



Kiddushin daf 74

THE NE'EMANUS OF THE DAYAN

בקידושין דף ע"ג: תנו רבנן, נאמנת חיה לומר זה כהן וזה לוי, זה נתין, וזה ממזר וכו'. נאמן בעל מקח לומר לזה מכרתי ולזה לא מכרתי וכו'. ובדף ע"ד. נאמן דיין לומר לזה זכיתי ולזה חייבתי. במה דברים אמורים שבעלי דינים עומדים לפניו, אבל אין בעלי דינים עומדים לפניו, אינו נאמן. וניחזי זכותא מאן נקיט. לא צריכא, דקריע זכותיה. וניהדר ונידייניהו, בשודא דדייני.

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Whether the *ne'emanus* of the midwife merchant and Dayan is *min haTorah* or *mideRabbanan*

It is the responsibility of the Dayan and the merchant to be accurate / Whether a single testimony is believed when there is no likelihood of 'bidedami' / That two Dayanim are believed together as testimony even to challenge two witnesses / Ne'emanus instituted by the Rabbanan / A distinction between the ne'emanus of the Dayan and the ne'emanus of the merchant

רש"י, פני יהושע, שולחן ערוך, אמרי בינה, ר"ן, שיטה לא נודע למי

The general rule in the *Torah* is that a single witness is only believed in his testimony with regards to *issurim*, however when it comes to monetary matters, we only rely on the joint testimony of two witnesses or more. We learn in our *Gemara* several exceptions to this rule and each one needs explaining accordingly. The reliability of a witness is known as '*ne'emanus*', and the witness is '*ne'eman*', believed.

*Rashi*¹ writes that the *ne'emanus* of the merchant to say to whom he sold, is based on his responsibility to his customers to make sure they receive the correct merchandise. Therefore, we presume the accuracy of his testimony.

Similarly², it is the *Dayan*'s responsibility to ensure the correct carrying out of justice all the time that they are still standing in front of him. Therefore, he is believed within the boundaries of his responsibilities.

The *P'nei Yehoshua*³ clarifies this reason, that the entire rule that a single witness is not relied upon in

Torah law, is because when he is alone in his testimony, the *Torah* assumed that he may not convey the accurate facts as he sees them, rather he adds his own conclusions, this is known as '*bidedami*', a supposition. The testimony in the *Torah* requires an accurate report of the facts that were seen so that the *Dayanim* can draw their conclusions based on his testimony.

However, when two witnesses corroborate each other with their testimony, this worry falls away, and therefore the *Torah* lay down a rule that two witnesses are deemed reliable to testify.

In these specific cases, *Chazal* saw that the likelihood of the witnesses draw their own conclusions is very low and therefore they instituted that their testimony be relied upon as is the testimony of two witnesses whose testimony also does not bear this weakness.

The *Tur* and *Shulchan Aruch*⁴ write that the rules of this *Gemara* apply to a single *Dayan* or merchant, however if two *Dayanim* or two merchants testify to whom the goods belong, we can rely on their testimony more than that of two uninterested witnesses. The source for this ruling is in the *Shu"t haRosh*⁵.

The *Imrei Binah*⁶ explains that the *Rosh* must understand that the reliability of the testimony of the *Dayan* in

or merchant in the *Gemara* is valid *min haTorah*, as if it would be a *mideRabbanan* reliability, using the power of *Chazal* to intervene in monetary matters, it would make no sense to believe them even when the two *Dayanim* are challenged by *kosher* witnesses.

If the source of their *ne'emanus* is *min haTorah*, it makes sense that the same power granted to the *Dayan* or merchant to be relied upon *min haTorah*, stands up even against two witnesses, assuming that there are also two *Dayanim*.

However, the *Ran*⁷ explains the *ne'emanus* of the midwife to be *mideRabbanan*, since generally she is the solitary witness at the birth, *Chazal* chose to give her comprehensive reliability as to the status of the child.

Similarly, says the *Ran*, *Chazal* relied on the *Dayan* and the merchant, who are usually the lone witnesses as to what transpired. [1]

The *Rashba*⁸ also explains the *Gemara* like the *Ran*, that their *ne'emanus* is *mideRabbanan*. [2]

However, the *Shita Lo Noda L'mi*⁹ distinguishes between the reliability of the *Dayan* and that of the merchant. When the litigants accepted him as a *Dayan*, included in this is their acceptance of his ruling, and on his later statements as to what the verdict was, all the time that they still stand before him.

However, for the merchant, this reason does not apply, and it is only for *Rashi*'s reason, that he is responsible to ensure that the sale is concluded correctly, that he is believed. This, he concludes, is a reliance of the *Rabbanan*. See more on this in the notes [3].

NOTES

[1] *Sefer Shaarei Torah*¹⁷ brings a *Shu"t haRosh*¹⁸ that our reliance on the midwife is acceptable *min haTorah*, as we learn out the reliance on the midwife from the *halachah* of '*yakir*', that the father is always believed regarding the legitimacy of his children. *Chazal* understood the reasoning of the *Torah* for *yakir*, is that the father is the main reliable source of this information. Similarly, the midwife, who is also our only source of information from the time of birth, is believed *min haTorah*. This follows the reasoning of the *Ran*, with the additional source from *yakir*.

Why does the Dayan not have ne'emanus once they have left Beis Din, using a migu that he could claim that he had not yet issued a verdict

רשב"א שער משפט

[2] The *Rashba*¹⁹ asks, that the *Dayan* has an avenue of *ne'emanus* even after the *baalei din* have left the *Beis Din*. He poses that if there are witnesses to the verdict, we should not need to rely on the *Dayan* as we can ask the witnesses. And if there are no witnesses, the *Dayan* could claim that he had not yet issued a verdict and it is now that his verdict is being issued according to his claim.

He answers that since the two *baalei din* agree that there was already issued a ruling, the *Dayan* cannot claim to the contrary, since their acceptance of the ruling is like witnesses as we know '*hodaas baal din k'meiah eidim dami*', one who testifies to his own detriment is always believed [at least regarding monetary matters].

The *Shaar Mishpat*²⁰ offers an alternative answer to the question. Since the whole *ne'emanus* of the *Dayan* in his testimony is *mideRabbanan*, *Chazal* did not allow to build on this further and to introduce a *migu* in order to believe him even when the litigants are not standing in the *Beis Din*.

He adds, that according to the explanation given by *Rashi*, that he is careful to remember the ruling all the time that they are still standing in front of him, after they leave, there is a new worry that he could have already forgotten the ruling he gave, and therefore the *migu* is not effective. *Migu* can only render him a *ne'emanus* in a case where we suspect him as a liar, but if we suspect that he forgot, his testimony is worthless and he cannot be helped by a *migu*.

When the litigants appoint a third-party moderator does he share the ne'emanus of a Dayan / Whether his ne'emanus would be min haTorah or mideRabbanan

אמרי בינה

[3] The *Imrei Binah* adds, that according to the *Shitah Lo Noda L'mi*, we can draw a parallel to the *halachah* of '*shalish*', a third-party moderator who has *ne'emanus*. Therefore, even if he is *passul* as a *Dayan*, such as a relative of one or both of the litigants, since they accepted his ruling, he is believed as a *shalish*.

Furthermore, the *Rashbash*²¹ writes that even a non-Jew is believed when appointed as a *shalish*, so too in such a case he is believed as to what his ruling was, since this is what they agreed between themselves.

However, regarding the reliability of the aforementioned *shalish*, there is a disagreement amongst the *Rishonim*. The *Rashba*²² gives an implication that the *shalish* is believed *min haTorah*, however the *Baal Hatrumos*²³ rules that his appointment is similar to that of '*ne'eman alai abba*' that a litigant can accept his own father as a *Dayan*, about which *Tosfos*²⁴ rule that this works only *mideRabbanan*. If so, we must reevaluate the status of a non-Jewish moderator to confirm whether *Chazal* extended this allowance of relatives even for non-Jews.

One who testifies based on someone else's testimony, and the first witness denies it

A woman who claims that the Rav ruled her to be pure, and the Rav denies / Whether the Dayan can challenge the testimony of one of the litigants who claims that he won [in a case where they already left the Beis Din] / A distinction between testimony of the Dayan and a muchzak

קצות החושן, נתיבות המשפט

The Ketzos Hachoshen¹⁰ asks, that the Gemara in Kesubos¹¹ says that a woman who serves food to her husband and she claims that a certain person separated the *maaser* for her, and later on, that person denied having done so, she is considered an '*overes al das*' a woman who willingly causes her husband to sin, and she is not eligible for *kesubah*. The Gemara says that the same is true if she said that the Rav ruled for her that she is pure and permitted for her husband, and later the Rav denied this, she too loses her *kesubah*.

The Ran¹² cites a Ramban¹³ that even though that up until the Rav challenges her statement, she is believed, however her reliability does not hold up if challenged by the source of her information, in this case her Rav. The Ran adds that the same is true for any testimony given over in the name of someone else and is later denied by that person. The Rashba disagrees and rules that two witnesses are needed to effectively challenge his original testimony.

The Chelkas Mechokek¹⁴ writes that the opinion of the Rambam¹⁵ is in agreement with the Ran, and so too is the Rosh¹⁶. Further, this rule applies even with regards monetary testimony which normally requires two witnesses, here is different since she is being challenged by the source of her testimony itself.

Knowing this, the Ketzos questions why the Dayan is not believed to challenge the litigants' version of his own

ruling, similar to the Rav who can challenge the woman who conceived a ruling in his name.

The Ketzos answers, that in essence the Dayan is testifying on two points; Firstly, to which of the litigants he acquitted, and secondly for the other of them of them whom he did not acquit.

The special *ne'emanus* of the Dayan is only needed for him to be relied on for the acquittal of the one that he claims, as he can be challenged by the other litigant. But he is also believed to challenge that he did not acquit the other litigant.

Therefore, even though the Gemara states that the Dayan is only believed when the parties are standing in front of him, the Gemara is referring to full *ne'emanus* regarding the whole case.

But even after they have left, the Dayan is still believed to challenge their claims to say that he did not acquit any one of them, just as they are believed to challenge him.

However, the Nesivos Hamishpat disagrees with the premise of the Ketzos' question. The scenario in the Gemara where the Rav challenged the testimony of the woman, is discussing the *ne'emanus* of the woman who is testifying as a single witness who is believed regarding matters of *issurim*, '*eid echad ne'eman b'issurim*'. On this premise, the Rav may also challenge the woman as he too is an *eid echad*, a single witness who is believed regarding *issur*.

However, in our Gemara, we are discussing a case where the parties are arguing over money, and the Dayan is testifying to whose benefit he ruled, this is a monetary matter, and the Dayan is not believed of he is testifying against the *muchzak*, the one who the money is assumed in his possession, and therefore the money remains in his possession.

מראי מקומות

1. עג: ד"ה בזמן. 2. רש"י עד. ד"ה בזמן. 3. עג: ד"ה אמנם. 4. חו"מ סי' כ"ג סעיף א'. 5. שו"ת הרא"ש כלל נ"ו סי' ו'. 6. אמרי בינה דיינים סי' כ"ט אות א'. 7. לא. מדפי הרי"ף. 8. עג: 9. עג: 10. סי' כ"ג סק"א. 11. דף עב. 12. דף לב: מדפי הרי"ף. 13. שבועות לב: 14. חלקת מחוקק סי' קט"ו סק"ד. 15. רמב"ם פכ"ד אישות ה"א. 16. שבועות פ"ד סי' י"ז. 17. ענייני עדות כלל כ"ג פרט א'. 18. כלל נ"ב סי' ב' הו"ד בב"א אהע"ו סי' קנ"ו. 19. ד"ה וליהדר. 20. שער משפטי סי' כ"ג סק"א. 21. שו"ת הרשב"ש [בנו של הריב"ש] סי' תס"ב. 22. שו"ת הרשב"א ח"ד סי' ס'. 23. ספר התרומות שער ל"ב ח"ג סי' ה' בשם בעל מתיבות. 24. ב"מ דף ע"ד