

OVERVIEW of the Daf

1) Fit to testify but not fit to adjudicate (cont.)

The Gemara declares that the Mishnah's reference to someone blind in one eye follows R' Meir's opinion.

It is reported that R' Yochanan allowed a person who was blind in one eye to adjudicate monetary cases and explains why he permitted him to do so.

2) **MISHNAH:** The Mishnah teaches that food subject to ma'aser is subject to tum'ah of foods but foods subject to tumah of foods are not necessarily subject to ma'aser

The case included in the Mishnah is identified.

3) **MISHNAH:** The Mishnah teaches that food subject to pe'ah is subject to ma'aser but food subject to ma'aser isn't necessarily subject to peah.

4) Clarifying the Mishnah

The case included in the Mishnah is identified.

The Gemara elaborates on the five criteria to subject food to pe'ah.

The criteria to subject food to ma'aser are presented and one of the rules is explained.

5) Changing the use of a food

Rabba bar bar Chana in the name of R' Yochanan rules that if ulshin were planted for animals and the owner then decided to use them for people, the change in intention does not alter the tum'ah susceptibility of the ulshin, unless it occurred after they were detached from the ground.

The rationale behind this ruling is explained.

Rava cites a Mishnah in support of this ruling.

R' Zeira rejects the proof.

Abaye challenges R' Zeira's premise and the followup conversation is recorded.

A Beraisa elaborates on the incident of the hen in Yavneh.

The Gemara seeks further clarification of the incident.

R' Zeira bar Chanina explains the intent of the Beraisa.

Rava begins to explain the statement of R' Yochanan ben Nuri recorded in the Beraisa. ■

Distinctive INSIGHT

Qualified to testify, but not to judge

ר' מאיר היא

The Mishnah (49b) stated that there are those who are valid to serve as witnesses, but they are disqualified to serve as judges. The Gemara begins by inquiring who it is that fits into this category. R' Yochanan explains that this refers to one who is blind in one eye. This halacha is derived from the posuk (Devarim 21:8) where we find an association between judging and the viewing of skin afflictions. Just as skin afflictions must be seen with both of the kohen's eyes, so too must a judge be able to see with both of his eyes. The opinion reflected in the Mishnah is therefore that of R' Meir who is the one who says that a judge who cannot see with both eyes is disqualified to serve.

The specific example of a person who cannot see from both of his eyes which is given by R' Yochanan forces the Gemara to limit our Mishnah to being the view of R' Meir. This results in the Gemara then having to say that the halacha does not follow our Mishnah, but rather the view of Rabbanan in Sanhedrin (32a) who do not make the association between seeing plagues and judging. Tosafos (ד"ה ורבי) points out a different example of one who may testify but not judge, one which is accepted as the halacha. A person who is categorized as either one who "loves or hates" another person may not serve as a judge in his case, but he may testify on his behalf (Sanhedrin 27b). Although R' Yehuda disagrees with the Chachamim and says that one who loves or hates is also disqualified to testify, the halacha follows the majority opinion that he may testify. Chachamim hold that although we do not suspect a person who loves or hates another to testify falsely due to his personal feelings, we still do not allow him to judge, because he might not be able to objectively weigh and measure a proper balance of the issues involving this person. Accordingly, Tosafos asks why R' Yochanan did not use this example to explain the case in the Mishnah.

Tosafos answers that R' Yochanan did not want to use the narrow case of a judge who is only disqualified from judging this particular person for whom he has strong emotions, but would be permitted to judge everyone else. Rather, it uses the case of a judge who sees from only one of his eyes, who R' Meir holds is disqualified to judge for everyone. Tosafos also answers that R' Yochanan realized that the Mishnah must be authored by R' Meir for a different reason. The Mishnah states that "all who are qualified to judge are also qualified to testify," and Chachamim do not agree with this generalization, because they allow a person who is blind to judge, but a blind person cannot testify, even in regard to things that he saw before he became blind, as we find in Bava Basra 128a. ■

HALACHA Highlight

One who is unfit to adjudicate but fit to testify

אף ריבים שלא בסומא

So too monetary cases may not be adjudicated by someone who is blind

The Gemara was searching for the Mishnah's case of someone who is fit to testify but is unfit to adjudicate and the Gemara's response was that the Mishnah refers to one who is blind in one eye following the opinion of R' Meir. R' Meir derives from a juxtaposition that one who is blind in one eye is unfit to adjudicate. Tosafos¹ wonders why the Gemara chose to explain that the Mishnah's case of one who is fit to testify but unfit to adjudicate is someone who is blind in one eye in accordance with R' Meir's position. A better explanation of the Mishnah would be to explain that it refers to a close friend (אורח) or enemy (שונא) who are fit to testify but are unfit to adjudicate. The advantage of this explanation is that the Mishnah would then follow the majority position of Rabanan rather than the minority position of R' Meir. Tosafos answers that the Gemara did not want to explain the Mishnah as referring to those cases since a close friend and enemy are disqualified from adjudicating only their close friend or enemy but not others. Since the scope of the disqualification is limited the Gemara did not want to use these cases to explain the Mishnah.

Along the same lines Ritva² explains why the Gemara did not suggest that the Mishnah referred to a convert whose

REVIEW and Remember

1. Why does the Torah juxtapose skin diseases and legal disputes ?
2. What are the five prerequisites to obligate produce in pe'ah ?
3. What is the point of dispute between Tanna Kamma and R' Yochanan ben Nuri ?
4. What halacha applies in cities but not in villages ?

mother was not Jewish who is fit to testify but is restricted from adjudicating. He explains that since a convert is fit to adjudicate other converts he is not someone whose disqualification prevents him from adjudicating altogether, and the Gemara's search was for someone who would be unqualified to adjudicate altogether. Rambam³ writes that the disqualification of one who is a close friend or enemy depends upon one's attitude, and this often changes very quickly. Since it is possible that one would be disqualified as a close friend or enemy today but by tomorrow the relationship may have changed it is not 100% accurate to say that a close friend or enemy is unfit to adjudicate. ■

¹ תוס' ד"ה רובי.
² ריטב"א מ"ט: ד"ה לאתויי.
³ רמב"ם פיה"מ פ"ד מ"י. ■

STORIES off the Daf

A Dark Transaction

"אין דנין בלילה..."

How sad it is when a divorce is the only solution to a failed marriage. Although the Chofetz Chaim, zt"l, pointed out that divorce is sometimes the only solution even in a marriage where one is not halachically obligated to divorce—otherwise divorce in permitted situations would be prohibited—in most cases the couple could have found a more peaceful solution.

While divorce used to be a last recourse used only in an untenable situation, nowadays, divorce is far too common. Soferim who specialize in writing

gittin have become very practiced in their work. One sofer even boasted that he can jot down a perfect get in about twenty minutes.

But while gittin are getting more common, their halachos are still quite complex. The rabbi who presides over them must be very knowledgeable in their halachos, or he can be responsible for creating an agunah or worse.

One husband asked a friend who specialized in writing gittin to write a get for his wife. He got together two kosher witnesses and gave the get to his wife, saying "This is your get."

The woman, for her part, was glad to receive the get. She felt as though a weight had been lifted from her. After several months she got engaged and was about to get married when the rabbi offi-

ciating asked her about her get. "My husband gave it to me on a dark night four months ago."

The rabbi was unsure whether this was effective. As we find on today's daf, it is forbidden to finalize an act of beis din at night, and a get is like a judgment in beis din, as the Rema writes in Even Ho'ezer.¹

When this question reached the Get Pashut, zt"l, he permitted it בדיעבד. "Although some forbid a get given by an emissary at night, if the husband himself gave the get it is certainly kosher. And if the only time a husband can give the get is at night, he can do so לכתחילה to avoid making his wife an agunah."² ■

¹ אבה"ע, ס' קכ"ג
² ספר גט פשוט ■

