

מודה במקצת הטענה ישבע - When a partial admission gets you in trouble

Shevuot 42b discusses the law of מודה במקצת - a defendant who admits to part of the plaintiff's claim who must take an oath in order to avoid paying the rest of the claim. What is the logic behind this, especially given the supposed honesty of the defendant? Shouldn't we be more lenient towards the defendant because of their honesty? What does this teach us about partial admissions - the trust they build and the suspicion they arouse?

Questions? Comments? Email dinanddaf@gmail.com

1. שבועות מב:

דאמר רבבה: מפני מה אמרה תורה מודה מקצת הטענה ישבע? חזקה אין אדם מעיז פניו בפני בעל חובו. והאי – בכוליה בעי דליכפריה, והאי דלא כפריה – משום דאינו מעיז פניו בפני בעל חובו;

As Rabba says: For what reason did the Torah say that one who admits to a part of the claim must take an oath? It is because there is a presumption that a person does not exhibit insolence by lying in the presence of his creditor, who did him a favor by lending money to him. And this person who denies part of the claim actually wants to deny all of the debt, so as to be exempt, and this fact, i.e., that he does not deny all of it, is because a person does not exhibit insolence in the presence of his creditor.

ובכוליה בעי דלודי ליה, והאי דלא אודי ליה – אישתמוטי הוא דקא משתמיט מיניה, סבר: עד דהוי לי זוזי ופרענא ליה; ורחמנא אמר רמי שבועה עליו, כי היכי דלודי ליה בכוליה.

And he wants to admit to the creditor with regard to all of the debt; and this fact, i.e., that he did not admit the entire debt to him, is because he may be temporarily avoiding paying him. He rationalizes doing so by saying to himself: I am avoiding him only until the time that I have enough money, and then I will repay him. And therefore, the Merciful One says in the Torah: Impose an oath on him in order to induce the debtor to admit the entire debt to him.

2. בבא מציעא ג-ג:

תני רבי חייא: מנה לי בידך, והלה אומר: אין לך בידי כלום, והעדים מעידים אותו שיש לו חמשים זוז – נותן לו חמשים זוז, וישבע על השאר.

§ Rabbi Hiyya taught a *baraita*: If one says to another: I have one hundred dinars [*maneh*] in your possession that you borrowed from me and did not repay, and the other party says: Nothing of yours is in my possession, and the witnesses testify that he has fifty dinars that he owes the claimant, he gives him fifty dinars and takes an oath about the remainder, i.e., that he did not borrow the fifty remaining dinars from him.

שלא תהא הודאת פיו גדולה מהעדאת עדים, מקל וחומר.

This ruling is derived via an *a fortiori* inference from the *halakha* that one who admits to part of a claim that is brought against him is obligated to take an oath that he owes no more than the amount that he admits to have borrowed. The inference is: As the admission of one's own

mouth should not carry greater weight than the testimony of witnesses. Since in this case witnesses testify that he owes an amount equal to part of the claim, he is all the more so obligated to take an oath with regard to the rest of the sum.

וְתַנָּא תוּנָא: שְׁנַיִם אוֹחֲזִין בְּטִלְיָתָא זֶה אוֹמֵר אֲנִי מֵצְאֵתִיהּ וְכוּ'. וְהָא הֵכָא כִּינּוּ דְתַפְסִיס, אֲנִן סְהֵדֵי דְמֵאֵי דְתַפְסִיס הָאֵי דִיִּידִיהּ הוּא, וּמֵאֵי דְתַפְסִיס הָאֵי דִיִּידִיהּ הוּא, וְקִתְנִי: יִשְׁבַּע!

The Gemara comments: And the *tanna* of the mishna also taught a similar *halakha*: In a case of two people who came to court holding a garment, where this one says: I found it, and the other one says: I found it, each litigant takes an oath and they divide the garment. And here, in the case of a found item, since each litigant is holding part of the garment, it is clear to us that what is in this one's grasp is his, and what is in that one's grasp is his. This is tantamount to witnesses testifying that part of the claim of each litigant is legitimate. And the mishna teaches that each of them takes an oath.

מֵאֵי "שְׁלֹא תִהְיֶה הוֹדָאת פִּי גְדוֹלָה מִהֶעֱדָאת עֵדִים מִקֵּל וְחוֹמֶר"? שְׁלֹא תֹאמַר הוֹדָאת פִּי הוּא דְרַמְיָא רַחֲמֵנָא שְׁבוּעָה עָלֶיהָ כְּדָרְבָּה.

The Gemara clarifies: For what reason is it necessary to have the *a fortiori* inference: As the admission of one's own mouth should not carry greater weight than the testimony of witnesses? Isn't the comparison to the case of an admission to part of a claim self-evident? The Gemara answers: It is necessary so that you will not say that it is only in a case of the admission of one's own mouth that the Merciful One imposes an oath upon him, in accordance with the explanation of Rabba.

דְּאָמַר רַבָּה: מִפְּנֵי מָה אָמְרָה תוֹרָה מוֹדָה מִקְצַת הַטַּעֲנָה יִשְׁבַּע? חֲזָקָה אֵין אָדָם מַעֲיִז פָּנָיו בְּפָנֵי בַּעַל חוּבוֹ, וְהָאֵי בְּכוּלֶיהָ בְּעִי דְנִכְפְּרִיהּ, וְהָאֵי דְלֹא כְּפָרִיהּ – מִשּׁוּם דְּאֵין אָדָם מַעֲיִז פָּנָיו

As Rabba says: For what reason did the Torah say that one who admits to part of the claim must take an oath? It is because there is a presumption that a person does not exhibit insolence by lying in the presence of his creditor, who had done him a favor by lending money to him. And this person who denies part of the claim actually wants to deny all of the debt, so as to be exempt, and this fact that he does not deny all of it is because a person does not exhibit insolence.

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וְהָאֵי בְּכוּלֶיהָ בְּעִי דְלֹדֵי לִיהּ. וְהָאֵי דְלֹא אוֹדֵי – אֲשֶׁתְּמוּטִי הוּא דְקָא מִישְׁתַּמֵּט מִיָּנִיהּ, סָבַר: עַד דְּהוּוּ לִי זִזִּי וּפְרַעֲנָא לִיהּ, וְאָמַר רַחֲמֵנָא: רָמִי שְׁבוּעָה עָלֶיהָ כִּי הֵיכִי דְלֹדֵי לִיהּ בְּכוּלֶיהָ,

And in order not to exhibit insolence, this person wants to admit to the creditor with regard to all of the debt, and this fact that he denies owing him in part is because he reasons: If I admit to him with regard to all of the debt, he will lodge a claim against me with regard to all of it, and right now I do not have the money to pay. He was evading his creditor, and thought: I will continue doing so until I have money, and then I will pay him all of it. This rationalization enables one to falsely deny part of a claim. And therefore, the Merciful One states: Impose an oath on him, in order to ensure that he will admit to him with regard to all of the debt.

3. רמב"ם הלכות גזלה ואבדה פרק ד הלכה טז

אמר החוטף עשרים חטפתי ועשרים שלי הן והנגזל אומר מאה חטף הואיל ואין העד יודע מניין הרי משלם העשרים שהודה בהן שחטפן ונשבע שבועת התורה על השאר שהרי נתחייב במקצת, ודעתי נוטה בזה שישבע הסת שהרי לא הודה בכלום אלא אמר שלי חטפתי.

There are opinions that maintain that the following rule applies when, in the above situation, the person who took the coins said: "I seized twenty gold coins; they were mine," while the person who was robbed says, "He took 100." The defendant must pay the twenty he admitted to having taken, and take an oath required by Scriptural Law with regard to the remainder, for he was obligated for a portion of the plaintiff's claim. My opinion is that he is required merely to take a Rabbinic oath, for he did not admit any liability. Instead, he said that he took what belonged to him.

4. ירושלמי בבא קמא א:א, ז עמוד ד'

תני. אדם שאמר לחבירו. תן לי מנה שאתה חייב לי. אומר לו. לא היו דברים מעולם. הלך והביא עדים שחייב לו נזוז. רבי חייה רבה אומר. הודיית עדים כהודיית פיו וישבע על השאר. רבי יוחנן אומר. אין הודיית עדים כהודיית פיו שישבע על השאר.

It was stated: One person said to another, give me the mina which you owe me. He answered, it never happened. He went and brought witnesses that the other owed him 50 zuz. The elder Rabbi Hiyya said, the confession of the witnesses is the same as his own confession; he has to swear about the remainder. Rabbi Johanan said, the confession of the witnesses is not the same as his own confession that he should have to swear.

5. רב ישראל גוסטמן הקונטרסי שיעורים בבא מציעא בשיעור על מודה במקצת והעדאת עדים

ואשר מוכרח מזה לומר דזו הלכה מיוחדת בעדים דמה שהעדים מעידין נחשב כאילו הבע"ד עצמו יודע והודה אעפ"י שבאמת הוא מכחישן

And what must be said from this is that there is a special rule regarding witnesses, such that the witnesses are considered as if the defendant knew and admitted, even though in reality the defendant denies what the witnesses declare.

6. תוספות ב"מ ג. ד"ה מפני

פי' יהא נאמן במגו דאי בעי כופר הכל או נילף מהכא דלא נימא מגו בעלמא ומשני דאין זה מגו דאין אדם מעיז פניו לכפור הכל הואיל וחבירו מכיר בשקרו אבל במקום שיכול להעיז כגון בבנו ואמר מנה לאביך בידי והאכלתיו פרס נאמן במגו דאי בעי כפר הכל כדאיתא פ"ב דכתובות (דף יח. ושם) ובפרק שבועת הדיינים (שבועות דף מב.)... Meaning that a person should be believed because the defendant could have denied owing anything! Or perhaps we should learn from here that *migo* is illegitimate in general! And he answers that this is not a case of *migo* because a person would never be so brazen as to deny everything in front of their creditor because their creditor knows they're lying..But in a case in which the defendant would be willing to deny it all, as in the case of the plaintiff being the creditor's child, and the defendant states: Your father had 100 zuz in my possession, but I gave him half of it already, the defendant is believed because (*migo*) the defendant could have denied everything - as brought in the second chapter of Ketubot (18a) and in the chapter called "The oaths of the judges (Shevuot 42a.).

7. ר"י מיגאש שבועות מה:

לא אמרין מיגו לאיפטורי משבועה דהא שומרין דאיכא למימר מיגו לא מיפטר נפשיה משבועה ושבועת מודה במקצת נמי הא קא חזינן דאיכא למימר מיגו ואפי' הכי חייב ביה רחמנא שבועה הילכך כי אמרין מיגו לאיפטורי מממון אבל משבועה לא

We do not say that *migo* absolves a person from an oath, for in the case of *shomrim* where we could utilize *migo*, the *shomer/et* does not absolve themselves from taking an oath. And the oath of *modeh/ah be-miktzat* is likewise we see that one could have employed *migo*, and yet the Torah still requires the defendant to take an oath. Therefore, when we use *migo*, we mean it to exempt the defendant from payment but not from taking an oath.