

OVERVIEW of the Daf

1) A zomem witness

Abaye and Rava disagree whether a zomem witness is disqualified retroactively or only prospectively.

Abaye explains the rationale behind his position.

Two versions of Rava's explanation are presented.

The practical difference between these two versions is explained.

After a discussion whether the halacha follows Abaye or Rava the Gemara concludes that this is one of the six cases (יע"ל קג"ס) where the halacha follows Abaye.

2) Eating unslaughtered meat

All opinions agree that one who eats unslaughtered meat for gratification is disqualified from testifying but there is a dispute between Abaye and Rava whether someone

who eats this meat to anger Hashem is disqualified.

Each Amora explains his position.

Rava's opinion is unsuccessfully challenged.

Abaye's position is successfully challenged.

It is suggested that the dispute between Abaye and Rava parallels a dispute between R' Meir and R' Yosi.

This suggestion is rejected.

The Gemara rules in accordance with Abaye's position and explains why the earlier refutation was not, in fact, a refutation.

In order to explain why halacha follows R' Meir rather than R' Yosi the Gemara recounts a story.

The Gemara rejects the assertion that this story proves that there is an anonymous Mishnah consistent with R' Meir's position.

Another anonymous Mishnah is cited that definitively follows the position of R' Meir.

3) MISHNAH: The Mishnah enumerates people who are disqualified from testifying due to their familial relationship. R' Yehudah also disqualifies close friends and enemies from testifying and defines those terms.

4) Disqualifying relatives from testifying

A Baraisa presents the source that relatives may not testify for one another.

The premise of the Baraisa that sons do not die for their father's sins is unsuccessfully challenged.

This premise is again unsuccessfully challenged. ■

Distinctive INSIGHT

The status of a friend and of an enemy in judgment and in testimony

שונא - כל שלא דבר עמו שלשה ימים באיבה

At the end of the Mishna's list of those who are disqualified from judging and testifying, R' Yehuda rules that one's close friend and one's enemy are disqualified from judging and testifying. The Chachamim disagree and say that the Jewish people are not suspect of lying for the sake of a friend or enemy.

R' Yehuda defines an enemy in this context to be someone who did not speak with his fellow Jew for three days out of his enmity. תוספות ריב"א explains that the source for this definition of quantifiable hatred is from Sifrei (Parashas Shoftim, 183) regarding the verse which speaks of someone who committed manslaughter. The verse (Devarim 19:6) says that the perpetrator must escape to one of the cities of refuge, if "he did not show hatred to him (the victim) from yesterday (תמול) and from the day before (שלשום)." Sifrei explains that the time frame of "yesterday and the day before" means that three days had not passed with these two people not speaking to each other due to hard feelings. We learn from here that the definition of hatred which is quantifiable is where the dislike causes an extended period of at least three days of forced silence.

Chachamim disagree with R' Yehuda regarding the disqualification of one who is a close friend or enemy. The Gemara (later, 29a) notes that Chachamim agree that a friend or enemy is not allowed to act as a judge, but they rule that he is allowed to testify. ד רמה explains that testimony is a witness's account of the events he observed. We do not suspect that a witness would distort and alter his account of the events just in order to satisfy his relationship with the people involved. Judgment, however, is not a clear and absolute statement of fact. It is an opinionated conclusion arrived at based upon one's interpretation of the facts and applying the halacha. One's strong feelings of friendship or being uncomfortable with one of the parties could affect one's objectivity in interpreting the significance of events and the halachic principles to evaluate the outcome. Even if a judge wishes to be honest in his decision, it is possible that his view may become slanted due to his feelings (S"ma, C.M. 33: #1).

According to this approach, אורח משפט, (הגהות הטור, אורח משפט, א) writes that if a particular case of testimony requires some degree of discretion on the part of the witness, Chachamim would disqualify a friend or enemy from testifying. ■

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 Gitel Bas Yecheil
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HALACHAH Highlight

Making a beracha on another's mitzvah

מלמד שכולן ערבים זה בזה

Which teaches that everyone is a guarantor for one another

Reuven was living in the house of a non-religious Jew and realized that one of the doors did not have a mezuzah. As much as Reuven tried to convince the owner that he should obtain a mezuzah the owner refused. Reuven took the matter into his own hands and purchased a mezuzah. When it came time to affix the mezuzah he was uncertain about whether he should recite the beracha so he refrained from the possible beracha in vain. He inquired of the author of Teshuvos Divrei Yatziv whether he should have recited the beracha.

Teshuvos Divrei Yatziv¹ began with a question posed by Magen Avrohom. Magen Avrohom² asks why Shulchan Aruch³ implies that an agent performing bedikas chometz for the home owner makes the beracha when it is not his mitzvah to perform. Rav Yaakov Emden⁴ offers two explanations for Shulchan Aruch's ruling. A basic principle of Torah is that a person's agent is like himself, thus an agent who separates terumah recites the beracha on behalf of the farmer. Secondly, the principle of ערבות—shared responsibility for one another – allows one person to make a beracha on behalf of another. This principle also allows a person to perform a mitzvah on behalf of another when it is the type of mitzvah that could be fulfilled by an agent. These sources indicate that Reuven should have recited the beracha when he affixed the mezuzah for the home-owner.

Divrei Yatziv then suggests that there is a difference whether one is acting as an agent or utilizing the principle of ערבות.

STORIES Off the Daf

Bon Appetit!

להכעיס אביי אמר פסול

Once the Beis Halevi, zt"l, was passing by a non-kosher restaurant when he noticed a certain maskil seated outside who was about to partake of a heaping plateful of a forbidden food. Surprisingly, the Beis Haelvi said, "Eat with a good appetite!" as he walked by.

The maskil was taken aback and began to upbraid the gadol. "Don't you see that I am eating forbidden food in what is obviously a non-Jewish restaurant? How can

you, a rabbi who is lauded for his careful safeguarding of every detail of halachah, wish me a bon appetit? I think that you must be pandering to me because you need my help for some kind of Jewish cause. I'll bet that you are just trying to flatter me so that I'll give you a generous donation!"

The Beis Halevi quickly dispelled the maskil's strange delusion. "Perhaps you are unaware that in Torah law there are two categories of sinners. One group partakes of non-kosher food because it is tasty to them and they have a hard time resisting their desire for the forbidden food. The second group consists of those who partake even though they have no particular craving for the non-kosher food. Even

though they could get kosher food and take no especial pleasure from the forbidden food, this group eats it as an act of rebellion against Hashem's Torah. The law of these groups is very different. Although the first group who eat because of their desire for the food are considered wicked, their condition is much less serious compared to the second group.

"It should no longer be a puzzle to you how I could have wished you bon appetit in good faith, since if you eat as a result of your appetite, you will be a מומר לתיאבון, one who indulges because of wanton desire and not a מומר להכעיס, who is much worse!"¹ ■

1. מובא בספר ראשון לשלשלת בריסק

REVIEW and Remember

1. What is the practical difference between the two explanations of Rava's position regarding עד זומם?
2. Why does the halacha follow R' Meir if we generally follow R' Yosef?
3. What person is qualified to adjudicate monetary cases but not capital cases?
4. What is the source that children do not die for their parents' transgressions?

As an agent one can make the beracha on behalf of another but one may not recite the beracha when one is performing a mitzvah as an ערב. He bases this distinction on our Gemara that indicates that ערבות obligates one to make sure that a friend does not commit a sin. ערבות does not obligate one to perform someone else's mitzvah; it obligates one to make sure that the friend fulfills his own mitzvah. Chazal did not enact the recitation of a beracha when one prevents a friend from not fulfilling a mitzvah like in our case where Reuven affixed a mezuzah to prevent the home-owner from not fulfilling the mitzvah. It is only when one is acting as an agent or at least has the knowledge and consent of the second party that one is permitted to make a beracha on someone else's mitzvah. ■

1. שו"ת דברי יציב יר"ד סי' קפ"ט
2. מג"א סי' תל"ב סק"ו
3. שו"ע שם סע' ב'
4. מור וקציעה שם ■