



OVERVIEW of the Daf

1) Identifying the author of the Mishnah (cont.)

The Gemara further clarifies how the Mishnah could be explained even according to Rabbah bar R' Huna's explanation of Sumchus.

It is observed that the Mishnah does not follow R' Yosi who maintains that when money is in doubt due to a deceiver the money should be set aside until the arrival of Eliyahu.

It is noted that the Mishnah does not accord with Rabanan who disagree with R' Yosi either.

It is explained why it seems as though Rabanan are a better choice than R' Yosi.

Two explanations are offered for how the Mishnah could be consistent with R' Yosi but the Gemara rejects the second explanation.

The reason is explained why in the case of the "storekeeper and his ledger" both claimants collect rather than put aside the money until the arrival of Eliyahu.

2) The testimony of witnesses for half the claim

R' Chiya taught that a defendant who denies a claim entirely and witnesses testify that he owes half the money must pay half and swear regarding the remainder. The rationale is that his own admission should not be stronger than the testimony of witnesses.

As proof to this ruling R' Chiya cites our Mishnah.

The reason a קל וחומר is needed for this principle is explained.

The logic of the קל וחומר is explained.

Numerous challenges against the קל וחומר are presented.

The Gemara is forced to offer an alternative קל וחומר that formulates the foundation of R' Chiya's position.

The Gemara now begins to challenge this קל וחומר as well. ■

REVIEW and Remember

1. How is it possible for R' Yosi to agree with the Mishnah's ruling that the money should be divided between the two parties?
2. What is the novelty of R' Chiya's case of a מודה במקצת?
3. Concerning what matter is a person's admission stronger than the testimony of witnesses?
4. Explain מה לפיו שכן אינו בהכחשה ובהזמה.

Distinctive INSIGHT

A personal confession is stronger than testimony of witnesses
 מה לפיו שכן מחייבו קרבן תאמר בעדים שאין מחייבין אותו קרבן

In its analysis of the words of the קל וחומר of R' Chiyya, the Gemara suggests that his law is determined from the case of פיו, a confession of one's mouth. If a personal confession cannot result in paying a fine, yet it can cause the person himself to take an oath of מודה במקצת, witnesses, who do have the power to testify and obligate a person to pay a fine, should certainly have the legal power to cause a person to have to take an oath of מודה במקצת.

The Gemara challenges this approach, as it finds a פירכא, a factor which shows a contrary position, as there is an aspect of one's own confession which is stronger than witnesses. One's own confession can result in a person's bringing an offering, while witnesses cannot cause a person to bring an offering. The Rishonim present varying approaches to explain this comment.

Tosafos explains that one's own confession, for example that he ate forbidden fats (חלב), would result in the person's having to bring a chattas offering, even if witnesses testify that what he ate was actually permitted fats (שומן).

Shitta Mikubetzes brings those who ask against Tosafos, how could the kohanim who are serving in the Beis HaMikdash be allowed to service this person and perform the rite of his offering, when witnesses testify that there is no need for it at all. In effect, the kohanim would be presiding over a non-consecrated animal's being brought, which is not allowed. He answers that once we believe the individual "more than one hundred witnesses" the kohanim do not have to be reluctant or to avoid bringing his offering. ר"ן adds that this person is coming to atone for his sin, so the Torah relies upon his claim that he actually ate forbidden fats, even though witnesses say that he is innocent. Once we rely upon him, the kohanim are allowed to officiate at the bringing of the offering.

Ramban and Ritva disagree with Tosafos, and they hold that a personal confession and witnesses are both the same in

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HALACHAH Highlight

Incriminating oneself in order to repent

מה אם ירצה לומר מזיד הייתי יפטר

But if he wanted he could claim that he did it intentionally - he would be exempt

There was once a slaughterer who became ill. When his prognosis began to look very bleak he called for the rov to come visit. When the rov arrived the slaughterer confessed to different transgressions and amongst them was that there were times that after slaughtering an animal he noticed the knife was damaged but ignored that fact and sold the meat as kosher. When the rov heard this confession he examined the slaughterer to confirm that he was coherent and cognizant of what he was saying and when he saw that he was, he declared all the utensils that people ever used for meat produced by this slaughterer to be non-kosher. The slaughterer eventually recovered from his illness and returned to his old ways which included a complete denial that he ever confessed to wrongdoing. The rov didn't know how to handle the situation so he asked the author of Teshuvos Shivas Tzion for guidance. Teshuvos Shivas Tzion¹ responded, based on Tosafos (ד"ה מה אם ירצה) that the slaughterer was believed when he gave his first confession and thus any slaughtering he does is considered non-kosher. In his response he spent time discussing whether we apply the principle that a person does not make himself wicked to a case where a person is identifying something as prohibited.

Other Poskim, however, maintain that the principle that a person is not believed to make himself wicked applies even when the person in question is seeking to repent. There was

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that neither can result in an offering being brought unless they are undisputed. The point of the Gemara is that a confession is strong in that it can require that an offering be brought, even without corroboration of witnesses. Witnesses, however, cannot require that an individual bring an offering unless the person agrees with their testimony, or unless he is at least silent.

Birkas Shmuel explains that the Torah ultimately says that an offering must be **או הודע אלו**—an action to which the person admits. He must confirm or accept the witnesses' testimony. The person is also not believed against witnesses. ■

another slaughterer who appeared before Beis Din and admitted that he was drunk most of the times he slaughtered in addition to other things that he did that would render the animals he slaughtered non-kosher. His intent in appearing before Beis Din was for them to advise him how to properly repent for his transgressions. Teshuvos Givas Shaul² ruled that the slaughterer is not believed to incriminate himself and based his ruling on the principle that a person is not believed to make himself wicked. Shvus Yaakov³, however, seems to adopt the first approach when he ruled that children should reimburse the people their father related to them that he robbed. Although the children claimed that their father's confession should be dismissed due to the principle a person cannot make himself wicked, nevertheless, Shvus Yaakov demonstrated that when a person seeks to repent he can make a declaration that would be self-incriminating. ■

1. שו"ת שיבת ציון סי' כ"ד

2. שו"ת גבעת שאול סי' י"ז

3. שו"ת שבות יעקב ח"א סי' ק"ע ■

STORIES Off the Daf

"I meant to sin"

אם ירצה לומר מזיד הייתי

A certain woman was going through a crisis of faith. She had been exposed to ideas that were the opposite of Torah and like so many other people of her generation, she was struggling to find herself. During this crisis, it came time for her to go to the mikveh; she decided not to bother. She did not tell her husband since she felt he would never understand. He thought that she went like every month, but she unfortunately did not.

Later, she started feeling great remorse for what she had done. She con-

fessed completely to her husband—who had a hard time believing it—and they went to their rav to find out what they, and especially she, should do to repair her sin.

When the rav ascertained that the husband didn't believe that this could possibly be true, he wondered about whether we believe her since **אין אדם רשע משים עצמו**—A person does not incriminate himself." The rav asked this question to the Yehudah Ya'aleh, zt"l.

He answered, "The Tosafos in Bava Metzia 3 writes on the phrase, 'If a person wishes to say that he meant to sin,' that the principle that there is no self-incrimination applies to one's qualifications as a witness. But if we see that someone wishes to do teshuvah, as in our

case, we certainly believe him or her. Since the woman has confessed from her own initiative, we can still believe her regarding the prohibitions of niddah, especially because she is looking for a way to do teshuvah. In our case, the husband was totally unaware of the grievous lapse and need not do anything to repent. The wife's teshuvah must be effected through vidui and letting go of her sin by never doing it again. If the woman can find the time to daven about this each day, she should do so. Encourage her and explain that the gates of tears are never sealed and Hashem wants the heart. If she does what she can, the All Merciful One will surely forgive her!" ■

1. שו"ת יהודה יעלה ח"א יו"ד סי' ר"ל