

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

To'ein Rabbani – Eidus 5 – Shiur 32

Mareh Makomos for this Shiur

Sanhedrin 29a

Rabbeinu Yerucham (Nesiv 2, Chelek 2, Daf 11b)

Rambam (Laws of testimony 17:2)

Yerushalmi (Sanhedrin, Perek Zeh Boreir, Halacha 8).

Rosh (Sanhedrin, Perek Zeh Boreir, Siman 32).

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*Threatening the
witnesses, and how they
give their testimony*



Siman 28 Seif Seven

7 We threaten (*meaning we terrify*) the witnesses before everyone, and inform them of the power of false testimony and the disgrace of one who testifies falsely in this world and the world to come, and that he is disgraced in the eyes of those who hired him.

Siman 28 Seif Eight

8 After, everyone is taken out and the greater one of the witnesses is left behind, and we tell him, "Say how you know that he owes?" If he said, "He told me 'I owe him', or 'So-and-so who is proper and trustworthy told me that he owes him'", he said nothing, until he says that he himself saw that he loaned to him, or he said that he admitted before me that he owes.

Siman 28 Seif Nine

9 Then, the second witness is brought in and we examine him. If he testifies like his partner, we deliberate and render a verdict.

Siman 28 Seif Ten

10 If the witnesses testimony in a coordinated way with precisely the same wording, one should suspect that they are lying and schemed to coordinate their statements, and they must be cross-examined.

Rama: If the first witness testified and the second one said I know it the way he said, this is ineffective, unless he went abroad and it is impossible for him to testify (Rabbeinu Yerucham, Nesiv 2, Chelek 2 and Mordechai, Perek Nigmar Hadin).

Threatening the witnesses

SIMAN 28:7

The source of this *Halacha* is *Sanbedrin* 29a, where the cross-examination of the witnesses is described. **The *Mishna* states:**

How do we check the witnesses? They would bring them in and threaten them.

What is meant by “threatening” the witnesses?

The *Gemara* explains (in the name of **Rav Yehuda**),

They were told the verse from *Mishlei* (25:14): “Clouds and wind and rain there is none, a man boasts of the death of lies,” which **Rashi** explains means: one tells the witnesses that because of people who testify falsely, rains are stopped.

Rava asks Rav Yehuda:

Is that a threat to the witnesses? The witnesses can say to themselves, let there be no rain at all, as whoever has a trade can sustain himself with this and does not need rain.

Rather, **Rava** says that the threat comes from a different verse in *Mishlei* (25:18):

“A MAUL, A SWORD, AND A SHARP ARROW IS SOMEONE WHO BEARS FALSE WITNESS AGAINST HIS FELLOW”

Rashi explains that this refers to false witnesses, who should fear that their testimony will cause their death.

Rav Ashi said to Rava:

But this also is no threat to the witnesses, as they can tell themselves that this does not apply to them.

Rather, **Rav Ashi** says in the name of **Nassan Bar Mar Zutra**,

The *beis din* threatens the witnesses that if they lie, they will be looked down upon even by the ones who hired them to testify falsely. This is learned from *Melachim* I, chapter 28, where two unscrupulous men were brought to testify concerning Navos the Yizre'eli. The king's advisors, who hired them, referred to the hired, false witnesses as "*bnei beliyal*."

Is an actual threat made?

From the *Gemara's* last explanation,

It seems that no actual threat is made. The witnesses are simply informed of the disgrace it is to them if they testify falsely.

However, the **Beis Yosef** notes,

This is not the way the **Tur** presents the *Halacha*, which is:

“WE INFORM THEM OF THE PUNISHMENT OF ONE WHO TESTIFIES FALSELY, AND THAT HE IS DISGRACEFUL IN THE EYES OF THOSE WHO HIRED HIM.”

The understanding is that aside from informing them of the disgrace of false testimony, we threaten them through warning of the punishment of a false witness.

The **Beis Yosef** adds,

That **Rabbeinu Yerucham** (*Nesiv* 2, *Chelek* 2, *Daf* 11b) holds like the **Tur**, writing: “And we threaten them and we tell them that false witnesses are looked down upon by those who hired them.” Again, we see that the *beis din* does two things — 1) threatens them and 2) informs them that false witnesses are disgraced.

The **Beis Yosef** adds,

The **Rambam** (Laws of testimony 17:2) also holds like the above, writing:

“AND WE INFORM THEM OF THE POWER OF FALSE TESTIMONY AND THE SHAME OF ONE WHO TESTIFIES FALSELY IN THIS WORLD AND THE WORLD TO COME”

Meaning, we tell the witnesses both the result of false testimony and the disgrace of it.

The Beis Yosef explains,

According to the above opinions, the opinions of **Rav Yehuda** and **Rava** brought in the *Gemara* are not rejected.

Rather, the *Gemara* held,

One does not threaten the witnesses with a general evil that can occur, as they will assume that this has nothing to do with them. To threaten them with a specific evil that can befall them — this is a way to threaten the witnesses.

The Shulchan Aruch rules briefly in this *Seif* like the above,

Mentioning both threats and disgrace, as per the explanation of the **Beis Yosef**, writing: We threaten the witnesses before everyone, and inform them of the power of false testimony (meaning the resulting evil that can befall them personally), and the disgrace of the false witness in this world and the world to come, that he is loathsome in the eyes of those who hired him.

The Shulchan Aruch adds,

“BEFORE EVERYONE”

Which did not appear in the **Tur**. They are taken from the **Rambam**, and originate in the *Mishna*, that after the threats to the witnesses,

“WE TELL EVERYONE [PRESENT] TO LEAVE”

Meaning, before he testifies, the witness is threatened before all those present, so that he will be ashamed to testify falsely.

The Sma (*Seif Katan* 36) notes,

The **Shulchan Aruch** concludes the *Halacha* differently from the **Rambam**. The **Rambam** wrote that we inform the witness of the disgrace in this world and the world to come, while the **Shulchan Aruch** adds,

“THAT HE IS DISGRACED IN THE EYES OF THOSE WHO HIRED HIM”

The Sma asks:

Isn't the statement:

“HE IS DISGRACED IN THE EYES OF THOSE WHO HIRED HIM”

The same as the earlier statement that describes:

“THE DISGRACE OF THE FALSE WITNESS IN THIS WORLD?”

The **Rambam** understandably does not repeat this idea twice. Why does the **Shulchan Aruch**?

The Sma offers no answer.

How testimony is given

SIMAN 28:8

The source of this *Halacha* is the *Mishna* in *Sanbedrin*, which states:

How do we check the witnesses?

We bring them in, threaten them (as was shown above) and take everyone who is present outside, and leave the greatest witness among them (alone in the room, so that the other witness does not hear the first one's replies) and tell him (the witness who remains):

How do you know that this one owes the other anything?

If the witness says:

- “He (the borrower) told me that he owes him” or “so-and-so told me that he owes him”
- This is nothing at all and this is not testimony on a debt.

- Because it is normal for a man to say that he owes money, even when this is not the case, so that others do not assume that he is rich, until the witness says:
- “He admitted before us (the second witness and me) that he owes him.”

The *Mishna* then states that the second witness is brought in and questioned in the same way.

The **Shulchan Aruch** brings the first part of the *Mishna*,

Writing that after the threats, everyone is taken out and the greater of the witnesses is left behind, and we ask him to say how he knows that he owes?

If he said:

He told me I owe him, or so-and-so who is straight and trustworthy told me that he owes him; he said nothing, until he says that he himself saw that he loaned to him, or that he said before me he admitted that he owes.

The **Sma** (*Seif Katan* 40) explains the concluding words:

“THAT HE SAID BEFORE ME HE ADMITTED THAT HE OWES”

Saying that there are two sorts of admissions that obligate a man:

Either he tells the witnesses “you are my witnesses” and then admits, or he gives a full admission (as described by the **Sma**), which also obligates him. A full admission means it is worded as an official confession and not said as part of a conversation. For example, he says “I hereby admit before you”. The **Sma** explains that the **Shulchan Aruch** did not need to mention here “you are my witnesses”, as it states in the **Tur**, as he holds that a full admission (as brought above) is sufficient and is as if he said “you are my witnesses.” (The **Tur** holds that he must say “you are my witnesses” for it to be a valid admission).

Must all those present leave?

Is it true that all those present leave when the witness testifies? This surely cannot be as the litigants must be present for this. What does the **Shulchan Aruch** mean?

The **Sma** (*Seif Katan* 37) asks this question, answering that while the **Rambam** states that everyone present is taken outside, the **Tur** does not mention this. The **Sma** offers two explanations:

1. The **Rambam's** wording “everyone” is not meant literally, as the litigants remain for the testimony.
2. Perhaps the litigants, in fact, leave the room, as this is a case where the witnesses already testified before them, and after they testify, everyone is taken outside, before the witnesses are cross examined, each separately.

The **Shulchan Aruch** concludes like the first reason, that the litigants do not leave before testimony or cross-examination.

The testimony of the second witness

SIMAN 28:9

The source of this *Halacha* was brought in the previous *Seif*.

The **Shulchan Aruch** brings the continuation of the *Mishna's* ruling ,:

After, the second witness is brought in and we check him. If he testifies like his partner, we deliberate and render a verdict.

The **Taz** adds here what was stated earlier in *Siman* 18, *Seif* 1,

When the *Dayanim* deliberate, the witnesses and litigants are taken outside, so that they will not know which *Dayan* ruled which way. See there as to which people may remain inside for this discussion. The **Shulchan Aruch** did not write this here because he relied on the fact that it was brought earlier.

Testimonies that are exactly the same

SIMAN 28:10

The source of this *Halacha* is the *Yerushalmi* (*Sanbedrin, Perek Zeh Boreir, Halacha 8*). The explanation of the **Tur** on this *Gemara* comes from the *Rosh* (*Sanbedrin, Perek Zeh Boreir, Siman 32*).

The *Yerushalmi* states:

Rav, when he noticed that witnesses were *mechuvanim* (coordinated), he would examine. When he saw witnesses say this or that, he would coordinate.

The Tur explains:

When **Rav** saw that witnesses were testifying exactly the same way and in the same manner, he suspected that they were lying, and would cross-examine them extensively. But if one would testify one way and the other witness in another way, but the testimony matched without contradiction, he would not cross-examine them (as this form of testimony gave him no reason to suspect that they had made an attempt to stage their presentation).

The **Shulchan Aruch** brings the above *Yerushalmi*, writing that if the witnesses testify with precisely the same wording, one should suspect that they are lying and schemed to coordinate their statements, and they must be cross-examined.

Testifying “I say like him”

The **Rama** quotes **Rabbeinu Yerucham** (*Nesiv 2, Chelek 2*), who writes,

If the first witness testified and the second does not testify in detail but rather states: “I know it the way he said,” this second person’s testimony is ineffective, unless the second witness went abroad (to “*medinas hayam*”) and there is no possibility for him to testify more explicitly.

The question against the **Rama** is, why should such testimony be effective only in certain situations? If it is acceptable, let it be acceptable always, and if not, let it be unacceptable even if the witness went abroad?

To understand the Rama's ruling,

Let us first look at the source of this *Halacha*, and through this we can also understand another problematic point: We saw above that the first witness testifies alone, but from this *Halacha* it seems that the second witness is present when the first one testifies. For the reason that if not, how can he say, "I say like he says" without hearing what was said?

The source of his *Halacha* is *Sanhedrin* 56a,

Which deals with testimony against a person for blaspheming. There, the second witness says outright

"I TESTIFY LIKE HE DID"

So as not to repeat the blasphemous statement another time.

On page 60, **Reish Lakish** says,

"ONE CAN INFER FROM HERE THAT "I SAY WHAT HE SAID"

Is acceptable testimony in monetary cases, but the *Chachamim* added a *Chumra* to monetary and capital law that each should detail his testimony, and also that one not testify before the other.

This is because,

The *Mishna* there surely spoke of a case when all of the witnesses were together, because if not, how can he say "I testify like he did" if he never heard what he said?

About this, Reish Lakish said,

A *Chumra* was added. If so, another *Chumra* was added in that each witness should give testimony while not in the presence of the other.

The **Rabbeinu Yerucham** adds to this (what is brought by the **Rama**),

- I. If there are exceptional circumstances and a witness must go abroad or the like,
- II. And the witness was inside *beis din* and said,

- III. “I say like him” and then goes abroad and cannot return to testify in greater detail,
- IV. Since this law in any case is a *Chumra* added on by the *Rabbanan*, in extenuating circumstances,
- V. We establish the case based on Torah law (and not the *Rabbanan*’s addition) and the testimony is accepted.
- VI. Of course, when there are no extenuating circumstances, the witnesses must testify not before the other, meaning that the second witness cannot say, “I say like he does,” and if he does so his testimony is invalid.

The Sma (*Seif Katan* 41) explains what we said above in short, saying,

From the Torah, testimony such as “I say like you do” would be accepted, but the sages required the witness to testify explicitly. In pressing circumstances (such as one going abroad), the *Chachamim* established their words according to the Torah ruling that this testimony is effective.

“I say like him” in a written document

Would these words work if written down in a contract?

The Taz writes in this *Seif*,

It seems that if a contract comes before *Beis Din* and the contract is a *maaseh beis din* (made by *beis din* to uphold an action or transaction, such as a *shtar keiyum* of a properly made *get* of divorce), saying about the second witness:

That the second witness says like he does, this is a valid document, because we assume that the second witness really did so testify, but the *beis din* wanted to shorten it and, therefore, wrote the text the way it did.

Questions and Answers

1. According to Rav Yehuda, what is meant by “threatening” the witnesses?

They are told the verse from *Mishlei* (25:14): “Clouds and wind and rain there is none, a man boasts of the death of lies,” which **Rashi** explains as meaning: one tells the witnesses that because of people who testify falsely, rains are stopped.

2. According to Rava, what is meant by “threatening” the witnesses?

Rava says that the threat comes from a different verse in *Mishlei* (28:18): **Rashi** explains that this refers to false witnesses, who should fear that their testimony will cause their death.

3. According to Rav Ashi (the conclusion), what is meant by “threatening” the witnesses?

Rav Ashi says in the name of **Nassan Bar Mar Zutra**, *beis din* warns the witnesses that if they lie they will be looked down upon even by the ones who hired them to testify falsely. This is learned from *Melachim* I, chapter 28, where two unscrupulous men were brought to testify concerning Navos the Yizre’eli. The king’s advisors, who hired them referred to the hired, false witnesses as “*bnei beliyal*.”

4. Must the witnesses be both threatened about their punishment and also informed about the disgrace of testifying falsely?

According to the **Tur**, **Rabbeinu Yerucham** and the **Rambam**, they must be told both of their punishment and the disgrace of testifying falsely.

5. What is the explanation of their shitah?

The **Beis Yosef** explains that, according to the above opinions, the opinions of **Rav Yehuda** and **Rava** brought in the *Gemara* are not rejected. Rather, the *Gemara* held that one does not threaten the witnesses with a general evil that can occur, as they will assume that this has nothing to do with them. To threaten them with a specific evil that can befall them — this is a way to threaten the witnesses.

6. How is testimony collected from the witnesses?

The **Shulchan Aruch** brings the first part of the *Mishna*, writing that after the threats, everyone is taken out and the greater of the witnesses is left behind, and we ask him to say how he knows that the defendant owes? If he said: He told me I owe him, or so-and-so, who is straight and trustworthy told me that he owes him, he said nothing, until he says that he himself saw that he loaned to him, or that he said before me he admitted that he owes.

7. **Is it true that all those present leave when the witness testifies? This surely cannot be as the litigants must be present for this. What does the Shulchan Aruch mean?**

The **Sma** raises this question and offers two explanations, either the **Rambam's** wording "everyone" is not meant literally (and the litigants do remain for the testimony) or the litigants, in fact, leave the room. This is a case where the witnesses already testified before them, and after they testify, everyone is taken outside to cross-examine the witnesses, each separately. The **Shulchan Aruch** concludes like the first reason, that litigants do not leave before the testimony and when they are cross-examined.

8. **According to the Yerushalmi, how did Rav deal with witnesses to determine if they had schemed to give false testimony?**

When **Rav** saw that witnesses were testifying with exactly the same wording and in the same manner, he would suspect that they were lying, and would cross-examine them extensively. But if one would testify one way and the other witness in another way, but their testimony matched without contradiction, he would not cross-examine them (as this form of testimony gave him no reason to suspect that they had made an attempt to stage their presentation).

9. **How does the *beis din* handle a witness who says merely that his testimony is exactly what the first witness testified?**

The **Rama** states that if the first witness testified and the second does not testify in detail but rather states: "I know it the way he said," this second person's testimony is ineffective unless the second witness went abroad (to "*medinas hayam*") and there is no possibility for him to testify more explicitly.

10. **How can such testimony be effective only in certain situations? If it is acceptable, let it be acceptable always, and if not, let it be unacceptable, even if the witness went abroad?**

The **Sma** explains that from the Torah, testimony such as, “I say like you do” would be accepted, but the sages required the witness to testify explicitly, and in pressing circumstances (such as one going abroad), the *Chachamim* established their words according to the Torah, ruling that this testimony is effective.