

OVERVIEW of the Daf

1) Voiding a contract (cont.)

R' Sheishes suggests that contradicting testimony must be done in the presence of the other witnesses the same way that hazamah must be done in the presence of the witnesses.

R' Nachman successfully challenges this explanation and offers an alternative explanation to the Baraisa.

Support for this explanation is presented.

The Gemara rules that hazamah must be done in the presence of witnesses but contradiction does not require the presence of the witnesses.

2) Authenticating a document

The earlier quoted Baraisa is cited as proof to the principle of R' Assi that signatures may only be authenticated from a contract that was challenged and was proven reliable.

Nehardai offer alternative ways to authenticate a contract.

R' Shimi bar Ashi qualifies this ruling.

3) Written testimony

A Baraisa rules that a person may write down his testimony and then testify orally many years later.

R' Huna and R' Yochanan disagree whether the witness must remember the testimony on his own.

Rabbah applies R' Yochanan's lenient ruling to an additional case.

The Gemara inquires whether testimony is acceptable if the litigant himself reminded the witness of the testimony.

R' Chaviva and Mar the son of R' Ashi dispute the matter and the Gemara rules that it is not valid testimony unless the witness is a young Torah scholar.

A related incident is cited.

4) An unidentified mound

A Mishnah is cited that relates to whether an unidentified mound is tahor or tamei.

The Gemara defines a number of terms mentioned in the Mishnah.

The reasoning behind the halachos in the Mishnah are explained.

R' Chisda inferred from this Mishnah that a person remembers testimony for sixty years.

This inference is rejected.

5) **MISHNAH:** The Mishnah presents details related to certifying one's signature as a witness on a document. ■

Distinctive INSIGHT

Two witnesses verses two witnesses

אלא אמר רב נחמן אוקי תרי להדי תרי ואוקי ממונה בחזקת מריה

The Baraisa discussed the case where two witnesses signed a loan document, and these witnesses passed away. Two other witnesses from the street come and confirm that the signatures are genuine, but these second witnesses claim that they know that the first witnesses were disqualified to testify at the moment the signatures were affixed upon the loan document. The examples given are that the original witnesses were minors at the time, or they were ineligible to sign because they were gamblers. This second set of witnesses are believed, and the signatures cannot be accepted. If, however, the signatures can be verified independently of the second set of witnesses, then the document is valid, and the claim that the signatures were written illegally is not accepted.

Rav Nachman explains that we do not completely disregard the claim of the second set of witnesses who question the validity of the signatures. Rather, on the one hand we balance the signatures as being valid as two witnesses, while the two witnesses who testify against the signatures are also considered as two witnesses. We do not disregard the document, but we also do not verify it as legitimate. We do not collect the money from the borrower, but if the lender takes the money, he may keep it.

Tosafos (ד"ה אלא אמר) points out that Rav Nachman holds that when the court is confronted with two sets of contradictory witnesses, we do not consider both to be liars. In fact, if either set of witnesses would testify in an independent case, the court would accept the testimony (until we find out which ones are, in fact, the liars). Here, too, the second set is saying nothing about the loan. The second set is merely stating that the signatures were written illegitimately. The loan should therefore be verified based upon the signatures, and the money should be able to be collected.

Tosafos answers that the loan is not an independent fact, unconnected to the claim that the signatories were unable to sign. The questionable status of the first witnesses affects the credibility of their written testimony that there ever was a loan.

Rashba answers that we cannot rely upon the first witnesses as being two valid signatures, because we must consider the possibility that if they were here to face the charges that they were disqualified, these signatories might confess and retract their testimony. Now, if they would be present and insist that they were not impaired, we would have to contend with their claim. But the fact is that they are not here.

Maharam Shif questions this point of Rashba. The rule is that witnesses cannot recant their testimony. Therefore, we do not have to consider the possibility of what would happen had the first witnesses retracted their signatures. ■

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HALACHAH Highlight

Answering halachic queries over the phone

תנו רבנן כותב אדם עדותו על השטר ומעיד עליה אפילו לאחר כמה שנים

The Rabbis taught: A person may write his testimony on a document and testify about that matter even many years later.

Rav Menashe Klein¹, the Mishnah Halachos wrote that it is incorrect, except in pressing, exceptional cases, for a rov to answer questions over the phone, and a rov should certainly not respond over the phone to people he does not know, since it will inevitably lead to mistakes. This ruling was challenged on the following basis. The only related restriction that could be invoked for this ruling is that testimony must be given directly from the witness to the court and it may not be submitted to the court in writing. It would seem, however, that this restriction is a Biblical decree that is limited to testimony, and cannot be applied to other cases like answering questions. Additionally, Rabbeinu Tam allows a witness to submit his testimony in writing and there is no reason to think that using a telephone should be any worse. Therefore, it should be permitted to ask and respond to questions over the phone especially when it provides significant benefit to the questioner.

Mishnah Halachos³ replied that his hesitation is not at all related to the case of testimony; rather his hesitation is from a practical perspective. The concern is that people have a ten-

REVIEW and Remember

1. Is it necessary for the witnesses to be present when their testimony is contradicted in court?

2. Is written testimony admissible to Beis Din?

3. What distance is considered close to the city?

4. Is a person believe to confirm his signature?

dency to be terser when talking on the telephone than they would be if they were talking to the rov in person. Consequently, they may decide to delete some details, thinking that they are not so important when, in fact, they could sway the halacha from one decision to another. This also causes the rov to make assumptions regarding certain matters that may not be true that will ultimately lead to an incorrect ruling. Another concern is that the rov may answer the question quickly and upon further consideration may decide to change his ruling, but without knowing who asked the question he will be unable to contact the questioner to inform him that he changed his position. ■

1. שו"ת משנה הלכות בהקדמה ובחלק ח'.
2. שם ח"י"ב סי' קכ"ב.
3. שם. ■

STORIES Off the Daf

The Amputated Limb

"ומוכי שכין זרועותיהם..."

Acertain Jewish man was unfortunately forced to surgically amputate a limb for medical reasons. After the man had recovered from the surgery, he remembered learning in Kesuvos 20b that those afflicted with מוכה שחין, most likely what is now called "Hansen's disease," would bury their limbs that had fallen off. The man asked the Shvus Yaakov, ז"ל, if he was obligated to bury the limb as is perhaps implied in Kesuvos 20b.

The Shvus Yaakov replied, "This is no proof. Perhaps they buried the limbs because they wished to, but there is no

obligation to do so. However, one must nevertheless be careful with the limb so that a kohen will not enter the room where it lies and become defiled by it."

The Nodah B'Yehudah, ז"ל, concurs that there is no obligation to bury the limb of a living person. He too explains that the reason why the mukei shchin did so in our Gemara was to ensure that they not defile anyone.

In a contrary view, the Pachad Yitzchak, ז"ל, reports that once someone's limb was removed from him and Beis Din did indeed force him to bury it. The Ma'avar Yabok brings the Sefer HaLikutim of the Divrei Yosef which says that the Rambam, ז"ל, once came to someone in a dream and told him to bury his severed finger.

Despite these divergent opinions, the Shvus Yaakov still brought a very

compelling proof to support his position. "In Bava Kama 85a, the Gemara asks how we can evaluate the pain, tza'ar, of losing a limb when one has already been compensated for the actual loss of the use of the limb by paying nezek. The Gemara states that we evaluate how much a person who has a dangling and useless limb would be willing to accept as compensation to cut off his limb. In response, the Gemara rejects this as over-compensation, since the fact that his limb will be used to feed dogs of necessity adds an element of shame that makes him demand a higher price; such a figure will necessarily include some degree of payment of בושת. So we see clearly, if Chazal entertained the hypothetical situation of the limb going to the dogs that there is no outright obligation to bury it properly!" ■

