



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h**Tzvi Gershon ben Yoel (Harvey Felsen) o"h**

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Mishnah

Shevuas ha'eidus (witnesses, who, after the litigant requests them to testify on his behalf, swear falsely that they do not know testimony) applies to men but not women, to people who are not relatives but not to relatives, to people who are valid (witnesses) and not those who are invalid, to people who can testify (as opposed to a king), and whether or not the oath is administered in *Beis Din*. This is if they take the oath themselves. If the oath is administered to them, they are liable only if they deny knowing testimony (under oath) in *Beis Din*. These are the words of Rabbi Meir. The *Chachamim* say: Whether they take the oath themselves, or whether it is administered to them by others, they are liable only if they deny in *Beis Din*. They are liable for knowingly violating the oath, or even for unknowingly violating it (they were not aware of the punishment), if they knowingly denied the testimony, but they are not liable if they unknowingly (completely) violated it. When they knowingly violate it, they are liable to bring a *korban olah v'yoreid*. (30a1)

Women as Witnesses

[The *Gemara* cites three *Baraisos* which discuss the Scriptural source that teaches us that women are disqualified from serving as witnesses.] How do we know? — Because the Rabbis taught in a *Baraisa*:¹ And the two men shall stand. The verse refers to witnesses. — You say [it refers to] witnesses; but perhaps [it refers to] the litigants? When it says: between whom the conflict is, the litigants are already mentioned; hence, how do I explain and the two men shall stand, [therefore,] the verse refers to witnesses. And if you wish to

say [something to refute this deduction, I give you another]: Here it is said, 'two', and there it is said, 'two'; just as there it refers to witnesses, so here it refers to witnesses.

What is meant by: If you wish to say [something to refute the deduction]? — You might say, because the verse did not write: and those between whom the conflict is, the whole verse refers to the litigants, [therefore, I give the second deduction:] here it is said: two, and there it is said: two; just as there it refers to witnesses, so here it refers to witnesses.

Another [Baraisa] taught: And the two men shall stand; the verse refers to witnesses. You say [it refers to] witnesses; but perhaps [it refers to] the litigants? You may retort: Do, then, two come to court, and do not three ever come to court? But if you wish to say something [to refute this deduction, I give you another]: Here it is said, 'two', and there it is said, 'two', just as there it refers to witnesses, so here it refers to witnesses.

What is meant by: If you wish to say [something to refute this]? You might say, the verse refers to plaintiff and defendant, [therefore I give the second deduction:] here it is said, 'two', and there it is said, 'two'; just as there it refers to witnesses, so here it refers to witnesses.

Another [Baraisa] teaches: And the two men shall stand; the verse refers to witnesses. You say [it refers to] witnesses; but perhaps [it refers to] the litigants? You may retort: Do, then, men come to court, and do not women ever come to court?

¹ It is written: *And the two men shall stand before the court*. Since the verse is referring to witnesses, and it says "men," we derive from there that women are disqualified from serving as witnesses. Each *Baraisa* discusses the possibility that

the Torah is referring to the litigants. This is refuted from the fact that the Torah wrote "two men." Obviously, the Torah is referring to witnesses.



But if you wish to say [something to refute this deduction, I give you another]: Here it is said, 'two', and there it is said, 'two'; just as there it refers to witnesses, so here it refers to witnesses.

What is meant by: If you wish to say [something to refute this]? — You might say, it is not usual for a woman, because all honor is the King's daughter inside, [therefore I give the second deduction:] here it is said, 'two', and there it is said, 'two'; just as there it refers to witnesses, so here it refers to witnesses. (30a2 – 30a3)

Standing

The *Gemara* cites a *Baraisa*: *And the two men shall stand*. It is a *mitzvah* that the litigants should stand. Rabbi Yehudah said: I heard that if they want to allow them both to sit, they may allow them to sit. What is prohibited? One should not stand, and the other sit; one speaks all that he desires, and the other is instructed to be brief.

The *Gemara* cites a *Baraisa*: *In righteousness shall you judge your neighbor*. This teaches us that one should not sit, and the other stand; one speaks all that he desires, and the other is instructed to be brief. Another interpretation: *In righteousness shall you judge your neighbor*. Judge your fellow favorably.

Rav Yosef taught the following *Baraisa*: *In righteousness shall you judge your neighbor*. He who is with you in Torah and *mitzvos* - endeavor to judge him properly (*by giving his case precedence*).

Rav Ulla the son of Rabbi Ilai had a case before Rav Nachman. Rav Yosef sent the following message to him: Our colleague Ulla is knowledgeable in Torah and *mitzvos*. Rav Nachman said: Why did he send this message to me? That I should flatter him (*and rule in his favor even if it is incorrect; that is forbidden*)!? Then he said: He probably meant that I should settle his case first. Alternatively, he was referring to the *halachah* of "the discretion of the judges." [*There are times when Beis Din do not rely on witnesses or an oath for their final judgment;*

rather, it is left to their discretion. Since Ulla was righteous, it would be proper to judge him favorably.]

Ulla said: The argument (*between Rabbi Yehudah and the Chachamim*) is in regard to the litigants, but in regard to the witnesses, all agree that they must stand, for it is written: *And the two men shall stand*.

Rav Huna said: The argument is in regard to the time when they present their arguments before the court, but at the time of the completion of the case, all agree that the judges sit and the litigants stand, for it is written: *And Moshe sat to judge the people, and the people stood*.

An alternate version: The argument is in regard to the time when they present their arguments before the court, but at the time of the completion of the case, all agree that the judges sit and the litigants stand, for witnesses are like the completion of the case, and it is written with reference to them: *And the two men shall stand*.

It once happened that the widow of Rav Huna had a case before Rav Nachman. He said to himself: What shall I do? If I should rise before her (*out of respect*) the plea of the other litigant will be obstructed; if I should not rise before her, I will be doing wrong, for the wife of a scholar is like a scholar. So he said to his attendant, "Go and make a goose fly over me, and urge it towards me, so that I will rise" (*and the other litigant will not realize that I am rising out of respect*).

The *Gemara* asks: But the master said: The argument is in regard to the time when they present their arguments before the court, but at the time of the completion of the case, all agree that the judges sit and the litigants stand (*so what can the judge do at the completion of the case*)!? The *Gemara* answers: He sits as one who unties his shoes (*as he is not standing or sitting*), and says, "You, So-and-so, are innocent, and you, So-and-so, are guilty."

Rabbah son of Rav Huna said: If a Rabbinical scholar and an *am ha'aretz* (*an unlearned person*) have some dispute with each

other, when their case comes to court, we seat the Rabbinical scholar; and to the *am ha'aretz* we also say, "Sit," and if he remains standing, it does not matter.

Rav son of Rabbi Sheravya had a case before Rav Pappa. He told him to sit, and told the other litigant also to sit; but the attendant of the court came and nudged the *am ha'aretz* and made him stand up. Rav Pappa did not tell him to sit.

The *Gemara* asks: How could he do so? Will not the other's claim be impeded? The *Gemara* answers: Rav Pappa may say: He will say to himself, "He (*the judge*) has asked me to sit, but the attendant does not like me.

Rabbah the son of Rav Huna said: If a Rabbinical scholar and an *am ha'aretz* have some dispute with each other, the scholar should not come first and sit down before the judge, because it will appear as if he is presenting his case (*and if the other litigant is not there, it is forbidden to do*). And we do not rule like this except when he does not have a fixed time to study with him; but if he has a fixed time with him, it does not matter, for he (*the other litigant*) will say, he is occupied with his lesson.

And Rabbah the son of Rav Huna said: If a Rabbinical scholar knows some testimony, and it is demeaning for him to go to the judge, who is inferior to him, to give testimony before him, he is not required to go. Rav Sheisha the son of Rav Idi said: We also learned like that: If one (*a Torah scholar*) found a sack or a basket which it is not his custom to handle (*even were it his own*), he is not required to take it (*and announce it*).

However, this is only the case in money matters, but in the case of a prohibition, he must give testimony, for it is written: There is no wisdom or understanding or counsel against Hashem; for wherever there is a desecration of Hashem's Name, the honor of a teacher is not regarded.

Rav Yeimar knew some testimony for Mar Zutra, and came before Ameimar. He told them all to sit. Rav Ashi said to Ameimar: Didn't Ulla say: The argument is in regard to the litigants, but in regard to the witnesses, all agree that they must stand? He replied to him: This (*that the witnesses should stand*) is a positive *mitzvah*, and that (honoring a Torah scholar) is a positive *mitzvah*. The positive *mitzvah* of displaying respect for the Torah scholar is greater. (30a3 – 30b3)

(Mnemonic: Advocate, Uncultured, Robbery, False.) Our Rabbis taught: How do we know that a judge should not appoint an advocate for his words?² — Because it is said: From a false matter keep far. And how do we know that a judge should not allow an uncultured disciple to sit before him? Because it is said: From a false matter keep far. And how do we know that a judge who knows his colleague to be a robber, or a witness who knows his colleague to be a robber, should not join with him? Because it is said: From a false matter keep far. And how do we know that a judge who knows that a plea is false should not say: Since the witnesses give evidence, I will decide it, and the chain [of guilt] will hang round the neck of the witnesses? — Because it is said: From a false matter keep far. (30b3 – 31a1)

INSIGHTS TO THE DAF

Should children also be judged favorably?

Our *sugya* teaches us that the command, "Judge your companion in righteousness" includes a command for the *dayan* to treat both litigants equally and a command that everyone judge his companion favorably. The astute surely notice that our *sugya* says "judge your comrade (*chavercha*)..." while the saying accustomed by everyone is "judge **everyone** (*kol haadam*) favorably," which originates in Avos 1:6. The explanation for the change is that our *sugya* cites the **halachah** whereas Avos teaches us morally proper conduct (*musar*). In other words, if you see anyone doing something that could be

² He should not endeavor to bolster up his decision (though realizing he has made a mistake) by an advocate, i.e., by trying to think of further arguments to support it, because he is ashamed to change his view.

interpreted as a transgression or a merit, judge him favorably and don't suspect him of transgression. But as for a comrade, who you know is not an evildoer, you are **obligated** to try as much as possible to judge favorably (*Chafetz Chayim*, introduction to 'asin, 3 in *B'eir Mayim Chayim*).

How to rectify a negative impression: A person who sees another committing a transgression and judges him unfavorably violates a mitzvah of the Torah and must erase that negative image and once again judge him favorably. Though the prohibition was committed when he judged him unfavorably, it will be rectified when he judges him favorably (*Darchei Tzedek*, 6:6, according to *Chafetz Chayim*, end of *klal* 6, concerning accepting *lashon hara'*).

Should children also be judged favorably? In his *Shvilei Chayim*, HaGaon Rav Moshe Kaufman relates to the prohibition of *lashon hara'* about children. It is interesting, he notes, that in his *Chafetz Chayim*, Rabbi Yisrael Meir HaKohen of Radin zt"l has difficulty in finding an instance where it is forbidden to tell *lashon hara'* about a child. He finally finds a complicated situation of an orphan living with others, about whom we mustn't tell *lashon hara'*, lest he be driven away. We thus learn that people do not perceive children as "bad." Childish mischief comes and goes, their attributes change, such that the *Chafetz Chayim* saw no reason to forbid *lashon hara'* about children except in the said instance (see *Shvilei Chayim*, that one must not relate things about a minor that clearly disgrace him). Thus, the mitzvah to judge another favorably does not usually relate to children since, as we said, they are not yet seriously assessed favorably or unfavorably. We accept their negative behavior as transient, having no bearing on their essence.

What is standing?

It would be interesting to observe two people leaning against a building. One is regarded as sitting while the other as standing. Could it be? It turns out that it could.

Our *sugya* explains that witnesses must stand during their testimony. When *dayanim* deliver their ruling, they must sit

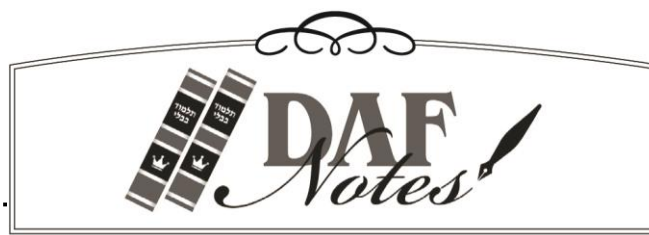
while the litigants must stand. Our Gemara derives these halachos from verses of the Torah but according to many *poskim*, the interpretations are merely homiletic support (*asmachta*) to a rabbinical decree. In our era, when there are no "ordained" *dayanim* (*semuchim*), all agree that these halachos are not from the Torah (*d'oraisa*) (see *Tumim*, 17, S.K. 1).

If we examine the *poskim*, we find an apparent contradiction in their rulings. The *Remo* (C.M. 17:1) writes that though witnesses must **stand**, they may lean on a certain object. Apparently, someone leaning is regarded as standing. On the other hand, *Shulchan 'Aruch* (ibid, 28:26) rules that though *dayanim* must **sit**, they may stand while leaning on a certain object and do not have to actually sit. The *poskim* therefore have a difficulty in determining if leaning is like standing or sitting. Many Acharonim address this contradiction and following are two explanations, which differ in the extreme.

According to the Vilna Gaon (17, S.K. 6), leaning is regarded **neither** as standing nor as sitting. Therefore, if a person is demanded to sit or stand, leaning is not regarded as doing either of those acts. Nonetheless, if a *dayan* doesn't sit or if a witness doesn't stand, their words still take effect as their sitting or standing is only a first preference (*lechatchila*) and if they did otherwise, their posture has no bearing on their pronouncements. Therefore, *Chazal* didn't mind if a *dayan* or witness wants to lean and they may do so if they wish.

On the other hand, according to the *Bach* (ibid), if the **Torah** demands a person to stand, such as when offering a sacrifice or the like, he should stand without leaning. The regulations of *Chazal* concerning standing or sitting are different, where leaning **is** regarded as standing **and** alternatively as sitting. A *dayan* who must sit may therefore stand while leaning and similarly a witness who must stand may lean on a certain object.

We thus learn that both a *dayan*, who must sit, and a witness, who must stand, may lean. However, *poskim* disagree in the instance of a *dayan* and a witness who want to lean



simultaneously. According to the *Bach*, they may do so while the witness will be regarded as standing and the *dayan* as sitting. The *Sema*., however, (see *Tumim*, *ibid*, S.K. 2) asserts that he does not reject the idea that we could regard leaning as either sitting or standing. Nonetheless, the halachos of standing for witnesses and sitting for *dayanim* were interpreted from the same verse and should be regarded as one entity with the same goal: to separate the *dayanim* from the others. The *dayanim* are thus granted an official status that casts its authority on the litigants and witnesses to make them behave suitably in such a place. Therefore, a *dayan* and a witness must not lean simultaneously as there is no difference between them and the *dayan*'s status does not stand out (see *ibid*, whereby he rejects the *Bach*'s proof).

DAILY MASHAL

Standing up for the elderly in a bus

About 40 years ago there was a person in New York, conscientious of mitzvos and liked by everyone. He worried about the elderly, noticing that they often had to stand in the public transport when no one offered them a seat. Subsequently he composed and publicized a message to the Jews in which he wrote that the Torah demands us to make a seat available for the elderly, as we are told: "Rise before old age and honor the appearance of an old person" (Vayikra 19:32). A few days later a certain Torah scholar came across the message and began to wonder if its contents were true (see *Mishneh Halachos*, VI, 160-161). This subject includes a number of halachic topics, such as if the obligation is to continue standing before an elderly person till he goes on his way or sits down. This question is also topical in a *beis midrash* if a *talmid chacham* enters and while standing, speaks with a learner. What about those within his four cubits? Must they stand the whole time he is standing or are they allowed to sit after they rise?

Our *sugya* relates that Rav Nachman rose in honor of Rav Huna's wife when she came to a *din Torah* before him, as she was the wife of a *chaver* (person of repute). The Gemara then asks that a *dayan* should sit while delivering this ruling.

The author *Toras Chayim* (and see the *Ran* on our *sugya*) proves from our Gemara that the obligation to stand before a *chacham* obligates a person to stand until the *chacham* sits down. If not, why did the Gemara wonder why Rav Nachman stood while delivering his ruling? After all, it could be that he stood momentarily when Rav Huna's wife entered the room and then sat down. Many other *poskim* (*Shibolei HaLeket Hashalem*, 43; *Urim Vetumim*, 17; *Urim*, S.K. 10; and see Responsa *Har Tzevi*, O.C., I, 107, and Responsa *Yechaveh Da'as*, III, 71) also indicate that the obligation to stand does not end with a moment of standing in the *chacham*'s honor. Similarly, it would appear that someone who stands before the elderly must not sit down as long as the elderly person is standing near him.

Still, there is a wonderful idea to distinguish between the instance of our *sugya* and other instances. Our Gemara speaks of Rav Huna's wife, who stood before Rav Nachman in a *beis din* because she was a litigant. To honor her he would have had to stand as long as she was standing **because of him**. The Gemara therefore asks that Rav Nachman had to sit to deliver his ruling (see *Kos Yeshu'os* on our *sugya* and Responsa *Minchas Shlomo*, I, 33).

The main point of standing is honor: But even if we decide that after standing in honor of a *talmid chacham* or an old person one may sit down although they are still standing nearby, the situation is different if an elderly person is standing because he has no place to sit. Rav S. Vosner asserts (Responsa *Shevet HaLevi*, II, 114) that an elderly person standing because of a lack of a place to sit while a young person is seated comfortably constitutes dishonor. The main point of standing before the elderly is not merely to stand but to observe the mitzvah to honor him and what honor is there in a futile momentarily standing if the elderly person must remain standing?