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**Only Monetary Testimony**

Rabbi Shimon says that the Torah obligated one who made a false promise denying that he knew testimony (*eidus*) and one who falsely promised about an item he was guarding (*pikadon*). Therefore, we learn that just as the *pikadon* promise is a monetary issue, so the *eidus* promise is limited to monetary testimony. Furthermore, it is logical to apply this limitation, as a *pikadon* promise applies to cases which are not included in *eidus*:

1. *Pikadon* promises made by women, relatives, and those disqualified from testifying are liable, while *eidus* promises made by them are not liable, since they are invalid to testify.
2. When one makes a *pikadon* promises multiple times, he is liable for each one anywhere, while once made a false *eidus* promise in court, he may not testify, so his later promises are irrelevant, and he is not liable.

Rabbi Shimon then challenges this argument, by noting the ways that an *eidus* promise applies more widely:

1. One is liable even by the litigant verbalizing the promise, as if he promised.
2. One is liable for intentional as well as unintentional false promise, while a *pikadon* promise is liable only if done unintentionally.

Therefore, Rabbi Shimon concludes that we only know the equation of the two promises from the *gezeirah shavah* – common use of the words *techeta* – *will sin*, used in both promises.

The *Gemora* proceeds to discuss each opinion cited in the *braisa*. (33b – 34a)

**Rabbi Eliezer**

Rabbi Eliezer said that we learn an *eidus* promise denying testimony from a *pikadon* promise due to the identical use of multiple connecting *o* – *or* phrases.

Rabbah bar Ulla challenges this by saying that perhaps we should learn from the same phrases used in the topic of false *bituy* promises of expression (e.g., I will eat/not eat), which are not limited to monetary areas. This instance of *o* – *or* phrases is similar to *eidus* promises in that they are both discussing a promise, and do not mention a *Kohen*.

The *Gemora* says that there are similarities to both *pikadon* and *bituy*, but we learn from the *pikadon* promise, since it has more similarities

<i>Pikadon</i>	<i>Bituy</i>
Common phrase <i>techeta</i> – <i>will sin</i>	Liable for a <i>chatas</i> sacrifice
Applies even when done intentionally	Liable for a sliding scale sacrifice
Due to claim and denial	Not liable to pay extra fifth
About the past	

(34a)

**Rabbi Akiva**



Rabbi Akiva says that the phrase *mai'aileh* – from these limits the scope of *eidus* promises, since it is obligating only something *from* a larger set.

The *Gemora* says that since the exclusion does not indicate what to exclude, we could just as easily exclude *monetary* cases. Rather, the *Gemora* explains that Rabbi Akiva accepts Rabbi Eliezer's source for limiting the promise to a monetary case, but due to the *mai* – *from* clause, Rabbi AKiva further excludes cases of real estate.

Rabbi Yochanan, who says that Rabbi Eliezer agrees that real estate cases are excluded, says the dispute is a case of testimony about a fine, where Rabbi Eliezer will obligate the denying witnesses, while Rabbi Akiva will exempt them. (34a)

### **Rabbi Yosi Hagelili**

Rabbi Yossi Hagelili said that the verse which specifies *o ra'ah* – or he saw *o yada* – or he knew indicates that the case is monetary, since only in such cases can a witness prove a case by testifying only to what he *saw* - without *knowing* a context - or by testifying what he *knows* - without *seeing*.

Rav Pappa suggested to Abaye that Rabbi Yosi Hagelili disagrees with Rav Acha, who says that if a camel in a herd was violently coupling, and we later found a dead camel in the vicinity, we assume that camel killed it, although no one saw the killing. Since Rav Acha rules based on a compelling circumstance, he would accept one who testifies that he knows someone murdered, even though he did not see the act.

The *Gemora* presents the example of Rabbi Shimon ben Shetach, who saw chase someone into a ruin. He followed him in, and found the victim dead from a stab wound, and the pursuer holding a bloody sword. Rabbi Shimon ben Shetach told the pursuer that they both know he murdered, but the verse mandates that a murdered be executed only

based on two witnesses to the act. According to Rav Acha, Rabbi Shimon ben Shetach would be able to testify to the murder, since knowledge is enough.

The *Gemora* says that even according to Rav Acha there can be testimony in capital cases that is based purely on *knowledge*, but there cannot be testimony based purely on *seeing* an act, since the circumstances of the act determine if it is a capital offense or not (e.g., was the victim Jewish). Similarly, the *Gemora* says that Rabbi Yosi Hagelili does not obligate witnesses who falsely denied testimony about a fine, since such testimony also requires knowledge of the circumstances (e.g, was the woman a virgin and Jewish). (34a)

### **What did they see?**

Rav Hamnuna was sitting before Rav Yehudah, who asked what would be the ruling if one claimed that he counted out money to someone as a loan, and witnesses testify that from outside they saw the money transfer. Rav Hamnuna said that if the person receiving the money denied the transaction, he has been proven a liar by the witnesses, and is liable, while if he claims that it was not as a loan, the witnesses have not disproven him. Rav Yehudah invited Rav Hamnuna to come to the front of the lesson, as he was enlightening his teacher.

A person claimed that he counted out money as a loan to someone next to a certain pillar. The alleged borrower responded that he did not pass by that pillar, but witnesses testified that he urinated at that pillar. Rish Lakish said that he has been proven a liar, and must pay. Rav Nachman objected, saying this is Persian justice. Rather, we understand that he only meant that he did not pass by the pillar in the context of a loan. Some say the alleged borrower responded that he *never* passed by the pillar, and the witnesses testified that he urinated there. Rav Nachman said that he has been proven a liar, but Rava disagreed, explaining that one does not remember details which are

not relevant, and he may have forgotten that he urinated there. (34a – 34b)

**Rabbi Shimon**

In *Eretz Yisroel*, they mocked the version of the argument quoted in the *braisa*. The *Gemora* attempts to explain what aspect of the arguments they mocked.

1. If Rabbi Shimon knows that one is liable for his own *eidus* promise, this must be from a comparison with a *pikadon* promise. From the same comparison, we should obligate one for a *pikadon* promise verbalized by someone else, like an *eidus* promise. The *Gemora* deflects this, as Rabbi Shimon may just be learning that one's own *eidus* promise follows logically from someone else's promise – if someone else's promise works, definitely his own promise works.

2. Rabbi Shimon says that one is liable for an *eidus* promise even if he lied intentionally, while one is only liable for an unintentional *pikadon* promise. If Rabbi Shimon knows that an intentional *eidus* promise is liable since the verse does not say *v'ne'elam – and it was forgotten*, then he should say the same by *pikadon*, since its verse also does not say *v'ne'elam*. The *Gemora* deflects this, since he may learn that *pikadon* is only unintentional since the verse uses the term *ma'al – betray* both by *pikadon* and *me'ila – embezzling consecrated funds*, which is only liable when done unintentionally.

3. Why does Rabbi Shimon learn that *pikadon* is only unintentional from *me'ilah*, and not extend it to an intentional case, by learning from *eidus* instead? The *Gemora* deflects this, since *pikadon* is more similar to *me'ilah* than to *eidus*:

<i>Me'ilah</i>	<i>Eidus</i>
Common phrase <i>me'ilah</i>	Common word <i>techeta</i>
Applies to all people	Mundane (no consecrated property)
The person benefited from his transgression	Involves promise
A standard sacrifice, not sliding scale	Due to claim and denial
Pay fine of fifth	Both use <i>o – or</i> phrases
Sacrifice is <i>asham – guilt offering</i>	

Since Rabbi Shimon learns that *eidus* and *pikadon* are equivalent from the *gezeirah shavah*, why does he challenge the comparison by pointing out their differences? Once there is a *gezeirah shavah*, they should be equivalent in all aspects. The *Gemora* deflects this, as the challenge may be before Rabbi Shimon introduced the *gezeirah shavah*. Although Rava bar Isi told the Sages that Rabbi Shimon is the opinion that *pikadon* is only in an unintentional case, this is since it is learned from *me'ila*. We would have then applied this limitation to *eidus*, but the verse explicitly included an intentional violation. The verse lists three transgressions that are liable for a sliding scale sacrifice: promises of *eidus*, promises of *bituy*, and one who is impure and violates consecrated items. The verse is precise to state *v'ne'elam – and it was forgotten* in relation to all but *eidus*, indicating that it, unlike the others in its context, applies to even intentional violations.

The *Gemora* therefore leaves unexplained what the reason for the mocking was. (34b – 35a)

## INSIGHTS TO THE DAF

### **How Similar?**

The *Gemora* explains the reason Rabbi Eliezer learned *eidus* from *pikadon* and not *bituy*. One of the similarities the *Gemora* lists with *pikadon* is the common phrase *techeta* – will sin. Rashi explains that the common phrase is a formal *gezeirah shavah* – common use.

Rabbi Akiva Eiger challenges this, as Rabbi Eliezer offers a different source in the *braisa*. If Rabbi Eliezer accepted the common phrase as a *gezeirah shavah*, he would not need the source he presents in the *braisa*. Rather, Rabbi Akiva Eiger explains that the *Gemora* is just considering the similar phrase to be a similarity like the other ones listed, but not a formal *gezeirah shavah*.

### **Was he a Tereifah?**

The *Gemora* says that in capital cases, *seeing* without *knowing* is not enough to establish testimony, as the circumstances are crucial to establishing guilt. For example, if witnesses *see* a murder, the court cannot execute the killer unless they *know* that the victim was not a *tereifah*, who has a systemic anatomical flaw.

Tosfos (34a ee) explains that we generally assume a victim is not a *tereifah*, since most people are not. However, the *Gemora* is discussing a case where there were two people in the vicinity, one *tereifah* and one not, and the witnesses saw the murder, but did not know whether the *tereifah* or healthy person was killed.

### **Irrelevant?**

Rava says (34b) that something that a person does not remember things that are irrelevant. Therefore, if someone said in court that he never passed by a pillar, and witnesses then testify that he urinated there, he is not considered a

liar, since he did not remember the irrelevant information of where he urinated. This principle has varied applications in other areas of *halachah*:

1. If someone who never studied the *halachos* of *shechitah* slaughters an animal with no supervision, it is assumed to be invalid. Even if we ask him about it afterwards, and he answers correctly, we do not accept the *shechitah*, since he has no clear recollection of details that were irrelevant at the time. (Shulchan Aruch YD 1:3)

2. If a knife has nicks in one direction, an animal slaughtered with it is kosher if the knife only went in the smooth direction. If the *shochet* only discovered the nick after *shechitah*, he is not believed to say that he only slaughtered in the right direction, since he does not remember something which was not relevant at the time (YD 18:4).

3. If one stuck a milk spoon in a meat pot, we must estimate how much milk entered based on the section of the spoon that entered the pot. If the person does not remember how much entered, we assume the round part entered. Similarly, if one sliced hot meat with a milk pot, we must estimate based on how much of the knife was used to slice. The Maharshal says that we assume the whole blade was used, and the person is not believed to say otherwise, since that is an irrelevant fact, which the person forgot.

The Noda Beyehudah (Tinyana YD 16) says that if someone did something himself, and theoretically knew that a fact could be relevant (e.g., if the spoon or knife was milk), even if he thought it was irrelevant at the time, he is believed when he specifies what he remembers. See Shach 98:28, who cites the Maharshal, as well as opposing opinions, and see Pischei Teshuva (98:1), who discusses the Noda beyehuda, as well as opposing opinions.