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Motzi Sheim Ra

The Gemora questions why the Sages require twenty-three judges, since in the current case there is no capital element.

The Gemora offers several explanations of the dispute:

Rav Ashi (*the fifth of the explanations*) similarly says that the case is where the husband has witnesses, but who warned her that she would be punished with lashes, but not death. Both Rabbi Meir and the Sages agree that she will be given lashes only, but they disagree how many judges are necessary for a case of lashes. Rabbi Meir follows the Sages later in the Mishna, who require only three judges, while the Sages follow Rabbi Yishmael, who requires twenty-three.

Ravina says that the case is where one of the witnesses was found to be a relative (*of one of the parties*) or otherwise disqualified. Their point of difference is the same as that in which Rabbi Yosi and Rebbe according to the opinion of Rabbi Akiva. For we learned in a Mishna: Rabbi Akiva says (*regarding the reason for the Torah saying that there can be “two or three witnesses”; if the testimony is valid with two, why mention three?*) 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 (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 “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. This is the dispute between Rabbi Meir and the Chachamim. The case was as follows: Three witnesses testified regarding her infidelity and one of them was found to be a relative or otherwise disqualified, but this witness was quiet and he did not warn her. Rabbi Meir holds like Rabbi Yosi that by capital cases, even if the disqualified witness was quiet, he still joins them as a witness, and the entire testimony is voided. It emerges that there is only a claim from the husband regarding her kesuvah, and for that, it is sufficient with three judges. The Chachamim, however, hold like Rebbe that if the disqualified witness was quiet, he does not join them as a witness, and the testimony can be effective through the remaining witnesses. Therefore, it is a capital case and twenty-three judges are required.]

Alternatively, you may say that the case of the Mishna is one where the woman was warned by others, but not by the witnesses. The point of difference between them is the same as that is between Rabbi Yosi and the Rabbis, for we learned in a Mishna: Rabbi Yosi says: The perpetrator cannot be executed unless he was warned by the two who witnessed the crime, for it says: *At the mouth of two witnesses (shall he be put to death)*. [The Rabbis disagree and maintain that he can be put to death even if he was warned by others (who were not the witnesses to the crime). This is the dispute between Rabbi Meir and the Chachamim. Rabbi Meir holds like Rabbi Yosi and that is why he is not killed; that is why it is sufficient with three judges – in order to rule that she should forfeit her kesuvah. The Chachamim, however, hold like the Rabbis, and that is why she gets killed, and a Beis Din of twenty-three would be required.]

Alternatively, you may say that the case of the Mishna is where the witnesses contradicted themselves in their answers regarding bedikos -- examinations (i.e., one witness testified that the adulterer was wearing white clothes,

whereas the other testified that it was black), but corroborated each other with their answers regarding chakiros – inquiries (such matters as date, time and place). And their point of dispute is the same as that which the Rabbis and Ben Zakkai differ; for we learned in a Mishna: Ben Zakkai once examined the witnesses minutely, enquiring as to the size of the stems on the fig tree (under which a murder had been committed). [Ben Zakkai holds that if they did not know if the stems were thin or thick, their testimony is invalid. The Rabbis disagree and hold that even if they contradict each other on matters such as these, their testimony is valid, for they are not responsible to know such trivial details. This is the dispute between Rabbi Meir and the Chachamim. Rabbi Meir holds like Ben Zakkai that if they contradicted themselves regarding the bedikos – even if they corroborated each other with regards to the chakiros – their testimony is invalid and she would not be put to death. This is why only three judges are necessary, for it is not a capital case. Three judges are sufficient to rule regarding her kesuvah. The Chachamim hold like the Rabbis, and therefore their testimony is valid, provided that they do not contradict each other regarding the chakiros, and therefore twenty-three judges are required in order to decide if she should be put to death.]

Rav Yosef said: If a husband produces witnesses testifying to his wife's infidelity, and her father produces witnesses refuting their testimony (by stating that the first pair was with them somewhere else at the time that they claimed to be witnessing the adultery), the husband's witnesses are liable to death, but are exempt from paying her the value of the kesuvah (although that was part of their testimony; the reason being is because of the principle of *kim leih bid'rabbah minei* - whenever someone is deserving of two punishments, he receives the one which is more severe). If, however, the husband produces witnesses to refute the father's witnesses (by stating that the second pair was with them at that time), the father's witnesses are then liable to death (for they were scheming against the first pair) and they are also obligated to pay the fine to the husband (for they were testifying that the husband is obligated to pay one hundred shekels to the father). The principle of *kim leih bid'rabbah minei* does not

apply in this case, for the money is being paid as a retribution for their intention to cause the husband to lose, and the death penalty is retribution for their intention to have the witnesses put to death.

And Rav Yosef said: If a man says, "So-and-so committed sodomy with me against my will," he himself with another witness can combine to testify against the perpetrator. If, however, he said, "So-and-so committed sodomy with me with my consent," he is a wicked man and the Torah states: *Do not use a sinner as a witness.* (8b - 9b)

INSIGHTS TO THE DAF

BLACKMAILING FATHER TESTIFIES THAT HE MARRIED OFF HIS MINOR DAUGHTER

And Rav Yosef said: If a man says, "So-and-so committed sodomy with me against my will," he himself with another witness can combine to testify against the perpetrator. If, however, he said, "So-and-so committed sodomy with me with my consent," he is a wicked man and the Torah states: *Do not use a sinner as a witness.*

Raba said: Every man is considered a relative to himself, and he cannot incriminate himself (as a sinner).

The following question was raised to the *poskim* years ago: A man testified in *Beis Din* that he married off his minor daughter, but he refused to state the identity of this man. His intention was to put pressure on his wife for her to accept a divorce without receiving any alimony payments and to have equal visitation rights for the children. Do we accept his testimony and consider the girl as a married woman?

Rav Eliyahu Pesach Ramnik, Rosh Yeshiva of Ohavei Torah in Far Rockaway applied the principle of 'a person is not believed to establish himself as an evil person' as the basis for his ruling. He explained: The father, who is testifying that he married off his minor daughter, is establishing himself as a

wicked person for several different reasons. Firstly, if in truth, he has married her off in order to extort money from his wife, using a mechanism of the Torah in this manner causes a tremendous desecration of Hashem's Name, and if the wife does not concede to his demands, the child will remain an *agunah* her entire life. This will result in an even bigger *chilul* Hashem. Secondly, he is transgressing the prohibition of causing pain to another fellow Jew. The pain and the embarrassment that he is causing his wife and daughter to endure is indescribable. Thirdly, the *Gemora* in Sanhedrin (76a) states that one who marries his daughter to an elderly man transgresses a Biblical prohibition of causing his daughter to sin, since she will not be satisfied in that marriage; certainly in this case, the father will be violating this prohibition, for the daughter does not even know the identity of her true husband. Based on these above reasons, it emerges that by accepting the father's testimony, he would be rendered a *rasha*, and therefore, his testimony should not be accepted and his daughter would not be regarded as a married woman.

Rav Yitzchak Zilberstein, in his sefer *Chashukei Chemed* questions the above conclusion. He cites several Acharonim who rule that when a man has already been established as a *rasha* regarding other matters, his testimony can still be valid (provided that he is not disqualified from offering testimony) even though it also renders him a *rasha*. The Chacham Tzvi (responsa 3) rules that if someone has violated a light transgression in our presence, he would still be believed that he has violated an even stricter prohibition. This is because his testimony is not rendering him a *rasha*; he already has established himself a *rasha*. It is for this reason that we will be compelled to accept the father's testimony that he married off his daughter, for this man has already been established as a *rasha*. He is desecrating the name of Hashem by using the Torah's mechanisms for evil purposes and by causing pain and grief to his wife and to his daughter.

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).

DAILY MASHAL

The Talking Tree

If the matter is as clear to you as your sister's being forbidden to you, pronounce it, but if not, do not pronounce it.

Our *Gemora* emphasizes a dayan's duty to seriously consider the ruling he intends to announce and stresses that his decision must be completely clear to him.

Once, the Brisker *rav*, Rabbi Chayim Soloveichik zt"l, wanted to impress upon his son, who became the next Brisker *rav*, how clear everything must be to the person who says it. One's pronouncements, he said, must be the firm and utterly unyielding truth, and he presented the following parable: Imagine you are passing by a tree and that someone there tells you that the tree spoke a few minutes ago. You would immediately conclude that he was unbalanced and even if ten people tell you the same, you would judge them insane. But if a thousand people say the same, you would start to think they were apparently mistaken and if 100,000 insist on it, you must consider that a tree could talk. This means, then, that it was never clear to you that trees can't speak!