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Bava Basra Daf 31

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Changing a Claim

Two people each claimed to own the same land, and they each claimed that it belonged to their father. One brought witnesses that it had belonged to his father, while the other one brought witnesses that he had established a *chazakah* (*he had been there for three years without anyone protesting his presence*). Rabbah says: The one who established a *chazakah* has a *migu* claim, as he could say that he (*should be believed with his claim as he*) could have claimed that he bought it from the person who claimed to have inherited it from his father.

Abaye countered: We do not say a *migu* when it is contradicted by witnesses. [*Being that he clearly lied when he said it belonged to his father, as stated by the witnesses that it belonged to the other person’s father, his claim cannot even be helped with a migu claim. This is because his claim must still be correct, whether or not he has a claim that he could have said something else.*]

The one who had a *chazakah* then claimed this very claim (*that he had bought it from the other person’s father*). He explained that he had only said it had belonged to his father (*when it really had not*) because he meant that he relied on that land as being his, as if it had belonged to his father.

The *Gemora* asks: Can a person retract and make a different claim in *Beis Din*? Or do we say that once he has made his claim, he can no longer change it?

Ulla says: He may change his claim. The Nehardeans said: He cannot do so. Ulla admits that in the case of our *Gemora*, if the person would have stated that it had belonged to his father and not to the other litigant’s father, he could not retract and claim that he meant it was his, as if he inherited it from his father.

Furthermore, Ulla admits that if he claimed something in *Beis Din*, left *Beis Din*, and then proceeded to come back and change his claim, we do not accept this (*if this change is somewhat contradictory to his former claim*). Why? This is because it is clear that someone taught him what to say in order that he should win.

The Nehardeans would admit that if he says that my forefathers bought it from your forefathers, he may change his claim (*from his original claim that it was simply his fathers, as he is not really changing his claim; he is merely adding to it*).

Furthermore, the Nehardeans admit that if he claimed things outside of *Beis Din*, and then comes to *Beis Din* and makes a contradictory claim, his claims are accepted. Why? A person will often reveal his claims only to *Beis Din* (*and will lie when asked outside of Beis Din regarding what he is going to claim*).

Ameimar says: I am from Nehardea, and I hold that one may change his claim. The law indeed is that one may change his claim (*as long as he does not totally contradict what he said*). (31a)

Witnesses Who Were Contradicted

Two people each claimed to own the same land, and they each claimed that it belonged to their father. One brought witnesses that it had belonged to his father and that he had established a *chazakah*, while the other one brought witnesses only that he had established a *chazakah*.

Rav Nachman ruled: The contradictory testimony about the *chazakah* cancels each other, and the one who brought testimony that it belonged to his father wins.

Rava asks: Aren't these witnesses (*and thereby their entire testimony*) contradictory? [*Being that one is lying, the testimony about the father should also be thrown out, as they are very possibly the liars!*]

Rav Nachman replied: While the testimony regarding the *chazakah* was contradictory, the testimony regarding the father was not contradicted (*and it therefore stands*).

The *Gemora* asks: Let us say that Rava and Rav Nachman argue regarding the same argument as Rav Huna and Rav Chisda. This is as it was taught: What is the law regarding two sets of witnesses that contradicted each other? Rav Huna says: Each can still testify in separate cases regarding anything else. Rav Chisda says: These witnesses are never valid anymore

(*being that they might be liars, we cannot do anything based on their testimony*). Let us therefore say that Rav Nachman holds like Rav Huna, and that Rava holds like Rav Chisda.

The *Gemora* answers: Everyone indeed agrees that Rav Nachman cannot hold like Rav Chisda, and that Rava can hold like Rav Chisda. However, they can argue regarding the position of Rav Huna. Rav Nachman holds like Rav Huna. However, Rava can say that he also holds like Rav Huna. He can say that Rav Huna maintained that the witnesses can only continue to testify in the cases other than the one in which they were found to be contradicted. However, Rav Huna would agree that they are not believed regarding other details of the case that they testified to when they were contradicted.

The one who did not bring testimony that it belonged to his father proceeded to bring testimony to this effect (*meaning that the testimony for each side was the same*).

Rav Nachman said: We brought him up (*as the winner*), and we can remove him. We do not worry about the fact that people might scoff and denigrate the *Beis Din* (*for changing its verdict*).

Rava, and some say Rabbi Zeira, asked a question from a *braisa*. The *braisa* states: Two witnesses say he (*a woman's husband*) died, and two say he did not. Two say she got divorced, and two say she did not. She should not remarry (*in both cases*). If she did, she does not have to get divorced. Rabbi Menachem the son of Rabbi Yosi says: She must get divorced. Rabbi Menachem the son of Rabbi Yosi says: When do I say that she must get divorced? This is when witnesses testified and she then remarried. However, if she

remarried and only then witnesses came and said that her husband did not die (*or she did not get divorced*), she does not have to get divorced. [*It seems that the reason she does not have to get divorced in this last case is because we are scared people will scoff at the Beis Din for changing their mind. This is difficult according to Rav Nachman who says that we do not worry regarding what people will think about the Beis Din.*]

Rav Nachman says: I thought to rule that we should change the verdict. However, now that you have asked this question and Rav Hamnuna in Surya asked the same question about this ruling (*from the same braisa*), I will not do so.

Rav Nachman changed the ruling anyway. Observers thought that he had made a mistake (*and forgot about the question and the fact that he stated he would not retract his ruling*). However, this was not true, as he in fact had decided to change the ruling based on important opinions. The *Mishna* states: Rabbi Yehudah says that we do not elevate someone to have the status of a *Kohen* based on the testimony of one witness. Rabbi Elozar says: This is where there are people who protest his status. However, where there are no protests to this elevation of status, one witness suffices to elevate a person to the status of a *Kohen*. Rabban Shimon ben Gamliel says in the name of Rabbi Shimon the son of Rabbi Chanina Segan Hakohanim: One witness suffices to elevate a person to the status of a *Kohen*.

The *Gemora* asks: Aren't the last two opinions similar? And if you will say that the difference between them is in a case where there is only one protestor, and Rabbi Elozar holds that such a protest is valid, whereas Rabban Shimon ben Gamliel maintains that a protest

requires two witnesses, this cannot be! For Rabbi Yochanan said that everyone agrees that a protest is not valid if it is made by less than two witnesses! [*The Gemora will continue with its proof.*] (31a – 32a)

DAILY MASHAL

Disgrace of the Court

The *Gemora* cites a discussion whether we are concerned with the possible disgrace of Beis Din.

Maskil LeDovid explains that we are concerned with the possible disgrace of Beis Din, for people will slander the judges by saying, "If they would be righteous people, the Holy One, Blessed be He, would not have brought a stumbling block through them."

Now, in truth, Tosfos says in many places that this principal (that the Holy One, Blessed be He, would not have brought a stumbling block through them) is only stated with regards to eating (that He would not allow a righteous person to eat or cause others to eat something that is forbidden), but since the populace are probably not aware of this distinction, we are concerned for the honor of the court.