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DAF Notes
Insights into the Daily Daf
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Sanhedrin Daf 29

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

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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

Former Relatives

Mar Ukva's wife died, and his former brothers-in-law came to his court. He told them he was invalid to judge them. They assumed that he was ruling like Rabbi Yehudah, who says that a relative who was once invalid remains invalid, even if the relation has ended, and objected that they can produce a letter from *Eretz Yisroel* stating that we do not rule like Rabbi Yehudah. Mar Ukva responded that he had no familial connection to them at all, but would not hear their case since they will not listen to him. (28b – 29a)

Friends and Enemies

Rabbi Yehudah stated in the *Mishna* that one who loves or hates someone may not testify in his case. One who loves is defined as a groomsman.

The *Gemora* asks how long the groomsman may not testify. Rabbi Abba quoted Rabbi Yirmiyah in the name of Rav that it is for whole week of wedding celebration, while the Sages quoted Rabbah as saying that it is only for the day of the wedding.

The *Mishna* defined one who hates as a person who did not speak with someone for three days out of enmity.

The *Gemora* cites a *braisa* for the source of this rule. The verse discussing a murder case says: *And he is not his enemy, nor is he seeking his harm*. The *braisa* explains these verses to relate to the parties to the court case, the first clause referring to the witnesses, and the second to the judges. The *Gemora* explains that just as an enemy is invalid since his strong hatred will make him negatively partial, so one who loves the litigant is invalid, since his strong love will make him positively partial.

The *Gemora* explains that the Sages agree that an enemy is invalid to judge, and they say that the second clause is stipulating that enemies may not judge a case together, since their enmity will prevent them from dispassionately considering their fellow judge's arguments, disrupting the deliberation necessary for justice. (29a)

Court Proceedings

The *Mishna* describes the judicial process once the case begins. The court brings the witnesses to the courtroom, impressing upon them the severity of false testimony, to ensure they only testify truthfully. The court removes everyone from the courtroom, leaving only the judges and the more senior witness. The court asks him to describe what he witnessed. If the witness says that the litigant or someone else told him that he owes the other litigant money, his testimony carries no weight. He must testify that the litigant explicitly admitted to the other litigant, in the presence of the witnesses, that he owes him money. If the first witness' testimony is valid, they then similarly examine the second witness privately. If the two witnesses' testimony is consistent, the judges proceed to deliberate. If all three rule one way, or if two rule one way, and the third the other way, they conclude the case based on the majority opinion. However, if one cannot decide, even if the other two agree to one position, new judges are added to deliberate and state his opinion. Once the judges have decided, the litigants are brought back in, and the chief justice announces the ruling. The *Mishna* says that once the case has been decided, a dissenting judge may not publicize his opinion, since he will be maligning the other judges by breaching the confidentiality of

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the proceedings.

The *Gemora* asks how we scare the witnesses from testifying falsely.

Rav Yehudah says we tell them, based on the verse in Mishlei, that false testimony leads to drought.

Rava objects, since the witnesses may not fear drought, realizing that some professions prosper even in times of drought. Rather, we tell them, based on another verse in Mishlei, that false testimony leads to plague.

Rav Ashi objects, since the witnesses may not fear plague, saying that even in times of plague, people only die when it is their time. Rather, we tell them that false witnesses are despised by those who hired them. Rav Ashi proves this from Izevel, who referred to people who she was going to hire for false testimony as *bnei bliya'al – brazen people*. (29a)

Just Kidding!

The *Mishna* says that the witnesses must testify that, in their presence, the litigant admitted to his creditor that he owed him money.

The *Gemora* says that the *Mishna's* stipulation that they testify that the admission was done "in their presence" (*and not that they heard the admission*) supports Rav Yehudah, who says in the name of Rav that the debtor must designate the witnesses when admitting. Rabbi Chiya bar Abba said the same in the name of Rabbi Yochanan.

The *Gemora* supports this further with a *braisa*. The *braisa* discusses a creditor who confronted his debtor, saying that he owed him money. The debtor admitted to the debt. The next day, when the creditor demanded payment, if the debtor said that he was just joking when he admitted, he is not liable. Even if the creditor hid witnesses on the first day, and followed up on the debtor's admission by asking him to admit in front of witnesses, if the debtor said that he was afraid that would make him unable to deny the debt, he may still later claim the whole conversation was a joke, since he never designated witnesses to the admission.

The *braisa* concludes by saying that a court does not volunteer any claims in defense of an enticer. The *Gemora* expands on the last statement of the *braisa*, which seems to be a non sequitur. The *Gemora* explains that the *braisa* is missing a statement. Although the debtor may claim he was joking, the court does not volunteer the claim if he does not suggest it. However, in capital cases, the court does volunteer claims in defense of the defendant, except in the case of an inciter.

Rabbi Chama says that from the lesson of Rabbi Chiya bar Abba he learned that this is due to the verse about the inciter, which states that we may not pity, nor cover up his crime, indicating that we should not be looking for ways to exonerate him.

Rabbi Shmuel bar Nachman says in the name of Rabbi Yonasan that we learn not to volunteer claims to exonerate the inciter from the story of the serpent in Gan Eden. Rabbi Simlai says that although the serpent could have advanced claims in his defense, but since he did not suggest them, neither did Hashem. The *Gemora* explains that the serpent could have claimed innocence, since Adam and Chavah should have listened to Hashem, and not to him, just as one must always disregard the words of a student, when it contradicts the words of their teacher. (29a)

Adding, or Subtracting?

Chizkiyah says that from the story of the serpent we see that if one adds on to the Torah, he is actually removing. While Hashem only prohibited eating from the tree of knowledge, Chavah included the prohibition of touching the tree in addition to the prohibition on eating it. Therefore, when the serpent showed her that she did not die from touching it, she thought she would not die from eating it. Thus, the addition of a new prohibition led to a diminution of the severity of the original prohibition.

Rav Mesharshiya learns this from the dimensions of the Ark. The Ark's length was two *amos* – *amasai'm*. If the leading *alef* in *amasa'im* is removed, the word is *masa'im* – 200. Thus, the extra letter *alef* decreases 200 to two.

Rav Ashi learns this from the dimensions of the ceiling of the Mishkan. The verse says there were eleven curtains – *ashtai esreh*. If the leading *ayin* in *ashtai* is removed, the phrase is *shtai esreh* – twelve. Thus, the extra letter *ayin* decreases twelve to eleven. (29a)

Kidding, or Lying?

Abaye says that debtor is only believed if he claims that his admission was a joke. However, if he denies the admission, he is established as a liar, and not believed. However, Rava is quoted as saying that a person does not remember something irrelevant, and he therefore may not be lying, but rather have forgotten his admission. (29a – 29b)

Designating Witnesses

A creditor hid witnesses under the canopy of a bed, and had his debtor admit to his debt there. When the creditor asked him if all people present - awake or asleep - may be witnesses to the admission, the debtor refused. Rav Kahana says that his refusal make his admission invalid.

A creditor hid witnesses in a grave, and had his debtor admit to his debt there. When the creditor asked him if all people present – dead or alive – may be witnesses to the admission, the debtor refused. Rabbi Shimon says that his refusal makes his admission invalid.

Ravina (or Rav Papa) say that from these stories we can learn that the requirement of Rav that the debtor designate the witnesses to his admission may be accomplished by the creditor's designation, and the debtor's silence. In these stories, only the debtor's explicit refusal invalidated the admission.

There was a man known as full of debts. He protested this name, naming only two people as his creditors. These two people then attempted to collect their debt by his admission. Rav Nachman ruled against them, since people falsely admit to debts, to not appear wealthy.

There was a man known as the mouse who sits on his coins. On his deathbed, he named to his children two creditors. When he died, the two creditors came to the orphans to collect, and Rabbi Yishmael the son of Rabbi Yosi ruled in their favor, since one only avoids appearing wealthy while alive. The orphans paid half. When the creditors tried to collect the rest, they went to Rabbi Chiya. Rabbi Chiya said that just as one does not want to appear wealthy, he does not want his children to appear wealthy, and his admission is therefore invalid. Rabbi Chiya said that the half that was paid need not be returned, since it was already adjudicated by Rabbi Yishmael the son of Rabbi Yosi. (29b)

For the Record…

If one admitted in front of two witnesses, they may record his admission in writing only if they validated this by acquiring a *chalifin* transfer from him. If three witnessed his admission, but did not validate it with a *chalifin*, Rav says they may record it in writing, while Rav Assi says they may not. This once occurred, and Rav did not allow them to record it in writing, out of concern for Rav Assi's position.

Rav Adda bar Ahavah says that a group of three witnessing an admission may only record it in writing if the debtor gathered them to admit in their presence, indicating he meant for them to serve as a court. If he found them already assembled, he may have just intended them to witness, and would have sufficed with two as well. Rava says that even his gathering the three is not sufficient indication of intention of a court, so he must specify to them that they are acting as his judges. Rav Ashi says that even that is insufficient, and they may only record it in writing if they formally sat as a court, and summoned him to their court, at which point he admitted.

(29b)

Admit to what?

The *Gemora* clarifies that an admission to owing movable items (*e.g., money*) without a *chalifin*, may not be recorded, but cites a dispute about such an admission to owing land. Ameimar says that such an admission also may not be recorded, while Mar Zutra says it may be. The *Gemora* rules like Mar Zutra.

Ravina went to Damharia, where Rav Dimi bar Rav Huna asked him the status of movable items that are present at the time of admission. Ravina said that this is equivalent to land. Rav Ashi says that even if present, unlike land, it is not yet collected, and may not be recorded in writing. (29b)

Was it done right?

A document to an admission did not contain the phrase, "And the debtor told us to write, sign, and deliver this document to the creditor." Although this debtor had to tell the witnesses to do this, Abaye and Rava both say that we assume the document was executed correctly, even if it is not explicitly clear from its text. This is similar to Rish Lakish's statement that a sales document on property of an inheritor is assumed to have been written when the inheritor was old enough to sell it, even if it is not explicitly clear from the text.

Rav Pappa (or Rav Huna the son of Rav Yehoshua) challenged this comparison. While all know that one who is too young may not sell his father's property, not all Torah scholars know that two witnesses to an admission, without *chalifin*, may not record it in writing, so we certainly may not assume that all court scribes know this.

The *Gemora* says that the scribes of Rava and Abaye's courts' scribes were asked, and indeed knew that such an admission may not be written, unless done with a *chalifin*.

An admission document was written in the form of a court document, instead of testimony, but had only two signatures. It did not record that it was done in the presence of three judges, one of which was absent at the signing. Ravina initially thought that this was also comparable to Rish Lakish's ruling, and we may assume that there was a full court of three at the outset of the document.

Rav Nassan bar Ami objected, saying that we are concerned with a mistaken court, that thinks that two are sufficient, and the document is invalid. Rav Nachman bar Yitzchak says that if the document says "court," that is sufficient, since no one mistakenly refers to two as a "court."

The *Gemora* asks why we do not assume the "court" consisted of two, which Shmuel calls a "brazen court." Although Shmuel rules that such a court's judgments are valid, for an admission, three are needed, and the document should therefore be invalid.

The *Gemora* says that the document must contain the phrase, "court of Rav Ashi" (*i.e., the contemporary eminent Torah scholar*), since his court would know that a court needs three judges.

The *Gemora* clarifies, that even if the court of Rav Ashi agrees with Shmuel about the status of two judges, the document must say that "Rav Ashi commanded us to write this document," since Rav Ashi knows that only three may write an admission document, if no *chalifin* was done. (29b – 30a)

INSIGHTS TO THE DAF

What is Admission?

When addressing the nature of the witnesses' testimony, the *Gemora* enters a discussion about which different types of admissions by a debtor are valid evidence of his liability. The *Mishna* states that in order to establish his liability, the witnesses must testify that "he borrowed or admitted the debt to the creditor in our presence." The *Gemora* learns from this *Mishna* that the debtor must designate the witnesses. If

he did not, the *Gemora* mentions claims he may advance, to negate his admission:

1. He was just joking when he admitted.
2. He admitted to a debt only to seem not wealthy.
3. He denies the admission.

If he agrees that he admitted, but denies the debt, without explaining his admission, we obligate him to pay. The Rambam (To'ain venit'an 7:1) rules that if the debtor admitted to the witnesses in a formal fashion, even if he did not designate them, he is liable.

The Rishonim discuss further parameters of a debtor's admission and statements of liability.

How many Witnesses?

The Ba'al Hamaor says that an admission must be in front of two witnesses. If one admitted in front of one witness, even designating him as a witness, this is inadmissible, even to force him to swear against the witness.

The Ramban, Rambam, Rif, and Rosh disagree, stating that an admission to one witness is as valid as to two witnesses, albeit only necessitating an oath by the debtor.

The Ba'al Haterumos says that if one admitted to a debt in front of a court, or with a *chalifin* acquisition, he may not negate his admission with any of the claims mentioned in the *Gemora*.

Kidding vs. not Wealthy

The Rishonim (Rashi, Rosh, Tosfos 29b kach) state that one may only claim that he was kidding when he responded to a claim by the creditor, since he claims that in response to the ridiculous claim of a debt, he responded in kind with a joke. If one volunteered an admission to a debt, he may not claim that he was kidding, since nothing prompted him to joke about a debt. On the other hand, the claim of not appearing wealthy is only valid when the debtor volunteered an admission of a debt, and not in response to a claim by the creditor. When the creditor falsely claims a debt, one will not lend it credence simply in order to not appear wealthy. The Rambam (ibid) states that the claim of not appearing wealthy is not valid at all when the admission was in the presence of the creditor. The Rosh disagrees, and says it is valid even when the admission was in front of the creditor.

The court will volunteer the claim of not appearing wealthy, but not the claim of kidding.

One does not joke around on his deathbed. Therefore, if one on his deathbed admitted to a creditor's claim, he (*if he recovers*) or his estate (*if he does not*) may not claim that he was joking. However, the *Gemora* concluded that one does try to make his children appear not wealthy, even on his deathbed. Therefore, even if he volunteered an admission to a loan, this is inadmissible as evidence, since we claim that he only did so to make his children not appear wealthy.

Silence is Acquiescence?

The *Gemora* states that the witnesses may be designated by the debtor, or by the creditor. If the creditor designates the witnesses, and the debtor was silent, this indicates his agreement to the designation. However, the Ba'al Haterumos states that silence is not taken as acquiescence in relation to the claim itself. Therefore, if the creditor claimed a debt, and designated witnesses, and the debtor was silent throughout, he is not liable.

Oath

Rav Hai, cited by the Rosh, states that although the debtor may advance these various claims to negate his admission, he must still swear that he is not liable. This is similar to a general *shevuas heseis* – an oath to negate a claim of a debt, even when the debtor denies the whole claim.

Undecided

The *Mishna* says that if one of the judges is undecided, even if the two other judges agree on a verdict, more judges must be added. Rashi explains that although his opinion would not affect the outcome, by being undecided, he has effectively changed the court to one of two judges. Although a majority rules, it must be a majority of a whole, not a majority with a silent minority.

Incitement

Rav Moshe Feinstein (Igros Moshe O"H 1:99) notes that the *Gemora* puts the serpent in Gan Eden in the category of a *maisis* – an inciter. This indicates that although only one who incites to idolatry may be subject to capital punishment, the category of *maisis*, along with all its severity, applies to any prohibition. He discusses the application of this concept to one who invites people to a celebration on Shabbos, knowing that they can only arrive by driving.

HALACHAH ON THE DAF

When is a Dayan Considered Biased?

The Shulchan Aruch (Choshen Mishpat 7:7) has several opinions whether a judge may judge a case when one of the litigants is either a friend or an enemy.

The Mechaber rules that all levels of friendship, and conversely animosity, will disqualify a judge from judging that case, since both litigants need to have an equal and fair hearing.

The Rema adds that if in fact a judge did judge such a case, the ruling stands.

The Tur holds that if the litigant was either a close friend or a real enemy, then the case would need to be judged again with impartial judges.

There is yet another opinion that maintains in instances where the litigant is not a close friend or a real enemy, then it is permitted for him to be a judge, and it's only a commended act if he would absolve himself from judging that case.

Although we just learned that one cannot be a judge in a case regarding a close friend, it would be permitted when each litigant chooses their own judge, and the two judges choose a third judge.

Two judges that hate each other may not judge a case together, since due to their hatred, each will try to undermine the other (ibid 7:8).

The Pischei Tshuva cites two opinions who hold that the judges who are disqualified from judging together, may not sit in on a case even without offering any opinions, albeit for two different reasons.

The Beis Yaakov (Shu't 67) derives this from an earlier Tosfos (18b). However, all other types of disqualifications, for example, the above scenario where he is a close friend to one of the litigants, although he may not be a judge, he is still allowed to be there.

The Shvus Yaakov (Shu"t 1:141) disagrees with his proof; rather, the reason is due to simple logic. The *halachah* is that even if a *talmid* can see a merit, he must speak up, and if he does not, he has transgressed the prohibition of *midvar sheker tirchak* (ibid 9:7). Therefore if we would allow them to quietly participate in the proceedings, inevitably, one of these two judges will have transgressed *midvar sheker tirchak,* since we established that the two judges will try to undermine each other!