

## OVERVIEW of the Daf

### 1) Oath of testimony (cont.)

The Gemara concludes its citation of the Baraisa that records the derivations of different Tannaim that the law of oaths of testimony is limited to monetary cases.

The derivation of the first Tanna, R' Eliezer, is further analyzed and explained.

The rationale behind R' Akiva's derivation is explained.

Two practical differences between R' Eliezer and R' Akiva are identified.

R' Pappa and Abaye discuss whether R' Yosi HaGalili's derivation presupposes the position of R' Acha who accepts testimony based on circumstantial evidence.

The Gemara infers that according to R' Yosi HaGalili witnesses adjured to testify in a penalty case are not liable.

### 2) Incomplete testimony

The Gemara records a conversation between R' Yehudah and R' Hamnuna related to incomplete testimony and R' Yehudah is very satisfied with R' Hamnuna's analysis.

Two versions of a related incident are presented.

### 3) The oath of testimony (cont.)

The Gemara reports that in Eretz Yisroel they mocked the Baraisa's presentation of R' Shimon's position.

The Gemara searches until it finally identifies the reason the Baraisa's presentation deserves to be mocked. ■

## REVIEW and Remember

1. Why is it more logical to derive the laws related to the oath of testimony from the oath of deposit?  
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2. What is R' Acha's unique position regarding testimony?  
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3. What do people do without paying attention?  
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4. What is the punishment for an intentional violation of the oath of deposit?  
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## Distinctive INSIGHT

### Compelling circumstantial evidence

דאי אית ליה דר' אחא בדיני נפשות נמי משכחת לה כר' שמעון בן שטח

Rabbe Yose HaGalili said that testimony is only valid when it is substantiated with *ראיה וידיעה*—the witnesses' having seen the event about which they report, and with their knowledge of the information.

Rav Pappa asked Abaye whether it was necessary to say that R' Yose HaGalili must disagree with the view of R' Acha. R' Acha's opinion is that a court may judge a case using strong indications of fact, even without solid proof. For example, the Gemara cites the case of R' Shimon ben Shetach, who one time saw a person chasing after another with a knife to kill him. As the two ran into an abandoned building, R' Shimon ben Shetach chased after them, only to find the pursuer coming out carrying the knife dripping with blood, and the victim still laying in death throes on the ground. R' Shimon ben Shetach cried out, "You evil one! You killed this person, but I cannot judge you, because the Torah requires two witnesses to bring someone to justice. Nevertheless, Hashem will avenge this person's blood from you!" The story concluded with R' Shimon's words coming true, as a snake came and bit the murderer and killed him.

In any case, if R' Acha's approach was accepted, we would have judged a case similar to that of R' Shimon ben Shetach, where the circumstances were those of strong indications of guilt. Rav Pappa's question was whether the view of R' Yose was necessarily opposed to that of R' Acha.

Tosafos (ד"ה דאי) notes that the Gemara seems to suggest that R' Acha would extend his view, of allowing judgment when we lack proof or testimony, even in cases of capital crimes (*דיני נפשות*), although R' Acha only said his statement in reference to a monetary case. This extended application of his opinion is problematic, especially in light of the Gemara in Sanhedrin (37a) where we find that witnesses are cross-examined thoroughly, and they are asked whether they perhaps arrived at any conclusions based upon assumptions, in which case their testimony would be disqualified. In capital cases we see that we cannot accept any information other than outright proof and first hand observations. The Gemara makes a contrast and says that we do not question witnesses in this regard in monetary cases, because we rely upon R' Acha's view that permits circumstantial evidence in financial matters. We see, therefore, that R' Acha himself only permits compromised evidence in monetary cases, so how can our Gemara assume that he also allows it in capital cases?

Today's Daf Digest is dedicated  
 By Mr. & Mrs. Dennis Ruben in memory of their parents  
 ר' אברהם וואלף בן ר' בערל ז"ל  
 ר' חיים שלום בן ר' בנדיט מאיר ז"ל

# HALACHAH Highlight

## The reliability of a person's report

כל מילתא דלא רמיא עליה דאיניש עביד לה ולא אדעתיה

Anything that is not incumbent upon a person he does without paying attention.

There was once an incident in which a shipment of esrogim that were suspected of being grafted arrived in a box. Someone opened the box and removed three esrogim to be examined to determine whether the esrogim had the characteristics of a grafted esrog or those of a non-grafted esrog. The examiner cut three esrogim open and without realizing the importance of it noticed that the seeds ran parallel to the length of the esrog rather than perpendicular to the length of the esrog. The opened esrogim were lost and a discussion ensued whether the report of the examiner could be trusted being that he did not know the significance of his find at the time of the examination. The rationale to hesitate is that our Gemara teaches that one does not pay attention to details that are insignificant. As such, since the examiner did not realize the significance of the seeds laying parallel to the length of the esrog we should be concerned that the report may not be accurate and we should not be able to declare the esrogim in the box to be non-grafted.

Teshuvos Minchas Elazar<sup>1</sup> cites Pischei Teshuvah who establishes the following guidelines for determining reliability. When a person is mindful to pay attention he is considered

(Insight...continued from page 1)

Tosafos answers that the cross-examining of witnesses in capital cases but not monetary cases was originally assumed to be the opinion of R' Acha. But after the Gemara determines that Rabbanan agree that we allow circumstantial evidence in monetary cases, the Gemara no longer believes that R' Acha makes any such contrast. ■

reliable to report what he saw even though he was ignorant of the relevant halachos. An example of this would be our case of the esrogim. Although the examiner did not know the characteristics of a kosher esrog he knew that his report would determine whether they are kosher and the examiner is considered reliable. At the other extreme is a person who is ignorant of the significance of what he is examining. He does not know the identifying features of a kosher esrog nor does he realize that one can identify a kosher esrog by certain characteristics. Such a person is not reliable to report the findings of his examination. In the middle is a person who was not paying particularly close attention to what he was doing but realized that his actions could be significant in some way. Such a person is considered reliable to report what he saw because he realized the possibility that his actions may be significant. An example of this is a person who, without realizing, put a milchig spoon into a pot cooking fleishigs. If he tells us how much of the spoon was inserted into the food he is believed even though he was not paying exact attention to what he was doing<sup>2</sup>. ■

1. שו"ת מנחת אלעזר ח"ג סי' ע"ח.
2. עי' שו"ע יו"ד סי' צ"ד סעי' א'.

# STORIES Off the Daf

## Seeing is Believing

”בשלמא ידיעה בלא ראייה...”

Rav Moshe Feinstein, zt”l, permitted drinking chalav stam purchased from companies in the United States. “We learn this from Shevuos 34. There we find that clear knowledge is like seeing when it comes to financial matters. Since the companies face such serious consequences for cheating and they are clearly afraid to add anything illegal, it is as if we are watching them and their milk is permitted.”<sup>1</sup>

But the Chelkas Yaakov, zt”l vehemently disagreed. “Who revealed this secret to him? The Gemara is merely saying that certain knowledge is acceptable in monetary and other cases; not that such

knowledge is literally like physical seeing. And who said the big firms are so afraid? Precisely because they are big, they have connections and may be undaunted by regulations which they easily circumvent.

“I heard from Rav Moshe Soleveitchik, zt”l, of Switzerland, that in the mountains there was a milkmaid who would carry two jugs of milk from the heights of one mountain to the valley below every day. A religious Jew who noticed her daily sojourn asked her how she prevented the milk from spoiling. ‘After all, it is a long way and the milk is jostled around for hours. In this hot weather it should be impossible to prevent the milk from turning.’

“The young woman gave him a shocking reply. ‘The secret is to add a bit of donkey’s milk to each pail. This strengthens the milk and ensures that it stays fresh...”

The Chelkas Yaakov continued, “Although in Switzerland adding donkey’s milk is illegal, this did not stop her from doing this every day. Of course I am not trying to build a psak on this maidservant’s word. But if a company wants to add impure milk—and the decree requires that we assume they do—how can we be sure that they are truly afraid to do so? Being strict is especially important nowadays since technological advances often enable what is naturally impossible. If we permit chalav stam now, what will we do if they come up with a way to disguise or change impure milk? Even if they are caught, it will be very difficult to convince people that they can no longer rely on what was earlier permitted, as we find in Beiza 5b.”<sup>2</sup> ■

<sup>1</sup>שו"ת אג"מ, ח' יו"ד א', סי' מ"ז

<sup>2</sup>שו"ת חלקת יעקב, ח' יו"ד, סי' ל"ד, אות ה' ■