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Makkos Daf 3

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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**Admittance of Eidim Zomemin**

The *braisa* quoted Rabbi Akiva as saying that *zomemin* witnesses do not pay based on their own admission.

The *Gemora* asks: What is Rabbi Akiva’s reasoning?

The *Gemora* answers: This is because he holds that when *zomemin* witnesses are liable to pay, it is considered a fine, and one does not pay a fine based on his own admission.

Rabbah says: It is clear that this (that the *zomemin* witnesses are liable to pay) is true, as they do not even perform an action and yet are killed or pay.

Rav Nachman says: It is clear this is true, as the money is in the hands of the rightful owner (*they did not cause an actual loss*), and they still must pay.

The *Gemora* asks on Rav Nachman: Why is the money in the hands of the owner? This is because they did not do any action (*to take it away*). This is the same as Rabbah’s reasoning!?

The *Gemora* answers: We should say: Rav Nachman similarly says (*as this is indeed the same reason phrased differently*).

Rav Yehudah says in the name of Rav: A *zomeim* witness pays according to his portion.

The *Gemora* asks: What does this mean? If it means that each witness pays half of what he intended to make the defendant pay, doesn’t the *Mishna* say that all of the *zomemin* split the amount of money they intended to make the defendant pay, but they each receive a full set of lashes? [*Why is it necessary for Rav to teach a halachah that has already been taught in a Mishna?*]

Rather, the *Gemora* answers: The case is where one of them became a *zomeim*. He pays his portion.

The *Gemora* asks: Does he pay? Doesn’t the *braisa* say that *zomemin* witnesses do not pay unless they both are turned into *zomemin*?

Rava says: The case is where one witness says that he lied.

The *Gemora* asks: Why does this matter? There is a well-established principle that after one has testified, he cannot retract his statement by testifying again!?

Rather, the *Gemora* answers: The case is where one witness testified that they (both witnesses) were convicted of being *zomemin* in one *Beis Din* (*while the other denied this*). [*The admitting witness pays according to his portion in the case.*]

The *Gemora* asks: Whose opinion does this follow? It does not follow the opinion of Rabbi Akiva, for he maintains that he (a witness who admitted that he was found to be a *zomeim* witness) is not liable to pay by his own admission (*for the punishment of zomemin is a fine, and one does not pay fines by his own admission*).

Rather, the *Gemora* answers: The case is where one witness testified that they (both witnesses) were convicted of being *zomemin* in one *Beis Din* and received a verdict that they are liable to pay. One might think that being that we cannot make his friend liable (*as he did not admit, and the admitting witness is not believed with respect of his fellow*), perhaps we should not make him liable to pay either. This is why Rav says that he must pay his portion. (2b – 3a)

### **Mishna**

Witnesses testified that a person divorced his wife and did not give her a *kesuvah*, and they were found to be *zomemin* (*the man said he had not divorced his wife*). However, isn't he going to eventually pay her a *kesuvah* anyway, whether it is today or tomorrow? (*Being that a woman receives her kesuvah if her husband dies or divorces her, chances are high that he will have to pay a kesuvah eventually anyway. How, then, do we assess how much these zomemin must pay?*) We estimate how much a person would pay for the rights to his wife's *kesuvah* (*which might be paid out eventually*), which would need to be paid if she became a widow or he divorced her. If she dies first, her husband inherits the *kesuvah*. (*It is therefore worth far less than face value, as it may never be paid out at all.*) (3a)

### **Evaluating the Kesuvah**

The *Gemora* asks: How does one evaluate how much the rights to a *kesuvah* are worth? [*What is the amount regarded as the intended loss to the husband by these zomemin witnesses?*] Rav Chisda says: They pay how much the *kesuvah* is worth to the husband (*what people would pay to the husband to purchase his rights in the kesuvah*). [*Rashi explains that the husband stood to lose two important monetary benefits if he had to give his wife a kesuvah. He could no longer eat from the fruits of properties she brought into the marriage, and he no longer*

*has the possibility of inheriting her as a husband would a wife. However, it must be taken into account that the wife still might get divorced from him or he might die in a small amount of time. Accordingly, this benefit is not usually a huge amount of money.*]

Rav Nassan bar Oshaya says: They pay based on how much the *kesuvah* is worth to the wife (*what people would pay to the wife to purchase her rights in the kesuvah*). [*This is as we explained in the Mishna, that there is a speculative benefit that she will become widowed or divorced and therefore collect a kesuvah. This is the "face value" of every kesuvah. Being that they wanted him to pay the entire kesuvah, we subtract the face value (i.e. current value) of the kesuvah from the amount of the kesuvah, and this is what the zomemin pay. The reason we deduct this amount is because the husband would also be willing to pay the wife this amount for her rights to the kesuvah, so she could not claim the kesuvah from him.*]

Rav Pappa says: They pay based on how much the *kesuvah* is worth to the wife, and with her *kesuvah*. [*Rashi explains that while Rav Pappa primarily agrees with Rav Nassan, he holds we do not take into account any benefit he receives from the possessions she brought into her marriage, for the witnesses could say that they did not know about that.*] [*All of these explanations are based on the first explanation quoted by Rashi. Many more explanations of these opinions are found in the various Rishonim.*] (3a)

### **Mishna**

Witnesses testify that a certain person owes his fellow one thousand *zuz*, and that he must pay the loan back within thirty days. However, the defendant claims that he has ten years to pay back the loan. The witnesses then become *zomemin*. We obligate them to pay the amount of money a person would pay in order to have a loan (*for one thousand zuz*) for ten years instead of a loan for thirty days. (3a)



## **Shemittah**

Rav Yehudah says in the name of Shmuel: If someone lends his friend money for ten years, *Shemittah* cancels the debt. Even though there is currently no prohibition of “do not pressure,” (*for the loan is not yet due*), there eventually will be.

Rav Kahana asked a question on this from our *Mishna*. The *Mishna* states: We obligate them to pay the amount of money a person would pay in order to have a loan (*for one thousand zuz*) for ten years instead of a loan for thirty days. If you will say that *Shemittah* cancels the debt that is for ten years, the witnesses should be liable to pay the full amount of the loan (*as that is the damage they tried to cause him*)!?

Rava says: The case is when the loan is done with collateral, or he hands over his loan documents to a *Beis Din*. This is as the *Mishna* states: If someone lends money with collateral, or he hands over his loan documents to a *Beis Din*, *Shemittah* does not cancel the debt.

Others say: Rav Yehudah says in the name of Shmuel: If someone lends his friend money for ten years, *Shemittah* does not cancel the debt. Even though there will be a prohibition of “do not pressure,” there currently is not.

Rav Kahana said: We learned this already in a *Mishna*. The *Mishna* states: We obligate them to pay the amount of money a person would pay in order to have a loan (*for one thousand zuz*) for ten years instead of a loan for thirty days. If you will say that *Shemittah* cancels the debt that is for ten years, the witnesses should be liable to pay the full amount of the loan (*as that is the damage they tried to cause him*)!?

Rava says: The case is when the loan is done with collateral, or he gave his loan document to *Beis Din*. This is as the

*Mishna* states: If someone lends money with collateral, or he hands over his loan documents to a *Beis Din*, *Shemittah* does not cancel the debt.

Rav Yehudah also says in the name of Shmuel: If someone lends money to his friend and says, “This is on condition that *Shemittah* should not cancel the debt,” *Shemittah* does cancel the debt (*and his condition is null and void*).

The *Gemora* asks: It must be that Shmuel holds that the condition is null and void, for this is a condition against the Torah, and any condition made against the Torah is null and void. However, wasn't it stated that if someone says: A person says to his friend, “On the condition that you have no claim of *ona'ah* (*overcharging*) on me” (*when they are conducting a sale*), Rav says: The laws still apply. Shmuel says: They do not apply. [*Evidently, Shmuel holds that a condition against the torah is nevertheless valid!*?]

The *Gemora* answers: It was taught regarding this that Rav Anan said: I heard from Mar Shmuel that if someone says, “On condition that you have no claim of *ona'ah* on me,” the law does not apply. However, if he says, “on condition that there are no laws of *ona'ah* in this sale,” the laws do apply. Similarly, if he says, “On condition that you will not avoid paying me on *Shemittah*” *Shemittah* does not cancel the debt. If he says, “On condition that *Shemittah* does not cancel the debt,” *Shemittah* does cancel the debt.

The *braisa* taught: If someone lends his friend money without specifying how long he has to pay it back, he cannot claim the money from him before thirty days have passed.

Rabbah bar bar Chanah was sitting before Rav and said: This is only if the loan was written in a document, as a person does not bother to write a loan document unless the loan is for a minimum of thirty days. However, this does not apply to an oral loan. Rav said: This is what Rav Chiya said: it applies to both a written loan and an oral loan.

The *braisa* supports Rav. The *braisa* states: If someone lends his friend money without specifying how long he has to pay it back, he cannot claim the money from him before thirty days have passed, whether it was a written loan or an oral loan.

Shmuel said to Rav Masnah: You should not sit down until you explain the following *sugya* (*Torah discussion*). How do the Rabbis know that if someone lends his friend money without specifying how long he has to pay it back, he cannot claim the money from him before thirty days have passed, whether it was a written loan or an oral loan?

He answered: The verse says: *The seventh year is coming close, the year of Shemittah*. Being that it says it is the seventh year, isn't it obvious that it is *Shemittah*? Rather, why does the verse say that it is *Shemittah*? This is to tell you that there is another *Shemittah* like this. What is it? It is that if someone lends his friend money without setting a time limit that he cannot claim the money from him before thirty days have passed. This is as Mar said: Thirty days of a year are considered a year. (3a – 3b)

### ***Rav Yehudah in the Name of Rav***

Rav Yehudah says in the name of Rav: If someone opens the neck of a shirt (*which had been sealed and was not able to be worn*) on *Shabbos*, they are liable to bring a *chatas* sacrifice. [*Prior to the shirt being opened, the material is connected, so one who opens up the neck opening is finishing off the process of creating a vessel.*]

Rav Kahana asked him: What is the difference between this and opening the top of a barrel (*which is permitted*)?

Rav Yehudah answered: The shirt is considered connected, while the top of the barrel is not considered connected to the barrel. [*Rashi explains that the cover of the barrel is not connected to the barrel, and since it is a separate piece, it*

*is not considered that he is finishing the creation of a vessel.*]

Rav Yehudah says in the name of Rav: Three *log* of water that have a *kortov* of wine fall into it, and the mixture appears like wine, would not cause a *mikvah* to become invalid. [*The only thing that would make a mikvah invalid is water that had been in a vessel, not wine.*]

Rav Kahana asked: Why is this different than colored water (*that does cause a mikvah to become invalid*)? This is as the *Mishna* stated: Rabbi Yosi says that three *log* of colored water that were in a vessel cause a *mikvah* to become invalid.

Rava answered: The colored water is still called water. The wine is called diluted wine, and is not called any type of water anymore. (3b)

## **INSIGHTS TO THE DAF**

### ***Lottery Ticket***

#### **Buying a lottery ticket for a charitable cause from *ma'aser* money**

Many charitable institutions raise funds by promising prizes to be awarded in a lottery among the contributors. HaGaon Rav Moshe Feinstein zt"l (Responsa *Igros Moshe, O.C., IV, 76*) was asked if a person could purchase such a ticket from his *ma'aser* money or if the ticket should be considered as having a monetary value to its holder and thus forbidden to be purchased from *ma'aser*.

**Two types of tickets:** Rav Feinstein remarks that we should divide this question into two parts – i.e., two types of lottery tickets. Some institutions issue a fixed amount of tickets, promising that at a certain date or when all of them are sold, the raffle will be held. In such a lottery even the



first purchaser knows his chances of winning.

Nonetheless, there is another sort of ticket: Some institutions do not limit the amount of tickets and fix no final date for the raffle. It is obvious, then, that such tickets have no monetary value. A person who purchases such a ticket has no investment, as he has been promised nothing. It is not an investment but a form of charity and may be purchased from *ma'aser*.

What is the nature, though, of the first type of ticket? First of all, we must examine if we can define the value of something whose worth is unknown. In other words, is a lottery ticket regarded as an item of monetary value although the vast majority of purchasers win nothing?

**Estimating the worth of an item whose value is unknown:**

Rav Feinstein proves from our *sugya* that we can regard such an article as having value. Our *sugya* explains that we can estimate the worth of a *kesuvah* of a woman who has not been divorced by examining the amount merchants would be willing to invest to purchase the rights to the *kesuvah* once it can be realized. The merchants examine the state of the couple's health, their relationship and the like. They then estimate the wife's chances to survive her husband or get divorced and earn her *kesuvah*. We thus see that we can regard an item whose worth is unknown as an article of monetary value. One should therefore not purchase a ticket of the first sort from *ma'aser* as the purchaser immediately gets the worth of his investment.

**The winner of a lottery:** Rav Feinstein adds that if a purchaser of the second type of ticket wins a prize, he should better return the cost of the ticket to his *ma'aser* money (see *Derech Emunah* on *Matenos 'Aniyim*, Ch. 7, in *Beur Halachah*, s.v. *V'echad*).

**DAILY MASHAL**

***Reasons for Shemittas Kesafim***

As strange as the *mitzvah* of relinquishing one's loans may seem, there are important lessons in regard to this commandment. The Sefer HaChinuch explains that the first useful benefit to be gained is the characteristic of generosity. There is none so generous as he who gives without hope of receiving anything in return. So too, relinquishing a loan with no benefit or gain in mind imbues a person with this noble character trait.

The second lesson mentioned in the Chinuch relates to the *mitzvah* of *bitachon* - trust in Hashem. Anyone who, upon command, relinquishes all outstanding debts, is continuously strengthening his level of trust in Hashem. The creditor displays trust that any losses incurred will be fully reimbursed to his allocated and pre-determined wealth. The knowledge of G-d as the source of all livelihood and provider of all one's needs is confirmed, and substantiated when releasing a debtor from his debts.

The Chinuch continues that the *mitzvah* of *Shemittas kesafim* is also a 'barrier' to keep away from robbery and any desire to own the possessions of one's neighbor, via a *kal vachomer*. If the Torah decrees that one should leave a loan in his neighbor's hand concerning money that is rightfully owed to him, then certainly he may not obtain his neighbor's belongings, in any way, without his neighbor's consent.