

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah elaborates on the different categories of questions that witnesses were asked. Different types of inconsistent testimonies that are acceptable are presented. The process of deliberations for a capital case is described.

2) The seven standard questions

R' Yehudah cites the source for the seven standard questions.

The exposition is unsuccessfully challenged.

The Gemara explains how we extend this exposition to include cases of strangulation and burning.

This exposition is challenged and R' Yehudah offers another source that the seven standard questions are required in all capital cases.

R' Avahu unsuccessfully challenges this explanation.

A Baraisa presents the exchange between R' Yosi and Tanna Kamma whether there are three or seven essential questions that must be asked.

Another Baraisa elaborates on the questions that are asked witnesses in a murder case.

3) Issuing a warning

Ulla presents an exposition with the source that there is a Biblical requirement to issue a warning for a transgressor to be punished. ■

REVIEW and Remember

1. What is the difference between חקירות and בדיקות?
2. When was it necessary to add additional judges to the panel?
3. Which is the most severe form of execution?
4. What is the source that a person must receive a warning if he is to be punished by Beis Din?

Distinctive INSIGHT

The day of the week...

באיזה יום

Among the seven questions a witness is asked in order to pinpoint the precise date, time and place of the event, the witness is asked what day of the week the event occurred. Rashi, among many of the Rishonim, ask why this is necessary. After the witness testifies that he witnessed the event in a particular month and on which day of the month, the court itself could easily determine what day of the week that date in the month occurred. קובץ שיעורים explains that the question of the Rishonim is that although the Torah requires that we interrogate the witnesses and ask them these seven questions, nevertheless, once it becomes apparent that the information they have already furnished adequately indicates the day of the week, it does not seem sensible that we need to ask the witness to state that which we already know. It should therefore not be necessary for the witness to have to repeat information regarding the day of the week.

Rashi, *יד רמה* and *ר"ן* answer that while we would know the day of the week from what was already stated, one of the goals of the cross-examination process is to make it possible for other witnesses to come and challenge the ones who are testifying. For example, if the witnesses who testify are actually conspiring (עדים זוממין), there may be other witnesses who know that this first set was with them at the time they claim to have witnessed this event. This second set may remember being with them, but not realize the exact day of the month they were together. When the second set hears that the testimony describes being somewhere on a Tuesday, for example, this may jog their memory and cause them to come to court and tell us that the first set was with them on that particular Tuesday. Therefore, by explicitly stating the day of the week, this enables the הזמה process to be completed, which might not have happened if the witnesses only said that the event took place on a specific day of the month.

Tosafos (first answer, Pesachim 12a; באיזה ד"ה) and Tosafos HaRosh explain that since the seven questions of the interrogation are Torah legislated, it is critical that the witnesses be asked every one of the questions, and that they not contradict each other or themselves (i.e., if a witness reports that the twelfth of the month was on a Monday, and it turns out that it was not so). If an inconsistency surfaces, the testimony is to be nullified.

HALACHAH Highlight

Are standard questions needed in all cases?

היו בודקין אותן בשבע חקירות

They would examine them with seven standard questions

Poskim disagree whether witnesses who testify that the event took place today or yesterday are questioned regarding the seven standard questions. Rambam¹ writes that even if the witnesses testify that the murder took place today or yesterday it is necessary to ask them which shemittah cycle, year, month, day of the month, day of the week and time of day the murder occurred. Noda B'yehudah² explains that it is necessary to have the witnesses respond to these questions, although the answers to most of them are obvious because there may be witnesses who could possibly make the first set into zomemim but will not be reminded of the fact that they were with the first pair unless the day and month are clearly mentioned. Therefore, to make it as easy as possible for detection of zomemim we have the testifying witnesses elaborate on all seven questions. Radvaz³ writes that if the witnesses contradict one another regarding some of the seven questions, their testimony will be dismissed even though they reported the murder took place yesterday. Even though when they testify the murder took place yesterday we know the answer to most of the seven questions, nevertheless, we ask them out of concern that they are lying and by asking numerous questions we may be able to catch them lying.

Ran⁴ in the name of Razah disagrees and writes that

(Overview...continued from page 1)

In his second answer, Tosafos explains that if one witness says that the event took place on the twelfth of the month, and the other witness says it was on the thirteenth, because there is only a one-day discrepancy, one might be mistaken regarding when Rosh Chodesh took place that month. If they both say the event was on Tuesday, we can accept their testimony. This observation would not be possible unless they each say the day of the week. ■

when a witness states, for example, that the murder occurred last month it is unnecessary to ask about the year and shemittah cycle since that is obvious. The seven questions are only asked when the witness does not supply that information in his own testimony but he is not asked about information that was given in his testimony. Ran challenges Razah from the fact that the Gemara derives the obligation to ask seven standard questions from pesukim. This indicates that the questions are essential so how could Razah dispense with them? Radvaz⁵ answers, although admittedly forced, that the Biblical requirement to ask all seven standard questions applies only when the witnesses did not supply this information on their own but when they give us that information there is no Biblical requirement to ask those questions. ■

1. רמב"ם הלי עדות פ"א הי"ד.
2. שו"ת נודע ביהודה מהדו"ק אה"ע סי' ע"ד.
3. שו"ת רדב"ז ח"ב סי' תתמ"א.
4. רי"ן ד"ה היו.
5. שו"ת הרדב"ז הנ"ל. ■

STORIES Off the Daf

The Yetzer's strategies

"המית בתוך כדי דיבור..."

The Rebbe of Dorog, shlit"א, once explained how to apply today's daf to every person's Divine service. "Our sages teach that Moshe Rabbeinu called the yetzer hara an ערל, Yeshayahu called it a stumbling block, and Yechezkel characterized it as a stone. And the yetzer hara is harder for a Jew to overcome than a non-Jew. The same is true when we compare a talmid

chacham to a layman; the yetzer focuses on the talmid chacham. This explains the Gemara in Sanhedrin 40. There we find that we check the witnesses to ensure that the murderer killed immediately after he was warned. Rashi explains that if the murderer waited even longer than the time to say a couple of words before killing his victim, we suspect that he may have forgotten the warning.

"On the surface this seems very strange. How could he have forgotten a warning issued less than ten seconds before the crime? The answer is that the yetzer hara causes a person to hard-

en his heart like a stone. It entices a person to ignore the mitzvos of the Torah and forget what is obvious before and after he sins.

"Even if he is a talmid chacham, since the yetzer hara works especially hard to confuse him and makes him forget yiras shamayim, it is plausible that he forgot even after a very short time elapsed. We must remember that in capital crimes we use any plausible claim to find a way to save the condemned soul. Due to the machinations of evil, this claim is certainly plausible."¹ ■

1. דברי תורה, סיון, תשס"ד, ע' ח' ■