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DAF Notes
Insights into the Daily Daf
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Bava Basra Daf 43

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

Tzvi Gershon ben Yoel (Harvey Felsen) o"h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Partners Testifying

Shmuel said that partners may testify for each other. The *Gemora* objects, saying that each partner has an interest in his partner winning in court, since the loss of a field will mean a loss of the shared property.

The *Gemora* says that Shmuel is discussing a case where the testifying partner wrote off his portion in the property being adjudicated. Even though the *braisa* says that if one simply disowns any interest or portion in land that he owns, this does not have any legal effect, Shmuel's case is where the partner did a *chalifin* acquisition to strengthen his statement.

The *Gemora* still objects, since even an indirect interest in an outcome of a case disqualifies a witness. This is apparent from another statement of Shmuel, that if one sells a field to someone – even without taking responsibility for any seizure of the field by a creditor – he may not testify on the buyer's behalf, since he has an interest in the buyer retaining the field, to serve as payment to other potential creditors.

The *Gemora* concludes that Shmuel's case is a partner who accepted responsibility for any loss of the field due to his debts, but not due to someone claiming that he owns the field. Therefore, even if the claimant successfully takes the field from the partner, the testifying partner is not liable, while if someone were to try to seize the field as payment for a loan, the testifying partner would be responsible. The testifying partner thus gains nothing by keeping the land in the possession of his partner, and therefore may testify.

The *Gemora* challenges the assumption that one may forfeit interest and then testify from a number of *braisos* that do not mention this option:

1. The first *braisa* says that if a Sefer Torah was stolen in a city, the city's judges may not adjudicate the case, and the city's residents may not testify. The *braisa* does not offer the option of some residents forfeiting their rights to the Sefer Torah, and then testifying, indicating that such forfeiture is assumed to be not sincere and only temporary.

   The *Gemora* deflects this by saying that the residents will hear the Sefer Torah being read, and therefore benefit, even if they technically forfeited their interest.

2. The second *braisa* says that if one pledged money to his city, the judges and residents of the city cannot be involved in the details of his pledge.

   The *Gemora* says this *braisa* is also referring to a Sefer Torah, where no one can truly forfeit their interest.

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3. The last *braisa* says that if one pledged money to the poor of his city, the judges and poor residents of the city may not be involved in the details of his pledge.

   The *Gemora* clarifies that the *braisa* is only referring to the judges of the poor of the city, who have an interest in the money going to the poor.

The *Gemora* offers two possible ways to deflect this last *braisa*:

1. It is also referring to a *Sefer Torah*, and the term "poor" is figuratively referring to the residents, who are poor when they do not have a *Sefer Torah*.

2. The judges and residents are the wealthy people of the town who must support the poor, and therefore have an interest in the pledge being kept.

The *Gemora* asks why some of the residents cannot pay their yearly share of charity, and then be disinterested parties, since the pledge will not reduce their burden.

The *Gemora* says that the *braisa* may be a case where there is not a set yearly amount paid by the residents, or that the pledge will lessen the future burden, leaving even the residents who paid with an interest in the pledge being fulfilled. (42b – 43a)

1. Partners Guarding

Shmuel said that partners who guard the shared property are considered paid guardians, since each one is paid by the other partner's guarding the property at some other time.

The *Gemora* asks why the partner is not considered to be an owner of the object who is working with his guardian. If one guards an object at the same time as the owner is working with the guardian, he is not liable for any damages. While the partner is guarding his portion of the shared property, the other partner – the owner of the guarded object – is guarding his portion, and therefore is working with the guardian.

Rav Pappa says that Shmuel's case is where they explicitly split the guarding of all the property into discrete times. Therefore, when one partner is guarding, the other partner is not working at all for him. (43a – 43b)

Testifying for the Buyer

The *braisa* says that if one sold a house or field to someone, he may not testify to the buyer's possession, since he is responsible if it is taken. However, if he sold a cow or garment, he may testify, since he is not responsible if it is taken.

Rav Sheishes explains the *braisa*'s case is where one (A) stole a field (from B), and sold it to a buyer (C). Another person (D) then claimed ownership of the field, and tried to seize it from the buyer (C). The robbery victim (B) may not testify to the buyer's possession, since it is in his interest that the buyer retains the field, so that he may prove that the thief took his field, and then retrieve his field. If the one claiming possession (D) succeeds, the robbery victim (B) will have no recourse to retrieve his field. If the robbery victim explicitly testifies that the buyer owns the field, he may no longer claim that it was stolen from him, since he's admitted the buyer is the rightful owner. However, if he only

testifies that the claimant does not own the field, he may still return to court to adjudicate the robbery.

The *Gemora* asks why he has an interest in the field remaining in the buyer's possession – if he has evidence that the field is not the claimant's, he can retrieve it from him as well. The *Gemora* offers two reasons he may want the field to remain with the buyer:

1. The buyer may be a more reasonable litigant, making it easier to take him to court and win.
2. The claimant and the robbery victim both have witnesses backing their claim. If the claimant successfully takes the field from the buyer, the deadlock of his witnesses and the robbery victim's witnesses will revert to the status quo – in the claimant's possession. If the robbery victim successfully keeps it in the buyer's possession, he can retrieve it by adjudicating his robbery claim.

The *Gemora* asks why the *braisa* chose a case where the thief sold the land, and didn't simply discuss whether a robbery victim can testify against one who tries to retrieve the field from the thief.

The *Gemora* answers that the *braisa* wanted to contrast the case of land with the case of movable property (*the second section of the braisa*), where the robbery victim has lost his possession of the stolen item. The victim only lost possession once it has changed ownership after he has despaired of retrieving it. If the *braisa* had discussed a thief who had not sold the item, the robbery victim still owns the stolen item, and will have an interest in both the case of movable and real property. Only in the case where the thief sold a movable item, and then died, does the robbery victim lose all claims to the item or its value, and therefore has no interest in who owns it, allowing him to testify. (43b – 44a)

INSIGHTS TO THE DAF

Kosher Judges the Entire Time

The *Gemora* says that when a *Sefer Torah* is stolen from a city, the judges of that city may serve as judges to convict the thief so long as they would relinquish their portion in the *Sefer Torah*. However, the *Gemora* concludes that by a *Sefer Torah* where they will anyway be benefiting from the reading, it is not sufficient to relinquish their ownership since they will still be considered biased (*nogei'ah b'davar*) because they are ultimately benefiting from the *Sefer* being returned to the city.

Tosfos asks that the *Gemora* holds that for items other than a *Sefer Torah*, it would help to relinquish their ownership thereby removing their *negi'os*. Why don't we require *techilaso v'sofo b'kashrus*? Meaning, we should require the judges to be kosher not only at the time of the judgment, but even at the time of the crime?

Tosfos answers that the requirement of *techilaso v'sofo b'kashrus* only applies to a *passul* in the *guf*, such as a relative, but doesn't apply to a monetary *passul*.

Tosfos in Niddah (50a) makes a distinction between a witness where we have such a requirement, and a judge, where we don't have such a requirement.

The Ramban explained by the Nemukei Yosef has a very interesting approach to this question. When one testifies on a monetary issue, he is not testifying on the money, rather he is testifying for the owner of the money. While it is true that we require *techilaso v'sofo*

b'kashrus, and therefore one, who was a relative through marriage at the time he witnessed a crime, cannot testify on that crime even if he has divorced, since then and is no longer a relative. The rationale is that at the time one witnesses the crime he must be kosher for testimony. But with a monetary issue, such as a communal item that is stolen, he is considered kosher for testimony for all those that he is not related to, and *passul* for testimony for the share of all those he is related to, including himself. Therefore, by removing himself from this money, he is no longer testifying for himself, rather, he is testifying for others and for them he was kosher all along to serve as a witness.

The R"I Mi'gash answers that one who is *passul* as a *nogei'a*, is not considered a witness at all. He is not like a relative who is considered a *passul* witness, rather, he is not in the subject of testimony. Therefore, when he removes himself and becomes a valid witness, he is considered *techilaso b'kashrus*, since that is the first moment that he assumes a status as a witness. This seems to be an exact opposite logic from Tosfos. Tosfos considers the *negi'ah* of money so mild that we don't apply the din of *techilaso b'kashrus*, whereas the R"I Mi'gash considers it so severe that we don't even consider him to be a witness. [*In truth, there is a lot of discussion as to why a nogei'ah is passul. He is only passul to testify l'zechuso, but kosher l'chovaso, so he is not like a regular passul who is passul for chov and zechus. Some say it is a din of karov eitzel atzmo, some say it is a chashash meshaker, and some say he is not an eid at all - the latter seems to be the opinion of the R"I Mi'gash.*]

DAILY MASHAL

The reinterment of
HaGaon Rav Mordechai Benet zt"l

The Gemara, here and often elsewhere, disqualifies anyone suspected of having an interest in a case from serving as a witness or dayan. The Chasam Sofer zt"l was known for his sensitivity to this issue, which he expressed at the burial of HaGaon Rav Mordechai Benet. The gaon, whom the Chasam Sofer called the "teacher of all Israel" (Responsa, VI, Likutim, 37), passed away in 5589 far from his town of Nikolsburg, Moravia – now in the Czech Republic – and was buried in Lichtenstadt. His family and members of his community claimed he had instructed them to bury him in Nikolsburg or, at least, Prague and asked the Chasam Sofer‟s permission to move the body. The Chasam Sofer, though, replied that all Nikolsburg were unfit to be witness, as they had an interest in the affair, wanting to pray at his grave especially as he had assured them that whenever they needed anything they should pray at his grave. Still, he allowed the reinterment since they claimed he had asked to be buried alternatively in Prague and this admission showed they had no personal interest (Responsa, ibid, and see Responsa Shoel Umeshiv, I, 231).

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