

OVERVIEW of the Daf

1) The acceptability of a single witness (cont.)

After the Gemara concludes demonstrating that proof that a single witness is believed cannot be derived from the Baraisa it is suggested that the source for this ruling is logic.

The logic that would form the basis of this ruling is presented.

The suggestion is successfully challenged.

Three alternative suggestions are presented.

The three suggestions are refuted.

R' Zeira suggests that the source that allows a woman to marry based on the testimony of a single witness is of Rabbinic origin and explains the rationale behind the leniency.

2) Divorcing when a woman's husband returns

Rav rules that a remarried woman whose husband returns must divorce both husbands only when she remarried on the testimony of one witness, but if she married on the testimony of two witnesses she does not have to leave.

Following a successful challenge the Gemara revises Rav's ruling.

This assertion that the woman can marry if there are two witnesses is successfully challenged and the Gemara limits the case to particular circumstances.

An alternative explanation for Rav is presented.

Rava unsuccessfully challenges Rav's ruling from a Baraisa.

R' Ashi offers a different understanding of Rav's ruling that avoids the previous challenges.

This explanation is unsuccessfully challenged.

Shmuel rules that if the woman disputes that this is her first husband she does need to leave the second husband.

The Gemara suggests two explanations to help understand Shmuel's ruling.

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REVIEW and Remember

1. Explain איתחוק איסורא.
2. What safeguard did Chazal put in place to rely on a single witness who testifies that a woman's husband died?
3. How does Beis Din deal with a kohen who refuses to separate from a prohibited wife?
4. What are examples where the testimony of one woman is reliable?

Distinctive INSIGHT

Why is this not a case of **אשם תלוי**?

אמר רב ששת כגון שנשאת לאחד מעדיה

A woman's husband left and did not return. Based upon credible testimony, the Jewish court determined that the husband was dead, and the woman was allowed to be remarried. In the Gemara, Rav teaches that if two witnesses come with a person and testify that he is the husband himself, the woman may remain remarried to the second husband. The reason is that two witnesses say that the husband died, and two other witnesses attest to the fact that the husband is alive. Faced with this dilemma, we allow the woman to maintain her status of being permitted to remarry. The Gemara notes that this is a case of doubt, and anyone who was involved in a case of doubtful **הטאת** must bring an **אשם תלוי**. We certainly do not condone the woman participating in a case of doubt with such severe consequences.

The Gemara answers that the case must be where the participants are not in doubt, for example, the woman married one of the original witnesses who personally testified that the husband was dead. As far as the woman herself, she is confident that her husband would have returned if he was alive.

Tosafos Yeshanim asks why the woman marrying one of the witnesses is allowed. We should be suspicious that the witness might be lying in order to marry the woman. This is indeed a concern of ours, as we learned earlier (25a) in a case of a witness who testifies that he killed the husband, that he himself is not allowed to marry the woman. Among the reasons for this is that we are suspicious that the witness is lying in order to marry the woman. Tosafos Yeshanim answers that the case is where the witness was married at the time of his testimony. We do not suspect, therefore, that he wishes to marry the woman about whose husband he testifies. Subsequently, the witness' own wife dies, and he married this woman.

Other answers could be in cases where the woman married someone else in the meantime, and that man died. Now, when the witness marries her we have no suspicion that his motivation was dubious. Finally, we do not suspect that the second witness who testified together with this one would lie in order to enable his friend to marry this woman. The rule is **לאין אדם חוטא ולא לו**. Therefore, the suspicion is alleviated. ■

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 in memory of their grandmother
מרת רייזל בת ר' אברהם מרדכי הלוי, ע"ה

HALACHAH Highlight

Buying an esrog from a reliable salesman

התם לא איתחזק איסורא

In that case there was no presumption of prohibition

Rav Shlomo Kluger¹ ruled that a single witness is not believed to declare that an esrog is not grafted. His reasoning is that just like a single witness is not believed concerning an item that has a presumption of prohibition (חזקת איסור), so too a single witness is not believed "against" the obligation to fulfill a positive command (חזקת חיוב של מצוה). In other words, since a person is obligated to fulfill the mitzvah of taking an esrog, a person may not rely on the testimony of a single witness to fulfill that mitzvah. Rav Ovadiah Yosef² disagrees and maintains that there is a distinction between something that has a presumption of prohibition and something that constitutes an obligation. The basis for this assertion comes from a ruling of the Rosh. Rosh³ ruled that someone who sold tefillin and testified that the tefillin previously belonged to a righteous person is believed and the tefillin do not have to be examined. The reasoning is that there is an assumption that a righteous person would not allow something that could not be used out of his possession (חזקה שלא הוציא דבר שאינו מתוקן מתחת ידו). Additionally, a single witness is believed regarding matters of prohibition that do not have a presumption of prohibition. This ruling clearly demonstrates that a single witness is believed even concerning matters related to fulfilling mitzvos. The reason to distinguish between the two cases is explained by Teshuvos Toras Chessed⁴. The reason a single witness is not believed when there is a presumption of prohibition is that the

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3) Two gittin

The Gemara questions the necessity of a גט from the second husband if it turns out to be an extramarital affair.

R' Huna explains that the גט is required Rabbinically so that people do not think that it is possible to divorce without a גט.

R' Huna's explanation is unsuccessfully challenged. ■

presumption of a Torah prohibition creates a prohibition of the object (איסור חפצא), thus the witness is not believed to contradict the presumption. In contradistinction, when a witness testifies that an object is fit for use for a mitzvah, he is not contradicting the obligation in the mitzvah, instead he is merely relating that the mitzvah could be fulfilled with this item. Since there is no direct contradiction he is believed.

Furthermore, continues Rav Yosef, even Rav Kluger's assumption that a single witness is not believed concerning matters that have a presumption of prohibition is not universally accepted. Ramban, Rashba and Ritva⁵, in their respective commentaries to our Gemara, all maintain that a single witness is believed concerning matters that have a presumption of prohibition, and if one follows that position the foundation of Rav Kluger's logic is lost. Rav Yosef's final conclusion is that a single witness is believed, but due to the weak standing of our generation one should only rely on the testimony of a Torah scholar about the kosher status of an esrog. ■

1. שו"ת שנת חיים סי' ע"ר דף ע"ט

2. שו"ת יחיה דעת ה"ב סי' ע"ד אות ז' וח'

3. שו"ת הרא"ש כלל ג' סי' ה'

4. שו"ת תורת חסד או"ח סי' ל"ד אות ט' ומובא דבריו בשו"ת יחיה דעת הנ"ל ■

STORIES Off the Daf

The honor due a Kohen

וקדשתו בעל כרחו

Our Gemara teaches that we force a kohen to separate from unsuitable women and ritual defilement even if the kohen desires to forgo his kedushah.

The Gemara in Brochos 7b states that serving a scholar is greater than learning Torah. This is such an important element in one's development that the Gemara in Kesuvos 96b writes that a Rebbi who doesn't allow his students to serve him is considered as if he had withheld chessed from them.

One time, a kohen served Rabbeinu Tam by pouring water on his hands. A

student who was present asked, "How can the Rebbi allow a kohen to wash his hands? The Yerushalmi states that one who makes use of a kohen transgresses the prohibition of מעילה!"

Rabbeinu Tam was quiet.

Rabbeinu Pater spoke up and said, "But they can forgo their kedushah! The proof is that the Gemara in the first perek of Kiddushin concludes that one cannot pierce the ear of a kohen slave who wishes to remain past his term of indenture with his master because this will make him into a baal mum. This implies that the only problem here is that the kohen will be disfigured. It is obvious that he can be mochel on the obligation of v'kidashto."

The Taz, zt"l, asked, "According to Rabbeinu Pater, a kohen should be able to be mochel on his kedushah and marry a

divorcee, etc. Yet this contradicts the Gemara in Yevamos 88!"

The Taz answered his own question. "There is a fundamental difference. The kohen cannot be mochel on what the Torah explicitly prohibits. He can, however, forgo his kedushah to wash his Rebbi's hands, since v'kidashto was not meant to prohibit what the kohen rightly views as beneficial. Certainly, being meshamesh was beneficial to the kohen and was permitted."

The Taz concluded, "Don't think for a moment that Rabbeinu Tam was quiet because he couldn't answer Rabbeinu Pater's claim. He didn't answer the student so as not to aggrandize himself by calling himself a talmid chacham, as he himself writes about Ravina in Bava Metzia 67b." ■