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Invalid Witness: Retroactive or Not?

It was stated: Abaye said: [*Zomemim*- when witnesses offer testimony and other witnesses refute them claiming that the first set of witnesses could not possibly testify regarding the alleged crime since they were together with them at a different location at the precise time that they claimed to witness the crime somewhere else; the Torah teaches us that we believe the second pair in this instance; the first witnesses are called "eidim zomemim" -- "scheming witnesses," and they receive the exact punishment that they endeavored to have meted out to the one they accused.] 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*.

The *Gemara* explains: Abaye said that he is disqualified retroactively, for it is at that time that he became an evildoer, for the Torah states: *Do not place your hand with an evildoer to be a corrupt witness*. Rava said that he is only disqualified from the time that he is found to be a *zomeim*, for his disqualification is itself a novelty (so why should we stretch it). This is because the two sets of witnesses are two against two, so why should we listen to the second set more than the first? Accordingly, we can only apply the disqualification novelty from the time that they become *zomemin*.

The *Gemara* presents an alternative version to explain Rava: In truth, he holds like Abaye that they are retroactively disqualified. The reason why Rava holds that they are only disqualified from the time that they become *zomemin* is because we are concerned for the loss of the purchasers (any buyer who used these witnesses in the interim to sign on any document).

The *Gemara* asks: What is the practical difference between the two reasons?

The *Gemara* answers: The difference between them would be in a case where two witnesses testified against one of the initial witnesses, and two other witnesses testified against the other of the initial witnesses. [*According to the first reason, it is not a novel law to say we should believe two over one. Rava in that case would agree with Abaye. According to the second reason he would still argue with Abaye.*] Alternatively, a difference would be in a case where they testified that that the first set of witnesses were thieves and that is why they should be disqualified. There is no novelty in these two cases, but we still should be concerned for the loss of the purchasers. [*The first reason does not apply, while the second reason still applies.*]

Rabbi Yirmiyah from Difti said: Rav Pappi ruled according to Rava. Mar bar Rav Ashi says: The law follows Abaye. The law follows Abaye in six cases known as YAL KGaM (the capital letters each stand for one case, this one being *Aid zomeim becoming invalid retroactively*). (26a4 – 27a2)

A person who purposely sins by eating improperly slaughtered meat (*neveilah*) for gratification (because it is cheaper) is invalid to testify according to all opinions (being that he is someone who will sin to save or gain money). If he eats such meat to rebel against Hashem (not because of financial considerations), there is an argument between Rava and Abaye. Abaye says: He is invalid. Rava says: He is valid.

Abaye says: He is invalid, as he is considered an evildoer, and the Torah says: *Do not place your hand with an evildoer to be*



a corrupt witness. Rava says: He is a valid witness, as the Torah only invalidates a person who is suspected of cutting corners to make money.

The Gemara asks a question on Rava from a Baraisa. The Baraisa states: *Do not place your hand with an evildoer to be a corrupt witness. Do not place a thief as a witness.* These refer to thieves and people who lie when taking oaths. This (plural use of oaths) must mean people who lie when taking oaths that involve monetary gain and oaths that do not involve monetary gain!?

The Gemara answers: No, this is only referring to oaths where there is monetary gain. What is the meaning of “oaths”? It merely means many different kinds of oaths.

The Gemara asks another question from a Baraisa. The Baraisa states: *Do not place your hand with an evildoer to be a corrupt witness. Do not place a thief as a witness.* These refer to thieves and people who lend money with interest. This seems to be a refutation of Abaye (for only people who sin because of financial reasons are ruled to be disqualified).

The Gemara asks: Perhaps Rava and Abaye’s argument is an argument amongst the Tannaim? The Baraisa states: A *zomeim* is invalid to testify regarding any matter in the Torah. These are the words of Rabbi Meir. Rabbi Yosi says: This is only if he became a *zomeim* in a capital case. However, if he became a *zomeim* in a monetary case, he can still testify in a capital case. Let us say that Abaye holds like Rabbi Meir, and Rava holds like Rabbi Yosi! Abaye would hold like Rabbi Meir, who holds that if one becomes unfit regarding a small matter, he becomes unfit regarding a more serious matter. Rava would hold like Rabbi Yosi who holds that if someone becomes unfit for a serious matter, he becomes unfit for a smaller matter. If he becomes unfit for a small matter, he does not become unfit for a serious matter.

The Gemara answers: No; everyone understands that Rabbi Yosi clearly does not agree with Abaye. The question is regarding the opinion of Rabbi Meir. Abaye holds like Rabbi

Meir. Rava will say that he, too, can hold like Rabbi Meir. Rabbi Meir said that a *zomeim* regarding money is also unfit to testify for capital cases. This is because he is sinful for Heaven and for people. However, he will agree that someone who is only sinful to Heaven (*eats unkosher meat on purpose, even if it is not cheaper*) and not to people can testify.

The Gemara concludes that the law in this case follows Abaye.

The Gemara asks: Didn’t we refute Abaye from a Baraisa?

The Gemara answers: We now know that the Baraisa we asked from is according to Rabbi Yosi.

The Gemara asks: Even if this is so, don’t we generally say that if Rabbi Yosi and Rabbi Meir argue that the law follows Rabbi Yosi?

The Gemara answers: This case is different, as we have a general *Mishnah* that follows the opinion of Rabbi Meir (*indicating that we should rule like his opinion in this case*).

The Gemara asks: What general *Mishnah* is according to the opinion of Rabbi Meir?

The Gemara answers: Bar Chama killed someone. The Reish Gelusa (*Head Exilarch*) said to Rabbi Abba bar Yaakov: Investigate the case. If he indeed did it, poke out his eyes (*this was at a time when Beis Din no longer killed people, but would do things to set an example and deter future crimes*). Two witnesses came forward and testified that Bar Chama was the killer. Bar Chama proceeded to bring two witnesses who testified that these witnesses were invalid. Regarding one they said that he stole a *kav* of shelled barley in front of their eyes, and regarding the other they said that they saw him steal a spear handle. Rav Abba bar Yaakov said to Bar Chama: Do you think the law is like Rabbi Meir? In a case where Rabbi Meir and Rabbi Yosi argue, the law follows Rabbi Yosi! Rabbi Yosi is the one who says that if a witness becomes a *zomeim* regarding a monetary case, he is still a valid witness for capital



cases. [Accordingly, the original witnesses are valid, and your eyes should be poked out.]

Rav Pappi said to Rav Abba: This rule is only true when the *Tanna* does not state a general *Mishnah* that is according to Rabbi Meir. However, when he does, the law follows Rabbi Meir over Rabbi Yosi.

What is the general *Mishnah* being discussed (*the original question of this Gemara*)? If it is the *Mishnah* that states that whoever is fit to judge capital cases is fit to judge monetary cases, let us analyze whose opinion this follows. This cannot be according to Rabbi Yosi, as he holds that a *zomeim* for monetary law is valid for capital cases but not for monetary cases. It must be according to Rabbi Meir!

The *Gemara* asks: Perhaps the *Mishnah* is discussing people who are unfit to judge because of their lineage, not because of their actions! If one does not say the case is regarding lineage, there is a question from the end of the *Mishnah* that says that some are fit to judge monetary matters but not capital cases. Why is he not fit to judge capital cases? It must be that he was made a *zomeim* in a capital case. However, in such a case both Rabbi Meir and Rabbi Yosi agree he cannot judge a monetary case! It therefore must be discussing lineage issues, just as the beginning of that *Mishnah* must be discussing lineage issues.

Rather, the *Mishnah* is as follows: These are unfit to testify: One, who gambles, lends with interest, races pigeons, merchants of *Shemittah*, and slaves. This is the rule: In any case that a woman cannot testify, these people cannot testify. Who is the author of this *Mishnah*? If it is Rabbi Yosi, this rule is incorrect, as these people can testify in capital cases while a woman cannot! It must be that the *Mishnah* is according to Rabbi Meir. Bar Chama got up and kissed Rav Pappi's feet, and accepted to pay his head tax for the rest of his life. (27a2 – 27b1)

Mishnah

These are the relatives who are disqualified from testifying for their relatives: A brother, father's brother, mother's brother,

sister's husband, father's sister's husband, mother's sister's husband, stepfather, father-in-law, and brother-in-law. They, their sons, and their sons-in-law cannot testify for these relatives. A stepson alone is invalid. Rabbi Yosi says: This is the teaching of Rabbi Akiva. However, the *Mishnah* originally taught that one's uncle, son of his uncle, whoever is fit to inherit him, and whoever is a relative of his at the time (*he gave testimony or saw the event*) is invalid to testify. If he was related (*through marriage*) and became distant (*i.e. divorce or death of the spouse*), he is a valid witness. Rabbi Yehudah says: Even if his daughter died, if his son-in-law has sons from her he is considered related. A loved and hated person is also unfit to judge. A loved one is someone who celebrates the wedding of their children together, known as a *shushvin* (*a groomsman - used to also pay for some of the wedding expenses*). A hated person is someone who has not spoken to another person for three days out of hatred. They said back to him: Jews are not suspected of this (*giving the wrong verdict in a case because they hate or love someone*). (27b2)

Scriptural Source

The *Gemara* asks: How do we know this?

The *Gemara* answers from a *Baraisa*. The *Baraisa* states: "*Fathers will not be killed because of their children (and children will not be killed because of their fathers)*." What does the verse mean to teach us? If it teaches that fathers will not be killed because of the sins of their children, and children will not be killed due to the sins of their fathers, the verse already states, "*A person will be put to death because of their own sin!*" Rather, it must be that, "*Fathers will not be killed because of the sin of their children*" teaches that they will not be killed due to the testimony of their sons. "*Children will not be killed because of the sin of their fathers,*" means because of the testimony of their father.

The *Gemara* asks: Are sons not killed because of the sin of their fathers? Doesn't the verse say, "*He visits the sin of the fathers upon the sons*"?



The *Gemara* answers: This is only when they are sinning like their fathers. This is as the *Baraisa* states: “*And also in the sins of their fathers, with them they will be afflicted.*” This is when they retain the sinful ways of their fathers. You say this is when they retain the sinful ways of their fathers. Perhaps it is even if they do not retain these ways? When the verse says, “*A person will die in his sin,*” it is clear that it means that in order to get punished for one’s father’s sins, a person must be continuing in his ways.

The *Gemara* asks: Is this true? Doesn’t the verse say, “*And a man will stumble on his brother*”? We derive from here that a brother is punished for the sin of his brother, as we are all guarantors for each other (*even if we do not sin ourselves*)!?

The *Gemara* answers: This is only if one has the opportunity to protest, and does not protest when the sinner sins. (27b3)

HALACHAH ON THE DAF

Sworn Enemy; Pasul L’eidus?

The *Mishnah* lists the various relatives that are *passul l’eidus* (*disqualified from testifying*). At the end of the list, the *Mishnah* records a dispute between Rabbi Yehudah and the *Chachamim* if a friend or an enemy may say testimony. The *Shulchan Aruch* (Choshen Mishpat 33:1) rules in accordance with the *Chachamim*, who hold that although they are *passul* from judging a case where one of the litigants is either a friend or an enemy, they may still give testimony in spite of the fact that they are favorably disposed to one side.

The *S’ma* and the *Nesivos* explain the difference being, that testimony is merely repeating what one saw, and therefore we don’t suspect that they will outright lie. However, when judging a case, which requires the judge to apply logic and to carefully weigh all the various aspects of the *din torah*, then we are afraid that the judge will from the onset be automatically and subconsciously inclined in favor of one litigant over the other.

There is a dispute among the *Achronim* if this is a blanket ruling for all degrees of animosity, or will the *halachah* be different when one of the witnesses is a sworn enemy who seeks revenge and may be considered as one who will relentlessly harass this litigant, if he too may give testimony.

The *Chasam Sofer* quotes the *Tshuvas Maharshal*, who is of the opinion that a sworn enemy is *passul l’eidus*, and the *Chasam Sofer* brings a proof to his ruling. The *K’neses Hagdola* and others also rule that he is *passul l’eidus*. On the other hand, there are many *Achronim* (*Tumim*, *Maharit* and others) that disagree with the *Maharshal* and eliminate his proofs.

DAILY MASHAL

Proof from a Piyut

When a question arose about instituting a fast in remembrance of troubles affecting the community, *HaGaon Rav Yitzchak Zeev of Brisk* zt”l claimed that the *Kinos* for *Tisha B’Av* state that it is forbidden to decree additional fasts than those instituted by the prophets. When he heard that someone said that proof cannot be brought from the *Kinos*, he insistently replied that *Tosfos* bring proof from the *piyutim* (liturgical poems).