



Sicha Summary

Chelek 16 | Mishpatim | Sichah 4

The Talmud:

From where is it derived that a court first attends to the arguments of the claimant and only afterward attends to the counterclaims of the defendant? As it is stated: “Whoever has a cause, let him come near [*yiggash*] to them, (*Shemos* 24:14)” which is interpreted to mean that whoever has a claim against another should submit [*yaggish*] his claim to them first before the defendant.

The Sages of Nehardea say that despite this principle, sometimes a court attends to the defendant first and listens to his defense before discussing the arguments of the claimant. This occurs in a case where his assets are depreciating because of the claim against him. In that situation, the court allows him to present his arguments first so that he can sell his assets at their true price. (*Bava Kama* 46b)

The Background:

The halachic authority and commentator *Shach* explains the rationale of this law: Torah mandates a defendant who partially admits his liability to the plaintiff to take an oath swearing he is not liable for the remainder of the claim. The defendant must only take this oath, however, in the event when his admission is in response to the plaintiff's accusation. To wit: If A claims in court that B owes him \$100, and B responds that he merely owes \$50, he must swear that he does not owe the remaining \$50. If, however, B amidst he owes A \$50 in court and then A responds that B actually owes \$100, B is not Biblically mandated to take an oath.

Thus, the Talmud rules that the court should take the plaintiff's claim first, to allow for the possibility of a biblically mandated oath in the event that

the defendant admits partial responsibility for the claim. Because the defendant did not settle his debt outside of court, he is placed in a position where he may have to swear to maintain his innocence.

If, however, the defendant claims that the reason he did not settle the claim outside of court was because his assets were depreciated, then he is given the opportunity to speak first, and to avoid a biblically mandated oath.

The Inner Court Case:

Every law in Torah, even laws concerning civil suites, contains relevance and meaning for the spiritual life of a Jew. What is the lesson in this law?

Every Jew has a constant court case with the evil inclination. Sin, in its literal sense and in the sense of “missing the mark,” is unavoidable. The evil inclination claims that because he has taken possession of the Jew for the moments of his sin, the person in his entirety belongs to the evil inclination and must be given over to this possession.

In response, every Jew makes a claim of partial admission. “True, part of me belonged to the evil inclination during the moment of my sin; my speech, thought, or action was aligned with the evil inclination’s will. But even in that moment, my deeper desire was to be connected to G-d. The surface of me belonged to the evil inclination, but not all of me.”

In this instance, the defendant must take an oath. The word for oath, *shevua*, can also mean “to satiate.” Meaning, when a soul takes an “oath” it is infused, satiated, with spiritual potential to turn his life around and avoid being entrapped entirely in the evil inclination’s grasp.

But taking an oath should be one’s last recourse because its repercussions are grave. The sages warn against taking oaths liberally because of the dire punishment for taking a false oath. In this context, taking an “oath,” being granted additional spiritual resources, is a grave responsibility. If these resources are misused or squandered the consequences are dire.

There is, therefore, a way to avoid taking an “oath” in response to the evil inclination’s claim. And that is by claiming that one’s “assets are depreciated.”

The time we are given on this earth is our “assets.” Every second that we spend entangled in a dispute with the evil inclination is another second that we are not using to fulfill our purpose in this world. If we are truly dedicated to our purpose in life to the exclusion of any other concern, then we can claim that any more time in the courtroom with the evil inclination is depreciating our assets. We are then allowed to put in our claims first, and not have to respond to the plaintiff’s accusations. Then, we are free to go and get back to what truly matters — making our world into a home for G-d.