**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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**Shiur #20: Combining Discrepant Testimonies**

A previous *shiur* discussed the question of whether two witnesses may offer their testimony in separate installments. R. Natan allowed this procedure, while the *Chakhamim* disqualified it. Perhaps R. Natan viewed a single witness as offering “monetary” testimony that was merely insufficient to independently lead to actual monetary collection. If, however, that “monetary” testimony were to be combined with another single witness’s “insufficient monetary” testimony, the case can be prosecuted. Alternatively, R. Natan may have adopted a “proactive” view of *beit din*. The judges are not simply passive recipients of testimony; rather, they can recombine otherwise discrepant testimonies. Even though the testimony of each individual witness was sufficient only to necessitate an “oath,” their testimony can be re-tracked by *beit din* to obligate an actual monetary verdict.

A related but different question emerges from a debate between R. Yehoshua ben Karcha (who, according to Rashi in *Shabbat*, was the son of R. Akiva) and the *Chakhamim*. Can divergent but overlapping testimonies of different *eidim* be recombined? For example, if one witness testifies to a loan that occurred on Monday and the second witness testifies about an identically valued loan on Sunday, can their discrepant testimonies be merged? Even though they enter *beit din* and offer their testimonies simultaneously, they are effectively testifying about separate incidents. For this reason, the *Chakhamim* disallow this testimony, whereas R. Yehoshua ben Karcha admits it.

Perhaps R. Yehoshua maintains that testimony can be pared down to its core, while the details are ignored. Witnesses aren’t storytellers, but rather legal indicters or defenders. Even though they present a STORY, the core of their testimony surrounds obligations that they testify to or defend against. Despite the discrepancy in the **stories** presented by the two independent witnesses, they are each affecting the same bottom line debt. Hence, the testimonies are identical at their core, even though they are discrepant regarding irrelevant details.

If this is true, R. Yehoshua’s innovation is not about the role of *beit din* in processing testimony, but rather about the legal definition of testimony itself. Since testimony is defined purely in terms of bottom-line legal impact, the testimonies of the two witnesses are considered identical.

A second approach would maintain that testimony DOES include details about the event and hence these testimonies are not considered identical. Nevertheless, *beit din* can be proactive in recombining discrepant testimonies to create a monetary verdict. Obviously, if R. Yehoshua’s view is based on the second model, his logic may parallel R. Natan’s rule. If R. Yehoshua pares down testimony to the debt itself, his position has little to do with that of R. Natan. However, if R. Yehoshua indeed allows *beit* *din* to act proactively, his view resembles R. Natan’s position. In each case, *beit* *din* reconfigures discrepant testimonies to create one integrated testimony capable of extracting monies. R. Natan’s view is less of a novelty since the ACTUAL testimony is identical but was offered in separate installments. R. Yehoshua is more extreme in allowing discrepant testimonies to be recombined into one integrated testimony. However, they share a common logic – namely, *beit din* isn’t passive in hearing and processing testimony. They can play an active role in reworking testimony to create the capacity to prosecute monetary verdicts.

Interestingly, a discussion in *Sanhedrin* (30b) may reveal a logical correspondence between the two positions. R. Yochanan is unsure whether to rule like R. Yehoshua ben Karcha. Questioning his *talmidim* about this, he receives a reply from R. Yossi ben R. Chanina, who claims that R. Yehoshua ben Karcha agrees with Rebbi Natan. Since the general ruling follows R. Natan and allows combination of SEPARATELY OFFERED testimony, R. Yossi assumes that *beit* *din* should also accept DISCREPANT testimony based on R. Yehoshua ben Karcha’s model. R. Yossi senses a logical overlap between R. Natan and R. Yehoshua ben Karcha, presumably based on their common view of a proactive *beit din*.

Regarding the scope of R. Yehoshua’s allowance, that same *gemara* in *Sanhedrin* appears to offer two very different opinions. One approach is to severely limit R. Yehoshua’s scope, whereas a second approach extends it liberally. For example, Rav rules like R. Yehoshua ben Karcha in cases involving land, AS WELL as cases dealing with portable items. Ulla accepts R. Yehoshua’s leniency regarding land cases, but NOT regarding portable items. Perhaps they adopted different models of understanding R. Yehoshua’s view and consequently perceived very different scopes. If R. Yehoshu’a position is based on ignoring the details because testimony is simply a statement of bottom line consequences, Rav would be correct in extending R. Yehoshua to both land based disputes and disputes over portable items. However, if R. Yeshoshua authorizes *beit din* to combine otherwise discrepant testimonies, perhaps Ulla is correct in limiting the applicability of R. Yehoshua’s view. In the case of land disputes, despite the divergence in the story, the witnesses are ultimately discussing the same tract of land, and their testimonies can be combined. However, discrepant testimonies about portable items are addressing completely different “items” and cannot be combined.

A second debate surrounds the applicability of R. Yehoshua’s view to debts. Rav limits R. Yehoshua’s view to discrepancies that do not imply separate debts. For example, if one *eid* testified that a litigant confessed to a prior debt on a Sunday and the other *eid* testified that he confessed to a prior debt on a Monday, the testimonies are discrepant (since they describe different events), but they surround one common feature – a debt in the past which they each argue the litigant confessed to, albeit on separate days. However, if they testify to different alleged loans on different days, perhaps they are describing two totally separate events. Rav did not accept R. Yehoshua’s leniency in this instance. By contrast, the sages of Neharda’ah accepted R. Yehoshua’s leniency in ALL situations. Perhaps they believed that R. Yehoshua’s position was based on paring down testimony to the bare minimum. Ultimately, if the witnesses are each arguing that the litigant OWES the same sum of money, their testimonies are IDENTICAL, regardless of what type of EVENT they are describing. Halakha IGNORES all information except for the BOTTOM-LINE OBLIGATION – which in this case is identical. By contrast, Rav may have believed that the testimony DOES include details of the event; testimonies that are divergent in these details are not considered NATURALLY identical. *Beit din* can ACTIVELY combine dissimilar testimonies and create a monetary verdict as long as the events can conceivably be identical. If they are clearly describing two different points of origin – with each *eid* testifying to different events of loan – the testimonies can no longer be combined.

An additional question regarding the range of R. Yehoshua ben Karcha’s leniency emerges from a debate between the *Ketzot* *Ha-Choshen* and the *Netivot* *Ha*-*Mishpat*. Can slightly discrepant testimonies be accepted in cases of *kenas*? Typical monetary cases are referred to as *mammon*, and the role of *beit* *din* is to clarify the details of what occurred. Once *beit din* – by processing testimony – verifies the details of the event, the monetary obligation to pay is self-generated. The FACT that Reuven borrowed money from Shimon creates an inherent obligation to compensate; the role of *beit* *din* is merely to clarify that indeed this loan occurred.

By contrast, certain monetary payments are punitive rather than compensatory. These are defined as cases of *kenas* or fines. For example, the EXTRA payment for a thief known as *kefel* is not compensating the basic loss but rather levying a fine upon the criminal. Non-compensatory payments do not stem automatically from the EVENT. Rather, they must be actively generated and levied by an active *beit din*. In these types of payments, their role is far more creative and active than their relatively secondary role in typical compensatory situations.

Perhaps the most telling consequence of this disparity between *mammon* and *kenas* is the scenario of *hoda’a*, confession. If a litigant preempts the process and confesses to his obligation, he must remit payment: “*hoda’at ba’al din* *ke-mei’ah eidim dami*,” “the confession of the defendant is akin to a hundred witnesses.” However, if the confession is about *kenas*, it exempts the defendant from payment: “*modeh* *be-kenas patur*.” Classically, this difference is imputed to the logical difference between compensatory payments and punitive payments. Regarding *mammon*, *beit din’s* role is merely to clarify the details. Typically, they certify this information through processed testimony, and a personal confession is equivalent to testimony. Once the facts have been determined through either testimony or confession, the event itself obligates payment. Regarding cases of *kenas*, *beit din* plays a more ACTIVE role in generating and levying a fine. They must levy the fine based on received and processed testimony. By offering a confession, the defendant has short-circuited the process and has deprived *beit din* of the ability to actively generate a fine.

The *Netivot Ha-Mishpat* (*Choshen Mishpat*, chapter 30) claims that R. Yehoshua ben Karcha’s combined testimony policy does not operate for *kenas* payments. R. Yehoshua’s scenario concerns testimonies which were identical statements about the DEBT but discrepant about the DETAILS of the event. Conventional *mammon* compensatory payments are automatically generated; even if the testimonies are discrepant regarding the event, they are still identical regarding the debt, and payments can therefore be obligated. Regarding *kenas*, however, *beit din* must actually consider the EVENT and GENERATE a *kenas* payment. Since the testimonies were discrepant regarding the event, *beit din* cannot generate a *kenas* obligation.

The Ketzot argues and allows R. Yehoshua’s testimony for *kenas* payments as well. One possible way of understanding this extended scope is to view R. Yehoshua’s leniency not as a policy that disregards testimony about the EVENT, but a policy that allows *beit din* to combine slightly differing testimonies. *Beit din* does not ignore the information about the event; they merely accept testimonies about that event even though nuanced details (such as time and place) remain discrepant. Since *beit din* combines information about the event, they can proceed to generate a *kenas* payment even though some of the details remain discrepant.