**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**TALMUDIC METHODOLOGY**

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**Shiur #18: *Shevuat Heset***

At the *de-oraita* level, if a defendant (*nitva*) completely denies a monetary claim, he is not obligated to payment or to take an oath. If he partially confesses, he pays the confessed sum and swears about the sum he denies. However, a late *takana* attributed to R. Nachman instituted a Rabbinic *shevua* known as *shevuat heset* for any denied claim. This *shiur* will explore the nature of this oath.

Many opinions view this oath as purely extrinsic. In pure legal terms, the defendant is completely exonerated and does not owe money or an oath. However, to appease the *tovei’a* (claimant), an oath was levied upon the defendant. This oath is purely psychological; to placate the *tovei’a* it does not reflect any legal weakening of the defendant’s/*nitva’s* position. This approach is adopted by the Ra’avan (beginning of his comments to *Bava* *Metzia*) and the *Sefer Ha-Terumot* (7:1:2).

The manner in which the *gemara* records the source of *shevuat heset* may provide a different perspective. The *gemara* (*Shevuot* 40b) describes the unlikelihood of a plaintiff lodging completely fabricated claims. Since he launched a legal proceeding, it is highly likely that he is owed at least some money. Although this probability is not sufficient to generate a monetary obligation, it **does** generate an oath. This description of *shevua heset* implies that a *heset shevua* is not taken merely to placate the *tovei’a*, but is instead based on the variance between the claim of the *tovei’a* and the defense of the *nitva*. Since the claim of the *tovei’a* appears more convincing, it obligates an oath that is a Rabbinic equivalent of *de-oraita* legal oaths; it is not merely a “tack-on” concession to the *tovei’a*.

An obvious distinction would emerge regarding the application of *heset shevua* to situations in which the *tovei’a*’s claim cannot be viewed as more legally formidable. For example, the Rambam (*Hilkhot Nachalot* 4:2) discusses a scenario in which a father disqualifies a presumed son from being his biological son. A father enjoys unique halakhic ability to testify about his offspring based upon the halakha of “*yakir.*” (For a fuller exposition of this halakha, see [shiur](https://www.etzion.org.il/en/authority-father-testify-about-identity-his-child) [“The authority of a father to testify about the identity of his child”](The%20authority%20of%20a%20father%20to%20testify%20about%20the%20identity%20of%20his%20child)). Can the disqualified child subsequently prosecute the father for the inheritance he lost based upon the father’s testimony, and can he elicit a *shevuat heset*? The *Mishna Le-Melech* claims that the disqualified child cannot, since the defendant (in this instance the father) enjoys sturdier halakhic position based upon his *yakir* augmentation. This view clearly implies that the *shevuat* *heset* is based on the superior halakhic status of the plaintiff’s/*toveia’s* claim under typical circumstances. In a situation in which *halakha* favors the position of the defendant, no *shevua* can be generated.

In a parallel case, the Shach (87:9) questions the applicability of *shevuat heset* to a situation in which each party has summoned contradictory witnesses (“*trei u-trei*”). Neither legal position can rightfully be viewed as “superior” since each position contradicts witnesses. If *shevuat heset* is a product of a stronger claim of a *tovei’a*, it would fail under conditions of *trei u’trei*. However, if a *shevuat heset* is applied in *trei u’trei* cases, the oath may not be based upon relative strengths of claims; rather, it may be an oath imposed merely to placate the *tovei’a*.

A second question surrounds applying a *shevua* in a vacuum. The *gemara* in *Shevuot* (40b) cites two opinions about whether an oath can only be applied in a situation of *derara de-mamona*. Loosely translated, this refers to a scenario in which the claim of the *tovei’a* has **some** basis. The example cited is a case in which the original claim of the prosecution about the loan was accepted by the defendant. Subsequently, however, the defendant claimed that he already paid his debt. Although he denies all continuing obligations, the defendant did admit to the existence of prior debt. If *shevuat heset* is indeed limited to these situations, it is likely that it emerges from the superior legal position of the *tovei’a*, whose claim is reinforced by the admission of the *nitva* that a debt **once** existed. If, however, *shevuat heset* can be applied universally and even in a vacuum of information, it may be an extrinsic *shevua* meant to placate the *tovei’a*.

Perhaps the most transparent halakhic question surrounds the mechanics of the oath. Must a *shevuat heset* be taken while holding a *sefer* *Torah*? *De-oraita* oaths must be executed while holding a *sefer* *Torah*, in part to convey the gravity of the situation and to assure solemnity. Rabbenu Tam (cited in Tosafot, *Shevuot* 41a) claimed that a *shevuat heset* must mimic a Biblical *shevua* and include the *sefer* *Torah*, while the Ri Migash claims that a *shevuat heset* does not require this protocol. This issue clearly highlights the possible discrepancy between a classic *shevua* of *to’en ve-nit’an* and a *shevuat heset*. The Ri Migash’s position is consistent with the view that this *shevua* does not have roots in the actual strength of the claims, but is rather a manner of mollifying the *tovei’a*.

A different question may surround the type of claim necessary to trigger a *shevuat heset*. The Rambam (*Hilkhot To’en Ve-Nit’an* 1:6) claims that only a claim of *bari* – a definitive claim on the part of the *tovei’a* – is capable of generating a *heset* *shevua*. This position indicates that the *shevua* emerges from the strength of the claim, and this claim must therefore be decisive. The Ritva (*Shevuot* 41) records this position and clearly attributes it to the necessary strength of claim, which can only be established through a claim of *bari*. However, several *Rishonim* (Ra’avad, *Temim De’im* 63; *Terumot* *Ha-Deshen* 308) disagree with the Rambam and obligate an oath even for uncertain claims of *shema*. Presumably, these *Rishonim* would agree with the Ra’avan that the entire oath was only instituted to appease the *tovei’a* and therefore does not require a legally forceful claim of *bari* to launch the *shevua*.

A related question concerns the ability of a minor to launch a *shevuat heset* with his claim. Theoretically, those who do not allow a “*shema”* claim to obligate *heset* should equally disqualify a *katan*’s claim from doing so. Interestingly, both the Rambam and Ri Migash mandate a *heset shevua* in response to the claim of a *katan*. Evidently, they regard a *katan*’s claim as a legal petition, which is strong enough to establish a *shevuat heset*, even though it may not be capable of generating a *shevuah de-oraita*. If the entire *shevua* is merely extrinsic and unrelated to the strength of claims, it would obviously apply even in the instance of a *katan* plaintiff.

Would the *heset shevua* be affected by additional legal forces that support the claim of the *nitva*? These forces can range from *migu* to a lone *eid* to an ambiguous contract. (A clear contract would possess the status of two *eidim* and would clearly acquit the *shevua.*) These forces clearly acquit a *de-oraita* *shevua*, since they reinforce the claim of the *nitva* against the prosecution of the *tovei’a*. If *shevuat heset* is a derivative of a *shevua de-oraita* and based upon the strength of claims, it may similarly be eliminated if the claim of the *nitva* is strengthened by these forces. If, however, the oath is purely extrinsic and unrelated to the relative strength of claims, it should not be affected by these various forces.

The Nimukei Yosef in his comments to *Bava Metzia* 4b cites two opinions about whether an ambiguous contract can acquit a *shevuat heset*. The ability of *migu* or *eid echad* to exonerate a *shevua* is debated by many Acharonim.