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Combining Witnesses

The Nehardeans said: Even if one witness testified that he lent a black *maneh*, and one testified that it was white, they combine to be valid witnesses.

The *Gemora* asks: Whose opinion does this follow?

The *Gemora* answers: It follows the opinion of Rabbi Yehoshua ben Korchah (*who says that if one said he owes two hundred and the other says he owes one hundred, they combine to testify regarding one hundred*).

The *Gemora* asks: It is possible that Rabbi Yehoshua ben Korchah only said his law when they are not openly contradicting each other (*as they could each be discussing two different loans*). However, if they are openly contradicting each other, would he agree that they combine?

Rather, the Nehardeans were following the opinion of the following *Tanna*: The *braisa* states: Rabbi Shimon ben Elozar says that Beis Shammai and Beis Hillel only argue regarding a case where there are two sets of witnesses, and one says that an amount of money involved (*in any case*) is one hundred and one says it is two hundred. In such a case, they agree that included in two hundred is one hundred. What is their argument? Their argument is regarding one set of witnesses, and one says that an amount of money involved is one hundred and one says it is two hundred. Beis Shammai says: Their testimony is

contradictory. Beis Hillel says: Included in two hundred is one hundred.

There was an incident that came before Rabbi Ami. One witness testified that the defendant owes a barrel of wine and the other testified that he owes a barrel of oil. Rabbi Ami ordered the defendant to pay the value of a barrel of wine, which is cheaper than a barrel of oil. Who did his ruling follow? It must be Rabbi Shimon ben Elozar.

The *Gemora* asks: It is possible that Rabbi Shimon ben Elozar only said his law because included in two hundred is one hundred. However, here a barrel of wine is not inherently included in a barrel of oil!?

The *Gemora* answers: The case is where the witnesses testified regarding his owing the value of a barrel of wine and oil.

One says that the loan took place upstairs, while one says it took place downstairs. Rabbi Chanina says: This incident was presented to Rebbe, and he combined their testimony.

The *Mishna* had stated: How do we know that when he comes out of *Beis Din* etc.

The *braisa* states: How do we know that when a judge comes out of *Beis Din*, he should not say that he voted that the defendant was innocent, but his friends voted guilty, and he was helpless to sway the verdict? The verse teaches: *Do not be a gossipmonger among your nation*.



Additionally, the verse says: *A gossipmonger goes and reveals secrets.*

There was a student who rumor had it had said over a secret incident that had happened twenty-two years previously in the *Beis Medrash*. Rav Ami threw him out of the *Beis Medrash*, and said, "This one reveals secrets." (31a)

Mishna

As long as one can bring proof, he can change the judgment. If *Beis Din* told him: "Any proof that you have must be brought within thirty days," if he brings such proof within thirty days, he can have the verdict changed. If it is after thirty days, he cannot have the verdict changed. Rabban Shimon ben Gamliel says: What can this person do if he could not find proof within thirty days, and only found it after thirty days?

The *Beis Din* said, "Bring witnesses" and he said, "I have no witnesses." They said, "Bring proof," and he said, "I have no proof." If after awhile he brought witnesses or proof, they are invalid. Rabban Shimon ben Gamliel says: What should this person do if he thought he did not have witnesses, and now he finds that he does? What should this person do if he thought he did not have proof, and now he finds that he does?

If a person sees he is going to be held liable and he then says, "Let So-and-so and So-and-so come close and testify for me," or he pulls a proof out of his pocket, it is invalid. (31a)

Rulings

Rabbah bar Rav Huna says: The law follows Rabban Shimon ben Gamliel (*that evidence brought after the time limit is accepted*). Rabbah bar Rav Huna also said: The law does not follow the *Chachamim*.

The *Gemora* asks: The second statement is redundant!?

The *Gemora* answers: One might think that the law ideally follows Rabban Shimon ben Gamliel, but not after the fact. This is why he reiterates the law is not like the *Chachamim* at all (*even b'dieved*), and if a judge rules like him, the decision is invalid.

The *Mishna* had stated: If the *Beis Din* says, "Bring witnesses," etc. Rabban Shimon ben Gamliel says etc.

Rabbah bar Rav Huna says in the name of Rabbi Yochanan: The law follows the *Chachamim* (*that his evidence is not accepted after he says that he has no proof or witnesses*). Rabbah bar Rav Huna also says: The law does not follow Rabban Shimon ben Gamliel.

The *Gemora* asks: The second statement is redundant!? [We cannot answer like before, for the *Chachamim* are the majority, and we will not rely on Rabban Shimon ben Gamliel's opinion at all!]

The *Gemora* answers: The second statement teaches that the only place that we do not rule like Rabban Shimon is in this *Mishna*.

The *Gemora* notes: This excludes Rabbah bar Chanah's statement in the name of Rabbi Yochanan that the law always follows Rabban Shimon when he is mentioned in the *Mishna*, besides in the cases of a guarantor (*see Bava Basra 173b*), Tzidon (*see Gittin 74a*), and the last case of proof (*in our Mishna*).

There was a young orphan who was brought to judgment before Rav Nachman (*regarding a claim from his late father's estate*). Rav Nachman asked him, "Do you have witnesses?" He said, "No." "Do you have proof?" He said, "No." Rav Nachman ruled against him. The young orphan went out crying. People heard him crying, and told him



(after asking why he was crying and finding out the details) that they know the details of the case (and brought him proof that showed the estate did not owe money). Rav Nachman said: In such a case, even the *Chachamim* of our *Mishna* would agree that this new proof is valid, as an orphan does not know the details of his father's estate. [When he said he has no witnesses or proof, he honestly did not know of any such proof, but it does not mean it did not exist.]

There was a woman who had a loan document involving two other people in her possession (she was holding it for them). She said: I know that the borrower paid this debt. Rav Nachman believed her (and ruled it was paid). Rava asked him: Is this because you hold like Rebbe, who says that a document can be acquired by being handed over? [Being that the lender had given her the document for safekeeping, she could have claimed that he had essentially "given" the loan to her; she therefore should be believed that it was paid up.]

Rav Nachman replied: This case is different (she is believed even not according to Rebbe), as if she wanted, she could have burned the document.

Others say: Rav Nachman did not believe her.

Rava asked him: Couldn't she have burned it? (She should therefore be believed if she says it was paid!)

Rav Nachman replied: Once the document appears in *Beis Din*, she is no longer believed (as we know it exists, she cannot deny it).

Rava asked Rav Nachman a question from a *braisa*. The *braisa* states: A receipt (*Rashi* and *Tosfos* argue what kind of receipt) that has the signatures of witnesses on it (in the hands of the debtor) should have the document verified through its signers and it is valid. If it does not have witnesses on it, and it is found in the hands of a third party

(who was entrusted to watch it), or it was on the bottom of the original loan document, it is valid. This shows that a third party is believed! This is a refutation on this version of Rav Nachman.

When Rav Dimi arrived (in *Bavel*), he said in the name of Rav Yochanan: He can bring new proofs and reverse the verdict until he declares that his claims are finished, and then he says, "Let So-and-so and So-and-so come close and testify for me."

The *Gemora* asks: This statement contradicts itself! He starts by saying that he cannot bring more witnesses or proof when his claims are finished, which is in accordance with the *Chachamim*, and then he says that new evidence is acceptable unless he says, "Let So-and-so and So-and-so come close and testify for me." This is the opinion of Rabban Shimon ben Gamliel! If you will say the entire thing is according to Rabban Shimon ben Gamliel, and it is explaining that the end of his claims is when he says that these people should testify for him - this cannot be, for Rabbah bar Chanah said in the name of Rabbi Yochanan that the law follows Rabban Shimon ben Gamliel in the *Mishna* besides for the cases of a guarantor (see *Bava Basra 173b*), *Tzidon* (see *Gitin 74a*), and the last case of proof (in our *Mishna*)? [Why would Rav Dimi be saying a statement in the name of Rabbi Yochanan according to the opinion of Rabban Shimon when we clearly rule against him in this case?]

Rather, when Rav Shmuel bar Yehudah arrived, he said in the name of Rabbi Yochanan: He can bring new proof and reverse the verdict until his claims are finished. What is the case? They tell him, "Bring proof or witnesses," and he says, "I have no proof or witnesses."

However, if witnesses arrive from overseas or he retrieves his father's records from someone who was watching them, he can bring effective proof and reverse the verdict (even after he said that he has no more proof or witnesses).

When Rav Dimi arrived (*in Bavel*), he said in the name of Rav Yochanan: If someone forces another person to come to *Beis Din*, and one says they should go to the local *Beis Din*, while the other wants to go to the expert *Beis Din*, the second person can force them to go to the expert *Beis Din*.

Rabbi Elozar said to him: Teacher, if someone claims one hundred from his friend, can the person owing the money force him to spend another hundred (*in travel expenses to the further expert Beis Din*)? Rather, the first person can enforce the other to litigate in the local *Beis Din*.

It was also taught that Rav Safra discussed this case. He says: If two people were going to have a court case, and one says they should go to the local *Beis Din* while the other wants to go to the expert *Beis Din*, the first person can enforce the other to litigate in the local *Beis Din*. If the local *Beis Din* requires the expert opinions of the expert *Beis Din*, they can write to them and send them a message.

If a person says to the *Beis Din*, "Write down for me and give me a document stating the reason that you have judged against (*so that I may take this case to a higher court*)," they should write such a document and give it to him.

However, a *yevamah* must go to the place where the potential *yavam* is located in order to receive *chalitzah*. How far must she go? She must even go from Teveryah to Tzipori.

Rav Kahana says: What is the source for this in the verse? The verse states: *And the elders of his city will call out to him*. This implies it takes place in his city, not her city.

Ameimar says: The law is that we force him to go to the expert *Beis Din*.

Rav Ashi asked Ameimar: Didn't Rabbi Elozar say that he can enforce the other to litigate in the local *Beis Din*?

Ameimar answered: This is only regarding a case where the borrower wants to go to the expert *Beis Din*. However, if the lender wants to go to the expert *Beis Din*, we force the borrower to go, as the verse states: *A borrower is a slave to a lender*.

They (*the court in Teveryah*) sent Mar Ukva (*who was the head of the court in Bavel*) the following message: To the one who shines like the son of Bisyah (*i.e. Moshe Rabbeinu, see Rashi regarding why they called him by this title*), *shalom!* Ukvan the Babylonian screamed before us regarding the fact that his brother Yirmiyah castrated him. Tell Yirmiyah to appease him. Convince him to come see our faces in Teveyrah.

The *Gemora* asks: This statement is a contradiction! "Tell Yirmiyah to appease him" implies that they sent this case to Mar Ukva (*who was in Babylon*). "Convince him to come see our faces in Teveyrah" implies that they wanted to judge the case, and asked them to send Yirmiyah to them!?

Rather, they said to Mar Ukva: Tell Yirmiyah to appease him (*in other words; you should judge him*). If he listens, fine. If not, send him to us in Teveryah.

Rav Ashi says: This case was one involving fines which are not judged in Babylon. [*Therefore, they clearly did not ask him to judge the case.*] Rather, they sent him the details of the case as a matter of honor (*as Mar Ukva was a great Torah scholar*). (31a – 31b)

WE SHALL RETURN TO YOU, ZEH BORER



HALACHAH ON THE DAF

When does a Yevamah Follow the Yavam?

The *Gemora* states that a *yevamah* must go to the locale of the *yavam* in order to facilitate a *chalitzah*. The *Gemora* derived this from the verse which speaks about *chalitzah*, “the elders of his city,” in which we deduce; his city, and not her city. However, as we will soon see, (based on the *Shulchan Aruch Even Ha'ezer 166*) this *halachah* will only be invoked in rare instances.

Let us examine all the possible factors:

Both the *yavam* and the *yevamah* live in the same city -

The *yevamah* will not have to travel to his city, for she is already at that location.

The *yavam* and the *yevamah* live in two different cities -

This is the only instance where a *yevamah* would have to travel to the *yavam*.

The *yavam* and the *yevamah* live in two different cities, but the *yavam* traveled to a third city -

The Bais Shmuel writes; If a *yavam* travels away from his city (for example the *yavam* traveled to Florida for the winter), then the *yevamah* need not travel all the way to his temporary location. The Pischei Teshuvah understands this to mean that even in cases where the two reside in different cities. According to this interpretation, there would be a dispute between the Bais Shmuel and the Radvaz, for the Radvaz holds that in such an instance, the *yavam* will be forced to go to her city.

They both agree to go to a Beis Din in any of their respective cities -

The Shivas Tzion rules that they may do so; even if that means that the *yavam* will go to the *yevamah*'s city. He understands our *Gemora* to be referring

only to a case where they have a disagreement who should come to whom.

DAILY MASHAL

Issi ben Yehudah praises various chachamim and mentions how each one has a special quality that merits praise. Referring to R. Yehudah he says, “When he wants he is a wise person.” One needs to understand this statement, for what praise lies in a person’s being wise only when he wants to be wise? Commentators suggest several approaches for answering this question, but the “Ran” does not even have these words as the text of the Gemara.

The Maharatz Chayos, though, explains the praise marvelously. We know, he writes, that even very talented people are not always able to concentrate. Usually such people can think deeply and can resolve complicated problems that require deep thought over an extended period of time. Sometimes, though, without knowing why, a person feels that deep concentration and analysis is not possible for him. Likewise, sometimes a person is impoverished or is suffering in some other way. Or he is jealous of someone. In these situations, he is not composed and cannot think properly. The Maharatz Chayos writes, “You can’t find one person among 600,000 who can pride himself that at every time and moment he can enter the inner depths of the Torah.” In this respect, explains the Maharatz Chayos, R. Yehudah was uniquely gifted. Whenever he wanted, no matter what his situation might be, he was able to compose himself to tranquilly study Torah with full concentration.