

3 Adar 5775  
Feb. 22, 2015



Kesuvos Daf 20

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### **Conflicting Witnesses**

The Gemora cites a braisa: If two witnesses were signed on a document and died, and two witnesses came from the market and said, “We know that it is their handwriting, but they were coerced, they were minors (at the time they signed), they were invalid witnesses, they are believed (for it was their testimony which was validating the document, they are believed to invalidate it as well – *peh she’assur, hu ha’peh she’hiter* – the very mouth that has forbidden is the mouth that has permitted). But if there are other witnesses that this is their handwriting, or their handwriting comes out from another place, namely, from a document, the validity of which was challenged (by the obligated party), and which was confirmed in Beis Din (through authenticating witnesses), they (the new witnesses) are not believed (for there is no ‘peh she’assur’ here).

The Gemora asks: And we collect with it as with a valid document? Why? They are two (witnesses) and two (witnesses)!? [The two witnesses who are signed on the document, and who are now dead, are testifying that the document is valid, and the two witnesses from the market, are testifying regarding the unfitness of the witnesses who had signed on the document. Even if their handwriting is otherwise confirmed, their testimony is counterbalanced by the testimony of the two witnesses from the market!?!]

Rav Sheishes said: This teaches us that contradiction is a first step to the *hazamah* (when witnesses offer testimony

and other witnesses refute them claiming that the first set of witnesses could not possibly testify regarding the alleged crime since they were together with them at a different location at the precise time that they claimed to witness the crime somewhere else; the Torah teaches us that we believe the second pair in this instance; the first witnesses are called “eidim zomemim” -- “scheming witnesses,” and they receive the exact punishment that they endeavored to have meted out to the one they accused; in our Gemora, we are simply comparing the two), and just as witnesses can be rendered *zomemin* only in their presence (as the retaliatory punishment which it involves, the accusation of the second set of witnesses can be made only in the presence of the witnesses concerned), so too can they be contradicted only in their presence (and since the original witnesses are dead, they cannot be contradicted, and the document is therefore ruled to be valid).

Rav Nachman said: if they were here and other witnesses would contradict them, the contradiction would be valid, and we would not pay attention to their testimony, as it is contradicted testimony. Now that they (the witnesses in the document) are not here, and if they were here they might even admit, why should we believe them?

Rav Nachman therefore said: we put the pairs of witnesses against each other (*cancelling each other out*) and leave the money in the hands of its owner (and we do not destroy the document, nor do we enforce it, but we



merely leave it at the status quo, as in the case of the property of Bar Shatya.

Bar Shatya sold some of his possessions, and two witnesses came and testified that he did so when he was deranged. Two others that he did so when he was of sound mind. Rav Ashi said: One pair of witnesses is against the other, and we leave the possessions in the hands of Bar Shatya.

The Gemora qualifies the ruling: We only say this if he (*person like Bar Shatya*) has a *chazakah* (*holding of ownership for an extended time*) from his father. However, if he does not, we say that he bought it when he was deranged and he sold it when he was deranged.

Rabbi Avahu said: Witnesses can only be rendered *zomemin* when they are present. Witnesses can be contradicted even when they are not present. If witnesses are attempted to be made into *zomemin* but not when they are present, it still is regarded as a contradiction. (19b4 – 20a2)

### ***Authenticating Signatures***

The master had stated: if there are witnesses verifying that the handwriting of witnesses signed on a document is indeed authentic, or this can be verified from a different document that had been questioned and subsequently authenticated by Beis Din, they (*the witnesses who say that although this is an authentic signature, it was from when they were minors, etc.*) are not believed.

The Gemora notes: This implies that it had to have been questioned, implying that if it (the previous document with their signatures on it) was not questioned, they are believed. This is a proof to Rabbi Assi, for Rabbi Assi said: A document cannot be validated through another document, unless the other document had been questioned, and was subsequently authenticated by Beis

Din (for otherwise, we need to be concerned that it was a forgery).

It was said in Nehardea: A document cannot be authenticated unless it was from two *kesuvah* documents (where these same witnesses signed), or from the documents of the sales of two fields, and provided that the owner was there for three years without any complaints (for this guarantees that the documents were indeed valid).

Rav Shimi bar Ashi added: These other documents must be produced by another person, but if they are produced by the party holding the document, we do not accept it.

The Gemora asks: Why is it different that we do not rely on these documents when they are produced by their holder? It is because we are concerned that perhaps he forged the third document based on the signatures of witnesses from other documents in his possession. If so, perhaps – even when it is produced by another person, he went and saw the other documents and came home and forged this one?

The Gemora answers: It is too difficult for a person to match signatures (that he merely saw and does not have the documents in his possession to copy from). (20a2 – 20a3)

### ***Jogging a Witness' Memory***

***[The halachah is that Beis Din accepts only the oral testimony of a witness, not his written testimony. This is derived from the verse: through the mouths of two witnesses, where we derive that it is only through their mouths, but not through their written record of a matter that they saw. Our Gemora discusses what the halachah would be if a witness would write that which he observed in order to remind himself of that which occurred, so he can testify orally about it at a later date.]***



The Gemora cites a braisa: A person can write down his testimony (that he was designated as a witness for something) on a document, and testify from it even after many years.

Rav Huna states: This is only if he indeed remembers it himself. [He remembers the incident without looking at that which he wrote; he is using the document to remember the details.]

Rabbi Yochanan said: Even if he does not remember it himself (*but after reading it, he remembers the incident*).

Rabbah says: It is evident from Rabbi Yochanan that if two people knew testimony about a certain matter and one merely forgot it, the other person can remind him. [Just as a written document can jar someone's memory enough to testify, so too his fellow can remind him.]

The Gemora inquires: Can the litigant himself remind him?

Rav Chaviva says: Even the litigant himself may remind him. Mar the son of Rav Ashi says: The litigant himself may not remind him (for it might be tainted).

The Gemora rules: The halachah is that the litigant himself may not remind him of that which occurred. However, if the witness is a young rabbinic student, he can be reminded by the litigant himself (for he is very meticulous in his actions; he would not testify if he wasn't certain that the incident occurred).

The Gemora relates: This is as happened when Rav Ashi knew testimony concerning Rav Kahana, and Rav Kahana said to him, "Does the master remember testimony for me in this matter?" Rav Ashi said, "No, I do not." Rav Kahana said, "Didn't this and this happen?" Rav Ashi responded, "I do not know." However, Rav Ashi eventually remembered that this is indeed what had

happened, and testified to that effect. Rav Ashi saw that Rav Kahana was amazed that he had testified. Rav Ashi told him, "Do you think I relied on your reminder of the events? I reminded myself and fully remembered." (20a3 – 20b1)

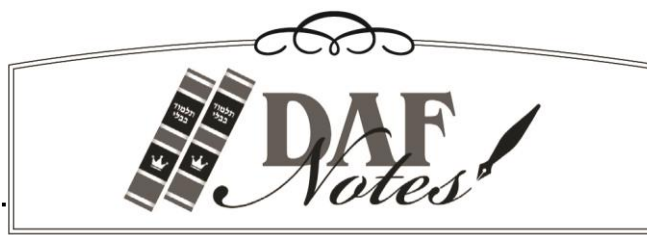
The Gemora cites a Mishna: Fresh mounds of earth that are close to either a city or a path, whether the mounds are old or new, should be considered impure (*as there is a good probability that they contain dead bodies; they were commonly used as burial sites, for due to their elevation, passersby would not walk over them*). If they are far away from the city or path, the new ones are considered pure (for it would be common knowledge if someone was buried there) and the old ones are considered impure.

The Gemora explains: What is considered close? If it is within fifty cubits, it is regarded as close. What is considered old? If it is sixty years old it is deemed old. These are the words of Rabbi Meir. Rabbi Yehuda states: Close refers to the anything where there is nothing closer than it, and old means that no one remembered when it was established.

The Gemora explains further: What does the Mishna mean when it says "city" and "path?" If it refers to actual cities and paths, is there a doubt whether or not it has a status of impurity? Didn't Rish Lakish say that the sages found a reason to state that all places in Eretz Yisrael that are not known to be impure are not (for they wished to minimize the places that were off limits to the Kohanim)?

Rabbi Zeira explains: A "city" refers to a city next to a cemetery, while a "path" refers to the path in a cemetery.

The Gemora asks: It is understandable regarding the path of a cemetery, as sometimes twilight arrives and they bury the person in a mound. However, in a city next to a cemetery, everyone is buried in the cemetery!?



Rabbi Chanina answered: It is because women who miscarry bury their fetuses there, and those with skin afflictions bury their (amputated) limbs there.

The Gemora notes: A woman will only go by herself fifty cubits outside the city, but more than that, she would take a man with her and bury her fetus in the cemetery. Therefore, there generally is no impurity in other places (mounds more than fifty cubits from a city) in Eretz Yisrael.

Rav Chisda says: it is apparent from the law of Rabbi Meir that a person only remembers testimony for sixty years, not more.

The Gemora says that this is incorrect. Rabbi Meir was only talking about something which is not incumbent upon him to remember. However, when he was specifically made a witness he remembers for even longer. (20b1 – 20b2)

## INSIGHTS TO THE DAF

### Did Rav Ashi Deny Knowing Testimony in Beis Din?

There is a known rule throughout Shas that once a person has finished testifying, he cannot go back and alter his testimony. In our Gemora, Rav Ashi denied knowing testimony for Rav Kahana, but later remembered and testified? How could he do so? Didn't he already testify that he didn't know?

The Hagaos Ashri (#16) states that it is therefore clear that he did not deny knowing testimony in Beis Din, but rather, it was done outside of Beis Din. Other Rishonim, however, argue that the rule above is only if someone actually

testified regarding events that happened. However, if he merely says that he is not aware of the events and later remembers, this is not called going back and changing what he had said. He simply remembered that he knew testimony.

## DAILY MASHAL

### FROM THEIR MOUTHS AND NOT FROM THEIR WRITING

The Gemora states that Beis Din must hear the testimony directly from the mouths of the witnesses, but they cannot hear it from an interpreter, nor may they accept it through writing.

The Chasam Sofer explains that one who is not accustomed to speak falsehood, when and if he testifies falsely, it will be clearly recognizable on his face, and his manner of speech as well will demonstrate if he is speaking the truth or not. This, however, would not be the case if his testimony would be accepted by means of an interpreter or through his written words.