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***Himself, His Wife, and His Money***

Rava says: If a person says, “I saw So-and-so cohabiting with my wife,” he and another person can combine to be witnesses who will cause the perpetrator to be put to death by *Beis Din*. However, they cannot put his wife to death through their testimony.

The *Gemora* asks: What is this teaching us? It must be that we split his words (*we believe his statement that this man had relations with a married woman, but not that it was his wife*). Didn’t Rava already say this earlier (9b)?

The *Gemora* answers: One might think that while we say that a person is considered a relative to himself, we do not say this regarding his wife. Rava therefore teaches that this is also true regarding his wife. (*Rashi and Tosfos’ explanation that without Rava we would think that we also kill the wife is quite difficult. The Yad Ramah explains that they probably mean that because when he saw the act his wife instantly became forbidden to him, as a woman who willingly cheats becomes forbidden to her husband, she is no longer considered a relative regarding this testimony. Rava teaches this is incorrect. The Yad Ramah, Ran, and others explain this Gemora in a completely different way.*)

Rava says: If witnesses testify that a person cohabited with a betrothed woman, and they then were made into *zomemim* (*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*), the *zomemim* are killed and do not pay money (*the kesuvah that they attempted to make her lose*). [*Being that the witnesses never said the name of the woman, they did not really try to make a specific woman lose money in their testimony.*] If they testified that the woman was a certain person’s daughter, they are killed and they pay money. They pay money to the father of the daughter (*who was a na’arah, and the money due to her marriage therefore goes to her father*) and they are killed because of the couple they wanted to kill.

Rava says: If witnesses say that a certain person cohabited with an ox (*they did not know whose ox it was*) and they are then made into *zomemim*, they are killed but do not pay money (*the value of the ox to its owner*). If they say whose ox it was, they are killed and pay money. They pay money to the owner of the ox (*as they tried to get it killed based on the law that an animal involved in relations with a person is killed*), and they are killed because they tried to have the accused killed.

The *Gemora* asks: Why do we need both cases? They teach the same lesson!

The *Gemora* answers: The second case is needed for a question asked about this case. This is as Rava asked: What

is the law if someone testified in *Beis Din* that a person cohabited with his ox? Do we say that a person is considered related to himself, but not to his money (*and he is therefore a valid witness on this incident*)? Or do we say that a person is considered related to his money (*and is therefore an invalid witness*)?

After Rava asked this question he answered it himself. He said: A person is considered related to himself, but not to his money. (9b – 10a)

### **Amount of Judges**

The *Mishna* had stated that cases punished by lashes are judged by three people etc.

The *Gemora* asks: How do we know this?

Rav Huna answers: The verse says: *And they will judge them*, implying two judges. A *Beis Din* cannot be composed of an even amount of judges, and therefore, we add another to make three judges.

The *Gemora* asks: There are two other plural words stated regarding lashes, “*And they will make righteous*” and “*And they will indict.*” This should make a total of seven judges!?

The *Gemora* answers: These words are needed for Ulla’s teaching. Ulla says: Where is there a hint for *zomemim* in the Torah?

The *Gemora* interrupts: How can Ulla ask this? Doesn’t the Torah explicitly say, “*Like they planned to do*”? [The Torah explicitly discusses the laws of *zomemim*!]

Rather, Ulla is asking for a hint that *zomemim* receive lashes (*when they cannot be given what the accused was supposed to receive, see Makkos 2a-b*). The verse states: *And they will proclaim the righteous as a righteous person, and they will proclaim the evildoer as an evil person (and*

*they will then give lashes to the evildoer*). Is it because they will proclaim the righteous as a righteous person, and proclaim the evildoer as an evil person that they will then give lashes to the evildoer? [What does proclaiming the righteous person into a righteous person have to do with the evil person receiving lashes?] Rather, this refers to witnesses who testified falsely against a righteous person, and then other witnesses came and made the victim into a righteous person (*by turning these witnesses into zomemim*). This leads to the witnesses receiving lashes.

The *Gemora* asks: Why can’t this be derived from the prohibition against testifying falsely, “*Lo sa’aneh*”?

The *Gemora* answers: This is because it is a negative prohibition that does not entail an action, and one does not receive lashes for transgressing such prohibitions.

The *Mishna* had stated: Rabbi Yishmael says that cases of lashes require twenty-three judges.

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

Abaye answers: We derive “*rasha-rasha*” from sins punished with death. The verse says here (*regarding lashes*), “*And it will be that the “rasha” -- “evildoer” will receive lashes.*” It says elsewhere, “*That he is an evildoer to die.*” Just as the capital case must be judged with twenty-three judges, so too a case of lashes must be judged with twenty-three judges.

Rava says: Lashes are instead of death (*this is why Rabbi Yishmael says twenty-three judges are required*).

Rav Acha the son of Rava asked Rav Ashi: If so, why do we need to estimate how many lashes a person can take and survive before he is given lashes? If he dies, he received what he deserved!



Rava responded: The verse states: *And your brother will be denigrated (i.e. hit) before your eyes*. This teaches that when he is hit, he should be alive.

The *Gemora* asks a question from a *braisa*. The *braisa* states: If they estimated he can only bear twenty lashes, he only receives multiples of three, meaning that in this case, he receives eighteen lashes. Why don't we let him receive twenty-one, and he will die after the last lash, as he will be hit while he is alive!?

Rava answers: This verse: *And your brother will be denigrated (i.e. hit) before your eyes* teaches that after he has been hit, he should remain alive.

The *Mishna* had stated that adding to the month requires three judges.

The *Gemora* asks: It does not say that figuring out whether or not to add a day or sanctifying the new month requires three. Rather, it says adding a new day is with three. Why don't we just refrain from sanctifying the new moon (*on the twenty-ninth of the month if witnesses do not come to testify regarding a new moon*) and allow the month to automatically have an extra day? [*We should not have to proclaim an extra day in the month!*]

Abaye says: The *Mishna* should read sanctifying the month.

The *braisa* similarly states: Sanctifying the new month and making a leap year requires three judges. These are the words of Rabbi Meir.

Rava asks: Doesn't our *Mishna* explicitly say "adding to the month"?

Rather, Rava explains: If the sanctifying of the month is on the thirtieth, three must sanctify it. If it is on the thirty-first, they do not have to sanctify the month.

The *Gemora* notes that this is like the opinion of Rabbi Elozar the son of Rabbi Tzadok. The *braisa* states: Rabbi Elozar the son of Rabbi Tzadok says that if the moon has not yet been seen on the thirtieth day, it is not necessary to sanctify the month on the thirty-first day, as they already sanctified the month in Heaven.

Rav Nachman says: If the sanctifying of the month is on the thirty-first, three must sanctify it. If it is on the thirtieth, they do not have to sanctify the month.

The *Gemora* asks: Whose opinion does Rav Nachman follow?

The *Gemora* answers: This is the opinion of Plimo. The *braisa* states: Plimo says that when the moon is on time, we do not sanctify it. When it is not on time, we do sanctify it.

Rav Ashi says: The *Mishna* actually means figuring out whether or not to add a day. It says "adding" because it means figuring out whether or not to add a day. Being that it wanted to say three judges are needed to make a leap year, it also said they are necessary to add an extra day to the month (*even though the Mishna meant to calculate it, not to add it*).

The *Gemora* deduces from this statement that three are only needed to figure out the necessity of an extra day, not to sanctify the new month. Who is this like? It is like the opinion of Rabbi Elozar. This is as the *braisa* states: Whether or not the new moon is on time, *Beis Din* does not sanctify it, as the verse states: *And you will sanctify the fiftieth year*. One sanctifies years, not months.

The *Mishna* had stated: Rabban Shimon ben Gamliel says with three etc.

The *braisa* states: What is the process according to Rabban Shimon ben Gamliel? One starts with three judges,



discusses with five, and ends with seven. If in the first hearing, one judge says to continue discussion while the other two dismiss this notion, the notion is dismissed. If two say to continue and one says to dismiss, two more judges are added and they continue the discussion. If two say they should make a leap year and three dismiss the notion, the notion is dismissed. If three say to make a leap year and two argue, two judges are added, as the number to institute a leap year cannot be less than seven.

The *Gemora* asks: What is the significance of three, five, and seven judges?

Rabbi Yitzchak bar Nachmeini and another person with him argued about this, the other person being Rabbi Shimon ben Pazi. Some say Rabbi Shimon ben Pazi and another person with him argued about this, the other person being Rabbi Yitzchak bar Nachmeini. One says this is corresponding to the words of *Birchas Kohanim* (in the three verses, there are three, five, and seven words respectively). One says three is based on the three gatekeepers (of a king), five is those servants who can see the king, and seven is the officers who can see the king (based on deductions from the book of Kings).

Rav Yosef taught: One says that three is based on the three gatekeepers, five is those servants who can see the king, and seven is the officers who can see the king.

Abaye asked him: Why didn't you explain this to us earlier?

Rav Yosef answered: I didn't know that you needed me to tell you. Have you ever asked me something and I refused to tell you? (10a – 10b)

## INSIGHTS TO THE DAF

### *Birchas Hachodesh*

In the sefer Yereim (259) it is written: That which Jews all over the world have the custom to announce the new month on *Shabbos* before *Rosh Chodesh* (*birchas ha'chodesh*), this is not the sanctification of the new month, for we do not have the *Rosh Beis Din* amongst us and he is an integral and essential part of this *mitzvah*. The Rishonim established this custom merely as a way of notifying the people when *Rosh Chodesh* will be.

The Magen Avraham (O:C, 417) writes that it is, nevertheless, the custom to stand by *birchas ha'chodesh* - specifically when we are saying that "*Rosh Chodesh* will be on Such-and-such a day," similar to when *Beis Din* sanctified the new month, which was done while standing.

Reb Akiva Eiger (ibid) asks: Where is it found that the sanctifying of the month was done standing? On the contrary! It would seem from the beginning of the third *perek* of Rosh Hashanah that it was done while sitting!?

Reb Moshe Feinstein zt"l (O:C I; 142) answers this question based upon a *Gemora* in Rosh Hashanah (24a) which states that first the *Rosh Beis Din* would say, "*Mekudash*" – "It is sanctified," and then the entire congregation would say in unison, "*Mekudash, mekudash.*" And certainly, the entire congregation, who were there at the *Beis Din*, were not all sitting; they were standing! We find like this by the *mitzvah* of *chalitzah* as well, where the *Gemora* in Yevamos (106a) states that there is a *mitzvah* for all the people standing there to say "*chalutz hana'al.*"

Reb Moshe understands that the *Rosh Beis Din's* saying "*Mekudash*" was the *p'sak din* – the witnesses were fully cross-examined and the *Beis Din* came to a conclusion with respect of the new month. The *Rosh Beis Din* announced this ruling. Then, there was a *mitzvah* on the congregation to sanctify the new month. This, they accomplished, by saying, "*Mekudash, mekudash.*" He derives this from a Scriptural verse, and it can be inferred from the language of the Rambam, as well.



That which we recite *birchas ha'chodesh* is based upon the congregation's saying of "*Mekudash, mekudash.*" It is not on account of the *Rosh Beis Din's* announcement of the judgment, for this was already done by Hillel's *Beis Din* (when he arranged the calendar for the future). This is why the custom is to stand. The inference of the *Gemora* in Rosh Hashanah that they were sitting is only in reference to the *Beis Din*, not to the people standing there. It also stands to reason that the "*Mekudash, mekudash*" should be said standing, for this was the *mitzvah* of sanctifying the new month, and *mitzvos* (as a general rule) are performed while standing.

## HALACHAH ON THE DAF

### *Palginan Dibura*

The *Gemora* teaches us that if Reuven testifies in *Beis Din* that Shimon cohabited with his wife, and with Reuven there is another witness, we can consider them two witnesses and Shimon gets killed. The *Gemora* explains that it would work only because of *palginan dibura* (we split his words). Rashi explains that we accept his testimony in regard to Shimon but not in regard to his wife, since she is related to him and he is not a valid witness.

The *Shulchan Aruch* (Choshen Mishpat 34:26) has several cases where *palginan dibura* applies:

1) A *loveh* (borrower) may testify that the *malveh* (lender) lent money to him with interest, and although he cannot testify on himself, we enact *palginan dibura* and we split his sentence. Instead of hearing the entire testimony that the *malveh* lent money to him with interest, we only listen to part of it; i.e., the *malveh* lent with interest (*S'ma*). Therefore, if there would be another witness, *Beis Din* will disqualify the *malveh* from being believed when giving testimony in the future (an *oveir aveira* is disqualified as a witness).

2) Reuven testifies in *Beis Din* that Shimon sodomized him, we invoke *palginan dibura*, and if there would be another witness testifying, *Beis Din* will disqualify him.

3) Similarly, if Reuven testifies in *Beis Din* that Shimon cohabited with his wife, and there is another witness, *Beis Din* will disqualify Shimon (the *Shulchan Aruch* doesn't state that he gets put to death, because the *Shulchan Aruch* is talking to our generation, where there isn't any court-imposed death penalty).

The *Rashba* distinguishes between the case where he says, "Shimon cohabited with my wife," and where he said, "I cohabited with Shimon's wife." In the latter case, we don't say *palginan dibura*.

4) Reuven testifies in *Beis Din* that Shimon sodomized Reuven's animal, if there will be another witness, *Beis Din* will disqualify Shimon. The *S'ma* points out that this case is different than the above cases, since there is no such concept that Reuven is related to his animal, and therefore, in the times of the *Sanhedrin*, we would kill the animal as well.

Not in all cases do we say *palginan dibura*. The *Mordechai* (*Yevamos*) and *Tosfos* in *Kesuvos* (18b) rule that cases which are not common, or if you need to add a reason to his sentence, then we don't say *palginan dibura*.