

He swears on what he owns, etc. – על דאית ליה משתבע כולי –

OVERVIEW

The משנה stated that the oath administered to the שנים אוהזין בטלית is שאין לו שנים אוהזין בטלית; that he does not own less than half. The גמרא asks (as רש"י explains) this oath can be misinterpreted to mean that he owns nothing, for then too he does not own less than half; why should the חכמים institute a misleading oath. תוספות explains that the real difficulty is not concerning administering the oath, but rather [framing] the text of the oath.

תוספות anticipates a difficulty:

ואף על גב דעל דעת בית דין משביעין אותו¹ –

And even though the oath is administered to him according to the understanding of בי"ד, so why are we concerned how he will interpret the oath, since whatever he thinks is irrelevant –

תוספות replies:

מכל מקום לא הוה להו לתקן שבועה בלשון דלא משתמע² שחציה שלו:

Nevertheless the חכמים should not have instituted an oath with such a syntax that is not explicitly understood to mean that he owns half.³

SUMMARY

The text of an oath should be formulated in a manner that its intent is clear.

THINKING IT OVER

Why indeed is the גמרא so concerned over the text of the שבועה, since the ש"ס is informed that his oath is בי"ד?⁴

¹ The ברייתא in (לט,א) states שבועות כט,א (לט,א) in ברייתא וכושהן משביעין אותו אומרים לו הוי יודע שלא על דעתך אנו משביעין אותך אלא על דעת המקום ועל דעת בי"ד; that the intent of the oath is the way בי"ד understands it and not the way the one who swears wishes to misinterpret it. Therefore in our case there should be no concern, since in the view of בי"ד he is swearing that he owns at least half.

² This statement of 'שלא על דעתך וכו' is to assure that when בי"ד is administering a proper oath, that the person accepting the oath does not equivocate and have something else in mind; however when בי"ד initially frames the text of the oath it should be an explicit oath to express what בי"ד desires, and not an oath that can be misinterpreted to mean something else. See 'Thinking it over'.

³ The oath should have been 'I own at least half' or something similar.

⁴ See מ"מ.