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Kesuvos Daf 21

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Mishnah

If one witness says, "This is my handwriting and that is the handwriting of my fellow," and the other witness says, "This is my handwriting and that is the handwriting of my fellow," they are believed (for there are two witnesses on each signature; the document is ruled to be valid). If one says, "This is my handwriting," and the other says, "This is my handwriting," they must join to themselves another person (who can confirm their signatures, for each signature requires confirmation by two witnesses). These are the words of Rebbe. But the Sages say: They do not need to themselves to another person, but rather, a person is believed to say, "This is my handwriting." (20b3)

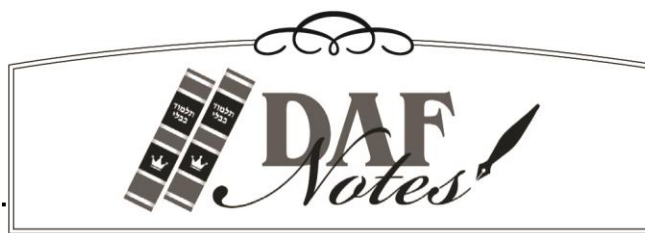
The Nature of this Testimony

The Gemora notes: When you thoroughly analyze Rebbe's opinion, you will realize that Rebbe's position is based upon his understanding that the witnesses are coming to testify regarding their signatures (which is why two witnesses are required to validate each signature). The Sages, however, understand that the witnesses are in fact validating the maneh (monetary transaction) stated in the document (which is why it is sufficient for each witness to confirm his own signature; just as in the document, only two witnesses are necessary for the document to have the same halachic status as testimony).

The Gemora asks: This explanation seems obvious (what else could have been the basis of their dispute)!? The Gemora answers: One might have thought that Rebbe was uncertain whether the testimony is regarding their signatures or on the maneh transaction stated in the document. The practical difference (between whether Rebbe was certain that they

were testifying regarding their signatures or whether he was uncertain about this) would be in a case where one of the witnesses in the document would die. We would then require two people from the market to testify about his signature (and we would not allow the surviving witness to testify about this). Otherwise (if we would allow the surviving witness to confirm the signature of the other witness), three-quarters of the money would be taken due to the testimony of this witness (as his signature provided half of the testimony, and his authentication of the signature of the other witness provides another quarter of the testimony). [The Torah states that matters should be confirmed by two witnesses; this indicates that each witness should provide no more than half of the testimony. This is why we compel two other people to confirm the signature of the deceased witness.] Accordingly (on account of the uncertainty), both here (in the case of the Mishnah, where the witnesses are alive, and each of the witnesses is required to confirm both signatures) and here (in the case where one of the witnesses died, and two other witnesses would be required to confirm his signature), the stricter rule would prevail; therefore, the Gemora teaches us that it is clear to Rebbe (that the witnesses are testifying about their signatures), whether the result is lenient (as in the case where one of the witnesses died, and the surviving witness would be allowed to confirm the signature of the deceased witness; for witnesses are merely testifying about their signatures, and not about the maneh transaction) or strict (as in the case of the Mishnah, where the witnesses are alive, and each of the witnesses is required to confirm both signatures).

This is apparent from that which Rav Yehudah stated in the name of Rav: If two witnesses are signed in a document and



one dies, two people from the market are required to testify about his signature. Rav Yehudah continues that this is a case where Rebbe would be lenient and the Rabbis are stringent (as Rebbe would require only one other person to join the surviving witness to confirm both signatures).

The Gemora asks: If there are not two people from the market but only one (according to the Rabbis), what is the halachah? Abaye answers: Let the surviving witness write his signature on a shard and throw it into Beis Din, and the Beis Din will confirm his signature (on the document by comparing it with that on the shard), and he will no longer need to testify about his own signature. He can then testify along with the other witness from the market about the signature of the dead witness (for then, he will be providing only half of the testimony which is required).

The Gemora notes: He should specifically do this on a shard and not on a scroll, lest an unsavory character should find it and write on it (above his signature) whatever he wants. This is as the Mishnah states: If someone (*the lender*) produced another person's handwriting (*the borrower's*) agreeing that he owes money to him, the lender can collect from unencumbered properties.

Rav Yehudah said in the name of Shmuel: The halachah follows the Sages (that each witness confirms his own signature).

The Gemora asks: Is this not obvious, as whenever there is an argument between a minority and majority, the halachah follows the majority!? The Gemora answers: One might have thought that the halachah is like Rebbe whenever he argues with his fellow (Tanna), and even when he argues with his fellows (like in this instance. Shmuel therefore taught that this is not the case. (20b3 – 21a2)

Shmuel's Opinion

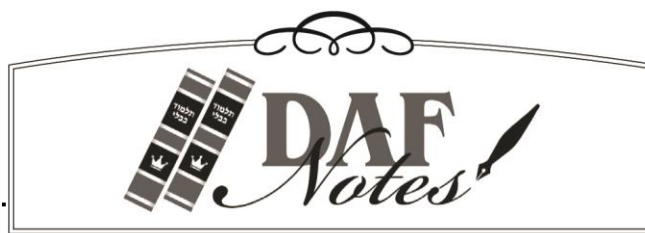
[A Mnemonic (for the following Sages: NaCh, Nad, ChaD) Rav Chinana bar Chiya said to Rav Yehudah, and some say Rav Huna bar Yehudah said to Rav Yehudah, and some say Rav

Chiya bar Yehudah said to Rav Yehudah: Did Shmuel really say this (that the halachah follows the Sages)? Wasn't there a document that came out (i.e., certified) of the Beis Din of master Shmuel that said: "As Rav Anan bar Chiya testified regarding his own signature, and had testified regarding the one who had signed together with him - and who was that - it was Rav Chanan bar Rabbah; and as Rav Chanan bar Rabbah testified regarding his own signature, and had testified regarding the one who had signed together with him - and who was that - it was Rav Anan bar Chiya; we have validated and upheld the document as is fit." [This seemingly demonstrates that he ruled like Rebbe, as according to the Sages, each witness can validate their own signature on their own with no other witnesses required!]]

He (Rav Yehudah) said to him: This particular document was a document belonging to orphans. Shmuel was concerned for a Beis Din that might make a mistake and think although the halachah is like Rebbe whenever he argues with his fellow, but not when he argues with his fellows, but that this case is an exception and the halachah is like him - even over his fellows. He (Shmuel) therefore thought, "I will give the orphans leeway in order that they should not lose (if they encountered a Beis Din that required a validation according to the opinion of Rebbe)." (21a2 - 21a3)

Good Teaching or Simply Incorrect?

[A loan document is presented to Beis Din. The document has been previously certified by a different Beis Din. The borrower claims that both the certification by Beis Din and the signature of the witnesses are a forgery.] Rav Yehudah said in the name of Shmuel: A witness and judge (who certified this document) can join together (to testify to the authenticity of this document). [For the purpose of confirming the validity of the document, the witness testifies to his signature, and the judge to his signature authenticating the document which had been presented to a previous Beis Din for confirmation. This follows the opinion of the Sages that the authenticating witnesses are testifying about the validity of the note.]



Rami bar Chama said: How good is this teaching! Rava asked: What is so good about it? What the witness is testifying about (the transaction) the judge is not testifying about, and what the judge is testifying about (that the signatures were confirmed in his presence), the witness is not testifying about!? ***[Rashi explains that the Sages of our Mishnah maintain that the witness is actually testifying on the content of the document, not his signature. Accordingly, the testimony is disjointed, as the witness is testifying about what happened while the judge is simply testifying regarding the signature!]***

When Rami bar Yechezkel arrived (in Bavel), he said: Do not listen to these rules that my brother Yehudah has stated in the name of Shmuel (that a witness and judge can join together in this testimony).

Ravnai the brother of Rav Chiya bar Aba went to buy sesame seeds (and encountered some fellow scholars). He related this teaching of Shmuel that a witness and judge can join together in testimony. Ameimar said: How good is this teaching! Rav Ashi said to Ameimar: Just because your mother's father (Rami bar Chama) praised it, you also have to praise it? Rava already refuted it! (21a3 – 21b1)

When the Judges Themselves Recognize the Signature

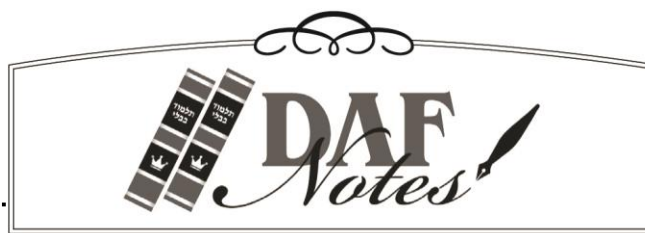
Rav Safra said in the name of Rabbi Abba, who said in the name of Rav Yitzchak bar Shmuel bar Marta, who said in the name of Rav Huna, and some say that Rav Huna said in the name of Rav: If three people were sitting together to validate a document, and two of them recognize the signatures of the witnesses and one does not, the law is as follows: Before they all sign that the document is valid, the two should testify before their fellow judge that they recognize the signatures, and then, they all can sign that the document is valid. If, however, the first two signed, they can no longer testify in front of the third judge and then have him sign. [This is because the text of the confirmation stated that "We, as three judges, were sitting, etc. and we confirmed the authenticity of the witnesses' signatures." In this case, at the time that the two judges signed this certification – that was

false, for the third judge could not yet have authenticated those signatures. This is why the two judges must testify before the third, and then, they all can sign the certification.]

The Gemora asks: Would judges even write (that the document is authenticated before actually determining it)? Didn't Rav Pappi say in the name of Rava: The judges' certification of a document that is written before the witnesses testify about the authenticity of their signatures is invalid, as it looks like a falsehood (that it was prepared beforehand)? The Gemora revises Rav Huna's statement: It must be that the law is as follows: Before they write that the document is valid, the two should testify before their fellow judge that they recognize the signatures, and then, they all can (write and) sign that the document is valid. If, however, the document was written, they can no longer testify in front of the third judge and then have him sign (for it appears like a falsehood).

The Gemora notes: Three things can be learned from this teaching. We see from here that a witness can turn into a judge (regarding the same case in which he testified; this is proven from the fact that the judges initially testify regarding the authenticity of the signatures, and then they sign the certification document). We see from here that judges who recognize the signatures of witnesses are not required to hear testimony (from others who recognize the signatures) in front of them. We see from here that judges who do not recognize the signatures of the witnesses – it is necessary for witnesses to testify before each and every one of them (in order to authenticate the signatures of the witnesses).

Rav Ashi asked: It makes sense that we see from here the law that a witness can turn into judge; however, how do we see from here the law that judges who recognize the signatures of witnesses are not required to hear testimony (from others who recognize the signatures) in front of them? Perhaps I can tell you that they are in fact required, but this case is different, as the testimony is given over to one judge (and that fulfills the requirement). [Perhaps if all the judges



were familiar with the signatures, someone might still be required to testify.] Additionally, how do we see that judges who do not recognize the signatures of the witnesses – it is necessary for witnesses to testify before each and every one of them? Perhaps I can tell you that they are not required to hear such testimony. This case, however, is different, as (someone has to hear testimony) otherwise, there would not be any testimony at all!?

[The Gemora discusses the first inference.] Rabbi Abba was sitting and saying over this teaching of a judge becoming a witness. Rav Safra asked him: The Mishnah is Rosh Hashanah states that if the Beis Din sees the new moon, two should rise to testify, and they should add two of their friends to the remaining person on the Beis Din. The two witnesses should then testify before them, and then they should proclaim, “The month is sanctified, it is sanctified!” This is because an individual (judge) is not trusted on his own accord (to proclaim that it is Rosh Chodesh). Now, if this Mishnah maintained that a witness could be a judge, why is all of this (to add two members to the Beis Din) necessary? Let them just sit where they are and proclaim the new moon!

Rabbi Abba replied: I too had had this question, and I therefore asked Rav Yitzchak bar Shmuel bar Marta, and Rav Yitzchak asked Rav Huna, and Rav Huna asked Chiya bar Rav, and Rav Chiya bar Rav asked Rav. Rav answered: Leave alone the matter of proclaiming the new month which is a Biblical law (and therefore, a witness who testifies cannot also be a judge in that case). Validating documents is a Rabbinic law (for, according to the Biblical law, two witnesses who are signed on a document are regarded as if their testimony was examined by Beis Din, for people generally do not have the gall to forge documents; the Rabbis imposed this requirement of confirming their signatures, and regarding this, a witness is allowed to be a judge). (21b1 - 21b3)

DAILY MASHAL

Once, a young man from a simple family appeared before Rav Eliezer of Dzikov, zt”l, to be examined for semichah. Contrary to expectations, the Rebbe gave him a really

difficult test which lasted for a very long time. The young man was surprised since he had never heard that the Rebbe’s test was so difficult; generally speaking, those Rabbonim who are “hard testers” are known for this quality ahead of time. After the examination had already proceeded for a while, the young man developed a theory as to why he had never heard that the Dzikover Rebbe was this difficult an examiner. Plucking up his courage, he decided to test his theory. The young man asked, “Rebbe, if I was the descendant of a prominent Rav or Rebbe, would you also be putting me through ‘ten nisyonos’ in this manner?” The Rebbe answered, “We find in Kesuvos 21 that when it comes to a Torah commandment like sanctifying the new moon, a witness cannot become a judge. When it comes to a Rabbinic obligation like validating documents, however, a witness can become a judge. The actual language of the Gemara is: מְדַאֲרִיטָא אֵין עַד נִעְשָׂה דִּין, מְדַרְבֵּן עַד נִעְשָׂה דִּין - Those words can be understood differently, though. We know that an עַד also means a small bit of cloth. The statement can be read: when a person who is really just a little ‘scrap’ comes along only on the strength of his own Torah learning, מְדַאֲרִיטָא, he cannot automatically be declared fit to be a judge. He will have to prove that he really knows all that he should. But מְדַרְבֵּן is a different story! If he is a descendant of great scholars and tzaddikim, even an עַד is made a judge. In the merit of his ancestors, you can assume that he will, in time, come to know all that he needs to know. For although the Torah is not an inheritance, she returns to the same achsanyah, the same lodgings, and those who come from greatness and can answer questions acceptably are likely to merit Torah with less effort than those who don’t. In that case, even such a ‘shmatta’ may serve as a dayan!”

Margolios HaSha”s – Daf Digest