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Zomemin

(The Gemora above brought the following argument: Abaye said: A zomeim witness is disqualified (for any other testimony) retroactively (from the time that he testified). Rava said: He is only disqualified from the time that he is found to be a zomeim.)

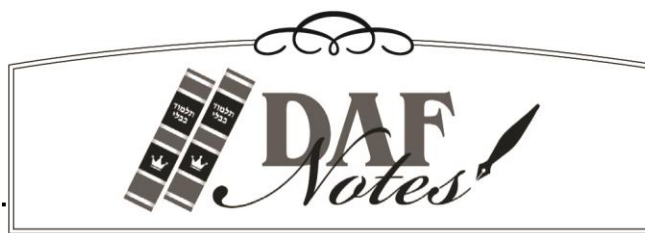
Rabbi Yirmiyah from Difti said that Rav Pappa once acted according to Rava. Rav Ashi said that the *halachah* follows Abaye. The *Gemora* rules that the *halachah* follows Abaye (when he argues with Rava) in six arguments. These are known as YA" L KG" M. [The "A" is for the letter "ayin," which is for the word *eid zomeim* – the dispute in our *Gemora*.]

The *Gemora* asks on Abaye from our *Mishnah*: If according to two witnesses he stole (an ox or a sheep) and according to them he slaughtered or sold it and they were found to be *zomemin*, they pay everything.

The *Gemora* assumes that they first testified on the theft and afterwards they testified regarding the slaughtering, and then they were proven to be *zomemin* on the theft and afterwards on the slaughtering. Now, if it would enter your mind that *zomemin* witnesses are retroactively disqualified, then once they were rendered *zomemin* for the theft, it is retroactively revealed that they were disqualified before they testified on the slaughtering; if so, why do they have to pay for the slaughtering testimony?

They said: We are dealing here with a case where they were first declared *zomemin* regarding their testimony about the slaughter. - But it may still be argued that after all since when they were subsequently declared *zomemin* regarding the theft, it became clear retroactively that when they gave testimony regarding the slaughter, they had already been disqualified. Why then should they pay for the slaughter? —The law is that the ruling in the *Mishnah* is referring to a case where they testified regarding the theft and the slaughtering at the same time (and they do not become disqualified until the conclusion of their testimony).

The *Gemora* suggests that the argument between Abaye and Rava might actually be a Tannaic dispute, as was taught in the following *Baraisa*: If two witnesses testified against a person that he had stolen an ox and the same witnesses also testified against him that he had slaughtered it, and subsequently, they were rendered *zomemin* regarding the theft, since their testimony became disqualified in part, it becomes disqualified altogether (for since there was no valid testimony regarding the theft, the thief cannot be held liable for the slaughtering). However, if they were rendered *zomemin* regarding the slaughtering, the thief would be liable to pay *kefel* (double payment) and they would have to pay the threefold payment. Rabbi Yosi, however, said: These rulings apply only in the case of two testimonies (one for the theft and one for the slaughtering), but in the case of one testimony, the *halachah* is that a testimony which became disqualified in part becomes disqualified altogether.



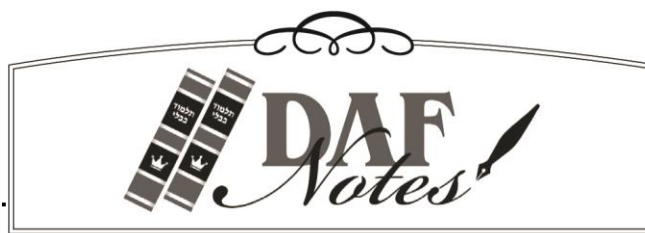
Now, what did Rabbi Yosi mean when he said “two testimonies,” and what did he mean when he said “one testimony”? Are we to say that “two testimonies” means two independent testimonies, as in the case of two different sets (*one for the theft and one for the slaughtering*), and “one testimony” means one set of witnesses giving two testimonies one after the other? If so, then Rabbi Yosi maintains that in the case of one testimony, i.e. where one set gave two testimonies one after the other, then, where they first testified regarding the theft and then testified regarding the slaughtering; if they were subsequently declared *zomemin* with reference to their testimony regarding the slaughtering, the *halachah* would be that a testimony which became disqualified in part becomes disqualified altogether, and the witnesses would thus be considered *zomemin* also regarding the theft? On what basis can there be for such a view? [*Why indeed should the testimony given first about the theft be disqualified through the disqualification of a testimony given later?*]

Must we not therefore say that “two testimonies” means one testimony which resembles two testimonies, that is to say, where one set gives two testimonies one after the other (*and accordingly, if they were rendered zomemin regarding the slaughtering, they will not be disqualified regarding the theft testimony*), but where there is only one testimony, in which all their statements were given at the same time (*and they were rendered zomemin regarding the slaughtering*), the *halachah* is not like that (*and their testimony regarding the theft is disqualified as well*)!

[*The Gemora now explains the dispute between the Rabbis and Rabbi Yosi.*] Now let us assume that the *Tannaim* agree that testimonies following one another within the minimum of time required for an utterance (*of a greeting*) are equivalent in *halachah* to a single undivided utterance. The point at issue therefore

between them would be as follows: The Rabbis would maintain that a *zomeim* witness is disqualified only for the future (*from after he was found to be a zomeim*), and since it is from that time onwards that the effect of *zomeim* will apply (*and not retroactively to the time of the testimony*), it is only with reference to their testimony regarding the slaughtering that they were declared to be *zomemin*, whereas with reference to their testimony regarding the theft, which they were not declared to be *zomemin*, the *halachos* of *zomemin* will not apply (*and the thief will be liable to pay for the double payment*). Rabbi Yosi, however, would maintain that a *zomeim* witness would become disqualified retroactively, so that from the very moment they had given the testimony, regarding which they were rendered *zomemin*, they would be considered disqualified. Accordingly, when they were declared *zomemin* regarding the testimony about the slaughtering, the effect of *zomemin* should also be extended to the testimony regarding the theft, for testimonies following one another within the minimum of time required for an utterance are equivalent in *halachah* to a single undivided utterance.

The *Gemora* suggests an alternative explanation to this dispute: Were testimonies following one another within the minimum of time required for an utterance are equivalent in *halachah* to a single undivided utterance, it would have been unanimously held by these *Tannaim* that the *zomemin* should become disqualified retroactively. But here, it is this very principle whether testimonies following one another within the minimum of time required for an utterance should or should not be equivalent in *halachah* to a single undivided utterance that was the point at issue between them. The Rabbis maintained that testimonies following one another within the minimum of time required for an utterance are not equivalent in *halachah* to a single undivided utterance (*and therefore, they are only disqualified from the testimony regarding the slaughtering, but their testimony regarding the theft remains valid*). However, Rabbi Yosi



holds that testimonies following one another within the minimum of time required for an utterance are equivalent in *halachah* to a single undivided utterance (*and therefore, once they are disqualified from the testimony regarding the slaughtering, their testimony regarding the theft is disqualified as well*). (73a1 – 73b1)

Time for an Utterance

The *Gemora* asks: Does Rabbi Yosi indeed hold that testimonies following one another within the minimum of time required for an utterance are equivalent in *halachah* to a single undivided utterance? But we learned in the following *Mishnah*: One who says, “This animal is an exchange for an *olah*, an exchange for a *shelamim* (known as *temurah*, literally meaning exchange; when an animal is exchanged for an offering, both animal now have sanctity),” Rabbi Meir maintains that the animal becomes an exchange for an *olah* (we only concern ourselves with his first statement, which was “an exchange for an *olah*”). Rabbi Yosi holds that if he intended to make both declarations, and the reason why he said one before the other was because he couldn’t state both statements simultaneously, his words are valid (*and the animal is regarded as an olah and a shelamim; it must be sent out to pasture until it gets a blemish*). However, if he said, “This animal is an exchange for an *olah*,” and then he changed his mind and he said, “This animal is an exchange for a *shelamim*,” the animal becomes an exchange for an *olah* (*for the sanctity of the olah cannot be removed*). And the *Gemora* there asked: Is it not obvious that it cannot be effective if he changed his mind!? And Rav Pappa answered: The *Mishnah* was referring to a case where he changed his mind within the minimum of time required for an utterance. [Evidently, Rabbi Yosi holds that statements made within the minimum of time required for an utterance are not regarded as a single undivided utterance!?!]

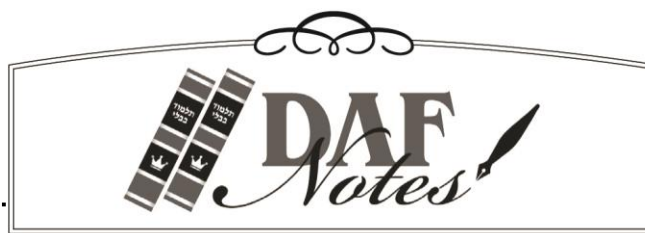
They said: There are two different minimum of times (*two types of greetings*): one sufficient for the greeting given by a student to his master, and the other sufficient for the greeting of the master to the student. Where Rabbi Yosi does not hold that the two statements are regarded as one is where the interval is sufficient for the greeting of a student to the master, that is, the time it takes to say “*shalom alecha rebbe u’mori*” – “peace unto you, my master and teacher,” as this is longer, but where it is only sufficient for the greeting of the master to the student, that is, the time it takes to say “*shalom alecha*” – “peace unto you,” he holds that they are considered one utterance. (73b1)

Contradiction; then Zomemin

Rava stated: Witnesses (*testifying to a capital offense*), who have been contradicted (*by another pair of witnesses*) and subsequently they were rendered *zomemin*, would be put to death, as the contradiction was a first step to the *hazamah*; though the proof of this was not yet complete at that time.

Rava said: From where do I know this? It is from the following *Baraisa*: If a set of witnesses say, “We testify that So-and-So has blinded the eye of his slave and he knocked out his tooth (*and therefore the slave should go free*), and the master himself also says like this,” and subsequently, these witnesses were rendered *zomemin*, they would be obligated to pay the value of the eye to the slave.

The *Gemora* asks: What are the circumstances of this case? If we assume, according to the apparent meaning of the *Baraisa* that there are no other witnesses here, why should they pay the value of the eye to the slave? After they have attempted to free him, they should be required to pay him the value of his eye!? Moreover, should they in such a case not be required to pay the owner for the full value of the slave (*as they falsely conspired to set him*



free)!!? And furthermore, what is the meaning when they said, “and the master himself also says like this”? Is it pleasing for the master to say such a thing (*and lose the services of his slave*)?

Rather, it must be referring to the following case: A set of witnesses had already testified previously that the master knocked out the slave’s tooth and then blinded his eye, so that the master would have to pay him the value of his eye (*for by then, he was a free man*). [The Baraisa begins here.] A middle pair of witnesses testified later that he blinded his eye first and then his tooth, so that he would not have to give him anything but the value of his tooth. It emerges that the first set of witnesses are contradicting the middle set, and it is to this that they (*the second set*) are saying, “and the master himself also says like this,” for the master was pleased with what they said (*for now, he is only liable to pay for the loss of the tooth*). The Baraisa continues: And if a third set of witnesses come and render the middle set to be *zomemin*, they would be required to pay the value of the eye to the slave (for they were scheming to deprive him of the (*larger*) payment for the eye).

Does this not indicate that a contradiction in testimony is a first step to the *hazamah* (*for the second set was contradicted by the first set before the third set arrived and rendered them zomemin, and nevertheless, they are liable to pay*)!!? (73b1 – 73b3)

INSIGHTS TO THE DAF

Zomemin

In a situation where two groups of witnesses contradict one another about an event; it is classified as contradictory witnesses, where we have no reason to believe one any more than the other. Under these circumstances the *Gemora* in Bava Basra has a discussion about what to do - it is an uncertainty, so follow the

chazakah. One thing, however, is clear, that we do not believe the latter group any more than the first. However, where the second group doesn't testify about the event, rather about the validity of the first two as being valid witnesses, such as testifying that they are thieves, the second group is completely believed to overthrow the testimony of the first group. This is not considered a novelty, since everything that the first group is saying is true, just that by believing the second group that the first are thieves, we automatically do not accept their testimony.

Rava (*in the first version*) holds that a *zomeim* is a novelty and therefore only becomes disqualified from the time of the *hazamah*, and not retroactively from the time of the testimony. Abaye would presumably agree with Rava that *zomemin* is a novelty, just that it is not logical for them to be disqualified from the time of the *hazamah*; therefore we disqualify them retroactively from the time of their testimony.

It seems that the concept of “novelty” by *zomemin* is that rather than considering it to be a case of contradictory witnesses, where the second group are merely disagreeing about the event, we consider it as if the second group are actually testifying about the character of the first group, invalidating them as witnesses. (See Tosfos who explains that the novelty of *zomemin* more than contradictory testimony is either that the second group is entirely believed, or that the first group is definitely disqualified, not just out of uncertainty. Assuming like Tosfos’ second approach that the novelty of *zomemin* is to view the testimony to be on the character of the witnesses, not on the event, in which case it is not a novelty to directly disqualify the first or to validate the second, rather it is a novelty in classification).

Why are *zomemin* somewhere in between? In essence, the second group is not making a character judgment; they are only contradicting the facts – “these two



witnesses could not have possibly witnessed what they claim to have witnessed since they were with us elsewhere.” Had it not been for the novelty of the Torah that we believe the second group, we would view it as if they just contradicting the first group about the events, where we would have a legitimate doubt as to who to believe. We would interpret their intent as simply being that the event was not witnessed by these two witnesses because they were with us elsewhere. But the Torah teaches us that we are not to regard the *hazamah* as just undermining the plausibility of the event, rather they are giving a character testimony similar to claiming that the first group were thieves. Why?

It would seem that the reason is because when testifying about an event, it is sometimes possible to misinterpret the event, or not have a clear picture as to what actually happened, so we give each group the benefit of the doubt. But, by *zomemin*, the second group is claiming that it was clearly premeditated lying that is taking place, not an innocent mistake. People who would fabricate a story when they were in an entirely different location have a fatal character flaw just as thieves do, and therefore they are not admissible as witnesses in any court.

DAILY MASHAL

The Horse and the Wagon Driver

The Gemora (71b) says that Rav Nachman was unable to provide a complete answer to a halachic query because he had not eaten beef that day.

In his sefer, *Ma’asai LaMelech* (Parshas VaEschanan, os 3), HaRav Shmuel Greineman zt’l writes that the Chafetz Chaim zt’l once remarked that just as a wagon driver is careful to ensure that his horse is well-fed since it is his source of income, a person must also ensure that his body is strong and healthy since he uses it to do the soul’s bidding.