

OVERVIEW of the Daf

1) Clarifying the dispute in the Mishnah

The Gemara clarifies that according to Rebbi the witnesses testify about their signatures whereas according to Rabanan they are testifying about the contents of the document.

The reason this explanation needed clarification is explained.

Abaye presents a way to authenticate the two signatures if one of the witnesses is dead.

It is noted that a person should not write his signature on paper lest someone find it and make it into a loan document.

R' Yehudah in the name of Shmuel rules like Chachamim.

The reason a ruling in favor of Chachamim is needed is explained.

Whether this is Shmuel's position is unsuccessfully challenged.

2) Certifying a document

R' Yehudah in the name of Shmuel rules that a witness and a judge can combine to certify a signature.

Although Rami bar Chama praised this ruling Rava criticized the ruling and Rami bar Yechezkel, R' Yehudah's brother, confirmed Rava's position that a witness and judge can not combine to certify a signature.

A related incident is recorded.

R' Huna or Rav is quoted as ruling about how the judges who recognize the signatures can testify regarding their validity and sign the certification as well.

A detail regarding this ruling is challenged and consequently revised.

Three halachos are inferred from this ruling.

Two of these inferences are refuted.

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Distinctive INSIGHT

When the case appears as being improper

ומי כתבינן והאמר רב פפי משמיה דרבא האי אשרתא דדיני דניכתב מקמיה דניחו סהדי אחתימת ידיהו פסולה. דמיתחזי כשיקרא, הכא נמי מיתחזי כשיקרא

The Gemara quoted the ruling of Rav regarding the details of recording a court's verification of a document (קיום שטר). Among the rules is that none of the judges may sign his name until all three judges are familiar with the handwritten signatures of the witnesses. If, for example, one of the judges is not yet familiar with the witnesses' handwriting, he must first accept testimony that the signatures are legitimate, and only then may any of the judges begin to sign and attest that "this document has been verified by a panel of three judges." If one of the judges would sign his name too early, the statement that the document came before a panel "of three" would be false. In consideration of the words of Rav Pappi, the Gemara further clarifies that not only should the signatures of the judges be affixed once all three judges are appraised of the facts, but also the text of the verification document itself should be written only after the full panel of judges is aware of the veracity of the witnesses' signatures. Otherwise, the situation would appear to be a falsehood.

Tosafos (האמר רב פפי) notes that we know from later (85a) that Rav does not agree with the statement of Rav Pappi, and Rav does not concern himself with the factor of a document or procedure having the appearance of falsehood (מיחזי כשיקרא). Why, then, does the Gemara question the statement of Rav from the words of Rav Pappi? Tosafos answers that sometimes the Gemara will ask a question even though the source from which the question is based is not according to the halacha.

Rashi learns that the question from Rav Pappi was not about the general text of the verification document, but the Gemara thought that Rav stated that even if the first judge has signed too early, the testimony about the signature should still be given. But has not the entire process been falsified? The Gemara answers that, indeed, Rav does not allow any signing before the testimony about the witnesses has been completed.

Rosh, however, makes a basic distinction between the discussion of 85a and our Gemara. Although Rav does not worry about מיחזי כשיקרא, when the case appears as false, he does care about outright falsehood. Rav would disallow a court proceeding if the witnesses signed before all three were appraised of the facts. This would be an outright falsehood. However, the writing of the text of the document itself, before it is signed, only has the appearance of an impropriety, and this is not something which Rav disallows. ■

REVIEW and Remember

1. What is the point of dispute between Rebbi and Chachamim?
2. What was Rava's reasoning to reject the assertion that a judge and witness can combine for testimony?
3. Explain the issue of מתחזי כשיקרא.
4. What three laws did the Gemara attempt to infer

HALACHAH Highlight

Siging a marriage license for a Karaite marriage

והאמר ר' פפי משמיה דרבא האי אשתא דדייני דניכתב מקמיה דניחו סהדי אחתימת ידיהו פסולה דמתחזי כשקרא

Didn't R' Pappi in the name of Rava say: The judge's certification that was written before the witnesses testify about their signatures is invalid because it appears like a lie.

The Tzitz Eliezer¹ was asked about signing the marriage license for a Karaite marriage. The essential question was whether it is considered assisting them in a transgression, since Rema² considers them to be possible mamzerim. Tzitz Eliezer responded that if the language of the license clearly conveys that it was a karaite marriage it is permitted. The reason is that the ruling of Rema, to consider Karaites possible mamzerim, applies to the question of whether we are permitted to intermarry with a Karaite, but it does not apply when two Karaites are marrying each other. Additionally, even if one wishes to dispute this reasoning, nonetheless there is no issue with signing a marriage license. The reason is that since many great Poskim maintain there is no prohibition even to intermarry with Karaites it should, at the very least, certainly be permitted to sign on their marriage license.

Rav Ovadiah Yosef³ strongly disagrees with this conclusion and argues that all opinions agree that it is prohibited to sign the marriage license of a Karaite couple. The reason is that the rationale behind the position that allows marrying Karaites is that their marriage ceremony does not include any language of

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R' Safra challenges the accepted inference, i.e. that a witness can become a judge.

R' Abba resolves the challenge.

3) Certifying a judge

Rav's ruling related to other judges testifying about the acceptability of a fellow judge is presented.

The Gemara begins to analyze this ruling. ■

kiddushin. Consequently, none of them are halachically married and as a result the children cannot be considered mamzerim. That being the case, how could it be permitted to lie and sign onto a marriage license that states that a marriage took place when from the perspective of halacha there was no marriage whatsoever. Certainly according to those Poskim⁴ who rule in accordance with the opinion of R' Pappi, who maintains that one cannot even do something that looks like a lie, it would be prohibited to sign on this license. But even according to the dissenting opinions it will be prohibited. The reason is that the lenient opinions only allow something that looks like a lie, but in reality does not contain any false information. If, however, there was information that was an outright lie all opinions would agree that it is prohibited to sign onto that document. Consequently, Rav Ovadiah Yosef prohibits signing onto the marriage license of a Karaite couple. ■

1. שו"ת ציץ אליעזר ח"ד סי' טי אות ד'.
2. רמ"א אה"ע ס"ס ד'.
3. שו"ת יביע אומר ח"ב אה"ע סי' כ"א.
4. תוס' כתובות כא: ד"ה האמר ר' פפי. ■

STORIES Off the Daf

The Semichah Test

"ומדרבנן עד נעשה דיין..."

Once, a young man from a simple family appeared before Rav Eliezer of Dzikov, ז"ל, to be examined for semichah. Contrary to expectations, the Rebbe gave him a really difficult test which lasted for a very long time. The young man was surprised since he had never heard that the Rebbe's test was so difficult; generally speaking, those Rabbonim who are "hard testers" are known for this quality ahead of time. After the examination had already proceeded for a while, the young man developed a theory as to why he had never heard that the Dzikov

ver Rebbe was this difficult an examiner. Plucking up his courage, he decided to test his theory.

The young man asked, "Rebbe, if I was the descendant of a prominent Rav or Rebbe, would you also be putting me through 'ten nisyonos' in this manner?"

The Rebbe answered, "We find in Kesuvos 21 that when it comes to a Torah commandment like sanctifying the new moon, a witness cannot become a judge. When it comes to a Rabbinic obligation like validating documents, however, a witness can become a judge. The actual language of the Gemara is: מדאורייתא אין עד נעשה דיין, מדרבנן עד נעשה דיין. Those words can be understood differently, though. We know that an עד also means a small bit of cloth. The statement can be read: when a per-

son who is really just a little 'scrap' comes along only on the strength of his own Torah learning, מדאורייתא, he cannot automatically be declared fit to be a judge. He will have to prove that he really knows all that he should. But מדרבנן is a different story! If he is a descendant of great scholars and tzaddikim, even an "עד" is made a judge. In the merit of his ancestors, you can assume that he will, in time, come to know all that he needs to know. For although the Torah is not an inheritance, she returns to the same achsanyah, the same lodgings, and those who come from greatness and can answer questions acceptably are likely to merit Torah with less effort than those who don't. In that case, even such a 'shmatta' may serve as a dayan!" ■