

## OVERVIEW of the Daf

### 1) Clarifying the story recorded in the Mishnah

A Baraisa presents a slightly different version of the story recorded in the Mishnah.

2) **MISHNAH:** The Mishnah discusses which people may join together for the purpose of testifying about the appearance of the new moon.

### 3) Clarifying the opinion of R' Shimon

R' Levi identifies the source for R' Shimon's position that relatives may testify together about the new moon.

R' Chanan bar Rava ruled like R' Shimon.

R' Huna challenges R' Chanan bar Rava's ruling, but the Gemara concludes that halacha follows R' Shimon's lenient position.

4) **MISHNAH:** The Mishnah identifies people who are disqualified from testifying about the appearance of the new moon.

### 5) An inference from the Mishnah

R' Ashi infers from the Mishnah that those who are considered robbers on a Rabbinic level may testify for a woman to permit her to remarry.

6) **MISHNAH:** The Mishnah discusses other measures that may be taken to assure that the witnesses are able to reach Yerushalayim to testify about the new moon.

הדרן עלך ארבעה ראשי שנים

7) **MISHNAH:** The Mishnah relates the history behind the ruling that others may accompany the witness if they are needed to confirm the reliability of the witnesses.

### 8) Clarifying the Mishnah

R' Pappa clarifies that the term אחר that appears in the Mishnah refers to another pair of witnesses rather than an individual witness.

Proof to this assertion is found in the language of the Mishnah.

The assertion, that a single witness to confirm the reliability of another is unacceptable, is unsuccessfully challenged.

A related incident is cited from which the Gemara infers that a single witness is accepted to testify about those matters that can easily be discovered. A Baraisa supports this assertion.

A Baraisa expands on the attempt made by the Baiytusin to deceive the Sages.

9) **MISHNAH:** A description of the process of lighting torches to inform those in distant lands about the sanctification of the new month is presented.

### 10) Clarifying the Mishnah

The source that the term משיאין means burning is identified.

### 11) Lighting torches

A Baraisa is cited that discusses when the torches were lit.

The Baraisa indicates that torches were lit only following a deficient month rather than for a full month. The Gemara begins to develop an explanation for this distinction. ■

## Distinctive INSIGHT

*Who has authority to establish the calendar?*

אלה מועדי ה' אשר תקראו אותם במועדים

In The Commentators' Rosh Chodesh (pgs.392-402), Rabbi Yitzchok Sender explains that there is a basic difference of opinion between Rambam and Ramban regarding who has jurisdiction in the matter of establishing the calendar year. Rambam is of the opinion that only the Sanhedrin haGadol or those who have semicha (ordination) and were granted permission to act in this matter may establish the month or the leap year. Ramban holds that all that is necessary to qualify in this area is semicha. Any Beis Din whose members are ordained can establish the calendar. The proof he brings for his opinion is the verse which dictates the mitzvah of Kiddush Hachodesh. It reads החדש הזה "לכם." This suggests that the persons who rule in this area must be as Moshe and Aharon - "like you" - meaning ordained. If the Torah had demanded the Sanhedrin in order to act, the verse would have read לך - alluding to Moshe alone, who originally acted as judge and was later succeeded by the seventy-one elders.

Rambam's thinking is outlined in Sefer Hamitzvos (#153) and Hilchos Kiddush Hachodesh (5:1), where he writes: "...the sighting of the moon and to establish a leap year to reconcile the calendar or out of necessity apply to the Sanhedrin in Eretz Yisroel. It is they alone who are authorized, or a court of judges who have been ordained that holds sessions in Eretz Yisroel and was granted authority by the Sanhedrin."

Ramban vehemently objects to the contention of Rambam that only Sanhedrin is qualified in this matter. It is well known that forty years prior to the destruction of the המקדש בית the Sanhedrin went into exile, leaving the הגזית לשכת. If Rambam is correct, how, then, were they able to sanctify the new moon by means of eyewitnesses, a process, which, according to Rambam himself, lasted until the days of Abaye and Rava, well after the destruction of the המקדש בית (ibid., 5:3)?

The classic commentators to Sefer Hamitzvos (אסתר מגילת and לב שמה) answer this question. They suggest that it is only in relation to certain issues that the Sanhedrin is required to be situated in its designated place in order to function. For example, they had to be in the הגזית לשכת in order to judge capital punishment. However, they were also recognized outside these confines in many matters, including sanctification of the month and Kiddush Hachodesh. ■

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Mrs. Gale Rothner o.b.m

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## HALACHAH Highlight

### Hiring others to commit a transgression

פעם אחת בקשו בייתוסין להטעות את החכמים שכרו שני בני אדם בארבע מאות זוז

One time the Baitusin wanted to deceive the Chachamim [so they] hired two people [as false witnesses] for four hundred zuz.

In the aforementioned story, one of the hired witnesses exposed the plot and informed the Chachamim about the ruse. Rashi<sup>1</sup> comments that although the witness did not fulfill his commitment to testify falsely, nonetheless, Chazal granted him the money through the power invested in Beis Din to declare property ownerless (הפקר בית דין הפקר). The implication is that had the witness fulfilled his responsibility in the arrangement and testified falsely the witness would have a legal right to demand payment for the service he provided. In other words, if Reuven hired Shimon to testify falsely, in Beis Din, Shimon has the right to demand payment for testifying falsely notwithstanding the fact that he was hired to commit a transgression. The Nesivos HaMishpat<sup>2</sup> cites Rashi's comment as proof to this halacha.

Teshuras Shai<sup>3</sup> also rules like the Nesivos in a case of one who hired a salesman to overcharge a customer, and he equates the case to one who hires a זונה. One who hires a זונה is responsible to pay even though the agreement involved a prohibited activity. Similarly, one who pays a salesman to overcharge a customer must pay the salesman for the job he performed. Orchos HaMishpatim<sup>4</sup> disagrees with Teshuras Shai's assertion that the case of the זונה and the case involving the salesman are equivalent. In the case of the זונה, the service is irreversible;

## REVIEW and Remember

1. What is the dispute between R' Shimon and Rabanan?
2. What is the source that permits desecrating Shabbos to testify about the new moon?
3. Why do we believe a common person who testifies when Beis Din sanctified the new moon?
4. Is a torch lit for every month that is sanctified?

therefore, payment must be made for the service performed. In contrast, the storeowner who hired the salesman to overcharge the customer is obligated to reimburse the customer for the amount he was overcharged. As such, there will not be a lasting benefit that accrues for the storeowner from the transgression that was committed, and there is, therefore, no obligation to pay. This would be similar, claims Orchos Mishpatim, to one who hired another to steal property. Certainly, if the stolen property is returned to the legal owner there is no benefit that remains for the one who hired the thief. Accordingly, he would have no legal obligation to pay the thief. ■

1. רש"י ד"ה מאתים
2. נתיבות המשפט סי' ט' סק"א
3. תשורתשי ח"א סי' ז'
4. אורחות המשפטים ח"ב עמ' רלד ■

## STORIES Off the Daf

### Outwitting the sages

אמרתי אלך אני ואודיע להם שמא יבואו בני אדם שאינם מהוגנים ויטעו את חכמים

Our Gemara recounts a story of the honest man who was sent by Divine Providence to foil the plot of the Baitusim who were trying to fool the Sages.

During the time of the Vilna Gaon, ז"ל, a young married woman of one of the best families of Vilna was inexplicably bereft of her groom. The young man had been sent on a business trip to a distant city, but weeks and months passed with no word. Foul play was suspected, but no compelling evidence was ever offered to explain his disappearance. Years passed, and the no-longer young wife returned to

her parents' home, unable to remarry.

One day, a man arrived in Vilna and presented himself to the woman's family as their long lost son-in-law. The groom had been quite young when he disappeared long ago, and it was difficult to establish with certainty that this stranger was really their son-in-law. He was summoned by the Gaon for questioning and acquitted himself admirably. He had a reasonable excuse for his long absence, knew everything about the woman and her family, and could recite his own history to the last detail. Even so, the girl's parents were not completely satisfied that the man was who he purported to be.

The girl's father approached the Gaon privately and expressed his doubts. The Gaon said, "Host him for now, but do not allow your daughter to be alone with him. Come back on Friday for further instruc-

tion."

All week, the man stayed in the girl's home. On Friday, the Gaon told the father, "Tonight, take him to shul, but as soon as you enter, find a pretext to speak to someone at the back. Wave him ahead and say: Go on to our seats. Then you will know if he is who he claims to be."

The father did as instructed, and the man's treachery was revealed, as he could not identify his old seat. Afterward, it came to light that the girl's husband had decided to abandon Judaism along with his young wife while abroad. The two unscrupulous men had met years later, and this charlatan was intrigued by the prospect of insinuating himself into a prominent family in Vilna. Thanks to the astuteness of the Gaon and siyatta d'Shemaya, his plan was foiled! ■

