

Unless he is unaware of its לאו

עד שישגוג בלאו שבה –

OVERVIEW

אבי taught that regarding a שבועת ביטוי one is not liable for a קרבן unless he was שגג בלאו שבה. There is a dispute between רש"י and תוספות as to the meaning of שגג בלאו שבה.

תוספות explains the case of שגג בלאו שבה is if -

כגון נשבע שלא יאכל ואכל ובשעת אכילה שכח איסור שבועה –

For instance, he swore that he will not eat, and he ate, and while he was eating he forgot the prohibition of transgressing a שבועה; he thought that one is permitted to transgress his שבועה -

וקרינן ביה האדם¹ דבשעת שבועה שנשבע היה יודע היטב איסור שבועה –

And we can refer to this situation as ‘the man (האדם)’, since at the time when he took the oath he was well aware of the שבועה איסור; that one is prohibited from transgressing a שבועה -

אלא שבשעת אכילה היה סבור דמותר לעבור על שבועתו –

However at the time he ate, he (forgot and) assumed that it is permissible to violate his oath (which he was aware of then).

פירש"י cites תוספות:

ורש"י פירש² דבשעת אכילה שכח שנשבע –

And רש"י explained (that שגג בלאו שבה means) **that when he ate he forgot that he swore** not to eat –

פירש"י disagrees with תוספות:

ואין נראה דאין זה קרוי שגג בלאו שבה במה שאינו נזכר שנשבע³:

And this explanation is not acceptable, for when someone does not remember that he swore; this cannot be referred to as being a שוגג in the

¹ Regarding a שבועת ביטוי the תורה (in ויקרא ה,ד) writes האדם בשבועה. לכל אשר יבטא האדם בשבועה. The ברייתא in כו,א in ברייתא (see שבועות כו,א) derives from the words האדם בשבועה to exclude an אנוס (from the חיוב) since he was not a האדם (a person who is aware and in control of what he is doing) when he took the oath. However in our case (even though that when he ate it he presumed that it was מותר [which would seemingly exclude him from האדם בשבועה], nevertheless) he is a האדם בשבועה as תוספות explains.

² בד"ה שבועת ביטוי.

³ If, when he is eating he does not remember that he swore, this cannot be considered that he was a שוגג in the לאו, since he has no recollection of a לאו. However, according to תוספות that he is aware of his oath; but he mistakenly assumes that it is not binding; this is considered שגג בלאו שבה. See ‘Thinking it over’ # 1.

לאו.

SUMMARY

רש"י maintains that שגג בלאו שבה means that he was unaware of his oath when he ate. תוספות maintains that he was unaware (when he ate) that the oath is binding.

THINKING IT OVER

1. תוספות maintains (in his question on רש"י) that if one is unaware of the oath it is not considered שגג בלאו שבה. Seemingly, why is forgetting the oath different than forgetting that it is שבת, where all agree that if one forgot that today is שבת he is חייב (one קרבן)?
2. What would רש"י maintain in תוספות case (where he thought the oath is not binding); is that (also) considered שגג בלאו?⁴

⁴ See לשון הזהב.