

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses issues related to the שבועות העדות – the oath of testimony.

2) The disqualification of female witnesses

A Baraisa is cited that teaches that females are disqualified to serve as witnesses.

Another two Beraisos are cited that teach this same principle.

Two Beraisos discuss the preference that the two litigants should stand.

R' Yosef cites a Baraisa that teaches that one should give precedence to the court case of a Torah scholar.

A related incident is recorded.

3) Litigants standing

Ulla asserts that the earlier disagreement whether litigants should stand relates to the litigants but all opinions agree that witnesses must stand when they give testimony.

R' Huna maintains that the dispute relates to when the arguments are presented but when the verdict is pronounced all opinions agree that the litigants must stand.

A second version of R' Huna's qualification is recorded.

A related incident is presented.

Rabbah bar R' Huna teaches that if one of the litigants is a Torah scholar we tell them both to sit and if the unlearned litigant chooses to stand it is not a problem.

A related incident is recorded.

R' Pappa explains why there was no issue of silencing the other litigant.

Two additional rulings from Rabbah bar R' Huna that relate to a Torah scholar who is a litigant or a witness are

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REVIEW and Remember

1. What is שבועות העדות?

2. Is it obligatory for litigants to stand during the proceedings?

3. How did R' Huna's wife put R' Nachman into a difficult circumstance?

4. What are some halachos that are derived from the phrase מדבר שקר תורה?

Distinctive INSIGHT

Do the litigants have to stand in court?

מצוה לבני דין שיעמדו

Our Gemara determines from the verses (Devarim 19:16-17) that it is the witnesses who must stand in court. The Baraisa later mentions that there is also a mitzvah for the litigants to stand, but R' Yehuda explains that if one stands, they must both stand. If one sits, the other must also sit. It is critical not that they stand or sit, but rather that they both be treated equally and equitably, in order that neither feels that he is being treated unfairly.

Tosafos (**ד"ה מצוה**) notes that the verse from which the Baraisa derives its point is Devarim 19:17, "And the two men shall stand." Yet, the Gemara in Moed Katan (21a) tells us that when a verse uses the term "ועמדו" or "זעמדו" the intention is not necessarily that the action described must be done while standing. In fact, according to the conclusion of the Gemara, it is only when the verse uses a term such as "זעמדו" or "ויעמדו" that the act must be done while standing. Why, then, does the Baraisa feel that verse is teaching that the litigants must stand?

Tosafos answers that there is a difference between a verse that speaks of the posture of a person, such as in our Gemara, and a verse which describes the position of a person as he performs another activity. The Gemara in Moed Katan is dealing with the halachos of whether a person must be standing while tearing one's clothes for mourning (yes) and while performing chalitza (no). There, the halacha depends upon how the word **עמדו** is presented. In our Gemara, the very fact that the Torah describes the litigants standing while in court speaks for itself, and that the posture they adopt must be one of standing.

R' Yehuda explains that the point is that they must be treated fairly, and they may both sit, if they choose to do so. Tosafos (**ד"ה שאם**) notes that the Gemara in Sanhedrin (19a) brings the story of King Yanai who was summoned to the Sanhedrin because he was involved with the murder of a Jewish man. Shimon ben Shetach addressed him and demanded, "King Yanai, stand up on your feet, and testimony will be brought!" We see, notes Tosafos, that even though King Yanai was not opposed by another litigant, and there was no issue regarding being treated more harshly than anyone else, the defendant must still stand. This shows that the opinion of R' Yehuda is not correct.

Tosafos offers several solutions to this question. We can say that the Gemara in Sanhedrin reflects the opinion of Chachamim, not that of R' Yehuda. According to R' Yehu-

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HALACHAH Highlight

Does the oath of testimony apply to women?

נוהגת באנשים ולא בנשים

It applies to men but not to women

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The Mishnah mentions that women are not subject to the oath of testimony if they swear that they do not know testimony that they do, in fact, know. The reason this parsha does not apply to them is that women are disqualified from testifying and as such are not subject to the oath of testimony. Later authorities question the rationale for exempting women from the oath of testimony when there are certain matters for which women could testify. The Gemara later teaches that in circumstances that a single witness is believed, if that witness were to swear falsely that he does not have knowledge needed to testify he would be liable to bring a korban. Since women are believed to testify that a woman's husband died or that a sotah had an extra-marital affair they should be subject to the punishment of the oath of testimony for swearing that they don't have the knowledge to testify.

Mishnah Lamelech¹ suggests that there is a distinction between the regular case of a single witness and those circumstances in which a woman is believed to testify. A single witness is a qualified witness and if another witness were to join him they could extract money and have someone executed by

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da we must say that Shimon ben Shetach demanded that King Yanai stand only at the moment of the verdict, but not during the deliberations. Tosafos (Sanhedrin) also explains that while the witnesses are testifying, even R' Yehuda holds that the litigants must stand. ■

Beis Din. Such a witness is subject to being penalized for an oath of testimony. A woman, on the other hand, cannot join with another witness to extract money or have someone executed; therefore she is not the quality of witness who could be subject to the punishment for the oath of testimony. Noda Beyehudah² writes that only a single witness who is believed by the Torah is subject to the oath of testimony. Although a woman is believed to testify about a man's death or that a sotah had an adulterous affair, her reliability is Rabbinic and as such she is not subject to the punishment for the oath of testimony. A third explanation is that when a regular single witness is believed to testify his credibility is the result of the fact that he is a witness. In those cases where the testimony of a woman is accepted it is in conjunction with other circumstantial evidence that gives credence to her testimony. However, since her credibility does not rest solely on her testimony she is not subject to the punishment of the oath of testimony. ■

.1. משנה למלך בהגותו על החינוך סוף מצווה קכ"ג.

.2. שוויות נודע ביהודה מהדורת חוי"מ סי' ח'.

.3. עי שב שמעתה ש"ז פ"א. ■

STORIES Off the Daf

"Every honored King's Daughter is Within"

"כל כבודה בת מלך פנימה..."

Rav Sholom Chaim of Sadigura, once explained why women cannot bear witness in beis din. "People feel it is unfair that women may not bear witness. After all, why should she be any less trustworthy than a man? We must understand that a king too is not fit to bear witness even though he is hopefully at least as trustworthy as an average person. She too is called a bas melech, and therefore she may not bear witness. This is meant to ensure that her modesty is not compromised, since it is best if she is not involved in business and other dealings if this is at all avoidable. It is well known

that the more involved she is in such matters, the easier it is for her to slip and compromise her purity and modesty."

He continued, "This is as we find in Shabbos, that our sages decreed that holy writings impart defilement and force one who handles them to wash his hands. They did not make this decree because of anything wrong with holy writings, chas v'shalom. The purpose of this decree was to protect the holy writings from being defiled and mishandled and the same is true of why women are invalidated to serve as halachic witnesses."¹

Rav Yosef Ber Soleveitchik, zt"l, made a similar observation. "Everyone wonders why women may not bear halachic witness. They are quick to insist that this shows discrimination against women, but the truth is that this claim is

demonstrably false. Just as we find that a king may not bear witness and we must understand that this is not discrimination of any sort, the same is true regarding women. The reason behind the prohibition of both women and a king to bear witness is metaphysical and beyond our ability to understand, but it clearly is not an example of any prejudice against women."² ■

.1. חי שלמה, עי רמי"ט

.2. כן שמעתי ■

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presented.

Each ruling is further explained.
A related incident is recounted.

4) Litigation

A Baraisa presents thirteen laws that are derived from the words מדבר שקר תרחק.