

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

Dayanus Shiur Fifty Six

Mareh Makomos for this Shiur

Gemara, Bava Basra 174b-175a

Rosh, Responsa, Klal 68, Siman 25

Rashba, Responsa, Vol. 1, Siman 978

Rambam, Mishnah Torah, Laws of Claimants (Chapter 5, Laws 7-8)

Birkei Yosef, Siman 16, Seif 4

Rosh, Responsa, Klal 68, Siman 24

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*When Someone Claims, “A shtar
in your hands contains financial
benefit for me”*

*When Someone Claims, “The
shtar that you want to use
against me is counterfeit”*



***Siman Sixteen -- Giving Litigants Time to Supply Proofs to Their
Claims; Laws of Placing Into Cherem Those who Know Information
Relevant to Litigation but Do Not Come Forward with It***
(Contains 5 *Seifim*)

Siman Sixteen Seif Four

4 Someone says to his fellow (7) [14], “In a shtar in your possession there is something written that is financially beneficial to me.” If the accused admits to the claim, he must bring the shtar to Beis Din so that the Beis Din can copy down the words that are of benefit to the claimant. On the other hand, [15], if he denies having a shtar that contains a statement that can benefit the person, he is not obligated to bring or show any shtar of his to anyone. However, if the claimant wants to declare a generally stated cherem so that anyone who has a shtar that contains a statement that benefits him must come and show it, he is allowed to do so. If he claims that he knows that the person without question has the shtar that contains the statement that will benefit him, the accused must swear a Rabbinic oath that it is not in his possession.

Siman Sixteen Seif Five

5 Someone makes a monetary claim against his fellow on the strength of a shtar. (8) [16] The other party claims that the shtar is counterfeit or contains other falsehood, so he asks the Dayan to provide him with a copy so that he can study it. He is given what he asks, even if the shtar reads that no copy shall be made of it for the sake of the person that it obligates.

Introduction

Siman XVI Seifim 4

To understand the **Shulchan Aruch's** rulings in *Seif* 4 one must study the **Tur**, who at the end of *Siman* 16 cites only the rulings of his father, the **Rosh**, on these matters. One also needs to study the comments of the **Beis Yosef** there, who cites *Rishonim* other than the **Rosh**, namely the **Rashba** and the **Rambam**.

It is equally important to study the words of the **Tur** and the **Beis Yosef** at the end of *Siman* 60. There, the **Tur** quotes only the **Rambam's** rulings about these issues. A dispute exists amongst the commentators whether the **Rambam** and the **Rosh** are in agreement about an important case. In that, the **Beis Yosef** is the author of the **Shulchan Aruch**; one cannot ignore that according to the **Beis Yosef**, the **Rosh** sides with the **Rashba** against the **Rambam** about the subject in general and seemingly about the case in question. This point is indispensable for proper understanding of the **Shulchan Aruch** in our *Seif*, for the **Shulchan Aruch** fails to even mention the case in question. Therefore, what exactly he thinks about this case is a matter of dispute, and the question casts doubt on the meaning of other words that he says in *Seif* 4.

"A Shtar in your hands contains Financial Benefit for me"

The **Tur** writes at the end of *Siman* 16 that the **Rosh** was asked about a ruling of Sages from the Gaonic period of Jewish history.

According to the *Gaonim*, if a person says to his fellow Jew,

"In a shtar (document) in your possession there is something that is financially beneficial to me"?

THE DAYANIM FORCE THE PERSON TO SHOW THE CLAIMANT THE SHTAR

The **Rosh** was asked,

Whether this applies only if claimant specifies the nature of the alleged financial benefit.

Imagine, for example, that according to the claimant, Reuven, Levi – a third party, told Reuven that the accused, Shimon, is holding a *shtar* that has words in it that can benefit Reuven. Reuven trusts Levi implicitly, but Levi, says Reuven, did not specify the nature of the financial benefit that Shimon's *shtar* holds for Reuven. According to the *Gaonim*, will the *Dayanim* require Shimon to show Reuven the *shtar*, or does Reuven first have to state the exact nature of the alleged benefit that the *shtar* holds for him?

As cited by the **Tur**, the **Rosh** replied (Responsa, *Klal* 68, *Siman* 25), “The *Gaonim*'s ruling did not catch on in our area of the world.

DAYANIM DO NOT FORCE ANY MAN TO SHOW A *SHTAR* OF HIS BECAUSE SOME OTHER PERSON CLAIMS THAT THE *SHTAR* HAS SOMETHING WRITTEN IN IT THAT WILL BENEFIT HIM FINANCIALLY.

- a) If the claimant tells the *Dayanim* things that provide a basis for believing that his claim is true,
- b) The accused must show the *shtar* to the *Dayanim* and they will determine whether it truly contains something that is of financial benefit to the claimant.
- c) Otherwise, *Dayanim* cannot force someone to show any *shtar* of his, for a person does not want the world to know the extent of his wealth and properties (or how much money others owe him).

A Person's Right to Conceal Information about His Wealth

The main precedent for the **Rosh**'s ruling is a *Gemara* in *Bava Basra* (174b-175a)

- a) There we find that sometimes, a person will say things that he does not really mean, to “cover up” the extent of his wealth and make it seem that he has less than he really has.

- b) Since people prefer to keep information about their wealth private, when someone claims that, a *shtar* in the possession of his fellow Jew has words in it that can help him financially.
- c) The person who is holding the *shtar* cannot be obligated to show the claimant any *shtar*.

HE CAN BE MADE TO SHOW A *SHTAR* OF HIS TO THE *DAYANIM*, BUT HE CANNOT BE MADE TO SHOW ANY *SHTAR* OF HIS TO THE CLAIMANT

- a) Thus, according to the **Rosh**, the ruling of the *Gaonim* was not accepted in the **Rosh's** part of the world, because it impinged upon privacy.
- b) The questioner wanted to know whether the accused could be forced to show the claimant a *shtar* even if the claimant does not specify the nature of the financial benefit that the accused's *shtar* allegedly holds for him.
- c) The **Rosh** answered that even if the claimant does specify what in the *shtar* will benefit him, only the *Beis Din* gets to look over the *shtar*, not the claimant himself.

Rashba: One Must Show a Shtar only having admitted to the Claim

The **Beis Yosef** adds that in Responsa (Vol. 1, *Siman* 978), the **Rashba** wrote of when someone is on his deathbed and dictates a last will and testament.

- a) He bequeaths things to his sons, relatives, and even to people who are not members of his family.
- b) After the man dies, the will – a *shtar* -- is in the hands of Shimon, a guardian of the deceased's sons.
- c) Reuven, who is not a member of the family, comes to *Beis Din* and claims that there is something written in the *shtar* that entitles him, too, to a portion of the estate.
- d) He wants Shimon to write out for him the part of the will that is pertinent to him and entitles him to money or property.

- e) Just in case the will gets lost or destroyed, he wants protection.
- f) He also wants the witnesses who signed on the will to sign on the entitlement that he asks from Shimon, too.

From the words of the **Rashba** in this Responsa, the **Beis Yosef** derives what the **Rashba** maintains about similar cases, not necessarily cases involving a last will and testament. Let's say that Reuven claims that Shimon is holding a deed to land, or an I.O.U. regarding a loan that Shimon gave to a third party, or an I.O.U. about a loan that Shimon gave to Reuven himself. Reuven claims that the *shtar* in Shimon's possession has words in it that can bring him financial benefit.

The **Beis Yosef** writes that according to the **Rashba**,

- a) Only if Shimon admits to Reuven's claim must he bring the *shtar* to the *Beis Din* and show it to the *Dayanim* so that the claimant (Reuven) can gain what the *shtar* entitles him too.
- b) If Shimon, the accused, has not admitted to the claim, he does not have to bring any *shtar* to *Beis Din*, because of the principle elucidated in *Bava Basra*. "A person does not want the world to know the extent of his wealth."

Explaining the **Rashba**, the **Beis Yosef** writes because the accused (Shimon) admits to the claim,

THE *BEIS DIN* WRITES OUT FOR THE CLAIMANT ENTITLEMENT TO
WHATEVER BENEFIT IS DUE HIM ACCORDING TO THE *SHTAR*.

On the other hand,

- a) If Shimon claims that not one *shtar* in his possession contains anything that can benefit Reuven in any way.
- b) The *Dayanim* do not obligate him to bring his documents before them, for no person wants *Beis Din* or anyone to know about his assets and documents.
- c) Even if Reuven claims that without question Shimon is holding a *shtar* that will bring Reuven financial benefit,

THE *DAYANIM* CANNOT REQUIRE SHIMON TO SHOW THEM HIS DOCUMENTS
(SO LONG AS HE HAS NOT ADMITTED TO THE CLAIM).

- d) If, however, Reuven wants to declare a generally stated *cherem* so that anyone who has a *shtar* that contains a statement that benefits him must come and show it (to the *Dayanim*), he is allowed to do so.

Clearly, according to the **Rashba**,

- a) Even if Reuven claims that without question, Shimon is holding a *shtar* that will bring Reuven financial benefit, if Shimon responds, “I am not sure that he is right,

THE *DAYANIM* CANNOT REQUIRE SHIMON TO SHOW THEM HIS DOCUMENTS

- b) Only if Shimon admits to the claim must he show them a *shtar*.
- c) If Shimon does not admit to the claim and responds that, he does not know whether the claim is true, but Reuven is sure that Shimon has such a *shtar*, Reuven’s only recourse is to declare a “general” *cherem*.
- d) Seemingly, on the basis of what we learned in Lessons 54 and 55, Reuven is allowed to declare a general *cherem* even if he is not sure that Shimon has a *shtar* that can help him.

Rambam: One Must Show One’s Shtar also having answered “I don’t know if the claim is true”

As cited by the **Tur** at the end of *Siman* 60, however, the **Rambam** says otherwise. In the Laws of Claimants (Chapter 5, Laws 7-8),

The **Rambam** writes, Someone says to his fellow Jew,

- 1) “In a *shtar* in your possession there is something written that is financially beneficial to me.”
- 2) If the accused answers, ‘I don’t know if there is anything beneficial to you written in it,’ or he says, ‘I am not showing my *shtar*,’
- 3) They force him to bring the *shtar* forward.

- 4) If he answers by claiming, 'I lost it,'
- 5) The *Dayanim* make a general *cherem* on behalf the claimant.
- 6) If the claimant says that without question the *shtar* that contains benefit for him is in the possession of the accused,

THEY MAKE THE ACCUSED SWEAR A RABBINIC OATH THAT THE *SHTAR* IS NOT IN HIS POSSESSION AND WAS LOST. SO RULED THE *GAONIM*.

It would appear from here that the **Rambam** argues with both the **Rosh** and the **Rashba**.

- 1) First of all, the **Rambam** accepts the ruling of the *Gaonim* while the **Rosh** maintains that the ruling of the *Gaonim* was not accepted, at least not the **Rosh's** part of the world.
- 2) Secondly, it seems quite clear that the **Rambam** argues with the **Rashba** in the case where the accused says, "I don't know." Even regarding the accused having to show a *shtar* of his to the *Dayanim*, not to the claimant,

THE **RASHBA** SAYS THAT THE REQUIREMENT EXISTS ONLY IF THE ACCUSED ADMITS TO THE CLAIM.

As we see, the **Rambam** writes,

THE *DAYANIM* CAN FORCE THE ACCUSED TO SHOW A *SHTAR* OF HIS TO THE CLAIMANT (ALL THE MORE SO TO THE *DAYAN*) EVEN IF THE ACCUSED DOES NOT ADMIT TO THE CLAIM.

In addition, if the accused answers by claiming,

- a) He lost the *shtar* that the claimant wants to see,
- b) The *Dayanim* make a general *cherem* on behalf the claimant.
- c) If the claimant says that without question the *shtar* that contains benefit for him is in the possession of the accused,

THEY MAKE THE ACCUSED SWEAR A RABBINIC OATH THAT THE *SHTAR* IS NOT IN HIS POSSESSION AND WAS LOST. "SO RULED THE *GAONIM*," SAYS THE **RAMBAM**.

According to the **Beis Yosef**, the **Rashba** agrees with the **Rosh**,

THAT *DAYANIM* FORCE A PERSON TO SHOW A *SHTAR* ONLY TO THEM
(UNLIKE THE RULING OF THE *GAONIM*) AND ONLY IF THE ACCUSED
ADMITS TO THE CLAIM.

- 1) In addition, if the claimant wants, he (not the *Dayanim*) can declare a *cherem*, when the accused completely denies the claim.
- 2) Nowhere does the **Rashba** imply that if the accused denies the claim, he must swear a Rabbinic oath that he is telling the truth.
- 3) We need to see to what extent the **Shulchan Aruch** sides with the **Rambam** on these issues, and to what extent he sides with the **Rashba** and the **Rosh**.

Rashba: Lacking an Admission, the Claimant's Only Recourse is to Declare a Cherem

As said, according to the **Rashba**,

ONLY IF THE ACCUSED ADMITS TO THE CLAIM IS HE FORCED TO BRING
THE *SHTAR* AND SHOW IT TO THE *DAYANIM*.

- 1) Even if the claimant, Reuven, is certain that Shimon has a *shtar* that contains a benefit for Reuven, so long as Shimon does not admit to the claim, only a *cherem* can force Shimon into action.
- 2) That is, Reuven can place a “general” *cherem* on anyone who has a *shtar* that can benefit him financially.
- 3) If Reuven does so, Shimon will have to worry that perhaps Reuven is right and Shimon does possess such a *shtar*.
- 4) If Reuven is right, Shimon belongs in *cherem* if he fails to bring in the *shtar*.
- 5) Therefore, Shimon will quietly and privately go through his papers to see if Reuven is right.

- 6) If he sees that Reuven is right, he comes and shows the *shtar* to the *Dayanim*, but he is not obligated to show the *shtar* to Reuven.

We do not see from the **Rashba** that if Reuven is certain that Shimon has in his possession a *shtar* that contains a statement that will benefit Reuven, and Shimon says, “I don’t know,”

SHIMON MUST SHOW THE *DAYANIM* ALL OF HIS DOCUMENTS ABOUT HIS FINANCIAL AFFAIRS

NEITHER DO WE SEE THAT IN SUCH CASE SHIMON MUST SWEAR A RABBINIC OATH THAT SUCH A *SHTAR* IS NOT IN HIS POSSESSION. SHIMON NEEDN'T DO ANYTHING UNLESS REUVEN DECLARES A *CHEREM* AND SHIMON IS AFRAID OF IT.

In the **Rambam**, however, we do see a requirement for a Rabbinic oath,

- 1) When Shimon responds that, he had such a *shtar* but it was lost and Reuven maintains that Shimon is lying and still possesses the *shtar*.
- 2) In the Responsa of the **Rashba** cited by the **Beis Yosef**, there is no mention of any Rabbinic oath, and the **Rashba**, as quoted by the **Beis Yosef**, does not even mention a case when the accused claims that the *shtar* was lost.

Rather, according to the Rashba,

If Reuven is certain that Shimon has in his possession a *shtar* that contains a statement that will benefit Reuven, and Shimon says,

- 1) “I don’t know,” Reuven’s only available course of action is a general *cherem*, just as when Shimon completely denies the claim.
- 2) Reuven cannot demand a Rabbinic oath of Shimon.
- 3) Shimon’s “I don’t know” effectively exempts him because the main thing is a person’s right to keep his financial affairs his own private affair.
- 4) He cannot be harassed.
- 5) No oath is required of Shimon.
- 6) The next step is up to Reuven, the claimant. Because Shimon did not admit to any part of the claim, all Reuven can do is declare a “general”

cherem on anyone holding a *shtar* that has something written in it that can benefit him.

The Shulchan Aruch's Silence about when the Accused Answers, "I don't know"

In *Seif* 4, from the way that the **Shulchan Aruch** begins, it sounds as if **R' Yosef Caro** (the **Mechaber** – author of the **Shulchan Aruch**) rules like the **Rashba**. The main thing is privacy. The **Beer HaGolah**, in fact, writes explicitly that the source for the first rulings of *Seif* 4 is the **Rashba**. Interestingly, however, the way that **R' Yosef Caro** continues and concludes the *Seif* does not sound much like the **Rashba**. The *Seif* begins:

Someone says to his fellow, 'In a shtar in your possession there is something written that is financially beneficial to me.'

IF THE ACCUSED ADMITS TO THE CLAIM HE MUST BRING THE *SHTAR* TO *BEIS DIN* SO THAT THE *BEIS DIN* CAN COPY DOWN THE WORDS THAT ARE OF BENEFIT TO THE CLAIMANT.

From here, we see that the obligation on the accused to bring in a *shtar* and show it to the *Dayanim* is only if he admits to the claim, as the **Rashba** maintains.

- a) The remaining words of the *Seif*, however, are problematical, some of them more problematical than others.
- b) Interestingly, the **Shulchan Aruch** does not say one word about where the **Rashba** and the **Rambam** clearly seem to argue – where the accused says, "*I don't know.*"

The **Shulchan Aruch** continues,

"On the other hand, if he denies having a *shtar* that contains a statement that can benefit the person, he is not obligated to bring or show any *shtar* of his to anyone."

According to the **Rashba**, the same would apply if the accused answered,

“I don’t know”

If the **Shulchan Aruch** means to rule like the **Rashba**, what he writes is true,

- a) However, the **Shulchan Aruch** should have said something else, and the denial case would have gone without saying.
- b) The **Mechaber (R' Yosef Caro)** could have written, “On the other hand, if he answers that he doesn’t know whether he has a *shtar* that contains a statement that can benefit the person, he is not obligated to bring or show any *shtar* of his to anyone.”
- c) If the **Mechaber** sides with the **Rashba**, he could have written that ruling, which is the **Rashba**’s opinion, and we would understand that all the more so the ruling applies if the accused completely denies the claim.

On the other hand,

- 1) This is no proof that the **Mechaber** in *Seif* 4 sides with the **Rambam** on this issue.
- 2) It could be that he sides with the **Rashba**, which is the implication of the way he began.
- 3) The **Mechaber** might well mean that if the accused says, “I don’t know” it is as if he completely denied for the claim.
- 4) After all, when does the obligation to bring in a *shtar* exist?
- 5) It is only when the accused admits to the claim, as the **Mechaber** began the *Seif*.

Could the Rashba Agree with the Oath in Seif 4?

The concluding words of the **Shulchan Aruch**, however, are difficult if he is following the reasoning of the **Rashba**, for the **Shulchan Aruch** rules that the claimant has the “weapon” of the Rabbinic oath, while in the **Rashba** there is no mention of such an oath. In fact, where the **Mechaber** mentions the weapon of the oath, the **Beer HaGolah** writes that the source for this ruling is the **Rambam**.

In *Seif* 4, **R' Yosef Caro** continues,

“However, if the claimant wants to declare a generally stated *cherem* so that anyone who has a *shtar* that contains a statement that benefits him must come and show it, he is allowed to do so. If he claims that he knows that the person without question has the *shtar* that contains the statement that will benefit him, the accused must swear a Rabbinic oath that it is not in his possession.”

At first glance, according to the way that the **Rashba** is explained in the **Beis Yosef** in *Siman* 16, the *Dayanim* do not help the claimant in this way.

- a) If the accused completely denies the claim (or if he says, “I don’t know”), the claimant has only the weapon of the general *cherem*.
- b) The **Rambam** says that the *Dayanim* can require an oath of the accused, but only when he admits that he once had such a *shtar* but claims that he lost it and the claimant says that he is sure that the accused is lying.
- c) How can the **Shulchan Aruch** say that if the accused completely denies the claim, if the claimant contradicts him and claims that the accused is lying, the accused must swear a Rabbinic oath?

Here, too, however, it is quite possible that the **Shulchan Aruch** is writing in a much-abbreviated style and regarding the oath the **Rashba** agrees with the **Rambam**.

- a) Possibly, the **Mechaber** means a case where the accused (Shimon) admits to possession of such a *shtar* but claims that he lost it.
- b) About that, the **Mechaber** writes, “If he (Reuven) claims that he knows that the person without question has **the** *shtar* that contains the statement ... (i.e. Shimon did not lose the *shtar*), the accused (Shimon) must swear a Rabbinic oath that it is not in his possession.”

If this is what the **Mechaber** means, we can say that all of *Seif* 4 reflects the thinking of the **Rashba**. True, the **Rashba** in his Responsa did not discuss a case where the accused admits possession but claims that he lost the *shtar*. Still, in such a case, since the accused did admit to possession, the **Mechaber** might well understand that according to the **Rashba**, too, there would be an oath.

- a) If the claimant maintains that without question the *shtar* was not lost and the accused is lying,
- b) The claimant can make the accused swear to attest to his claim, even according to the **Rashba**, because the accused admitted to possession.

- c) On this point, the **Rashba** agrees with the **Rambam**.
- d) The **Rashba** disagrees with the **Rambam** where the accused says, "I don't know," but here there is no argument.
- e) According to the **Rashba**, where the accused says, "I don't know," he cannot be forced to show any *shtar* of his to the *Dayanim*, and all the more so he cannot be forced to show any *shtar* of his to the claimant. This is what the **Mechaber** holds, too.

Alternatively, the **Rashba** and the **Rambam** argue regarding both cases. Regarding when the accused says, "I don't know," the **Mechaber** sides with the **Rashba**. Regarding when the accused says that he had such a *shtar* but lost it, the **Mechaber** sides with the **Rambam**.

- 1) Seemingly, however, the first way of understanding the **Mechaber** is preferable.
- 2) Where the accused admits that he had such a *shtar* but claims that he lost it, why should we assume that according to the **Rashba**, the accused would not be required to swear a Rabbinic oath?
- 3) After all, since the claimant says with certainty that the accused is lying and still has the *shtar*, such an oath would be in order, for the accused partially admitted to the claim.
- 4) True, the **Be'er HaGolah** cites the **Rambam** as the source of this ruling, but reason dictates that the **Rashba** would agree.

The Argument against an Oath when the Accused Denies the Claim

In other words, from the wording of *Seif* 4, one easily could think that the **Shulchan Aruch** means that the accused might have to swear the Rabbinic oath even if he completely denies the claim. After ruling that if the accused completely denies the claim, he does not need to show any *shtar* of his to anyone,

- a) The **Mechaber** writes that the claimant still has the right to declare a general *cherem* in order to get hold of the written material that he wants.
- b) Probably, according to the **Mechaber**, the claimant can declare such a *cherem* even if he is not sure that the material that he is seeking still exists.
- c) Afterwards the **Mechaber** adds that if the claimant, in fact, is certain that the accused, who denied his claim, is lying, he can force the accused to swear a Rabbinic oath that nowhere in his possession is there any written material that can benefit the claimant.

It is difficult to say, however, that this is what the **Mechaber** means.

- 1) First of all, none of the *Rishonim* say a word about the accused having to swear a Rabbinic oath when he completely denies the claim that he has written material that can help the claimant.
- 2) Only the **Rambam** mentions that the accused can be made to swear a Rabbinic oath, but only where the accused admits possession of helpful material but claims that the *shtar* that contained it was lost.
- 3) The **Mechaber** is not in the business of inventing rulings.
- 4) He doesn't say anything unless he has a source for it in the *Gemara* or in the writings of the *Gaonim* or *Rishonim*.

Why should the Rabbis Institute such an Oath?

There is such a Rabbinic oath when the claim is for money – an alleged loan -- and the accused answers with a complete denial.

- 1) According to the Torah, since there is no I.O.U. in the picture the accused is completely exempt from the claim and need not swear that he is telling the truth.

- 2) Only the Rabbis required an oath in such a case. In our case, however, the claim is not for money.
- 3) The claimant says only that the other party is holding a *shtar* that contains information that will benefit him financially.
- 4) If the accused completely denies possession of such a *shtar*, why think that the Rabbis would require him to swear that he is telling the truth?
- 5) Granted, if someone claims that the accused owes him money and the accused completely denies it, he must swear a Rabbinic oath that he is not lying.
- 6) On the other hand, if the accusation is just that he “owes” the claimant information, if he completely denies the charge, why should he have to swear?

A person “owes” oral testimony if he knows something about a court case.

- A) Whether it is litigation over money or a trial about a crime the Torah requires him to come to *Beis Din* and state what he knows.
- B) Here, however, the claim is not that he possesses knowledge. The claim is that he possesses a *shtar* that has words in it that hold monetary benefit for his fellow Jew.
- C) Can we really say that the holder of the *shtar* “owes” it to the other Jew to show the *shtar* to the *Dayanim*, to the extent that if he denies the claim he must swear that he is telling the truth?

Would Not Such an Oath Be a Form of Harassment?

Assume the **Rosh** is correct, and the **Rashba**, as the **Beis Yosef** explains, agrees with the **Rosh** that the ruling of the *Gaonim* was not accepted.

- A) We can further assume that in order to allow people to conceal how much “they are worth,” *Dayanim* cannot force anyone to show a *shtar* of his to someone who claims that the *shtar* has wording in it that can benefit him.
- B) If that is so, then if someone says to his fellow Jew, “You have a *shtar* that contains something that can benefit me financially” but the accused denies the claim, making him swear that he is telling the truth. This could well be considered a form of harassment.
- C) After all, he is being asked to swear on a “negative” – that he does *not* possess anything in writing can help the other person financially. How can he be certain of this?

Swearing an oath is a very serious matter, so it seemingly would be unfair to him to require the oath. He might be afraid to swear to such a thing, which would mean that the claimant would get his way. The *Dayanim* would be allowed to investigate financial dealings that the accused has a right to keep private. True, the eyes of the claimant will not rest on any of his written records, but the accused surely will feel victimized and harassed.

For these three reasons, it well could be that the **Mechaber** at the end of *Seif* 4 is simply speaking in a very abbreviated fashion, and is not speaking about when the claim is completely denied. His wording is somewhat misleading, but he is speaking only of the case discussed by the **Rambam**.

The **Be'er HaGolah**, in fact, cites the **Rambam** as the source of this ruling. The accused (Shimon) admits to possession of such a *shtar* but claims that he lost it.

About that the **Mechaber** writes,

“IF HE (REUVEN) CLAIMS THAT HE KNOWS WITHOUT QUESTION THAT THE PERSON HAS **THE SHTAR** THAT CONTAINS A STATEMENT THAT WILL BENEFIT HIM (I.E. SHIMON DID NOT LOSE THE *SHTAR*) THE ACCUSED (SHIMON) MUST SWEAR A RABBINIC OATH THAT IT IS NOT IN HIS POSSESSION.”

- a) There is every reason to say that the **Rashba** would agree to this ruling, for the accused partially **admits** to the claim.
- b) Therefore, it is possible to understand that all of *Seif* 4 is consistent with the thinking of the **Rashba**, and when the accused answers “I don’t know,” it is as if he completely denied the claim.
- c) He need not bring any *shtar* to *Beis Din*, and certainly he need not swear any oath.
- d) When the accused does not admit to the claim, the only option that the claimant has is the general *cherem*, whether the accused denied the claim or said, “I don’t know.”

Sma: The Accused Must Swear if He Denies Such a Claim

The **Sma**, however (*Seif Katan 15*) disagrees with all of this.

- 1) He maintains that when the **Shulchan Aruch** rules that the accused must swear the Rabbinic oath, it is not just in the case of the **Rambam**.
- 2) It is not just where the accused admits that he had such a *shtar* but claims that he lost it, and the claimant says he is lying.
- 3) It is even when the accused completely denies the claim, so long as the claimant says he is certain of his own claim.

In *Siman* 16 of the **Tur**, at the end, where **R' Yosef Caro**, writing in the **Beis Yosef**, cites the **Rashba**, he implies that the words of the **Rashba** are consistent with the words of the **Rosh** as cited by the **Tur** there. A person’s right to keep his financial affairs private must be protected.

After citing the **Rashba**, the **Beis Yosef** writes,

“SEE WHAT THE **TUR** WRITES AT THE END OF *SIMAN* 60 IN THE NAME OF THE **RAMBAM** (LAWS AND CLAIMANTS 5:7-8). SEE WHAT I WROTE ABOUT THAT, AND ALSO WHAT I WROTE ABOUT WHAT HAPPENS WHEN SOMEONE WHO IS FINANCIALLY LIABLE ON THE STRENGTH OF A *SHTAR* ASKS THE HOLDER OF THE *SHTAR* TO PROVIDE HIM WITH A COPY OF IT.”

In *Siman* 60, the **Beis Yosef** writes,

- A) One is justified in being astonished at these words of the **Tur**, for here he writes only the rulings of the **Rambam** (Laws and Claimants 5:7-8) as if no one disputes these rulings.
- B) On the other hand, the **Tur** writes in *Siman* 16 that the **Rosh** argues with the **Rambam** about this matter (for the **Rosh** says that the rulings of the *Gaonim* on this matter were not accepted).
- C) I wrote there (in *Siman* 16) that the thinking of the **Rashba** is like the thinking of the **Rosh**.

Accordingly, where the accused says,

“I DON’T KNOW,” THERE IS GOOD REASON TO SAY THAT THE **ROSH** SIDES WITH THE **RASHBA**, AGAINST THE **RAMBAM**.

- 1) The accused is not forced to do anything, and the claimant’s only option is to declare a general *cherem*.
- 2) In turn, there is good reason to say that in *Seif* 4, although the **Mechaber** does not mention that case, the law in that case is just like when the accused completely denies the claim, as explained above.
- 3) Since, according to the **Beis Yosef**, the **Rosh** and the **Rashba** think similarly about these issues, against the **Rambam**, the **Mechaber** in *Seif* 4 rules against the **Rambam** on this issue, for it is two against one.
- 4) In addition, it is likely that according to the **Shulchan Aruch**, the accused must swear the Rabbinic oath only in the **Rambam’s** case, where he admitted possession to such a *shtar*, claims he lost it, and the claimant says he is lying. At least regarding the first point, this is how to understand the **Shulchan Aruch** according to the **Birkei Yosef**.

The Sma's Attempt at Making Peace

The **Sma**, however, explains *Seif* 4 very differently.

- a) The **Sma** (*Seif Katan* 15) begins by observing that the **Shulchan Aruch** does not mention the case where the accused answers, “I do not know whether I have a *shtar* that contains financial benefit for you.”
- b) Nevertheless, writes the **Sma**, it makes sense that in this case, the *Dayanim* would tell the accused,
- c) “If you don’t know, then you have to check and see whether he is right. If you find that, in fact, you have such a *shtar*, you must bring it to *Beis Din* and show it to us. If you are not sure, too, you must bring the *shtar* to *Beis Din* and we will determine whether, in fact, there is something in the *shtar* that can benefit him.”

The **Sma** continues, The **Rambam** wrote as such in the Laws of Claimants and the **Tur** quotes him in *Siman* 60 ...

- 1) If the accused claims that the *shtar* was lost, the *Dayanim* declare a general *cherem* on behalf of the claimant.
- 2) Also, if the claimant says that he knows without question that the *shtar* that contains benefit for him is in the person’s hands, the accused must swear a Rabbinic oath that he does not have the *shtar* for it was lost.
- 3) The **Rambam** does not mean, however, only when the accused claims that the *shtar* was lost.
- 4) **The oath is required also if the accused claims that never did he possess such a *shtar*.**
- 5) This is what the **Mechaber** means when he writes here,

‘IF HE CLAIMS THAT HE KNOWS THAT THE PERSON WITHOUT QUESTION HAS THE *SHTAR* THAT CONTAINS THE STATEMENT THAT WILL BENEFIT HIM, THE ACCUSED MUST SWEAR A RABBINIC OATH THAT IT IS NOT IN HIS POSSESSION.’

- 1) For this reason, the **Mechaber** in *Siman 60* does not mention any of the above rulings of the **Rambam**, for he relied on what he wrote here.
- 2) Note this carefully and you will understand that **the Rosh and the Rambam are not arguing**, which is not like how the **Beis Yosef** explains things, and it sounds like the **Darkei Moshe** agrees with the **Beis Yosef**. See the **Drisha**, for more of what the Sma wrote about these matters.”

The Birkei Yosef Disputes the Words of the Sma

The **Chida**, however, writing in the **Birkei Yosef**, takes issue with the words of the **Sma**. “All of these words of the **Sma**,” he writes, “are meant to explain the rulings of our teacher (**R' Yosef Caro**) in the **Shulchan Aruch** (*Seif 4*).

However, it is very clear,

OUR TEACHER DOES NOT THINK THAT WHEN THE ACCUSED SAYS ‘I DON’T
KNOW’ HE MUST SHOW THE *SHTAR*.

After all, in *Siman 60*, in the **Beis Yosef**, our teacher,

- 1) Expressed astonishment at the words of the **Tur**, for in *Siman 16* the **Tur** brings the Responsa of the **Rosh** (rejecting the *Gaonim*’s ruling) while in *Siman 60* the **Tur** quotes the **Rambam** (who accepts the *Gaonim*’s ruling).
- 2) According to our teacher, the **Rosh** and the **Rambam** are arguing.
- 3) Thus, it must be that in the **Shulchan Aruch**, our teacher rules like the **Rashba** and the **Rosh** and maintains that even when the accused answers, ‘I do not know,’ the *Dayanim* do not force him to show them any *shtar* (just as when he denies the claim).”

Although the **Mechaber** in *Seif 4* does not mention when the accused says, “I don’t know,” it is clear from what he writes in the **Beis Yosef** that his ruling in this case is the same as his ruling where the accused completely denies the claim. **The accused is completely exempt.**

Although the **Birkei Yosef** does not mention a word about when the accused must swear the Rabbinic oath, it would appear that he argues with the **Sma** about this point, too.

- 1) What the **Sma** says about the oath might be correct according to the **Rambam**.
- 2) On the other hand, since according to the **Beis Yosef**, the **Rosh** and the **Rashba** hold very differently from **Rambam**, what the **Sma** says about the oath might not be correct according to the **Rosh**, the **Rashba** and the **Shulchan Aruch**.

Granted, according to the **Rambam**, just as the Rabbinic oath is required of the accused when he admits to the claim but claims that the *shtar* was lost, and the claimant says he is lying, the Rabbinic oath might be required of the accused even when he denies the claim. After all, the **Rambam** agrees with the ruling of the **Gaonim**.

On the other hand, according to the **Shulchan Aruch**,

- a) Following the reasoning of the **Rosh** and the **Rashba**, it could be that the oath is required of the accused only in the case mentioned by the **Rambam** explicitly.
- b) Perhaps the oath is required of the accused only where he partially admits to the claim, but says that the *shtar* was lost, as explained above at length.
- c) On the other hand, requiring the oath in the case of complete denial does not directly compromise the right of the accused to keep his financial affairs private.
- d) After all, perhaps in such a case the accused will be willing to take the oath.
- e) Accordingly, perhaps the **Birkei Yosef** agrees that the **Sma** is right about this point. Perhaps the **Birkei Yosef** doesn't explicitly argue with the **Sma** about this point because he agrees that even according to the **Shulchan Aruch**, the oath is required of the accused even when he completely denies the claim. So long as the claimant says that he knows that the accused is lying, the accused must swear to a negative. Perhaps the **Birkei Yosef** agrees that such an oath would not be considered a form of harassment, even according to the **Rosh** and the **Rashba**.

Still, the **Birkei Yosef** says explicitly that the **Shulchan Aruch** rules like the **Rosh** and the **Rashba**,

THE RULING OF THE *GAONIM* WAS NOT ACCEPTED, AND NEITHER OF THESE *RISHONIM* MENTIONS THAT SUCH AN OATH WOULD BE REQUIRED WHERE THE ACCUSED DENIES THE ALLEGATION.

In fact, from the way that the **Beis Yosef** presents the position of the **Rashba** (see above), it seems very clear that in the case where the allegation is denied, the claimant has only one option – to declare a general *cherem*, even if he is certain of his claim. In other words, according to the **Shulchan Aruch**,

SUCH AN OATH WOULD BE CONSIDERED A FORM OF HARASSMENT

More on the Sma's Explanation of Seif 4

It is important to add here what the **Sma** writes in the **Drisha**, one of his commentaries on the **Tur**. As mentioned, the **Sma** (*Seif Katan* 15 of *Seif* 4 of the **Shulchan Aruch**) tells us to look at what he wrote in the **Drisha**. He tells us to do so right after he states his view that the **Rosh** and the **Rambam** are not at odds with one another.

The **Drisha** comments on what the **Rosh** (brought by the **Tur** in *Siman* 16) writes in Responsa (*Klal* 68, *Siman* 25) about the ruling of the *Gaonim*. As noted, the **Rosh** says,

IN THE PART OF THE WORLD WHERE HE LIVED (ASHKENAZ - EUROPE), THE RULING OF THE *GAONIM* WAS NOT ACCEPTED. THEREFORE, EVEN IF A CLAIMANT SPECIFIES THE EXACT NATURE OF THE ALLEGED BENEFIT THAT THE OTHER PERSON'S *SHTAR* HOLDS FOR HIM, THE *DAYANIM* DO NOT FORCE THE HOLDER OF THE *SHTAR* TO SHOW THE *SHTAR* TO THE CLAIMANT.

The **Drisha** points out, however,

IN ANOTHER RESPONSA (*KLAL* 68, *SIMAN* 24), THE **ROSH** SAYS THAT SOMETIMES, THE *DAYANIM* GIVE THE CLAIMANT A COPY OF THE *SHTAR*!

If we look in the **Beis Yosef** in *Siman* 60, where that Responsa of the **Rosh** is cited, it appears that the **Drisha's** question is as follows:

- a) There was once a Rabbi who came to the **Rosh** with a question. Sometimes, in monetary litigation that came before this Rabbi, the accused would ask to see the *shtar* that his opponent was bringing as proof to his claim against him.
- b) The Rabbi would consent to the request by giving the accused a copy of the *shtar*. The Rabbi's support for this practice was the **Rambam**, who wrote in Responsa that such was proper.
- c) One day, however, the Rabbi was shown a Responsa of the **Rashba**, who wrote that if someone asks the *Dayan* to let him see his opponent's written substantiation of his claim, the request is not heeded.
- d) According to the **Rashba**, the holder of the *shtar* can say that he does not want to give his opponent the opportunity to find some sort of dishonest way of invalidating the *shtar*. Since the **Rambam** rules one way, and the **Rashba** rules the other way, the Rabbi asked the **Rosh** to decide the matter.

The **Rosh** answered (*Klal* 68, *Siman* 24) that according to the custom throughout Ashkenaz, the request is granted.

- a) A copy is made of the *shtar* and the person making the request is given the copy so that he can check whether the *shtar* is counterfeit or whether it contains an erasure or some other impropriety, (improprieties can be discovered even if the litigant is given only a copy).
- b) In *Siman* 60, the **Beis Yosef** writes that it appears from the words of the **Rosh** that the request is granted and a copy is given only when the one making the request claims that the *shtar* is counterfeit, and seemingly the **Rambam** agrees.

At any rate, the **Drisha** asks,

- a) "How can the **Rosh** say in *Klal* 68, *Siman* 25, as cited by the **Tur** in *Siman* 16, that the ruling of the *Gaonim* was not accepted?"
- b) How can he write that if someone says that another Jew has a *shtar* that contains financial benefit for him, and he asks the *Dayan* to force that person to show him the *shtar*, the request is denied, to protect the privacy of the person holding the *shtar*?

- c) In a different Responsa, *Klal 68 Siman 24*, also regarding when someone asks a *Dayan* to see the *shtar* of another Jew, the *Dayan* grants the request!
- d) The *Dayan* awards a copy of the *shtar*!

WHAT HAPPENED TO THE RIGHT OF THE *SHTAR*'S HOLDER TO KEEP HIS FINANCIAL AFFAIRS HIDDEN FROM THE PUBLIC EYE?

In *Siman 16*, the **Drisha**, author of the **Sma**, answers,

- 1) It would appear that the **Rosh** grants the request (and provides a copy of the *shtar*) when the request involves an I.O.U.
- 2) The one making the request is represented in the I.O.U. as the borrower, and the person holding the I.O.U. wants to use this I.O.U. to collect money from him.
- 3) When someone who is financially liable on the strength of a *shtar* asks the holder of the *shtar* to show him what it says, although the holder of the *shtar* wants to use the *shtar* to collect from the one who is making the request, the **Rosh** grants the request.
- 4) A copy is made and the claimant gets his way.
- 5) That is the subject of *Klal 68, Siman 24*. In *Siman 16*, however, where the **Tur** quotes the **Rosh** as saying that the request is not granted (the claimant is not shown what is written in the *shtar*) the case is different.
- 6) There (*Klal 68, Siman 25*), the holder of the *shtar* does not plan to use the *shtar* against the claimant.
- 7) According to the person who is holding the *shtar*, the *shtar* has nothing to do with claimant. It is a *shtar* about some financial affair between its holder and a third party.

THEREFORE, THE **ROSH** RULES THAT THE CLAIMANT CANNOT SEE WHAT IS WRITTEN IN THE *SHTAR*, BECAUSE THE HOLDER OF THE *SHTAR* HAS THE RIGHT TO KEEP HIS FINANCIAL AFFAIRS HIS OWN PRIVATE MATTER.

Apparently, this distinction is at the heart of the **Drisha's** contention, made in the **Shulchan Aruch (Sma – Seif Katan 15)**

- a) The **Rosh** and the **Rambam** are not arguing.
- b) Apparently, according to the **Drisha**, not only are the **Rosh** and the **Rambam** not arguing; neither does the **Rambam** argue with **Rashba**, for they are not speaking about the same case.
- c) When the **Rambam** rules that if the accused says, “I don’t know if the claim is true,” the *Dayanim* obligate him to bring in the *shtar* and show it to them, the **Rambam** is speaking about a special, isolated case, says the **Sma**.
- d) The **Rambam** is speaking of a case where the accused (Shimon) is holding a *shtar* against the claimant (Reuven), and the claimant wants to see the *shtar*, because he claims that there is something in it that can benefit him financially, regarding his affairs with a third party. So claims the **Sma**.

That is, the **Rambam** is speaking of a case where someone is financially liable on the strength of a *shtar*. He (Reuven) wants the one who is holding the *shtar* (Shimon) to bring the *shtar* to *Beis Din*, because he (Reuven) claims that although the *shtar* indicates his liability towards its holder, it contains something that can help financially, too, regarding his affairs with someone else (Levi). Perhaps he claims that there is wording in the *shtar* that can benefit him even regarding other financial relationships that he has with the one who is holding the *shtar*.

- 1) Only in such cases, explains the **Sma**, does the **Rambam** maintain that if the accused says, “I don’t know if **the** *shtar* contains such information,” must he show the *shtar* to *Beis Din*.
- 2) According to the **Sma**, neither the **Rashba** nor the **Rosh** were speaking about such a case and would agree that here, the **Rambam** is right.
- 3) Here, the claimant already has an “interest” in the *shtar* – for it allegedly reflects financial liability on his part – his liability to the holder of the *shtar*.
- 4) In addition, he has specified to what *shtar* he is referring.
- 5) For these reasons he has the upper hand.
- 6) It is as if the holder has explicitly admitted that the *shtar* contains wording that can benefit the claimant.

According to the Sma,

- a) Where the **Rashba** rules that if the accused says “I don’t know” he need not show his *shtar* even to the *Dayanim*,
- b) Where the **Rosh** says that the ruling of the *Gaonim* was not accepted, there is no financial dispute between the claimant and the person holding the *shtar*.
- c) The *shtar* being sought does not reflect that the claimant of the information is liable to the *shtar*’s holder.
- d) The accused is holding a *shtar* against someone else, and the claimant wants to see the *shtar* because he claims that there is something in it that can benefit him financially, regarding his affairs with a fourth party, or regarding his affairs with the one who is holding the *shtar*.

THERE, EVEN THE **RAMBAM** AGREES THAT THE REQUEST TO SEE THE *SHTAR* IS DENIED, FOR A PERSON DOES NOT WANT THE WORLD TO KNOW THE EXTENT OF HIS WEALTH AND PROPERTIES, OR HOW MUCH MONEY OTHERS OWE HIM.

In *Seif* 4, the **Be’er HaGolah** writes this distinction in the name of the **Sma**, despite the fact that the **Sma** sets it forth only in the **Drisha**.

The **Shulchan Aruch** rules,

“SOMEONE SAYS TO HIS FELLOW, ‘IN A *SHTAR* IN YOUR POSSESSION THERE IS SOMETHING WRITTEN THAT IS FINANCIALLY BENEFICIAL TO ME.’ IF THE ACCUSED ADMITS TO THE CLAIM HE MUST BRING THE *SHTAR* TO *BEIS DIN* SO THAT THE *BEIS DIN* CAN COPY DOWN THE WORDS THAT ARE OF BENEFIT TO THE CLAIMANT. ON THE OTHER HAND, IF HE DENIES HAVING A *SHTAR* THAT CONTAINS A STATEMENT THAT CAN BENEFIT THE PERSON, HE IS NOT OBLIGATED TO BRING OR SHOW ANY *SHTAR* OF HIS TO ANYONE.”

The **Be’er HaGolah** writes,

- 1) The source of this ruling is the **Rashba**.
- 2) He then writes in the name of the **Sma** that the **Rashba**’s case is “when the request is made of someone who is not claiming against him.” That is, both rulings apply only when the holder of the *shtar* is not using the *shtar* to collect money from the one who is making the claim for information.

- a) This means that in the first case, for the accused to be required to show the *shtar* to the *Dayanim*, it is necessary for him to admit to the claim only because the holder of the *shtar* is not using the *shtar* to collect from the claimant.
- b) On the other hand, if the *shtar's* holder is using the *shtar* against this person, for that is the purpose of the *shtar*, the law would be different.
- c) In that case, if the claimant said that the *shtar* held financial benefit for him, the *shtar's* holder would have to show the *shtar* to the *Dayanim* even if the *shtar's* holder completely denied the claim.

The same applies regarding the second case, where the accused denies the claim and is completely exempt.

- 1) The **Beer HaGolah** means that, according to the **Sma**, the request is denied only when the holder of the *shtar* is not using the *shtar* to make a claim against the one who claims that the *shtar* contains information that is beneficial to him.
- 2) On the other hand, if the claimant wants to see specifically a *shtar* that the holder plans to use against him, and the claimant wants to see the *shtar* because he says that it can benefit him in his affairs with a third party, the accused will not be exempt.
- 3) Although the one holding the *shtar* completely denies that the *shtar* can be of any help to the claimant, he must show it to the *Dayanim*. Possibly, according to the **Sma**, he must show it to the claimant himself!

More about the Birkei Yosef's Explanation of Seif 4

The **Birkei Yosef** disagrees.

- 1) He maintains (as the **Beis Yosef** seems to say) that the *Rishonim* are at odds about where the accused denies the claim even if the *shtar* that the claimant wants to see (because of beneficial information in it) is being used by its holder against him.

- 2) It does not matter that the claimant pinpoints which *shtar* in the other person's possession he wants to see, and that he already has an "interest" in that *shtar*.
- 3) Here, too, says the **Birkei Yosef**, the **Rashba** would say that the claimant loses and his only option is the general *cherem*.

THE *BEIS DIN* CANNOT FORCE THE HOLDER OF THE *SHTAR* TO SHOW IT TO THE CLAIMANT. NEITHER CAN THEY GIVE HIM A COPY, FOR THE ONE HOLDING THE *SHTAR* HAS NOT ADMITTED THAT THE *SHTAR* CONTAINS ANYTHING BENEFICIAL TO THE CLAIMANT. NEITHER CAN THE *DAYANIM* FORCE THE ACCUSED TO SHOW THE *SHTAR* TO THEM.

So, too, in the case where the accused says, "I don't know."

- a) Even if the *shtar* that the claimant wants to see is being used by its holder against him, the holder of the *shtar* is completely exempt, for he has not admitted to the claim.
- b) It is no different from when the claimant wants to see a *shtar* that that his fellow Jew has in his possession about a financial matter that involves a third party, just the claimant says that there is wording in the *shtar* that can benefit him, too.
- c) When the holder of the *shtar* says "I don't know whether I have any *shtar* that can benefit you," or he completely denies the claim, he need not show the *shtar* to anyone, not even the *Dayanim*.
- d) So, too, here, where the holder of the *shtar* intends to use the *shtar* against the claimant. So long as he has not admitted that the *shtar* contains information beneficial to claimant, and the claim is not that the *shtar* is counterfeit,

THE HOLDER OF *SHTAR* CANNOT BE FORCED TO SHOW THE *SHTAR* OR A COPY OF IT TO ANYONE. ACCORDING TO THE **BIRKEI YOSEF**, SO RULES THE **SHULCHAN ARUCH**.

Similarly, according to the **Birkei Yosef**,

The **Rambam** means (Laws of Claims 5:7) that if the accused says,

- 1) "I don't know," it is as if he has admitted to the claim in every case of a claim that seeks beneficial written information in another's possession.

- 2) According to the **Birkei Yosef**, there is no indication that the **Rambam** is speaking specifically of where the claimant wants to see specifically a *shtar* that the holder plans to use against him.

According to the **Birkei Yosef**, the words of the **Rosh** in the two Responsa are not at all contradictory.

- 1) When does the **Rosh** allow the claimant to see the *shtar* of his fellow Jew (*Klal* 68, *Siman* 24)?
- 2) When the *shtar* is being used against him and he claims that it is counterfeit.
- 3) On the other hand, if he wants to see it simply because he claims that it can help him in his financial dealings with someone else; he is not allowed to see it, unless its holder admits that the *shtar* contains words that can benefit the claimant. That is the case that the **Rosh** discusses in *Klal* 68, *Siman* 25.

G-d willing, in the lesson to come, where we will discuss *Seif* 5, we shall see that this is how the **Beis Yosef** understands that Responsa of the **Rosh**. According to the **Birkei Yosef**, siding with the **Beis Yosef**, this is how we should understand the **Shulchan Aruch**, too. *Seif* 5 discusses the same sort of case that the **Rosh** discusses in *Klal* 68, *Siman* 24, where the claimant wants to see a *shtar* that the *shtar's* holder is going to use against him.

The **Shulchan Aruch** rules,

“SOMEONE MAKES A MONETARY CLAIM AGAINST HIS FELLOW ON THE STRENGTH OF A <i>SHTAR</i> . THE OTHER PARTY CLAIMS THAT THE <i>SHTAR</i> IS COUNTERFEIT OR CONTAINS OTHER FALSEHOOD, SO HE ASKS THE <i>DAYAN</i> TO PROVIDE HIM WITH A COPY SO THAT HE CAN STUDY IT. HE IS GIVEN WHAT HE ASKS, EVEN IF THE <i>SHTAR</i> READS THAT NO COPY SHALL BE MADE OF IT FOR THE SAKE OF THE PERSON THAT IT OBLIGATES.”
--

These are the words of the **Rosh**, and they do not contradict the **Rosh's** ruling that the *Gaonim's* ruling was not accepted.

Summary

In summary, according to the **Birkei Yosef**, the **Sma's** attempt at making peace is a failure. Since the **Beis Yosef** is the author of the **Shulchan Aruch**, and the **Beis Yosef** writes that the **Rashba** and the **Rosh** are of one mind on these matters, against the **Rambam**, we can assume that the **Shulchan Aruch** sides with the **Rashba** and the **Rosh**.

There are many disputes here, beginning with the dispute over whether the ruling of the *Gaonim* was accepted. In Ashkenaz (Europe), like the **Rosh** says, the ruling was not accepted. The right to keep one's financial affairs a private matter took primacy. Elsewhere, however, the ruling of the *Gaonim* was accepted, as we see from the words of the **Rambam**. According to the **Beis Yosef**, however, and thus the **Shulchan Aruch**, the **Rashba** sides with the **Rosh**, as far almost everything we discussed here.

Thus, although the **Shulchan Aruch** does not mention the case where the accused (the holder of the *shtar*) says,

“I DON'T KNOW WHETHER THE CLAIM IS TRUE”

We can explain like the **Birkei Yosef**, against the **Sma**. According to the **Shulchan Aruch**,

THE *DAYANIM* CANNOT FORCE THE HOLDER OF THE *SHTAR* TO SHOW IT TO THEM, FOR HE HAS NOT ADMITTED TO THE CLAIM.

As to whether according to the **Shulchan Aruch**, the accused must really swear a Rabbinic oath if he denies the claim and the claimant says he knows that the accused is lying, see above at length.

- A) Arriving here we can add something.
- B) Even if the holder of the *shtar* plans to use it against the claimant, although the claimant says for sure that the *shtar* can benefit him regarding his financial relationship with a third party, the holder of the *shtar* need not swear that his *shtar* cannot benefit his opponent.
- C) Rather, the holder of the *shtar* uses the *shtar* to advance his claim. According to the *shtar*, he is a claimant so his claim comes first.

D) After that case is decided the *Dayanim* will see whether the *shtar* contains anything that can benefit the *shtar* holder's opponent regarding his financial affairs with a third party.

- 1) If the *shtar's* purpose is not to collect from the claimant,
- 2) If the accused denies that it can benefit the claimant, there is good reason to say that here, too, the accused need not swear, and the claimant's only recourse is the general *cherem*.

ALTHOUGH THE **SMA** EXPLAINS THE **SHULCHAN ARUCH** DIFFERENTLY, THE ACCUSED IS NOT REQUIRED TO SWEAR IN THIS CASE. TO MAKE THE ACCUSED SWEAR WOULD BE A FORM OF HARASSMENT.

If this is so, however, the **Shulchan Aruch** at the end of *Seif 4* has worded his ruling very briefly, and left it unclear.

- a) Where he says that the Rabbinic oath is required of the accused,
- b) The **Mechaber** did not spell out that this is only where the accused admits having had a *shtar* that would have benefited the claimant.
- c) However, when he says that he lost it, the **Rambam** rules explicitly.
- d) Only there must the accused swear the Rabbinic oath, for he partially admitted to the claim. See above at length.

Questions and Answers

1. If someone says to his fellow Jew, “In a *shtar* (document) in your possession there is something that is financially beneficial to me,” and the accused admits to the claim, must he show the *shtar* to the claimant?

According to the *Gaonim*, yes, but the **Shulchan Aruch** rules like the **Rashba** and the **Rosh**, according to the way that the **Beis Yosef** understands them, that the admission requires the holder of the *shtar* to show it only to *Beis Din*, not to the claimant.

2. The **Rashba** and the **Rosh** were *Rishonim*. How can *Rishonim*, who lived after the *Gaonim*, go against a ruling of *Gaonim*, whose knowledge of the Torah was greater, even according to the *Rishonim*?

The **Rosh** writes in a Responsa (*Klal* 68, *Siman* 25) that the ruling of the *Gaonim* was not accepted in Europe. Apparently, it was not accepted in most places.

3. Why was the ruling of the *Gaonim* not accepted?

A. People, at least Jews, by nature prefer to keep information about their wealth under wraps. In fact, the *Gemara* says (*Bava Basra* 174b-175a) that sometimes, a Jewish person (outside of *Beis Din*) will say things that he does not really mean, to “cover up” the extent of his wealth and make it seem that he has less than he really has. Because people prefer to keep information about their wealth under wraps, when someone claims that a *shtar* in the possession of his fellow Jew has words in it that can help him financially, the person who is holding the *shtar* cannot be obligated to show the claimant any *shtar*. In limited circumstances, he can be made to show a *shtar* of his to the *Dayanim*, but he cannot be made to show any *shtar* of his to the claimant.

4. What question prompted the **Rosh** to answer the questioner that the ruling of the *Gaonim* was not accepted?

According to the *Gaonim*, if a person says to his fellow Jew, “In a *shtar* in your possession there is something that is financially beneficial to me,” the *Dayanim* force the person to show the claimant the *shtar*. The **Rosh** was asked whether this applies only if claimant specifies the nature of the alleged financial benefit. The **Rosh** answered that the ruling of the *Gaonim* was not accepted, because Jews considered it an impingement upon privacy.

5. **The Shulchan Aruch rules that if the accused completely denies the claim, “he is not obligated to bring or show any *shtar* of his to anyone.” That is, not only does he not need to show any *shtar* of his to the claimant; he cannot be forced to show any *shtar* of his to the *Dayanim* either. Can the claimant ask the *Dayanim* to have the accused swear that he has no such *shtar* in his possession?**

According to the **Sma**, yes, but it would appear that the **Birkei Yosef** argues. That is, according to the **Birkei Yosef**, it would appear that the **Shulchan Aruch** maintains that the accused would not need to swear that his denial is true. Support for this notion comes from next words of the **Shulchan Aruch**. About where the accused denies the claim, the **Mechaber** writes, “However, if the claimant wants to declare a generally stated *cherem* so that anyone who has a *shtar* that contains a statement that benefits him must come and show it, he is allowed to do so.” Seemingly, according to the **Shulchan Aruch**, the claimant’s only option in this case is the *cherem*.

6. **From the words of the Shulchan Aruch, is there any other indication that when the accused denies the claim, he need not swear that he is telling the truth?**

Possibly, there is a hint to this. The **Rambam** maintains that the *Gaonim*’s ruling was accepted. He writes (Laws of Claimants, Chapter 5, Laws 7-8), “Someone says to his fellow Jew, ‘In a *shtar* in your possession there is something written that is financially beneficial to me.’ If the accused answers, ‘I don’t know if there is anything beneficial to you written in it,’ or he says, ‘I am not showing my *shtar*,’ they force him to bring the *shtar* forward. If he answers by claiming, ‘I lost it,’ the *Dayanim* make a general *cherem* on behalf of the claimant. If the claimant says that without question the *shtar* that contains benefit for him is in the possession of the accused, they make the accused swear a Rabbinic oath that the *shtar* is not in his possession and was lost. So ruled the *Gaonim*.”

Here, it seems that the claim is for a specific *shtar* that the claimant knows the other person has. True, in the **Shulchan Aruch**, after writing about the claimant’s option of declaring a general *cherem*, the **Mechaber** writes that sometimes, seemingly where the accused denies the claim, the accused might have to swear an oath. The **Mechaber** writes, “If he claims that he knows that the person without question has the *shtar* that contains the statement that will benefit him, the accused must swear a Rabbinic oath that it is not in his possession.” On the surface, the **Mechaber** seems that the accused must swear an oath when he completely denies the claim. On the other hand, since the **Mechaber** writes, “If he claims that he knows that the person without

question has **the *shtar*** that contains the statement that will benefit him,” it is possible that the **Mechaber** means the **Rambam’s** case. After all, the **Mechaber** could have written “**a *shtar*** that contains...” Possibly, therefore, the **Shulchan Aruch** is speaking of where the claim was for information in a specific *shtar*, the accused admitted possession of the *shtar* but claims he lost it. The **Rashba** (and the **Rosh**) would agree that in this case, a Rabbinic oath could be required of the accused if the claimant is certain of his claim, for the accused partially admitted to the claim. The **Mechaber** simply did not make himself clear that this is the case that he means.

See above at length, reasons why a requirement for an oath in the case where the accused completely denies the claim would be surprising, though the **Sma** says that the oath, in fact, is required in this case, so long as the claimant is certain of his claim.

7. **Provide a reason why particularly the Sma would maintain that when the accused completely denies the claim and the claimant says he is lying, the accused would have to swear to a “negative” and say that he does not possess a *shtar* that holds benefit for the claimant? Why, according to the Sma, would such an oath not be considered a form or harassment?**

The **Sma** argues with the **Beis Yosef** who explains that according to the **Rosh**, the ruling of the *Gaonim* was not accepted even when the claim is for information in a *shtar* that the accused wants to use against the claimant, to collect a loan from him. In such a case, says the **Sma**, the **Rosh** agrees that even if the lender does not admit that the *shtar* has something in it that can benefit the borrower, the *Dayanim* make him show them the *shtar* so they can check whether what the borrower is saying is true. In fact, the borrower himself is shown the *shtar*. From here, we see that according to the **Sma**, explaining the **Rosh**, not such a great premium is placed on each individual’s right to privacy regarding his documents about his financial affairs. Since the **Sma** says this about the *Gaonim’s* ruling, his explanation of what the **Shulchan Aruch** says about the Rabbinic oath is more understandable. The **Sma** maintains that even where the claim is not about *shtar* whose holder will use it against the claimant, in a case of complete denial of the claim, if the claimant is sure of his claim, the holder of the *shtar* will have to swear on a “negative.” He will have to swear that he has no *shtar* in his possession that can help the claimant. Such a requirement would not be considered a form or harassment.

8. Why does the Birkei Yosef reject all this?

From the wording of the **Rambam**, he says, we have no indication that the **Rambam** is speaking only of a *shtar* that the holder of the *shtar* plans to use against the claimant. True, it sounds as if the **Rambam** is speaking of where the claimant wants to see a specific *shtar* in the other person's possession, but there is no indication that the *shtar* reflects that the claimant is financially liable to the holder of the *shtar*. Furthermore, from the way that the **Beis Yosef** understands the **Rashba**, even if the *shtar* that the claimant says has something beneficial to him it is being used by its holder against him and the *shtar's* holder denies the claim, the claimant's request is denied. His only option is the general *cherem*. The *Beis Din* cannot force the holder of the *shtar* to show it to the claimant or to them. Neither can they give him a copy, for the one holding the *shtar* has not admitted that the *shtar* contains anything beneficial to the claimant.

9. How can the Rosh say in *Klal 68, Siman 25*, as cited by the Tur in *Siman 16*, that the ruling of the *Gaonim* was not accepted? How can he write that if someone says that another Jew has a *shtar* that contains financial benefit for him, and he asks the *Dayan* to force that person to show him the *shtar*, the request is denied, to protect the privacy of the person holding the *shtar*? In a different Responsa, *Klal 68 Siman 24*, also regarding when someone asks a *Dayan* to see the *shtar* of another Jew, the *Dayan* grants the request! The *Dayan* awards a copy of the *shtar*! What happened to the right of the *shtar's* holder to keep his financial affairs hidden from the public eye?

This question is asked by the **Drisha** (the **Sma**). See above how the **Drisha** answers. According to the **Birkei Yosef**, the words of the **Rosh** in the two Responsa are not at all contradictory. When does the **Rosh** allow the claimant to see the *shtar* of his fellow Jew (*Klal 68, Siman 24*)? When the *shtar* is being used against him and he claims that it is counterfeit. This is the ruling of the **Shulchan Aruch** in *Seif 5* of our *Siman*. On the other hand, if the *shtar* that the claimant wants to see is not being used against him but he wants the *Dayanim* to see the *shtar* because he claims that it can help him in his financial dealings with someone else, the law is different. He is not allowed to see it or a copy. Neither does the holder of *shtar* have to show the *shtar* to the *Dayanim* unless the holder of the *shtar* admits that the *shtar* contains words that can benefit the claimant. That is the case that the **Rosh** discusses in *Klal 68, Siman 25*. This is what the **Rashba** maintains, too, and this is what the **Shulchan Aruch** rules in *Seif 4* of our *Siman*.

10. Someone says to his fellow Jew, “In a *shtar* in your possession there is something that is financially beneficial to me.” The accused answers, “I don’t know if I have such a *shtar*.” What happens?

The **Shulchan Aruch** does not speak of this case explicitly. According to the way that the **Sma** understands the **Shulchan Aruch**, the right to privacy plays second fiddle. The *Dayanim* would tell the accused, “If you don’t know then you have to check and see whether he is right. If you find that, in fact, you have such a *shtar*, you must bring it to *Beis Din* and show it to us. If you are not sure, too, you must bring the *shtar* to *Beis Din* and we will determine whether, in fact, there is something in the *shtar* that can benefit him.” By contrast, according to the way that the **Birkei Yosef** understands the **Shulchan Aruch**, the accused is completely exempt in this case, because he did not admit to the claim. The claimant’s only option is the general *cherem*.

11. How would the **Shulchan Aruch** rule in a case of an I.O.U. where the borrower wants the lender to show it to *Beis Din*, because he says that he is certain that it contains a line that can benefit him financially regarding his dealings with a third party? The holder of the *shtar*, who is represented in the *shtar* as the lender of the money, does not plan to use the I.O.U. to collect the loan for quite some time, for the due date for the loan is far away. He tells the *Dayanim*, “I don’t know whether the I.O.U. has anything in it that can benefit this man that borrowed from me.” What happens? Can the *Dayanim* force the holder of the *shtar* to bring it to them as the claimant wants?

According to **Sma**, they can. The claimant, the borrower, gets his way. After all, the **Rambam** rules, “Someone says to his fellow Jew, ‘In a *shtar* in your possession there is something written that is financially beneficial to me.’ If the accused answers, ‘I don’t know if there is anything beneficial to you written in it,’ or he says, ‘I am not showing my *shtar*,’ they force him to bring the *shtar* forward.” According to the **Sma**, the **Rambam** is speaking about our case, and the **Rosh** (and so, too, the **Rashba**) would not argue.

On the other hand, according to the way that the **Birkei Yosef** understands the **Shulchan Aruch**, the claimant would not get his way. The **Birkei Yosef** points out that the **Beis Yosef**, author of the **Shulchan Aruch**, maintains that the **Rosh** and the **Rambam** are at odds regarding whether the ruling of the *Gaonim* was accepted, and the **Beis Yosef** writes explicitly that the **Rashba** sides with the **Rosh**, against the **Rambam**. Since it is two (**Rashba** and **Rosh**) against one (**Rambam**) and the **Shulchan Aruch** sides with the **Rosh** and the **Rashba**, since the holder of the I.O.U. did not admit to the claim he is not subject to any court action at all. He can keep his *shtar* under wraps.

The only person here who has a claim backed up by a *shtar* is the holder of the I.O.U. for the I.O.U. represents him as having lent money to the one who wants the *Dayanim* to see the *shtar* now. Although the person represented by the *shtar* as the borrower says that for sure that the *shtar* can benefit him regarding his financial relationship with a third party, the holder of the *shtar* need not bring the *shtar* forward and need not swear that the *shtar* cannot benefit his opponent. He is completely exempt, for he has not made even a partial admission to the claim. The holder of the *shtar* will have a problem only if the claimant declares a general *cherem* (on anyone who has a *shtar* that can help him financially but fails to bring it forward).

The *shtar's* holder does not plan to use the *shtar* against the borrower for a time. The borrower -- to gain the benefit that he says the *shtar* holds for him -- wants the *Dayanim* to see the *shtar* now, but only the *cherem* can make the lender show the *shtar* to the *Dayanim*. Even were the borrower to declare the general *cherem* and the due date of the loan written in the I.O.U. were today, first the *Dayanim* would decide the case of the loan that is reflected in the I.O.U. In our case, as well, if the person that the *shtar* says is the borrower decides not to declare the general *cherem*, he will have to wait until the holder of the *shtar* attempts to use the *shtar* to collect from him. After it is determined whether he must pay the loan, the *Dayanim* will see whether the *shtar* contains anything that can benefit him regarding his financial affairs with a third party.

On the other hand, the **Shulchan Aruch** rules in *Seif* 5 that if the person represented by the *shtar* as a borrower claims that the *shtar* is counterfeit, the *Dayanim* award him a copy. If that's what he claims, however, he just lost the alleged benefit that the *shtar* holds for him. According to the **Birkei Yosef's** understanding of the **Shulchan Aruch**, it would appear that if the one who now wants the *Dayanim* to see the *shtar* does not want to use the *cherem*, he has only one other option. If he wants to get hold of the *shtar* now so that he can use it to gain the benefit that he says it holds for him, he will have to pay the loan now, ahead of time.