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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

**Only Monetary Testimony**The *Gemara* proceeds to discuss each opinion cited in the *Baraisa*.

Rabbi Shimon says that the Torah obligated one who made a false promise denying that he knew testimony (*eidus*) and one who falsely promised about an item he was guarding (*pikadon*). Therefore, we learn that just as the *pikadon* promise is a monetary issue, so the *eidus* promise is limited to monetary testimony. Furthermore, it is logical to apply this limitation, as a *pikadon* promise applies to cases which are not included in *eidus*:

1. *Pikadon* promises made by women, relatives, and those disqualified from testifying are liable, while *eidus* promises made by them are not liable, since they are invalid to testify.
2. When one makes a *pikadon* promise multiple times, he is liable for each one anywhere, while one made a false *eidus* promise in court, he may not testify, so his later promises are irrelevant, and he is not liable.

Rabbi Shimon then challenges this argument, by noting the ways that an *eidus* promise applies more widely:

1. One is liable even by the litigant verbalizing the promise, as if he promised.
2. One is liable for intentional as well as intentional false promise, while a *pikadon* promise is liable only if done unintentionally.

Therefore, Rabbi Shimon concludes that we only know the equation of the two promises from the *gezeirah shavah* – common use of the words *techeta* – *will sin*, used in both promises. Just as there it deals only with a money claim, so here it deals only with a money claim. (33b3 – 34a1)

**Rabbi Eliezer**

Rabbi Eliezer said that we learn an *eidus* promise denying testimony from a *pikadon* promise due to the identical use of multiple connecting *o* – *or* phrases.

Rabbah bar Ulla challenges this by saying that perhaps we should learn from the same phrases used in the topic of false *bituy* promises of expression (e.g., I will eat/not eat), which are not limited to monetary areas. This instance of *o* – *or* phrases is similar to *eidus* promises in that they are both discussing a promise, and do not mention a *Kohen*.

The *Gemara* says that there are similarities to both *pikadon* and *bituy*, but we learn from the *pikadon* promise, since it has more similarities

<i>Pikadon</i>	<i>Bituy</i>
Common phrase <i>techeta</i> – <i>will sin</i>	Liable for a <i>chatas</i> sacrifice
Applies even when done intentionally	Liable for a sliding scale sacrifice
Due to claim and denial	Not liable to pay extra fifth
About the past	

(34a1 – 34a2)

**Rabbi Akiva**



Rabbi Akiva said: And it shall be, when he shall be guilty in one of these things — in some of ‘these things’ he is liable, and in some of ‘these things’ he is exempt: how is this? If he claimed from him money, he is liable, if something else, he is exempt.

The Gemara asks: Let me reverse it! — Rabbi Akiva relies on the or . . . or of Rabbi Eliezer. — [If so,] what is the difference between Rabbi Eliezer and Rabbi Akiva? — The difference between them is, if he adjures witnesses for land: according to Rabbi Eliezer they are liable, according to Rabbi Akiva they are exempt. — But according to Rabbi Yochanan who says there that if he adjures witnesses for land, they are exempt even according to Rabbi Eliezer, what will be the difference here between Rabbi Eliezer and Rabbi Akiva? — The difference between them will be witnesses for a fine.<sup>1</sup> (34a2)

#### ***Rabbi Yosi Hagelili***

Rabbi Yosi Hagelili said that the verse which specifies *o ra’ah* — or he saw *o yada* — or he knew indicates that the case is monetary, since only in such cases can a witness prove a case by testifying only to what he *saw* - without *knowing* a context - or by testifying what he *knows* - without *seeing*.

Rav Pappa suggested to Abaye that Rabbi Yosi Hagelili disagrees with Rav Acha, who says that if a camel in a herd was violently coupling, and we later found a dead camel in the vicinity, we assume that camel killed it, although no one saw the killing. Since Rav Acha rules based on a compelling circumstance, he would accept one who testifies that he knows someone murdered, even though he did not see the act.

The Gemara presents the example of Rabbi Shimon ben Shetach, who saw chase someone into a ruin. He followed him in, and found the victim dead from a stab wound, and the pursuer holding a bloody sword. Rabbi Shimon ben Shetach said to him: Wicked one! Who killed this man? I or you? But what can I do, since your blood is not given into my hand, for Scripture says: At the mouth of two witnesses, or

three witnesses, shall he that is to die be put to death. But the Omnipresent will exact retribution from you! It is said, they had not yet moved from there, when a serpent bit him, and he died! — You may say, he does agree with Rabbi Acha. Granted, knowing without seeing is possible, but seeing without knowing how is that possible? Does he not need to know if he killed an idolater or a Jew, if he killed a man suffering from a fatal disease or a healthy man?

We may deduce that Rabbi Yosi Hagelili holds that if he adjures witnesses for a fine, they are exempt, for if you will say they are liable, granted that knowing without seeing is possible, but seeing without knowing — [how is that possible]? Does he not need to know if he cohabited with an idolater woman or a Jewish woman, with a virgin or with a woman who is not a virgin? (34a3 – 34a4)

#### ***What did they see?***

Rav Hamnuna was sitting before Rav Yehudah, who asked what would be the ruling if one claimed that he counted out money to someone as a loan, and witnesses testify that from outside they saw the money transfer. Rav Hamnuna said that if the person receiving the money denied the transaction, he has been proven a liar by the witnesses, and is liable, while if he claims that it was not as a loan, the witnesses have not disproven him. Rav Yehudah invited Rav Hamnuna to come to the front of the lesson, as he was enlightening his teacher.

A person claimed that he counted out money as a loan to someone next to a certain pillar. The alleged borrower responded that he did not pass by that pillar, but witnesses testified that he urinated at that pillar. Rish Lakish said that he has been proven a liar, and must pay. Rav Nachman objected, saying this is Persian justice. Rather, we understand that he only meant that he did not pass by the pillar in the context of a loan. Some say the alleged borrower responded that he *never* passed by the pillar, and the witnesses testified that he urinated there. Rav Nachman said that he has been proven a

<sup>1</sup> Rabbi Eliezer will obligate the denying witnesses, while Rabbi Akiva will exempt them.

liar, but Rava disagreed, explaining that one does not remember details which are not relevant, and he may have forgotten that he urinated there. (34a4 – 34b1)

### Rabbi Shimon

The Baraisa had stated: Rabbi Shimon said: The Torah obligates one here (for a false oath) and it obligates one by the case of a deposit, etc.

In *Eretz Yisroel*, they mocked the version of the argument quoted in the *Baraisa*. Why the laughter? — Because he states; deposit [is restricted to money claims] because the law does not make him who is adjured [by others] like him who swears [of his own accord], nor him who swears willfully like he who swears unwittingly. Now, he who swears of his own accord in [the case of] testimony — how does Rabbi Shimon know [that he is liable]? Because he deduces it from deposit; then let him also in [the case of] deposit deduce adjuration by others from testimony. - But why the laughter? Perhaps Rabbi Shimon deduces it by argument through a kal vachomer: if when adjured by others he is liable, when he swears of his own accord he should the more so be liable? — Well then, the laughter is in connection with ‘willful like unwitting’, for he states: Deposit [is restricted to money claims] because the law does not make the one who is adjured [by others] like he who swears [of his own accord], nor the one who swears willfully like he who swears unwittingly. Now for swearing willfully in [the case of] testimony, how do we know [that he is liable]? Because it is not written: and it be hidden. Here also it is not written: and it be hidden.

Rav Huna said to them: But why the laughter? Perhaps Rabbi Shimon deduces that willful [transgression] is not like unwitting in [the case of] deposit from [the law of] trespass [in holy things] (me’ilah). — This then is the very reason for the laughter: why does he deduce it from me’ilah? Let him rather deduce it from testimony! — It is more reasonable that he should deduce it from me’ilah, because it is ‘me’ilah’ from ‘me’ilah’! On the contrary, he should deduce it from testimony, because it is ‘sin’ from ‘sin’. It is more reasonable

that he should deduce it from me’ilah, because [they are both equal in respect of] ‘me’ilah’, all, enjoyment, fixed offering, fifth, and guilt offering. On the contrary, he should deduce it from testimony, because [they are both equal in respect of] ‘sin’, layman, oath, claim and denial, and ‘or . . . or’! — The others are more.

<i>Me’ilah</i>	<i>Eidus</i>
Common phrase <i>me’ilah</i>	Common word <i>techeta</i>
Applies to all people	Mundane (no consecrated property)
The person benefited from his transgression	Involves promise
A standard sacrifice, not sliding scale	Due to claim and denial
Pay fine of fifth	Both use <i>o – or</i> phrases
Sacrifice is <i>asham</i> – <i>guilt offering</i>	

Well then, why the laughter? — When Rav Pappa and Rav Huna the son of Rav Yehoshua came from the Academy, they said this is the reason for the laughter: Behold Rabbi Shimon deduces by analogy [testimony from deposit]. Why then does he argue: Deposit [is restricted to money claims] because the law does not make the one who is adjured [by others] like he who swears [of his own accord], nor the one who swears willfully like he who swears unwittingly. - But why the laughter? Perhaps he argued thus before he established the analogy, but after he established the analogy he does not argue thus.

But does he not? Surely Rava bar Ittai said to the Sages: Who is the Tanna who holds that [in the case of] the oath of deposit willful transgression is not atoned for [by an offering]? It is Rabbi Shimon! — Perhaps he argues that willful transgression [is not] like unwitting [in the case of deposit], because he deduces it from me’ilah since [it is equal to it] in more respects;



but that adjuration by others [is not] like swearing of his own accord he does not argue. — Well, let testimony now be in turn deduced from deposit that willful is not like unwitting transgression; just as [in the case of] deposit he is liable for unwitting but not for willful transgression, so [in the case of] testimony let him be liable for unwitting and not for willful transgression; just as he deduces deposit from me'ilah! — For this reason Scripture wrote testimony near the oath of utterance and near [the laws of] tumah in connection with the Temple and its holy food: for in all of them it is said: and it be hidden; and here it is not said: and it be hidden; in order to make him liable for willful as for unwitting transgression. (34b1 – 35a1)

### INSIGHTS TO THE DAF

#### How Similar?

The *Gemara* explains the reason Rabbi Eliezer learned *eidus* from *pikadon* and not *bituy*. One of the similarities the *Gemara* lists with *pikadon* is the common phrase *techeta* – will sin. Rashi explains that the common phrase is a formal *gezeirah shavah* – common use.

Rabbi Akiva Eiger challenges this, as Rabbi Eliezer offers a different source in the *Baraisa*. If Rabbi Eliezer accepted the common phrase as a *gezeirah shavah*, he would not need the source he presents in the *Baraisa*. Rather, Rabbi Akiva Eiger explains that the *Gemara* is just considering the similar phrase to be a similarity like the other ones listed, but not a formal *gezeirah shavah*.

#### Was he a Tereifah?

The *Gemara* says that in capital cases, *seeing* without *knowing* is not enough to establish testimony, as the circumstances are crucial to establishing guilt. For example, if witnesses *see* a murder, the court cannot execute the killer unless they *know* that the victim was not a *tereifah*, who has a systemic anatomical flaw.

Tosfos (34a ee) explains that we generally assume a victim is not a *tereifah*, since most people are not. However, the

*Gemara* is discussing a case where there were two people in the vicinity, one *tereifah* and one not, and the witnesses saw the murder, but did not know whether the *tereifah* or healthy person was killed.

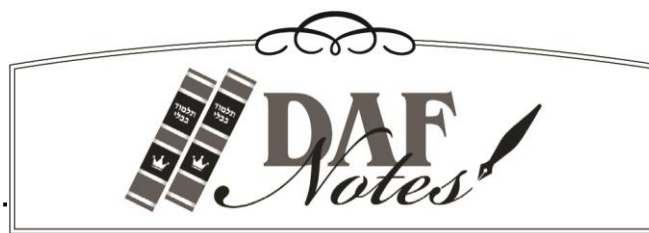
#### Irrelevant?

Rava says (34b) that sometimes a person does not remember things that are irrelevant. Therefore, if someone said in court that he never passed by a pillar, and witnesses then testify that he urinated there, he is not considered a liar, since he did not remember the irrelevant information of where he urinated. This principle has varied applications in other areas of *halachah*:

1. If someone who never studied the *halachos* of *shechitah* slaughters an animal with no supervision, it is assumed to be invalid. Even if we ask him about it afterwards, and he answers correctly, we do not accept the *shechitah*, since he has no clear recollection of details that were irrelevant at the time. (Shulchan Aruch YD 1:3)
2. If a knife has nicks in one direction, an animal slaughtered with it is kosher if the knife only went in the smooth direction. If the *shochet* only discovered the nick after *shechitah*, he is not believed to say that he only slaughtered in the right direction, since he does not remember something which was not relevant at the time (YD 18:4).
3. If one stuck a milk spoon in a meat pot, we must estimate how much milk entered based on the section of the spoon that entered the pot. If the person does not remember how much entered, we assume the round part entered. Similarly, if one sliced hot meat with a milk pot, we must estimate based on how much of the knife was used to slice.

The Maharshal says that we assume the whole blade was used, and the person is not believed to say otherwise, since that is an irrelevant fact, which the person forgot.

The Noda Beyehudah (Tinyana YD 16) says that if someone did something himself, and theoretically knew that a fact could be



relevant (e.g., if the spoon or knife was milk), even if he thought it was irrelevant at the time, he is believed when he specifies what he remembers. See Shach 98:28, who cites the Maharshal, as well as opposing opinions, and see Pischei Teshuva (98:1), who discusses the Noda beyehuda, as well as opposing opinions.

#### DAILY MASHAL

Rav Pappa suggested to Abaye that Rabbi Yosi Hagelili disagrees with Rav Acha, who says that if a camel in a herd was violently coupling, and we later found a dead camel in the vicinity, we assume that camel killed it, although no one saw the killing.

*From his master's camels... (Breishis 24:10)* They were distinct from other camels. They would go out muzzled because of concern for theft so they would not graze in the fields of others. (Rashi)

Why is so much ink invested describing the incredible devotion of Avraham's servant and even the character of his of his animals? To stare at the sun is a blinding experience. Therefore, if one wants to get a sense of the sun's brightness it might be more advisable to observe the moon. Huh!?

Rabbi Label Lam in <https://torah.org/torah-portion/dvartorah-5766-chayeisarah/> explains: A colleague of mine Yossi, has been passionately devoted to Jewish Outreach in Israel for decades. He had for a pet a talking bird. The bird would imitate many sounds and voices in their home. It would ring like the telephone and repeat the regular greetings and salutations. One day, while in the back yard, one of his boys accidentally sprayed water at the bird. The bird was startled and flew up into a tree. Disoriented, now, the bird flew away. The family was devastated. Deafening silence now punctuated their daily chatter.

A year went by and Yossi caved in to his children's constant pleas and he paid a handsome sum to acquire another talking bird. At work that day he shared the news of his new purchase.

He was told that at one of the homes in which classes were held there was a talking bird that chimed in humorously and poignantly during the lectures. Yossi called the host to talk hobby-shop. Yossi told him how he had lost his bird a year ago and how his bird had been missing one of three toes on the right foot. There was uncomfortable silence on the other side. The dialogue ended abruptly

A day later Yossi received a call from this fellow, "Yossi, I think I have your bird!" Yossi went to his house and confirmed that it was his bird in fact. The man apologized for not telling him right away. He explained that he had an emotional resistance to doing the right thing. He went on to tell that the bird was found on a soccer field. Someone took note that this was no usual bird. They took it to him because he was known to deal with animals. He fed the dehydrated bird with an eye dropper and then it sat up and said, "Boruch HASHEM!" and other such expressions. The man and his wife were spooked. "Was this some kind of heavenly messenger? The bird talks about G-d, while we live our lives in a spiritual vacuum?" They decided to go to a class and later a seminar. Their whole life changed and later they opened their home to classes and many others were impacted too. The man confessed, "I hesitated because that bird saved my life!" Wow! Truth is stranger than fiction and more organized as well.

Here are three potential lessons. 1) Watch what you say at home! Words travel farther than we might think! 2) As for those who reach out and teach others, claim not success for yourself. Even a bird can do your job. 3) Reb Tzadok explained that when one loves HASHEM with all his might or possessions as our sages say, that even his animals, like the donkey of Pinchas Ben Yair that would not eat non-tithed food, are capable of similar nobility. The brightness of Avraham's personality may best be seen reflecting on a **camel – on the moon.**