

שבת קודש פרשת בשלח | מסכת כתובות דף כ"א

לע"נ באשא בת יוסף ולע"נ יצחק דוב בן איציק

INSIGHTS FROM
OUR CHABUROS

When the Case Appears
as Being Improper

ומי כתבין והאמר רב פפי משמיה דרבא האי אשרתא דדיני דניכתב מקמיה דניחוהו
סהדי אחתימת ידיהו פסולה. דמיתחזי כשיקרא, הבא נמי מיתחזי כשיקרא

The Gemara quoted the ruling of Rav regarding the details of recording a court's verification of a document (רטש סויק). Among the rules is that none of the judges may sign his name until all three judges are familiar with the handwritten signatures of the witnesses. If, for example, one of the judges is not yet familiar with the witnesses' handwriting, he must first accept testimony that the signatures are legitimate, and only then may any of the judges begin to sign and attest that "this document has been verified by a panel of three judges." If one of the judges would sign his name too early, the statement that the document came before a panel "of three" would be false. In consideration of the words of Rav Pappi, the Gemara further clarifies that not only should the signatures of the judges be affixed once all three judges are apprised of the facts, but also the text of the verification document itself should be written only after the full panel of judges is aware of the veracity of the witnesses' signatures. Otherwise, the situation would appear to be a falsehood. Tosafos (האמר רב פפי) notes that we know from later (85a) that Rav does not agree with the statement of Rav Pappi, and Rav does not concern himself with the factor of a document or procedure having the appearance of falsehood (מיתחזי כשיקרא). Why, then, does the Gemara question the statement of Rav from the words of Rav Pappi? Tosafos answers that sometimes the Gemara will ask a question even though the source from which the question is based is not according to the halacha. Rashi learns that the question from Rav Pappi was not about the general text of the verification document, but the Gemara thought that Rav stated that even if the first judge has signed too early, the testimony about the signature should still be given. But has not the entire process been falsified? The Gemara answers that, indeed, Rav does not allow any signing before the testimony about the witnesses has been completed. Rosh, however, makes a basic distinction between the discussion of 85a and our Gemara. Although Rav does not worry about כשיקרא, when the case appears as false, he does care about outright falsehood. Rav would disallow a court proceeding if the witnesses signed before all three were apprised of the facts. This would be an outright falsehood. However, the writing of the text of the document itself, before it is signed, only has the appearance of an impropriety, and this is not something which Rav disallows.

STORIES
OFF THE DAF

The Semichah
Test

"ומדרבנן עד נעשה דיין"

Once, a young man from a simple family appeared before Rav Eliezer of Dzikov, ז"ל, to be examined for semichah. Contrary to expectations, the Rebbe gave him a really difficult test which lasted for a very long time. The young man was surprised since he had never heard that the Rebbe's test was so difficult; generally speaking, those Rabbonim who are "hard testers" are known for this quality ahead of time. After the examination had already proceeded for a while, the young man developed a theory as to why he had never heard that the Dzikover Rebbe was this difficult an examiner. Plucking up his courage, he decided to test his theory. The young man asked, "Rebbe, if I was the descendant of a prominent Rav or Rebbe, would you also be putting me through 'ten nisyonos' in this manner?" The Rebbe answered, "We find in Kesuvos 21 that when it comes to a Torah commandment like sanctifying the new moon, a witness cannot become a judge. When it comes to a Rabbinic obligation like validating documents, however, a witness can become a judge. The actual language of the Gemara is: מדרבייתא אין עד נעשה דיין, מדרבנן עד נעשה דיין. Those words can be understood differently, though. We know that an דע also means a small bit of cloth. The statement can be read: when a person who is really just a little 'scrap' comes along only on the strength of his own Torah learning, מדרבייתא, he cannot automatically be declared fit to be a judge. He will have to prove that he really knows all that he should. But מדרבנן is a different story! If he is a descendant of great scholars and tzaddikim, even an "עד" is made a judge. In the merit of his ancestors, you can assume that he will, in time, come to know all that he needs to know. For although the Torah is not an inheritance, she returns to the same achsanyah, the same lodgings, and those who come from greatness and can answer questions acceptably are likely to merit Torah with less effort than those who don't. In that case, even such a 'shmatta' may serve as a dayan!"

PARSHA CONNECTION

In this week's daf the גמרא continues the discussion regarding עדות. We find an interesting use of the word עדות בשלח in פרשת בשלח, with regards to the נון. The פרק טז in פסוק says in reference to the jar of נון that was placed next to the לוחות: תרמשל, ויניחהו אהרון לפני העדות. Why did אהרן place the נון next to the לוחות? And why are the לוחות called עדות in this context? Further, why was it done when the נון first started instead of doing so at the end of the 40 years when it ended? The reason why the נון was placed next to the תורה is to teach us that those who study the תורה will not have to worry about their sustenance. The ילקוט שמעוני writes that אהרן used the נון to admonish the Jews who were not studying תורה seeking to excuse their actions by claiming that if they occupied their time with the study of תורה they would not have what to eat. In response, ירמיהו showed them the jar of נון to prove that those who study the תורה will receive their food from 'ד'. It is therefore an עדות testifying to this fact. The מורה נבוכים explains that although the נון fell for 40 years, it was only a novelty in the beginning. He compares it to the daily functioning of the world which we call nature and which we assume just happens, because we see it every day, whereas in reality it's all a נס. It was therefore important to capture the נון when it was still a novelty and preserve its supernatural phenomena.

HALACHA HIGHLIGHT

Signing a Marriage Licence for a Karaite Marriage

האמר ר' פפי משמיה דרבא האי אשרתא דדייני דנכתב מקמיה דניחו סהדי אחתימת ידיהו פסולה דמתחזי כשקרא

Didn't R' Pappi in the name of Rava say: The judge's certification that was written before the witnesses testify about their signatures is invalid because it appears like a lie

The Tzitz Eliezer¹ was asked about signing the marriage license for a Karaite marriage. The essential question was whether it is considered assisting them in a transgression, since Rema² considers them to be possible mamzerim. Tzitz Eliezer responded that if the language of the license clearly conveys that it was a karaite marriage it is permitted. The reason is that the ruling of Rema, to consider Karaites possible mamzerim, applies to the question of whether we are permitted to intermarry with a Karaite, but it does not apply when two Karaites are marrying each other. Additionally, even if one wishes to dispute this reasoning, nonetheless there is no issue with signing a marriage license. The reason is that since many great Poskim maintain there is no prohibition even to intermarry with Karaites it should, at the very least, certainly be permitted to sign on their marriage license.

Rav Ovadiah Yosef³ strongly disagrees with this conclusion and argues that all opinions agree that it is prohibited to sign the marriage license of a Karaite couple. The reason is that the rationale behind the position that allows marrying Karaites is that their marriage ceremony does not include any language of kiddushin. Consequently, none of them are halachically married and as a result the children cannot be considered mamzerim. That being the case, how could it be permitted to lie and sign onto a marriage license that states that a marriage took place when from the perspective of halacha there was no marriage whatsoever. Certainly according to those Poskim⁴ who rule in accordance with the opinion of R' Pappi, who maintains that one cannot even do something that looks like a lie, it would be prohibited to sign on this license. But even according to the dissenting opinions it will be prohibited. The reason is that the lenient opinions only allow something that looks like a lie, but in reality does not contain any false information. If, however, there was information that was an outright lie all opinions would agree that it is prohibited to sign onto that document. Consequently, Rav Ovadiah Yosef prohibits signing onto the marriage license of a Karaite couple.

1. שר"ת ציץ אליעזר ח"ד סי' ט' אות ד'
2. רמ"א אה"ע סי' ס"ד
3. שר"ת יביע אומר ח"ב אה"ע סי' כ"א
4. תוס' כתובות כא: ד"ה האמר ר' פפי

MUSSAR FROM THE DAF

Judge From Afar

ואי סלקא דעתך דעד נעשה דין, למה לי כולי האי? ליתבו בדוכתייהו וליקדשו

The Gemara concludes that on a דאורייתא level (like קידוש החודש) we say אין עד נעשה דין.

What is the deeper meaning behind this concept?

The Maharal explains that הגדת עדות is not simply giving over information to the judges. Rather the testimony is a type of reenactment of what the עדים saw. Through that, the judges can determine based on what they have now seen. Therefore, the Maharal says, since the עדים are within the מעשה, they cannot become Judges. A Judge has to be on the outside and see what happened.

One might have thought that a witness would be even better than the Dayan, because he is part of the מעשה and has a first hand account of what occurred?

In life often, when one is the middle of a story, it can be very difficult for a person to see the full picture. Since the person is the one going through the experience, they may be unable to get a full picture of what is happening. They will only see the experience from their limited perspective.

Therefore, we can understand the Maharal's pshat of why a witness cannot become a judge. Since the עד is now part of what happened, he cannot see the situation from afar and is unable to fully understand and judge the various sides of the picture.

In our lives as well, this concept has a practical lesson. When one is in the middle of a challenging situation in life that they cannot make sense of, they have to remember that there is a true דין who understands every angle since He can see everything clearly from afar.

POINT TO PONDER

The Gemara says that according to the חכמים the reason why we don't need to add another witness is because they are testifying on the actual הלוואה. If the עדים are not certifying the שטר would it only be a מלוה על פה? Could the לווה claim פרעתי לוה?

Response to last week's Point to Ponder:

The Gemara says that בר שטיא was a person who is sometimes lucid and sometimes not, and he would only win the case of ותרי, if he inherited the property. If he bought the property than we can tell him that just like he could have been not in control of his faculties when he sold it, so too maybe he wasn't in control when he bought it. The גמרא earlier said that עדים would not sign on a שטר if it wasn't נעשה בגדול. Why can't we say the same here, namely that they wouldn't sign if he wasn't in control of his faculties? The ר"ן writes that if a שטר exists for the original sale to בר שטיא we would indeed assume that he was lucid and the sale was valid. The ר"ן therefore learns that the case in our גמרא did not involve a שטר. While there were witnesses who saw the sale they either didn't pay attention to the state of mind of בר שטיא or don't remember.

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

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