



The Hakuk Edition English Topics on the Daf

Dedicated l'refuah sheleima for Yaakov ben Victoria

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Yevamos Daf 88

Why One Witness is Believed for Eidus Isha

There is a very unusual dispensation for testimony about a husband's demise – even one witness is believed and the woman can remarry. Our Gemara supplies two sevaros, rationalizations why this is so. If her husband eventually returns she is fined heavily, she'll make absolutely certain it's correct before she remarries. Secondly, the Rabbis instituted this to save women from being agunos.

The Rishonim debated if this halacha is midioraisa or midirabonon. Let's focus on the Rambam's opinion.

The **Rambam** seems to contradict himself on this point. In Hilchos Gerushin 13:29 he says, "Let it not be difficult in your eyes, that which *the Sages permitted* such a serious ervah (eishes ish) with the testimony of another woman, or a servant... Because *the Torah was not particular* to have two witnesses, nor the rest of the laws pertaining to witnesses, except in cases where it is impossible to ascertain the

truth of the situation if not for the testimony. This is true in testimonies such as that one person murdered another or lent to a friend. However, something that could be found out without the witnesses, and the witnesses would have no alibi to pardon themselves – like here, where they say a person died – the Torah was not particular. This is because it is a very unlikely thing for them to lie in such a case. Therefore, the Sages were lenient in this topic and believed them... and so that daughters of Israel not be left agunos."

Note that the Rambam first writes that the Sages permitted it, which sounds like a dirabonon, and then speaks of the Torah allowing it, seemingly a dioraisa. Which is it? As well, he omits the reason in our Gemara, that the woman will investigate, and provides a different one, that it could be found out. This idea is found on daf 93b as an alternate explanation for accepting one witness. And then he concludes with the second sevara of our Gemara, about agunos. Is

this reason necessary for the halacha also?

In **Teshuvos Rivash** (155) he maintains that it is dirabonon. Our Gemara sounds like this – combined with the assumption that she will investigate thoroughly beforehand, we can believe the testimony. Thus, the Rambam begins with “the Sages permitted.” Why does he later write “the Torah”? The term Torah can be used even when referring to Rabbinical enactments. Rivash cites many proofs from Chazal and the Rambam himself. One is R’ Nechemiya’s statement on 88b – “Every place *the Torah believed* one witness...” while discussing those disqualified from testifying! Obviously, it refers to the Rabbinical level. Torah is a generic term, at times, as we see when the Chumash commands us to heed the words of our Sages: “According to the *Torah* which they teach you” (Devarim 17:11).

On the other hand, the **Tashbetz**, another Rishon, understands the Rambam’s opinion as a dioraisa. The sevara of “something that will be found out” is strong enough to restore the Gemara’s tenet that one witness is believed in issurim. As the Rambam emphasizes, we don’t require the regular rules of cross-examining the witnesses here, since the testimony is almost self-standing. Why does the Rambam speak in terms of “the Sages”?

To include one of his examples – a witness testifying in the name of another witness. In that case, the chazaka of his trustfulness is hampered, because if it’s found to be untrue he could excuse himself that he merely repeated what he heard. Thus, it is indeed only effective midirabonon (Tashbetz Vol. 1:83).

Rav Shach zt”l explains Rambam’s viewpoint by quoting from a different Rambam. In Hilchos Eidus 2:1-2, the Rambam elaborates upon the authority invested in Rabbinical judges. Essentially, whenever they see fit to trust or distrust a litigant they may revoke rights, demand extra proofs or an oath, or reverse onuses of oaths. In fact, when the Torah tells us that judgments are to be decided by the testimony of two witnesses, that’s only when the judge cannot tell who’s right!

Then the Rambam continues to constrict this power. Since less-than-scrupulous courts of Jewish law have cropped up, the Rabbonim of Klal Yisroel decided not to exercise these rules. It became too risky to allow the judges to take the law into their own hands. Rather, if they sense or are told that a fellow cannot be trusted, they can delay the verdict until additional proofs are brought, and similar measures.

With this perspective, we see that dayanim are invested with extensive

power to decide cases according to their assessment. And this power is midioraisa – the Rambam needs to explain why we *ever* need two witnesses. Now we can more easily appreciate the underpinnings of our sugya. Essentially, when a judge is presented with the testimony of one witness to a man's death, he has the prerogative to accept it as is and permit the widow to remarry. However, this is no simple matter. As the Rambam records, we don't simply let any dayan wield this authority. Therefore, the Gemara supplies several reasons to make an exception in our case and we allow even substandard testimony.

But there is a caveat. This power is held by the Beis Din. Unlike the effectuality of two witnesses, which sometimes may work without a Beis Din, this unique acceptance of one witness is reserved for dayanim. The result is that if a witness bears testimony of a man's death *in Beis Din*, she will be permitted to remarry midioraisa, but if not, it's only midirabonon (Avi Ezri on Rambam *ibid*).

Rabbi Akiva Eiger established a similar precedent in a case brought before him (Shu"t Siman 123). Two siblings, already parents, were subject to slander that their mother had remarried without testimony of her first husband's death. Thus, they were all

mamzerim. The only apparent testimony was one man who heard from the brother of the first husband that he had sat shiva for him. Among the issues R' Akiva Eiger discusses, he dismisses this testimony – since it was not brought to a Beis Din.