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Makkos Daf 6

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### **Relatives**

Illa and Toviah were relatives to a cosigner of a loan (*and they were witnesses for that loan*). Rav Pappa thought to validate them, for they were unrelated to the borrower and the lender.

Rav Huna the son of Rav Yehoshua told Rav Pappa: If the borrower does not have money to pay with, will the lender not go to the cosigner? [*He therefore is regarded as a principal in the case, and the witnesses are disqualified.*] (7a)

One who was sentenced to death and escaped, and later, he was brought back to the same *Beis Din*, they do not reconsider his verdict (

Rabbi Akiva says that the third witness is mentioned in the Torah to deal strictly with him by making his status equal to that of the other two (*even though the testimony would have been effective without him; nevertheless, by joining them, he is equally responsible, and therefore, if the first set of witnesses were found to be zomemim, the “third” witness will get killed as well*), indicating, incidentally, that if the Torah punishes an accomplice to a sinner just as it would a sinner, how much more so will it reward accomplices to people performing *mitzvos*, as though they themselves had actually fulfilled them. And (*another comparison*), just as in the case of two witnesses, if one is found to be a relative or otherwise disqualified, the entire testimony is rendered void, so too in the case of three witnesses, the disqualification of one invalidates the entire

testimony. And how do we know that this *halachah* would apply even if there are a hundred witnesses? We learn this from the repetition of the word “*witnesses*.”

Rabbi Yosi says: These *halachos* (*that a third witness is like the other two*) apply only to witnesses in capital cases (*where the Torah looks for ways to exonerate the defendant and therefore the testimony can be voided*), whereas, in monetary cases, the testimony offered can be established by those remaining (*the other two witnesses*).

Rebbe says that the rule (*if one is found to be a relative or otherwise disqualified, the entire testimony is rendered void*) applies by monetary cases and capital cases. However, this is only if the disqualified witnesses warned the defendant (*that he was about to commit a crime; only then is he regarded as a witness and not merely a spectator*). But, if they were not among those who gave the warning (*it was only the qualified witnesses who warned the perpetrator; the testimony will not be voided*), what should two brothers and another witness do if they saw someone kill another (*will the murderer be exonerated automatically for two relatives witnesses the event*)? [*They maintain that people combine for a testimony only if they warned him. Rabbi Yosi holds that they can combine even if they did not warn him; therefore, if one of them is disqualified, the entire testimony is void.*] (5b – 6a)

### **Witnesses**



Rava says: This (*that one hundred witnesses have the same halachah as two*) is only if they testified within "*toch k'dei dibur*" (*the time required for an utterance*) of each other.

Rav Acha from Difti asked Ravina: How long is *toch k'dei dibur*? It is as long as it takes for a student to greet his teacher. If there are one hundred witnesses, this will clearly take much longer!?

Ravina answered: It means that each witness starts testifying within a *toch k'dei dibur* of the previous witness (*and the next witness testifies within toch k'dei dibur of that witness, and so on*).

The *Mishna* had stated: Rabbi Yosi says: These *halachos* (*that a third witness is like the other two*) apply only to witnesses in capital cases, whereas, in monetary cases, the testimony offered can be established by those remaining (*the other two witnesses*).

Rebbe says that the rule (*if one is found to be a relative or otherwise disqualified, the entire testimony is rendered void*) applies by monetary cases and capital cases. However, this is only if the disqualified witnesses warned the defendant. But, if they were not among those who gave the warning, what should two brothers and another witness do if they saw someone kill another (*will the murderer be exonerated automatically for two relatives witnesses the event*)?

Rav Pappa asked Abaye: If this is so (*that according to Rabbi Yosi, if one of them is disqualified, the entire testimony is void – even if he had no intention of testifying*), the victim should save the murderer, as he is a relative to himself and he has witnesses the killing!?

Abaye answered: The case is when he was killed from behind (*and never saw his killer*).

Rav Pappa similarly asked Abaye: The man who is sodomized should save the perpetrator!

Abaye answered: The case is when he was sodomized from behind.

Rav Pappa asked: The murderer or sodomizer should save themselves (*as they are related to themselves and witnessed the sin*)! Abaye was silent.

When Rav Pappa came before Rava, Rava answered him: The verse is talking about the ones who establish the incident as true (*which is only the witnesses, not the people involved*).

The *Mishna* had stated: Rebbe had said that if they were not among those who gave the warning, what should two brothers and another witness do if they saw someone kill another?

The *Gemora* asks: What do we ask them to determine if they intended to testify or not?

Rava says: We ask them the following: When you saw the event, did you intend to just observe or did you intend to be a witness? If they say they intended to witness, if one of them is found to be a relative or otherwise disqualified to testify, then the entire group is invalid. If they say they intended to observe, what can brothers do if they see someone killing somebody else?

It was taught: Rav Yehudah says in the name of Shmuel that the law follows Rabbi Yosi. Rav Nachman says: The law follows Rebbe. (6a)

### ***Mishna***

If two people saw him (*the one committing a crime*) from one window and another two saw him from another window, and one person was warning the perpetrator



between them, if everyone sees each other they can be one group of witnesses. If not, they are considered two groups of witnesses. Therefore, if one of these groups becomes *zomemin* witnesses, the perpetrator (*as there is still a group of valid witnesses against him*) and the *zomemin* are executed, and the second (*valid*) group is exempt. Rabbi Yosi says: A perpetrator is only killed if the two witnesses warn him. This is as the verse says: *By the mouth of two witnesses.* [Therefore, the perpetrator, and consequently, the *zomemin* witnesses cannot be killed in this case.] Alternatively, this verse teaches that the judges should not hear testimony through an interpreter. (6b)

### **Witnesses and Warnings**

Rav Zutra bar Tuvya says in the name of Rav: How do you know that when witnesses see an event, but do not see each other, that their testimony is invalid? This is as the verse says: *He should not be executed by the word of one witness.* What does this verse mean? If it literally means one witness, we already know this from the first part of the verse that says: *By the word of two witnesses!* Rather, what does it mean when it says one? It means one plus one (*that they did not see each other*).

The *braisa* supports this. The *braisa* states: *He should not be killed by the word of one witness.* This includes a case where two people see an incident, each from a different window, and they do not see each other. They cannot combine to be two witnesses. Moreover, even if they see the incident one after the other from the same window, they cannot combine.

Rav Pappa asked Abaye: If they cannot combine when they are in two separate windows, even though each saw the entire event, obviously they cannot combine when they each only saw half of an event!?

Abaye answered: This is only needed in a case where a person was cohabiting with a forbidden woman (*where*

*they each see only part of it, but they can testify about a complete transgression*).

Rava says: If they see the one giving the warning, or the one giving the warning sees them, they can combine.

Rava says: The warning needed can even be from the victim or a demon.

Rav Nachman says: Testimony where the witnesses did not see each other is valid regarding monetary matters. This is as the verse says: *He should not be executed by the word of one witness.* This implies that such testimony is invalid regarding sins punished with death, not monetary matters.

Rav Zutra asked: If so, we should use this to save the defendant! (*Being that this type of testimony is valid for monetary matters, we should say it is valid if it will exonerate the defendant, as in the case of our Mishna.*) Why, then, does the *Mishna* say that the perpetrator is also killed? This remains a question on Rav Nachman.

The *Mishna* says that Rabbi Yosi says a warning is required from both witnesses.

Rav Pappa asked Abaye: Does Rabbi Yosi hold of this logic? Doesn't the *Mishna* say that Rabbi Yosi says that someone who hates another person is killed (*even if he claims the death was accidental*), because he is considered to have already received a warning?

Abaye answered: This is the opinion of Rabbi Yosi the son of Rabbi Yehudah. This is as the *braisa* states: Rabbi Yosi the son of Rabbi Yehudah says that a scholar does not need warning, as warning is only given to differentiate between one who does a sin accidentally and one who does it willingly.

The *Mishna* says: Alternatively, this verse teaches that the judges should not hear testimony through an interpreter.



Foreigners came to testify before Rava, and Rava established that an interpreter should interpret. How could he do this? Doesn't our *Mishna* say that the judges should not hear testimony through an interpreter?

The *Gemora* answers: Rava understood the language, but was not adept at responding in their language. (6b)

## INSIGHTS TO THE DAF

### *The Purpose of Hasra'ah*

The *Gemora* cites various verses as the source for the requirement of *hasra'ah* (warning).

The Maharatz Chayus points out that there are two sources for *hasra'ah*. The first is a *sevara*, - this serves to make sure that the person is aware of the severity and consequences of his actions. Included in the *hasra'ah* is both the education of the *halachah*, and the awareness of the action that he is about to do. The second source is the verses that the *Gemora* quotes which serve as a *gezeiras hakasuv*, whether they apply or not, that no punishment can be carried out unless there is a warning.

The Maharatz Chayus deduces this from Tosfos who is bothered why the *Gemora* has to find a source for *hasra'ah*, to which they answer that it is needed for a non-*chaver* (someone who isn't educated in the laws). It is obvious from logic that he requires *hasra'ah*, because otherwise, he would have no idea whether the action that he is doing is prohibited by the Torah, but, a *chaver*, who is well educated, knows very well what he is doing and understands the consequences. He shouldn't require *hasra'ah* if not for the fact that the Torah would demand it as a *gezeiras hakasuv*. The verses are the rationale for requiring the details of *hasra'ah*, such as killing him within the time of an utterance (and perhaps having to accept the *hasra'ah*).

Based on this, he points out that Tosfos, who asks regarding the source for *hasra'ah* by an *ir hanidachas* (subverted town), is difficult. Who says that *ir hanidachas* has the *gezeiras hakasuv* requirement of *hasra'ah* that would involve the details? Perhaps it would only have the *sevara* aspect of *hasra'ah* to differentiate between unintentional and deliberate, so that no source is necessary. Clearly, Tosfos assumes that the type of *hasra'ah* necessary by *ir hanidachas* is the *gezeiras hakasuv* type - with all the details, and not just the determination that he was aware of the consequences of his actions.

The Rambam, however, doesn't seem to follow this same approach. The *Gemora* 8b and 41a quote Rabbi Yosi bar Yehudah, who says that a Torah scholar doesn't require *hasra'ah*, since the sole purpose of *hasra'ah* is to differentiate between unintentional and deliberate. This would imply that the Rabbis, who hold that even a Torah scholar requires *hasra'ah*, would hold that *hasra'ah* is a *gezeiras hakasuv*, and NOT just to distinguish between unintentional and deliberate. However, the Rambam (Sanhederin 12:2) writes: A torah scholar and an unlearned man require *hasra'ah*, for the sole purpose of *hasra'ah* is to differentiate between unintentional and deliberate. This seems to be very strange. The Rambam cites the rationale of Rabbi Yosi bar Yehudah, yet requires *hasra'ah* even for a *chaver*! Why?

The Kesef Mishneh and Lechem Mishneh explain that according to the Rambam, the Rabbis don't disagree with Rabbi Yosi bar Yehudah in principal; rather, they hold that because of his concern, we require *hasra'ah* even by a *chaver* who knows the law, since he may not be aware of the action he is about to do. The Rambam clearly learns that the concept of *hasra'ah* is only meant to make him aware of his actions, and educate him about the *halachah*, not just a *gezeiras hakasuv*. Nevertheless, the Rambam requires *hasra'ah* within the time of an utterance of the



action, implying that this concept isn't merely a *gezeiras hakasuv*, but an actual concern that he may have a very short term memory. It seems that the Rambam doesn't buy into the two sources for *hasra'ah* approach; rather, he understands that the rationale for the sources of *hasra'ah* cited in the *Gemora* is to differentiate between unintentional and deliberate - to educate and inform.

## HALACHAH ON THE DAF

### *Eidim P'sulim*

The *Gemora* learns that even if there are a hundred witnesses that witnessed an event, but included in those witnesses were relatives or otherwise disqualified witnesses, then the all the witnesses may not testify. Rebbe clarifies that this is only true when the relatives or otherwise disqualified witnesses also gave the warning, but if they merely witnessed an event along with others, they can't nullify the testimony of the other witnesses. Rashi explains that by giving the warning, they show that they too want to be considered witnesses, therefore they negate the other witnesses' testimony, since part of the witnesses are disqualified.

Who is considered disqualified for testimony?

1) **Relatives - Relatives:** There are many different scenarios; we will only touch on a few.

We learn that relatives cannot be considered witnesses from the verse: *Fathers shall not die through their sons*. The *Chachamim* derived from this verse that the father cannot die due to testimony from his son, and vice versa. Aside from a son there are other relatives that cannot testify; a) brothers, b) grandson, c) first cousins, d) second cousins. All these cases apply to females as well, meaning a sister cannot testify on a brother and vice versa etc. (Choshen Mishpat 33:2)

If one cannot testify regarding a woman (*for example a sister*), he is similarly prohibited from testifying for her husband, and conversely, if one cannot testify for a certain man, he also may not testify for his wife (ibid 33:3). However, he may testify for that spouse's relative (ibid 33:5).

*Mechutanim* may testify for each other (ibid 33:6).

2) **Oivrei Aveirah - One Who Committed a Sin:** If one transgressed any prohibition that is punishable by either death or lashes, he is disqualified for testimony until he repents. It makes no difference if he sinned due to desire, or if he sinned as an act of rebellion (ibid 34:2).

If one transgressed a Rabbinic prohibition, he is disqualified only on a Rabbinic level (*there are halachic differences between them*).

3) **Other P'sulei Eidus:** A minor is disqualified for testimony, even if he is very bright. One leaves the status of a minor once he shows signs of physical maturity, usually when he turns thirteen years old.

One who is incoherent in a certain issue is also disqualified (ibid 35:8). If he is mentally deranged, he is also disqualified (ibid 35:10).