *Talmid Chacham*, they tell him, “You have nothing to lose by responding to his claim and by informing us why you don’t owe him. Did you never borrow from him or did you already repay him, as we will rule according to the relevant arguments in any event.”

Similarly, if the plaintiff claims and states, “He owes me a *Maneh*” or “I have a *Maneh* by him,” we ask him, “On what grounds, did you lend him money or entrust him with something or did he damage your property? State why he owes you.” It is possible that he thinks that he owes him money while in fact he doesn’t owe him. For example, he may suspect that he stole from him or promised to give him a *Maneh* etc.

The **Rashba** (*Responsa* volume 3, *Siman* 98) concurs with the **Rambam** and rules,

We do not accept any statement from either the plaintiff or the defendant unless they clarify their argument and explain why they feel their opponent owes them money or why they don’t owe money. As not everyone is proficient in Halacha; and they may think that their opponent is liable when he is not, or that they are exempt when they are not.

The **Sma** (*s.k.* 1) cites the **Prisha** that we are not only concerned about an innocent mistake, there is also a risk that one of the litigants is being deliberately and maliciously vague. He suggests that it is due to this concern that we require them to clarify the precise nature of their arguments, for example, whether the supposed obligation was a loan or a trust.

The **Sma** (*s.k.* 3) adds that when the **Shulchan Aruch** writes that even a respected scholar must clarify his arguments; this is despite the fact that he is neither suspected of ignorance of the Halacha nor of malicious obfuscation. First, anyone could make an error in judgment on a subjective issue where he has a personal interest. Second, since he can dismiss any concerns with a simple clarification and has nothing to lose by doing so, we require that he elaborate upon the substance of his argument.

What does he Need to Specify?

However, the **Rosh** (*Responsa* 70:5) states that this requirement to clarify one’s arguments is limited in its scope. While the litigants must clarify the general nature of their arguments, they are not obligated to specify precise details. For example, while the plaintiff cannot merely state that the defendant owes him money and he

must specify that he gave the defendant a loan; the claimant does not need to stipulate the precise date and location of the loan.

Nevertheless, the **Mordechai** (*Bava Metz'ia* 222-224) quotes **Rabbeinu Tam** as saying that while strictly speaking it is accurate that Halacha does not require a litigant to specify the details of his argument, the **Gaonim** saw that there was a significant issue with dishonest individuals. Accordingly, the **Gaonim** enacted that both litigants must elaborate on the details of their respective arguments to the best of their ability.

A Litigant who Failed to Clarify

However, the **Darkei Moshe** refers us to what he wrote in *Siman* 70 where he qualifies that the litigants' responsibility to clarify their arguments is only *l'chatchila*, but failure to do so does not automatically invalidate their position.

While certainly if it appears to the *Dayanim* that one of the litigants is being deliberately vague and that his motives are deceitful, they can and should dismiss his arguments out of hand. But if his intent appears to be innocent in nature, they can accept his claim despite the lack of details.

Accordingly, if the litigant seems to honestly not recall the details of the incident and to merely vaguely remember the events that lead to either his lack of liability or his opponent's obligation, *Beis Din* can accept his best efforts and compel his opponent to respond to this general argument. If the opponent's reply is unsatisfactory, they can even issue a ruling in his favor based merely upon his vague argument.

Swearing on a Vague Claim

The **Rosh** (*Responsa* 71:5) brings an interesting case:

Reuven produced a document that he had lent a sum of money to Shimon. Shimon claims that he returned a portion of the debt to Reuven's brother, Yehuda, but he did not directly inform him that the money he gave him was intended for his brother's loan. Rather he merely stated, "Take these 50 gold coins" which could be interpreted as a present. Yehuda denies having ever received any money from Shimon, neither as a present nor as repayment for a debt. Shimon wants Yehuda to swear an oath that he never received anything from him, and Yehuda counters that Shimon's vague argument is

insufficient to obligate him to swear. Shimon refused to elaborate on his supposed payment to Yehuda, but he did bring a single witness that Yehuda admitted to receiving money from Shimon, seemingly countering Yehuda's absolute denial.

The **Rosh** accepted Yehuda's argument that Shimon's syntax was vague and could be interpreted as giving him a present, and in the absence of a clear claim from Shimon, we will not obligate Yehuda to swear a *Shavuas Hesel*.

Questions and Answers

1. **Is a litigant permitted to employ devious methods to reach a just ruling in his case?**

No. This is forbidden due to *Midvar Shaker Tirchak*.

2. **Does a claimant need to state any more than, “Ploni owes me money”?**

Yes. *Beis Din* asks him to clarify why he thinks the defendant owes him money.

3. **Why?**

The primary purpose of this clarification is to weed out misunderstandings, as many cases can be dismissed out of hand when the *Dayanim* hear why the plaintiff thinks he has a case. Additionally, fraudulent claims can often be identified by merely hearing the claimant’s arguments. Finally, when the plaintiff explains why he thinks the defendant owes him money, it enables the defendant to present a coherent response.

4. **Does the plaintiff need to present all of the details of his arguments to file a claim?**

No. We only require him to specify the general nature of his suit at the outset. For example, we expect the claimant to describe whether the defendant supposedly borrowed money from him, damaged his property, etc. However, at this initial stage of the proceedings we do not require the plaintiff to detail specific dates, locations, etc.

5. **What does *Beis Din* do if the claimant refuses to clarify his claim?**

If it appears to the *Dayanim* that he is refusing to elaborate on his argument for devious motives, they will dismiss his case out of hand. However, if it appears that he is sincerely unable to explain clearly why he feels that the defendant owes him money, we will accept his claim at face value and ask the defendant to respond.

6. Generally speaking, if a defendant absolutely denies the entire claim against him, *Beis Din* will obligate him to swear a Rabbinic *Shavua Heset*. If the plaintiff's claim was vague and he was unable to clarify it, will this still obligate the defendant to swear?

No. Since he is not required to swear any oath according to the Torah to exempt himself, *Beis Din* will not impose a Rabbinic oath upon the defendant unless there are clear grounds to do so.

7. How does all of the above apply to the defendant?

If the plaintiff has filed a clear claim against him, *Beis Din* will require the defendant to respond in kind and will not suffice with a vague denial of the claims. If the defendant fails to explain his response and his intent appears to be devious, we will reject his defense out of hand and rule in favor of the claimant. If he seems to be sincere in his inability to elaborate, we will accept his statement as-is.