

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY

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CHATZI DAVAR

The gemara in Bava Kamma (70a) and Bava Batra (56b) probes the ability of beit din to combine fragmented testimony. Often a halakha or verdict of beit din is a product of multiple fragments of information. For example, a thief pays four or five times the worth of an animal he subsequently sells or sacrifices. This verdict can only be handed down if we acquire knowledge both of the theft as well as of the subsequent sale. Does halakha allow beit din to receive these complementary units of information from different sources? Obviously, the most preferable situation is one in which the very same pair of witnesses testify both about the theft and the sale. If one pair testifies about the initial theft while the other asserts the sale, can we prosecute the case? This question, known as "chatzi davar," will be examined in this week's shiur.

Both gemarot establish Rebbi Akiva as the extreme position. Though he accepts fragmented testimony about (theft) and subsequent sale, Rebbi Akiva would not allow fragmented testimony in other situations. Testimony about theft alone cannot be considered a fragment because it establishes a full obligation. If, in addition to this testimony, we ascertain that a sale took place, we can intensify the degree of liability, we might increase the payment. In this instance as each particle of testimony affects independent liability, the composite testimony is valid and can be accumulated from different sources. If, however, different groups testify to actual fragments of information, such testimony is disqualified. The example which Rebbi Akiva cites pertains to a halakha of property claims. In land disputes the land is awarded to the party who has occupied it for at least three uninterrupted years. What would happen if a different pair of witnesses testify about a litigant's presence for each of the three different years? Can the testimony subsequently be combined to yield knowledge of a three-year residence? Rebbi Akiva claims

that such fragmented testimony may not be joined because each piece is considered chatzi davar (a fragment).

Having presented Rebbi Akiva's severe position the gemarot pose the Rabanan's more lenient stance. Indeed, the Rabanan accept testimony from three different pairs of witnesses about three different years of residence upon disputed land. Yet even the Rabanan concede a form of chatzi davar which is disqualified. In order to be considered a halakhically obligated adult, an individual must display two pubic hairs. Would testimony as to the presence of these two hairs be accepted from different sources? Namely, can one pair of witnesses supply testimony about one hair while knowledge of the other hair is provided by a different pair of witnesses? The Rabanan claim that this situation would be invalid. The gemara does not clarify the difference according to the Rabanan between testimony about years of residence and testimony about two hairs. Why can the former testimony be accumulated from different sources while the latter must be supplied by the same group of witnesses?

The Rif and Tosafot suggest the following logic to explain the basis of the Rabanan's distinction. A pair which testifies about a year of residence has offered a judicially meaningful statement. Even though their testimony must be coupled with knowledge about an additional two years in order to award ownership, their testimony taken alone does effect a verdict. If someone is known to have resided upon land for less than three years, he must render payment for his usage of that land to the last known owner. By testifying to a person's presence on land for a year, the witnesses are, in effect, obligating him to pay for his residence - assuming he cannot provide testimony about two additional years of residence. By contrast, testimony about one hair has absolutely no judicial impact when taken alone. Its sole relevance is realized only when it is combined with testimony about a second hair. This is truly considered a fragment and disqualified because of chatzi davar.

An important concept emerges from the Rif's position. First of all, he seems to attribute chatzi davar to the question of relevance or irrelevance. As long as the testimony supplied produces some legal impact, it may be accepted and combined with other testimony. In fact, Tosafot in Bava Batra (56b) even suggest a source for the halakha of chatzi davar which highlights this notion. Presumably, the source of this halakha is the term "davar" in Devarim 19:15 (see the Rashbam in Bava Batra (56b) s.v. she-haya), which

demands that the testimony be a self-contained entity of knowledge rather than a fragment. As such, we would use a more conceptual or fundamental yardstick to gauge whether testimony is a unit of information or merely a fragment. Tosafot claim that the textual source for the chatzi davar rule stems from the term "yakum," that testimony has to be actionable in court (literally, something which can establish a verdict). As long as some verdict is established, it may be accepted by a court. Valid testimony is thus determined not by its being a complete narrative but rather by its being an actionable and legal bit of evidence.

The Rashbam adopts a more conventional approach toward discriminating between segmented testimony about three years of residence (acceptable according to the Rabanan) and fragmented testimony about two hairs. Three years of residence is not an event which is usually witnessed by one set of witnesses. As the event is not instantaneous but progress over a period of time, it is only natural that different witnesses view its different stages. As such, the knowledge of only one year cannot be rendered fragmented knowledge and must be accepted by beit din. By contrast, as two hairs are normally witnessed in unison (since they must appear together), knowledge of only one hair is deemed incomplete and rejected as legal testimony. The definition of a fragment depends upon our expectations of how much knowledge can generally be collected. Unlike the Rif, who uses the impact of testimony to gauge its status, the Rashbam employs a more internal and fundamental meter.

The Ramban (in his chidushim to Bava Batra 56b and in his Sefer Milchamot Hashem to Bava Kamma [27b in the pages of the Rif]) suggests a different way of explaining the Rabanan's distinction, and ultimately, a completely different perspective upon the chatzi davar rule. According to both the Rif and the Rashbam, chatzi davar constitutes a rule regarding the viability of fragmented testimony. Is it considered halakhic testimony, or is it merely insignificant bits of knowledge? The Ramban poses a different question: How can beit din combine fragments which are ultimately discrepant? After all, one pair testifies about year one while the next pair testifies about year two. As these testimonies are different in their content, beit din might not be able to combine them into one actionable unit!! When one pair of witnesses describes one hair and the second a completely different hair, we might not be able to fuse the two!! According to the Ramban, it is precisely in the fusibility of the testimonies that the Rabanan discriminate between three years

of residence and two hairs. In the former instance the testimony of the first pair establishes a condition which, if sustained fully, corresponds to the testimony of the second group. By establishing the fact that the litigant lived on the land for a year, the first group is suggesting that this state probably continued and that he indeed lived there for more years. One could say that their testimony introduces the testimony of the subsequent groups. Because of this dynamic and because accepting their testimony will "lead us" to the description of the second pair, their two differing accounts can be coupled.

By contrast, witnesses who testify about one hair in no way allude to, or suggest the grounds for, a second hair. The presence of a second hair introduces a NEW element - one which in no way was alluded to or assumed by the testimony of the first group. As the testimony of the first pair is totally severed from the subsequent testimony, we cannot combine these unrelated units of information and the case cannot be processed. According to the Ramban, chatzi davar does not reflect a definition of testimony per se. It rather dictates beit din's ability to combine disparate accounts into one continuous testimony.