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Yevamos Daf 88

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The Gemora states that it is logical that one witness is believed. For the testimony regarding the husband who went overseas is similar to a case of a piece of fat that we are uncertain if it is *cheilev* (and it is forbidden), or if it is *shuman* (and it would be permitted), and one witness testified that it is *shuman*. Just as he is believed in that case, he should be believed in this case (that the husband died).

The Gemora objects to this comparison: Perhaps the one witness is believed only by the piece of fat, where a state of prohibition was not previously established. However, in the Mishna’s case, the state of prohibition of a married woman was already established, and the one witness will not be believed. Furthermore, there is a principle that two witnesses are required in all matters concerning *ervah* (forbidden marital relationships). (88a)

The Gemora offers another logical reasoning to believe one witness. For the testimony regarding the husband who went overseas is similar to the testimony of one witness permitting produce that had been previously established as *tevel* (untithed produce that one cannot eat until tithing has been performed), or permitting objects that had been previously established as *hekdesh* (consecrated items), or permitting an object that had been established to be subject to the prohibition of *konamos* (when one makes a vow not to derive pleasure from a certain object).

The Gemora analyzes all three cases: What is the case of *tevel*? If the produce is his own (the witness’), perhaps the reason that the witness is believed is not because one witness is believed, but rather, it is because he has the capability of rectifying the prohibition through tithing the produce himself. Rather, it must be referring to a case where

the *tevel* belongs to someone else. What does the one who offered this comparison hold? If he holds that separating *terumah* from his own produce for the sake of rectifying someone else’s produce does not require the willingness of the owner, what is the comparison? Perhaps the reason that the witness is believed is not because one witness is believed, but rather, it is because he has the capability of rectifying the prohibition through tithing the produce himself. And if he holds that separating *terumah* from his own produce for the sake of rectifying someone else’s produce requires the willingness of the owner, and the one witness testifies that the produce has in fact been tithed, how do we know that the witness would be believed in this situation?

What is the case of *hekdesh*? If the consecrated item is one that merely possesses monetary sanctity, perhaps the reason that the witness is believed is not because one witness is believed, but rather, it is because he has the capability of redeeming the object himself. And if the case we are discussing is dealing with a consecrated item that possesses physical sanctity (which cannot be redeemed), let us examine the case further. If the consecrated item is his own, perhaps the reason that the witness is believed is not because one witness is believed, but rather, it is because he has the capability of asking a sage to annul his vow, which would render the item unconsecrated. If the consecrated item belonged to someone else, and the witness testified that he knew that the owner asked a sage to annul his vow, how do we know that the witness would be believed in this situation?

The Gemora examines the case of *konamos*. If the one who offered this comparison holds that there is a halacha of

me'ilah (the sin of deriving benefit from consecrated property) by *konamos*, and therefore these objects would obtain monetary sanctity, perhaps the reason that the witness is believed is not because one witness is believed, but rather, it is because he has the capability of redeeming the object himself. If he holds that there is no halacha of *me'ilah* by *konamos*, but merely an ordinary prohibition, let us examine the case further. If the item is his own, perhaps the reason that the witness is believed is not because one witness is believed, but rather, it is because he has the capability of asking a sage to annul his vow. If the item belonged to someone else, and the witness testified that he knew that the owner asked a sage to annul his vow, how do we know that the witness would be believed in this situation? (88a)

LENIENCY TO ALLOW A WOMAN TO REMARRY AND NOT TO REMAIN AN AGUNAH

(The Gemora did not find a source proving that one witness will be believed against an established prohibition.) Rabbi Zeira says: The reason why one witness is believed (*that the husband died*) is because of the severity with which we applied to her (*the wife*) at the end (*when the husband returned*), we are lenient with her at the beginning (*and allow her to marry through the testimony of one witness*).

The Gemora asks: Let us not treat her severely at the end (*by not imposing penalties on her if the husband returns*) and we would not be compelled to be lenient with her in the beginning?

The Gemora answers: Since we were concerned that the woman will remain an *agunah* (*a woman that cannot get married because we do not have sufficient evidence that her husband died*), the Rabbis treated her leniently, and accepted the testimony of one witness. (88a)

REMARRYING BASED UPON TWO WITNESSES

The Mishna had stated: If a woman's husband went overseas, and they came (*one witness*) and said to her, "Your husband died," and she married, and afterwards her husband returned, she must leave this one and this one. Rav says that this is the halacha only if she married on the basis of the testimony of one witness. However, if she remarried on the basis of the testimony of two witnesses, she is not required to leave.

In *Eretz Yisroel*, they mocked at this ruling by saying: "The first husband has returned, and you say that she is not required to leave the second husband?"

The Gemora answers: Rav is discussing a case where we did not recognize the man who claims to be her first husband.

The Gemora asks: If we do not recognize him, then she should be permitted to stay with her second husband even if there was only one witness testifying that her husband died?

The Gemora answers: Rav is referring to a case where we do not recognize the man who claims to be her first husband, and there are two witnesses who testify and say the following: "We were with this man from the moment he left until now (*and we are certain that he is her husband*), and you do not recognize him because his appearance has changed."

The Gemora proves from Yosef and his brothers that it is possible that a person's appearance can change in such a manner that even his family will not recognize him.

The Gemora asks: But the bottom line in this case is that we have contradictory witnesses. We have two witnesses testifying that the husband died, and two witnesses testifying that the husband has returned. One who cohabits with this woman should be liable to bring an *asham taluy* (*a korban that one is required to bring if he is uncertain if he mistakenly committed a transgression*). Why then, do we allow the second husband to remain married to her?

Rav Sheishes answers: We are discussing a case where she is married to one of the witnesses who testified that the husband has died. (*He is not required to bring an asham taluy since he does not suspect at all that he has committed any transgression.*)

The Gemora asks: But, what about her? She herself is liable to bring an *asham taluy*.

The Gemora answers: We are discussing a case where she is certain that her husband died (*and the man claiming to be her husband is a fraud*).

The Gemora asks: If so, what is the novelty of Rav's ruling? Even Rabbi Menachem the son of Rabbi Yosi said that a couple must separate when the legitimacy of their marriage is in question only if they married after both sets of witnesses testified; however, if they married on the basis of testimony from one set of witnesses and a conflicting set testified afterwards, they are not obligated to separate. For it was taught in the following braisa: If two witnesses testify that her husband died or that they got divorced, and another set of witnesses testify that the husband did not die or they did not *get* divorced, she should not *get* married. If she does remarry, she is not obligated to leave. Rabbi Menachem the son of Rabbi Yosi says: She is required to leave. Rabbi Menachem the son of Rabbi Yosi explains: When do I say that she is required to leave? Only if she remarried after the testimony of both sets of witnesses. However, if she remarried based on the supporting testimony from one set of witnesses, and afterwards, the opposing witnesses testified, she is not required to leave. (*Accordingly, why did Rav need to repeat this ruling?*)

The Gemora answers: Rav is referring to a case where she remarried after the testimony of both sets of witnesses, and Rav ruled that she is not required to leave in accordance with the *Tanna Kamma*, and to exclude the opinion of Rabbi Menachem the son of Rabbi Yosi.

There are others that say that the reason Rav ruled that she is not required to leave is because she married prior to the testimony from the opposing witnesses; however, if she remarried only after both sets of witnesses testified, she would be required to leave. This would be in accordance with the opinion of Rabbi Menachem the son of Rabbi Yosi. (88a – 88b)

Rava asks on Rav from the following braisa: How do we know that if a *Kohen* does not want to separate himself from *tumah* or from a forbidden woman that we physically force him until he obeys? It is written [Vayikra 21:8]: *And you shall sanctify him*. The Torah teaches us that it is incumbent upon *Beis Din* to force him to comply.

Rava examines the braisa: What is the case of the forbidden woman? If we are referring to a case where the *Kohen* married a woman based upon the testimony of witnesses who testified that her husband had died, and the *Kohen* was not one of the witnesses, and she did not claim that she is certain that her husband died, is it necessary to teach us that we force the *Kohen* to separate from the woman? Obviously not! Rather, the braisa must be referring to a case where the *Kohen* is one of the witnesses who testified that her husband died, and she is certain that her husband died, and nevertheless, the braisa rules that *Beis Din* forces the *Kohen* to separate from her. This would be inconsistent with Rav's ruling that they are permitted to remain married.

The Gemora answers: We are stricter when we are dealing with a *Kohen*, whereas Rav was discussing a non-*Kohen*.

Alternatively, the Gemora answers that the braisa is not discussing a case where both sets of witnesses testified, and we obligate the couple to separate. The case is that the *Kohen* wishes to marry her based on the testimony of one set of witnesses. The Torah requires that we force him to refrain from marrying her until we determine that there are no opposing witnesses.



Alternatively, the *Gemora* answers that the *braisa* is discussing a case where both sets of witnesses testified, and only then do we require the couple to separate. This would be in accordance with the opinion of Rabbi Menachem the son of Rabbi Yosi. (88b)

INSIGHTS TO THE DAF TESTIMONY OF A WOMAN

The *Gemora* states that regarding testimony for a woman whose husband died overseas, we accept testimony from a witness who heard testimony from another witness, although we normally do not accept such testimony. Similarly, even the testimony of a person who is normally invalidated for testimony, such as a woman, a slave and the like, their testimony will be accepted to allow a woman to remarry.

The *Reshash*¹ asks: The *Mishnah* states that there is no liability of a *korban shevuas haeidus*, if one takes an oath that he does not know testimony regarding a woman. The question is, if regarding testimony on behalf of a woman, even a woman's testimony is acceptable, then one should be liable a *korban shevuas haeidus* for testimony regarding a woman.

The *Reshash* answers that the testimony of woman is not considered a testimony. Even if she is a "kosher" witness, she is not considered to be "kosher" with regard to the laws of testimony, only that she can reveal what happened in a certain situation. This answer is corroborated by Rabi Akiva Eiger².

The *Shav Shmattsa*³ answers that what we believed the words of a woman is not because of testimony, but rather because we assume that her words are the facts. If so, regarding the liability of a *korban shevuas haeidus*, Rashi writes that we require that the person was fit to testify. So it follows that a woman and anyone else who is invalidated

from testifying will not fall under the category of liability for a *korban shevuas haeidus*.

¹ Shavuot 30a

² Siman 179

³ Shmattsa 7:1