

The Weekly Daf



by Rav Mendel Weinbach - Dean, Ohr Somayach Institutions

Yevamot 27 - 33

Week of 18 24 Tevet 5760 / 27 December 1999 2 January 2000
Rav Weinbach's insights, explanations and comments for the 7 pages of Talmud
studied in the course of the worldwide Daf Yomi cycle

Is the testimony of witnesses in writing acceptable as evidence in a *Beit Din* (a court ruling according to Torah Law)? The difference of opinion on this question revolves around a passage of the Torah paraphrased in our

(*Devarim 19:15*)

not from their

Rashi, in his commentary on the Torah, explains this as an insistence on oral testimony which disqualifies testimony which the witnesses send in writing to the court. Tosefot, however, quotes Rabbeinu Tam as stating that it is customary for witnesses to send their written testimony to the court. According to his view, the Torah only disqualified the testimony of witnesses who do not recall the event at all and rely *entirely* on the record they once wrote. If they do remember the event, however, there is no problem in their transmitting their testimony about it to the court in writing.

gemara (*Mesechta Gittin 71a*) which disqualifies a mute from being a witness since he is incapable of saying his testimony. When the *gemara* questions this by suggesting that he is capable of writing his testimony, the Sage Abaye explains that the Torah disqualified written testimony on the basis of the above quoted passage.

challenge is to refer us to a general rule found in *Mesechta Menachot* (*103b*). The *Mishna* there tells us that if someone donates a *mincha* (flour offering) of 60 *esronim* he can bring the flour in one vessel; but if he donates 61 he must bring 60 in one vessel and the remaining one in another vessel. What limits a vessel to 60 *esronim* is the fact that this is the maximum amount which can be effectively blended with a *lug* of oil. The *gemara* challenges this explanation on the basis of the rule that a *mincha* is kosher even if the blending process was not done at all. To this, Rabbi Zeira responds that it is only kosher if it had the *potential* to be effectively blended and that it is the potential, not the actual blending, which is the determinant. In the same fashion, concludes Rabbeinu Tam, the Torah did not insist on a witness actually *saying* his testimony but rather on his *potential* to say it. The mute who lacks this potential is disqualified even if he writes his testimony, but a witness who has the potential to speak, and remembers his testimony, can also submit this testimony in writing.

Yevamot 31b

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Issue #307 - Yevamot 27 - 33

For the week of 18 24 Tevet 5760 / 27 December 1999 2 January 2000 (Parshat Shmot)

The Unfaithful Minor

A woman who willingly commits adultery is forbidden to her husband. What about a minor (less than 12 years old) whose father used the power the Torah gave him to marry off his daughter will she too become forbidden to her husband if she willingly commits adultery?

Rambam (*Laws of Forbidden Relations 3:2 and Laws of Sotah 2:4*) rules that she does become forbidden as a result of willingly committing adultery, in the same fashion that a grown woman does. His ruling is challenged by Ravid on the basis of our *gemara* which states that the willingness of a minor is considered coercion because of her lack of maturity, and she is therefore not forbidden to her husband; only the wife of a *kohen* becomes forbidden as a result of forced relations. He also raises a question about the warning which Rambam says is given by the husband who suspects his minor wife of infidelity, a warning which if ignored can lead to her becoming forbidden to him even without witnesses to actual adultery, only to her secluding herself with the man whom she was warned to avoid. How, he asks, can a warning have any meaning in regard to a minor who lacks the maturity to understand its significance?

In regard to the challenge from our *gemara*, the Maggid Mishna suggests that no definitive ruling was given to the effect that a minor does not become forbidden to her husband. The *gemara* merely undertook to refute an attempt to prove that our *mishna* must not be discussing a case of willful wife swapping because such action would have made the sinful women offenders forbidden to their husbands, something which the *mishna* states clearly is not the case. Perhaps the women in question were minors, challenges the *gemara*, and the willful adultery of a minor is considered coercion and does not make her forbidden? The *gemara* then proceeds to prove its interpretation of the *mishna* from another detail in it and therefore does not continue its discussion of a *gemara* (*Mesechta Ketubot 9a*) he did not view our *gemara* as a definitive ruling on this issue.

As for the question as to how can a warning to a minor be meaningful, the answer may be found in the approach taken by the Ohr Somayach (*Laws of Forbidden Relations 3:2*) in regard to the problem of how a minor can become forbidden to her husband if she is not yet obligated in *mitzvot*. He cites the famous ruling of Maharik that a woman who committed adultery because she thought that it was not forbidden is still considered a willful adulteress and is forbidden to her husband. The reason for this is that in explaining why she becomes forbidden,

serve as mitigation of the sin but not of the betrayal. Even though a minor lacks the maturity to be held responsible for *mitzvot* or to be punished for violation, she is expected to be capable of being faithful to her husband. The warning therefore has a meaning and her unfaithfulness does result in her being forbidden.

Yevamot 33b

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