



Volume 1. Issue 25.

Hashmatat Kesafim and Shvu'ot

Towards the end of this week, the way *shmittah* cancels debts (*Hashmatat Kesafim*) was discussed. This law is derived from the following positive and negative commandments (*Devarim* 2:15):

The idea of the *shmittah* year is that every creditor shall **remit any debit** owed by his neighbour, and **one shall not claim** from his neighbour or brother...

The *Rambam* (*Shmittah VeYovel* 9:6) extends the discussion into the area of *shvu'ot* (vows):

Shmittah absolves *shvu'ot*... [This is true when considering *shvu'ot dayanim* since if the person admits [to owning the money] *Shmittah* absolves [the debt]. However, *shvu'ot* taken by guards or partners and the like, since if one admits he is required to pay, the *shvuah* would also not be absolved.

This ruling is based on a *Tosefta* that explains that in case where the underlying monetary obligation would be absolved by *shmittah* the associated *shvuah* is also cancelled by *shmittah*. The *Ra'avad* explain that latter part of the ruling is based on the *Mishnah* learnt this week (10:2) that fines due to a violater, seducer and slanderer (who are required to pay their victims) and other judicial rulings directed by *beit din* are not absolved. The *Gra"ch* poses the question: Is the *Ra'avad* merely producing a source for the *Rambam's* ruling or does his commentary have more significance?

In order to first develop a better understanding of the *Rambam's* position it is important to see what he writes in the following *halachah* (9:8):

If throughout *Shmittah* one denies having borrowed money and then admits to borrowing the money after *Shmittah*... the debt is not absolved.

The *Rava'ad* argues however this is only true if *Beit Din* has already exempted the person from paying the debt based on a (false) *shvu'ah*. If this was not the case, we have seen that *Shmittah* absolves the required *shvuah*; *shmittah* would absolve the debt. Why does the *Rambam* not make this distinction explicit?

The *Gra"ch* explains the *Ra'avad* maintains that even though the source for absolving *shvu'ot* is biblical (see *Shvu'ot* 49a) it is clear that this only applies to *shvu'ot* that

are of monetary significance. Consequently, the *passuk* teaches that both the *shvuah* and debt are connected and *shmittah* cancels both.

The *Rambam* however must understand that one can separate the debt and the associated *shvu'ah*. While the need for the *shvuah* is indeed absolved, the debt remains. The *Gra"ch* explains that in this case, as the person has denied borrowing any money the positive commandment of "remit any debt" cannot be applied. Nevertheless the prohibition of "you shall not claim" can be activated on those elements that the lender can claim, i.e. the *shvuah*, even though the loan remains unaffected.

Returning to the original question, the *Gemarah* (*Gittin* 18a) explains our *Mishnah* (10:2) in further detail that once the violater or seducer has been obligated to pay, *Shmittah* can absolve the amount due. The reason being that once the person becomes obligated to pay the fine or damages, the money due is considered like a loan. This could perhaps pose a problem for the *Rambam* since as a soon *beit din* obligates someone to take an oath it should be treated like the case of the violater in that the underlying monetary obligation be viewed as a loan, and the *shvuah* would consequently be absolved. The *Gra"ch* explains the obligation to make a *shvuah* should only be viewed in this manner when the person has been obligated to pay or has admitted to owing a portion of the claimed loan. If however the person is only obligated to make a *shvu'ah* then the underlying monetary obligation would not be considered a loan.

This therefore explains our original question. The *Ra'avad*, who maintains that *shvuah* and underlying monetary obligation are inextricably linked, views vows required by *shomrim* like the fines placed on violater and seducer. In other words once *beit din* obligates one to make a *shvu'ah* then the underlying monetary obligation becomes a loan. Consequently once the *shvuah* is absolved so is the *obligation*. The *Rambam* however, sees the case of *shvuat shomrim* as different to fines placed on the violater and slanderer. In other words, even after *beit din* obligates the *shomer* to make a *shvuah*, the underlying monetary obligation is not accessible and consequently not considered a loan - the *shvu'ah* is therefore not cancelled.

David Bankier

Revision Questions

שביעית ט' ב' – י' נ'

- Into how many areas is Israel divided for the laws of *biur*? (ט: ב')
- What are the names of the three major areas? (ט: ב')
- Why are the definitions of these areas important? (ט: ג')
- Into how many areas does *R' Shimon* divide Israel? (ט: ג')
- What is different about the way olives and dates are treated with respect to the laws of *biur*? (ט: ג')
- Explain the debate regarding whether the law of *biur* comes into effect, if all that remains is guarded produce. (ט: ד')
- What are *t'fichim*, *duphra* and *sivaniof*? Does the law of *biur* come into effect if only these things remain in the field? (ט: ט')
- If someone has a preserve with three different vegetables and the *zman biur* has begun for one of these vegetables, what should one do with the preserve? (Include all four opinions.) (ט: ה')
- Until when can one gather: (ט: ו')
- Moist greens?
- Dry greens?
- Moist leaves?
- Dry leaves?
- Until when does one rent a house if he rented it "until the rains"? (ט: ז')
- Until when can the poor enter a field to collect *peah*, *leket* and *shichecha*? (ט: ז')
- When can one burn straw and stubble of the *Shmittah* year? (ט: ז')
- What does one do at the time of *biur* with his *shmittah* fruit? (ט: ח')
- Explain the debate regarding who can redeem the fruit once it has been removed. (ט: ח')
- Explain the debate regarding what one should do if they inherited a large amount of *shmittah* produce. (ט: ט')
- Does one need to separate *challah* from *shmittah* bread? (ט: ט')
- Are loans that are formed in a written contract cancelled at the end of the *shmittah* year? (ט: י')
- Are the debts due to purchases made on credit cancelled at the end of *shmittah*? (ט: י')
- Are wages due to employees cancelled at the end of *shmittah*? (ט: י')
- Are payments due to court ruling cancelled at the end of *shmittah*? (ט: י')
- What was the name of the initiative instituted by *Hillel* (based on the previous question) and why was it instituted? (ט: י')
- Explain in further detail *Hillel's* initiative and how it is implemented? (ט: י')
- When is it problematic if a loan contract has the wrong date – if it is early or late? (ט: י')
- When is it problematic if a *pruzbul* has the wrong date – if it is early or late? (ט: י')
- How many *pruzbuls* are required if: (ט: י')
- Five people loan to one person?
- One person loans to five different people?
- What is necessary in order that a *pruzbul* can be written (aside from the writing implements)?

Local Shiurim

Sunday -Thursday
Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat
10 minutes before mincha
Mizrachi Shul

Audio Shiurim on-line!

- 613.org/Mishnah.html
- www.shemayisrael.com/Mishna/

SEEKING SPONSORS

Currently 200 printed Mishnah Yomit publications are being sent to 18 shuls around Melbourne and electronic editions sent to 15 subscribers in Australia, Israel, England and USA. This can only continue through the generous support of our sponsors.

If you would like to sponsor a *Messechet*, please email mishnahyomit@hotmail.com or call Doodie on 9528-2235.

To add another mishnah yomit shiur send an email to: mishnahyomit@hotmail.com

Next Week's Mishnahyot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
27 th Mar. ט"ז אדר ב'	28 th Mar. י"ז אדר ב'	29 th Mar. י"ח אדר ב'	30 th Mar. י"ט אדר ב'	31 st Mar. כ' אדר ב'	1 st Apr. כ"א אדר ב'	2 nd Apr. כ"ב אדר ב'
Shvi'it 10: 7-8	Shvi'it 10: 9 – Trumot 1:1	Trumot 1: 2-3	Trumot 1: 4-5	Trumot 1: 6-7	Trumot 1: 8-9	Trumot 1:10-2:1

