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Bava Basra Daf 155

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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

Must it be Validated?

The *Gemora* concludes that Rabbi Yochanan said that the Sages say that if a debtor admits that he wrote a document, it needs no more validation, while Rabbi Meir says that it still needs validation.

The *Gemora* explains that the dispute between the Sages and Rabbi Meir in our *Mishna* must therefore be reversed, since it cites the Sages saying that the gift recipients need to prove that the giver was healthy and the gift is valid, even though the giver admitted he wrote the document.

Similarly, the dispute between the Sages and Rabbi Meir in the *braisa* regarding witnesses who validate their signature, but claim that the document is invalid (e.g., *they were minors at the time*), must be reversed, since it cites the Sages as saying that the witnesses are believed to invalidate the document.

Finally, the *Gemora* says that the dispute cited earlier between Rabbi Yochanan and Rish Lakish in explaining the “proof” that the Sages require to collect the document, must be reversed, since Rabbi Yochanan had said that they must prove this with testimony. Rabbi Yochanan now says that once the giver admits that he wrote the document, it needs no more validation.

The *Gemora* suggests that we may need to reverse the role of this earlier proof, and use it as a proof to Rish Lakish’s opinion, that the proof is by testimony.

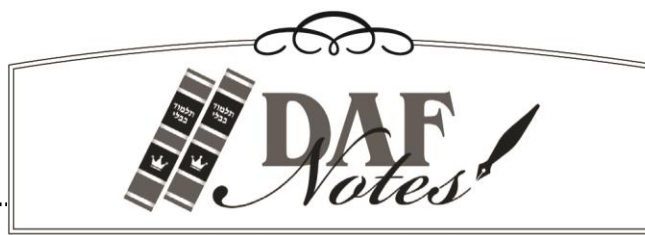
The *Gemora* says that we need not reverse, but rather modify the point of proof from the *braisa*. The *braisa* had a debate between buyers who bought from a deceased son and the

son’s relatives whether the son was a minor at the time of sale or not. Rabbi Yochanan told Rish Lakish that the *braisa* can be explained if a gift recipient only needs to validate the document. Once the buyers validated the document, they received the sold property, and the relatives were now trying to retrieve the property. However, if the buyers can only receive the sold property through testimony, what else was left for the family to argue? Rish Lakish answered that in that case, he agrees that the family’s claim was without merit once the document was validated, since we assume that a valid document was signed only if the parties were adults. Therefore, they had to prove their claim that the son was a minor. However, in the case of one who gives property, possibly as a *shechiv mei’ra*, the validated document is not sufficient to validate the gift. (154b – 155a)

When can a Child sell the Estate?

Rava quotes Rav Nachman saying that a child may sell his father’s property once he is eighteen, while Rav Huna bar Chinana quotes Rav Nachman as saying he must be twenty.

Rabbi Zeira attempts to resolve this dispute from the *braisa* cited earlier. The *braisa* relates the story of someone in Bnei Brak who sold his father’s property, and then died. The family claimed that he was not an adult at the time of the sale, invalidating the sale. When they asked Rabbi Akiva, he said that they were not allowed to defile the corpse to check if he was physically mature (*two pubic hairs*), and moreover, signs of maturity can change after death, making the investigation irrelevant. Rabbi Zeira says that if the minimum age is eighteen, it is relevant whether he was physically mature, since a boy of eighteen without physical signs of maturity is still considered a minor. However, if the minimum age is twenty, the *Mishna* says



that if one reaches twenty, he is an adult, even without physical signs of maturity, since he is considered a *saris* (sterile).

The *Gemora* deflects this, since that *Mishna* is talking about one who has other signs of being a *saris*, and therefore is assumed to be a *saris* at the age of twenty. In the *braisa*, there were no signs of his being a *saris*, and he therefore would be considered a minor even at the age of twenty, if he had no signs of physical maturity. (155a – 155b)

Determining Maturity

Rava points out that the *Mishna* implies this added requirement, since it says “one who reaches twenty, without pubic hairs – and who is a *saris* – is considered an adult.” The additional clause, “who is a *saris*” indicates that there are other signs that he is a *saris*. Rabbi Chiya says that if one has no signs of a *saris*, nor pubic hairs, he is considered a minor until most of his life has passed, e.g. thirty-six years (*the majority of seventy, the average lifespan*).

The *Gemora* says that when people were brought to Rabbi Chiya to check for pubic hairs, he would ensure that they were not malnourished or overly obese, since both conditions can alter the appearance of the physical signs of maturity. (155b)

Which Birthday?

The *Gemora* asks whether a son may sell his father’s property in the last year before the specified minimum age. Rava quoted Rav Nachman saying that he may sell, since he is considered to have reached the minimum age. Rava bar Shaila quoted Rav Nachman saying that he may not sell, since he is not considered to have reached the minimum age.

The *Gemora* says that Rava’s opinion was not explicitly stated, but extrapolated from a story. Someone within the last year before the specified age sold his father’s property, and the case was brought before Rava, who said the sale was void. Those observing thought that Rava voided the sale since the child had not yet reached the specified age. However, the true reason

Rava voided the sale was because the child freed his father’s slaves, an indication that he was behaving irrationally. (155b)

Good Business Sense

Gidal bar Minashya asked Rava whether a girl at the age of fourteen who knows how to conduct business may sell her father’s property. Rava answered that if she knows how to conduct business, her transactions are fully valid. The *Gemora* says that Gidal could have asked about a boy, or a girl at the age of twelve, but he asked about a specific instance, which happened to be a fourteen year old girl.

Someone younger than twenty sold his father’s property, and then came to Rava to void his sale. His relatives told him to eat dates in front of Rava, and spit the pits in front of him, to convince him that he was irrational. He did so, and Rava voided the sale. When he presented the court document voiding the sale to the buyers, they told him to return to Rava and say, “To buy a large *Megillas Esther*, I pay a *zuz*, and for your small document, I must also pay a *zuz*?” He did so, and Rava said that he obviously has good business sense, and his sale is valid. When his relatives protested that he was just repeating what the buyers told him to say, Rava said that by understanding their logic, he exhibited good business sense, and his original brazen act in front of Rava was not irrational, but just brazen. (155b)

Testimony

Rav Huna the son of Rav Yehoshua says that someone below twenty who has no business sense is still a valid witness, once he’s above thirteen. Mar Zutra says that this is only for cases involving movable property, but not real estate.

Rav Ashi challenged Mar Zutra’s statement. If one below twenty can testify on movable property since he can buy and sell such property at the age of *pe’utos* (6-7), then he should be able to testify at that age as well.

Mar Zutra replied that Torah explicitly mandates that a witness



be at least thirteen. To testify, one needs to understand the area of testimony, but also be at least thirteen years old. Therefore, in areas of real estate, one must be twenty - to understand the area, while in areas of movable property, one must be thirteen - the minimum age of testimony. (155b)

Gifts

Ameimar says that a gift given by someone below twenty is valid. Rav Ashi asked Ameimar how this could be. If when selling, where he receives something in return, his sale is void, how can a gift, in which he receives nothing, be valid? Ameimar replied that any sale made by one below twenty, even at a good price (e.g., an item worth 5 for 6), is invalid, since the Sages know that young people can be easily enticed by money to sell the whole estate. However, one will only give a gift to someone who truly benefited them, so the Sages did not have to void the sale to protect the child and his estate. (155b – 156a)

INSIGHTS TO THE DAF

Real Estate Testimony

Mar Zutra says that one between thirteen and twenty may testify on matters related to movable property, but not on real estate. Rashbam says that someone that age does not have a clear understanding of transactions involving real estate.

Tosfos (155b Lo amru) disagrees, and says that a lack of business sense should not prevent one from testifying. Instead, Tosfos says that he is only unsuited for a formal appraisal of real estate. Tosfos notes that the *Gemora* says that one at this age is overly impressed by money, and will therefore underestimate the value of the field.

The Shulchan Aruch (HM 35:3) rules that one who is below twenty, and does not exhibit any business sense, may not testify on real estate cases, seemingly like the Rashbam.

The Shach (3) says that the Shulchan Aruch only is referring to cases of real estate appraisal, in line with Tosfos.

The *Gemora* says that one under eighteen or twenty may not sell his father's property.

Rashbam and the Rif say that this is limited to his father's property, since he will decrease the equity inherent in that property by selling at such a young age. However, if he purchased property himself, he may sell it.

Rabbeinu Tam (155a Mochair) says that this applies equally to his own property, since he will sell it as well for a severely discounted price.

The Shulchan Aruch (HM 235:1) rules like Rabbeinu Tam.

How Old and how Sharp?

Rava rules that if someone understands business, he may sell real estate even before the minimum age. The Shulchan Aruch (HM 235:8) therefore rules that one above the age of thirteen who understands business may sell real estate.

For selling movable property, the *Gemora* cites the age of *pe'utos*, at which a child's transactions are valid. The *Gemora* (Gittin 59a) defines this as ranging from 6-10, based on the sharpness of the child.

The Shulchan Aruch (HM 235:1) rules that as young as six, if a child understands business, he may conduct transactions.

The Rosh learns that the *Gemora* in Gittin is stating that until the age of ten we must investigate to see if the child understands enough, but from the age of ten and older, we assume a child understands enough, unless he acts irrationally.

The Rambam does not include the distinction at the age of ten, but simply says that a young child's transactions are valid, if he understands.

The Gr"a (2) explains that the Rosh learns that the *Gemora* in Gittin was only requiring a level of sharpness until the age of



ten, but not beyond.

The Rambam learns that the *Gemora* in Gittin is to be read as a continuing list of ages, depending on the sharpness of the child. Although the *Gemora* stopped at the age of ten, the intent was that at *any* age between six and thirteen, a child's transactions may be valid, based on the sharpness of the child.

The Shulchan Aruch rules like the Rambam, while the Rama quotes the Rosh's distinction.

The Shulchan Aruch (OH 199:10) rules that a boy at the age of *pe'utos* may be counted as the last one for a zimun.

The Magain Avraham (6) defines this as nine or ten, possibly based on the Rif's formulation.

The Yechave Da'as (4:13) rules that this can be as young as six, as long as the child understands whom he is blessing.

HALACHOS FROM THE DAF

The Testimony of a Minor that could make him Bar Mitzvah

Our *sugya* explains that a minor cannot serve as a witness, as the Torah says: "And the two **men** will stand" – i.e., men who are qualified to testify but not minors (the verse could have just said "And the two will stand").

In his *Minchas Chinuch*, HaGaon Rav Yosef Babad asks an interesting question: There is a *halachic* rule that a *beis din* must accept the testimony of any witnesses who comes to them. Now, as explained in tractate Rosh HaShanah, there is a *mitzvah* to determine the beginning of each month according to witnesses who testify that they have seen the new moon. The *mitzvah* was in practice till 4119, when Rabbi Hillel ben Rabbi Yehuda Nesiah – called Hillel II – convened a special *beis din* to fix our present calendar to overcome the worry that there would not be an expert *beis din* and other conditions necessary for determining Rosh Chodesh each month, due to the long *galus*.

The *Minchas Chinuch* raises the question of two young men who come to *beis din* at the end of Nisan, claiming they saw the new moon and that that day, then, should be announced as 1 Iyar. The *beis din*, however, discovers that the witnesses will celebrate their thirteenth birthday on 1st Iyar. As long as the *beis din* does not announce that day as 1 Iyar, they remain minors but if they accept their testimony, they are considered adults and that day may be announced as 1 Iyar. **May or must** the *beis din* accept their testimony?

Indeed, the *Minchas Chinuch* asserts that the matter is up to the *beis din*. They may accept the testimony, as once they announce that day as 1 Iyar, the witnesses are retroactively qualified. Still, they are not **obligated** to accept their testimony, as when they came to the *beis din*, they were minors (see *Minchas Chinuch*, *ibid*, that this solution is according to one answer of Tosfos in Makos 2).

Another question related to our *sugya* arises from Rashi's commentary on Bava Kamma 88a (s.v. *Pesulah l'edus*). Rashi adds his own idea as to why the Torah disqualifies minors as witnesses. A minor, he explains, can't be punished by *beis din* and if his testimony is revealed as false, he cannot be penalized. He therefore cannot testify, as the *halachah* is that a *beis din* may accept only such witnesses that can be refuted. Why, then, did Rashi feel the need to **add** to the above exclusion of a minor on the strength of the verse "And the two men will stand" and, on the other hand, since Rashi's reasoning is so wonderfully valid, why must we learn the *halachah* from the verse at all?

The Acharonim offer several solutions: HaGaon Rav David Rapaport suggests a case that necessitates Rashi's reasoning in addition to the *halachic* interpretation of the verse: If a *beis din* accepted the testimony of two witnesses and a doubt was later raised as to if they were adults or minors, we must behave as the *halachah* requires in any instance of a doubt – to act strictly in the case of a prohibition stemming from the Torah. According to Rashi, though, we have no need to behave strictly as the rule is that a *beis din* cannot punish anyone for a

doubtful transgression. The witnesses could have been minors when they testified and, as such, can't be punished if their testimony is revealed as false. A *beis din* may accept only such witnesses as can be refuted and their testimony is definitely invalid (*Hagahos Tzemach Tzedek* on Responsa Rabbi Akiva Eiger, 1st edition, 176).

HaGaon Rabbi Akiva Eiger approaches the question from the other direction. Why do we need the verse if we learn the same *halachah* from Rashi's reasoning? Indeed, though, not all testimonies proven false are punishable. Someone who testified, for example, that he saw the new moon and was discovered to have lied did not mean to harm anyone physically or financially and goes unpunished. We need the verse, therefore, to exclude minors from testifying in any instance.

DAILY MASHAL

Professor Daniel Chavelson was a living tragedy. A brilliant scholar, who became an apostate and converted out of the faith in order to advance his secular status, he enjoyed the respect and friendship of a number of rabbinic leaders. He continued to study Torah on a consistent basis, maintaining an active correspondence of halachic responsa with these rabbis. When the Netziv, zl, was questioned about this enigma, an individual who, although a heretic, was still held in esteem by many observant Jews, he sighed, responding with the following story:

One day the wife of the town's wealthiest man became seriously ill. This woman was very special and G-d-fearing. They sent for the greatest physicians, the most erudite specialists to find some cure for her illness. The doctors all came to the decision that in order for her to live, she must eat meat from a pig. Understandably, both husband and wife vehemently refused to listen to such a cure. Unfortunately, the situation appeared to be very bleak, as her health slowly digressed. She was literally at death's door.

When the rav of the community heard this, he immediately went to the woman and insisted that she partake of the forbidden food. "Not only are you permitted - you are obligated to eat from the pig if it will cure you," exclaimed the rav. "Hashem wants us to live, not to die."

Reluctantly, the woman accepted the rav's ruling, and said that she would eat from the pig. As the rav was leaving, the woman asked, "I have one request. I would like, at least, to have the pig slaughtered by a shochet, ritual slaughterer." The rav held back a smile and agreed to permit the pig to be slaughtered. The shochet slaughtered the pig. The women now requested that the lungs be examined to make sure there were no adhesions that would "disqualify" the shechitah. Indeed, there was a questionable adhesion on the lobe of one the lungs. The shochet did not know what to do. He went to the rav, who carefully examined the lung. He said, "This is a difficult decision to make, for if this were the lung of a kosher animal, I would not hesitate to render a decision of kosher. This is the lung of a pig, however. How can I say kosher on a lung, if the rest of the animal is not kosher? When all is said and done, this is a pig! I cannot say kosher on a pig."

It was not necessary for the Netziv to explain the implication of this story regarding the "scholarly" apostate. A kosher lung does not render a pig kosher.