



OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah presents two examples of zomemim witnesses who receive lashes rather than the consequence they tried to impose on the defendant.

2) Clarifying the Mishnah

The Gemara questions the wording of the Mishnah.

This question is resolved by explaining the sequence of Mishnayos from Sanhedrin to Makos.

3) Identifying the source for the Mishnah's ruling concerning kohanim

R' Yehoshua ben Levi offers one source that kohen zomemim witnesses do not become disqualified kohanim.

An unsuccessful challenge to this explanation is presented.

Bar Padda suggests another source for the Mishnah's ruling.

Ravina challenges this explanation and the Gemara concludes that the first explanation was more reasonable.

4) Exiling zomemim witnesses

Reish Lakish offers one source for the Mishnah's ruling that zomemim witnesses are not exiled.

R' Yochanan offers another source for this ruling.

The Gemara challenges this explanation and the Gemara concludes that the first explanation was more reasonable.

5) Lashes for zomemim witnesses

Ulla inquires after the source that zomemim witnesses who cannot be punished with the consequence they tried to impose on the defendant receive lashes.

An exposition that serves as the source for this ruling is cited.

An alternative source is suggested but rejected.

6) Exceptions to the zomemim punishment

A Beraisa lists four cases, or according to R' Akiva five cases, in which zomemim witnesses do not receive reciprocal punishment.

(Continued on page 2)

Distinctive INSIGHT

Testimony which is subject to the scrutiny of הזמה

אין אומרים יעשה זה בן גרושה

The Mishnah presents several cases where we cannot apply the standard rule of עדים זוממין, which is that conspiring witnesses are to be punished with the same punishment they attempted to apply to the innocent defendant. One of the cases in the Mishnah is where the witnesses attempt to testify about a kohen that he is disqualified due to his mother having been either divorced or חלוצה, dismissed by a yavam. If this were true, the kohen would lose his status of being a valid kohen. When the witnesses are found to be עדים זוממין, we do not apply this condition to them, even if they are kohanim. The reason we do not apply the conventional rules of הזמה is based upon verses, as the Gemara explains.

Tosafos (ד"ה מעידין אנו) notes that if we do not apply the rules of הזמה in this case, this testimony should be disqualified, as it is עדות שאי אתה יכול להזימה—testimony which is not subject to being judged as conspiratory. If these witnesses cannot be judged in a reciprocal manner to what they conspired to do, why is their testimony valid at all?

Tosafos answers that because the goal of these witnesses is to declare the status of this kohen to be a חלוצה ובן גרושה, we can consider the punishment of lashes which is given to the witnesses as a fulfillment of כאשר זמם.

Tosafos also answers that although it is true that the Torah only validates testimony when it is subject to הזמה, however, this is only in cases which are not specifically excluded from the category of הזמה. For example, Tosafos refers to a case in Sanhedrin (78a) where witnesses testify that Reuven, who was a טריפה, committed murder. The witnesses cannot be punished with death, because they can claim that they were testifying against someone who was technically already "dead." In that case, witnesses who testify regarding murder should be subject for הזמה, so where that component is missing, the testimony is dismissed. Here, however, regarding the status of a kohen, the Torah specifically excludes the case from הזמה with the word "לו." Here, we do not need the testimony to be subject to הזמה.

There seems to be a practical difference between the answers of Tosafos in the basic understanding of the concept of testimony which must be subject to הזמה. According to the first explanation, we need that the witnesses be concerned that if their lie is detected that they be under the threat of a serious consequence. Tosafos notes that in this case, lashes is adequate. According to the second explanation of Tosafos, this case is excluded from the need to be subject to הזמה. Had הזמה been necessary, lashes would not have been enough of a threat to validate their testimony. ■

REVIEW and Remember

1. What makes witnesses into zomemim?

2. How does the Gemara explain the sequence from Sanhedrin to Makos?

3. What is the hint in the Torah that zomemim witnesses receive lashes when they cannot receive their reciprocal punishment?

4. What are the four exceptions to the reciprocal punishment penalty for zomemim witnesses?

HALACHAH Highlight

Lashes for falsely accusing one of being the son of a chalutza
מעידין אנו באיש פלוני שהוא ... בן חלוצה

We testify of so-and-so that he ... is the son of a chalutza

The Mishnah mentions the case of zomemim witnesses who falsely accused a kohen of being the son of a chalutza. Ramban¹ asserts that the Mishnah's inclusion of this case was not accurate – לאו דוקא. The reason for this assertion is that the prohibition against a kohen's marrying a chalutza is only Rabbinic (Kiddushin 78a), thus the child would not be Biblically disqualified. Since Biblically the testimony of the zomemim witnesses was inconsequential how is it possible to give them lashes? Rav Akiva Eiger² challenges this line of reasoning. What difference does it make that it is only Rabbinically prohibited to marry a chalutza? the testimony of the zomemim witnesses would have been effective to Rabbinically disqualify this kohen. Once their testimony is effective on some level they violated the prohibition of לא תשא ברעך – do not bear false witness against your friend – and should receive lashes. From Rambam³ it would seem that the lashes given to zomemim witnesses who accused a kohen of being the son of a chalutza is Biblical. What is the point of dispute between Ramban, who maintains in the chalutza case that zomemim witnesses do not receive lashes and Rambam who maintains that they do receive lashes?

Chazon Yechezkel⁴ suggests that their dispute revolves around an issue raised by Tosafos. Tosafos⁵ asks why the testimony that a kohen is the son of a divorcée or a chalutza is acceptable when it is testimony that does not allow for the witnesses to be

(Overview...continued from page 1)

ishment.

Each case is explained.

The Gemara discusses whether there is a dispute if the kofer payment is compensatory or for atonement.

R' Hamnuna offers one explanation of the fourth case that zomemim witnesses are not sold as slaves.

This explanation is challenged and thus revised.

Rava rejects this qualification altogether.

R' Akiva's ruling that zomemim witnesses do not pay on their own admission is explained.

Rabbah and R' Nachman cite support for R' Akiva's position that the hazamah penalty is a fine. ■

convicted as zomemim (עדות שאי אתה יכול להזימה) which is invalid testimony. Tosafos answers that since they will receive lashes if convicted as zomemim witnesses it is considered as if they could be made into zomemim. In his second answer Tosafos explains that the requirement that testimony should allow for the witnesses to be convicted as zomemim does not apply to our case. Ramban follows the first explanation of Tosafos, therefore, since in the chalutza case the disqualification is only Rabbinic there is no lashes for their false testimony. Rambam follows the second answer and the source for lashes is derived from the general prohibition against testifying falsely and that prohibition is in force regardless of the consequence of that false testimony. ■

1. חידושי הרמב"ן לסוגיין.
2. שו"ת רעק"א סי' קע"ט.
3. רמב"ם פ"כ מהלי עדות הי"ח.
4. חזון יחזקאל על התוספתא מכות פ"א מ"ה.
5. תוס' מכות ב. ד"ה מעידין אנו. ■

STORIES Off the Daf

Teacher and student

"הוא ולא זוממין..."

Rav Meir Shapiro of Lublin, zt"l, was very attached to his students. For example, he would not eat any differently than the bochurim in the yeshiva. When a close friend asked him to explain this practice, he said, "Our sages teach that one who teaches someone Torah is considered to have sired him. Have you ever seen a father who takes better than what he gives his own son?"¹

This is the way that all true teachers of Torah relate to their students. When Rav Pinchas Hirschburg, zt"l, a favorite student of Rav Shapiro, once asked the Brisker Rav, zt"l, a question concerning our sugya,

the Brisker Rav explained just how deep the rebbe-student bond really is.

He said, "I do not understand why our gemara learns that one who gave false testimony to send an innocent Jew to the city of refuge from the verse which states, 'הוא — he' will flee [to the city of refuge] —not those who bear false witness. Although the Torah teaches that false witnesses are punished by receiving the sentence that would have fallen upon their innocent victim, there are exceptions. This word 'him' is explained to mean that only the actual perpetrator goes to the city of refuge, not one who tried to frame him.

"Why isn't this obvious from the word 'וְיָצֵא' — from the phrase, 'you shall do to him as he plotted'—regarding false witnesses? The punishment is meant to accrue to him alone. Just as we do not confer the chalal status of an invalidated kohein on a

false witness because this would affect his children adversely, we should not send a false witness to the city of refuge because this would force his rebbe to accompany him there."

The Brisker Rav immediately answered his own rhetorical question. "However, a student and his rebbe are not two separate entities, but one. It follows that if the false witness's rebbe was forced to follow him into exile in the city of refuge, it would not contradict the fact that only the perpetrator should be punished. They are a single unit, not two separate entities!"

When he left the Brisker Rav's room, Rav Pinchas remarked to the sage's students, "This is the kind of answer one would expect of a chassidic rebbe!"² ■

1. רבי מאיר אומר, ע' 235
2. האיגוד, כסליו תשס"ז, ע' נ"ה ■