עַל כְּתַב יָדָן הֵם מְעִידִים, לְדִבְרֵי חֲכָמִים עַל פֶּה עֵדָה הֵם מְעִידִים.

the witnesses **are testifying about their handwriting** and authenticating their own signatures. Therefore, if each witness testifies only with regard to his own handwriting, there is only one witness authenticating each signature. According **to the Rabbis,** the witnesses **are testifying about** the sum of **one hundred dinars that is in the document**[HN] and are not authenticating the signatures at all. Therefore, the testimony of the two witnesses who signed the document is sufficient to ratify the document.

פְּשִׁיטָא! מַהוּ דְּתֵימָא: לְרַבִּי סַפּוּקֵי מְסַפְּקָא לֵיהּ אִי עַל כְּתַב יָדָם הֵם מְעִידִים אוֹ עַל פֶּה עֵדָה הֵם מְעִידִים.

The Gemara asks: That is **obvious.** No analysis is necessary to arrive at this explanation of the dispute. The Gemara answers: The analysis is necessary **lest you say** that according to **Rabbi** Yehuda HaNasi there is **uncertainty whether they are testifying about their handwriting or** whether the witnesses **are testifying about** the sum of **one hundred dinars that is in the document,** and due to the possibility that the purpose of the testimony is to authenticate their handwriting, he requires two witnesses for each signature.

וְנִפְקָא מִינָּה: הֵיכָא דְּמִית חַד מִינַּיְיהוּ – לְבָעֵי שְׁנַיִם מִן הַשּׁוּק לְהָעִיד עָלָיו,

And the practical difference between whether the opinion of Rabbi Yehuda HaNasi is based on certainty or uncertainty is in a case **where one of** the witnesses who signed the document **died.**[H] If his opinion is based on certainty that they are testifying about the signatures, one other witness testifying to the authenticity of both signatures would suffice, as both that other witness and the surviving signatory would testify to authenticate each signature. However, if his opinion is based on uncertainty, **let them require two** other witnesses **from the street to testify about** the signature of the deceased witness.

דְּאִם כֵּן קָנָפֵיק נְכִי רִיבְעָא דְּמָמוֹנָא אַפּוּמָא דְּחַד סָהֲדָא.

That is due to the fact that **if** it is **so** that the witnesses are testifying about the sum of one hundred dinars that is in the document and only one other witness joined the surviving witness in testifying with regard to that signature, the result would be that the entire sum **of money, less one-quarter, is collected** based **on the testimony of a single witness.** The surviving signatory authenticates his signature and thereby facilitates collection of half the sum. In addition, his testimony together with the testimony of the witness from the street authenticating the signature of the deceased signatory facilitates collection of the other half. Based on the verse: "At the mouth of two witnesses… shall a matter be established" (Deuteronomy 19:15), each witness is responsible for half the sum.

HALAKHA

They are testifying about the sum of one hundred dinars that is in the document – עַל מָנֶה שֶׁבַּשְּׁטָר הֵם מְעִידִים: When a witness who signed a document comes to court to authenticate his signature and says that he does not recall the actual incident recorded in the document that he signed, his testimony is not accepted. That is because in that case, his testimony is about the sum recorded in the promissory note, in accordance with the opinion of the Rabbis. In any event, if the signatures were already authenticated by other means, e.g., through comparison to another document or through the testimony of other witnesses, whether or not the signatories recall the event is irrelevant (Rambam). Some authorities disagree and rule that the testimony of witnesses authenticating their signatures is valid even if they do not recall the actual event, provided that two witnesses authenticate each signature. This can be accomplished either by each of the witnesses authenticating his own signature and that of his fellow witness, or by each authenticating his own signature and an additional witness testifying to authenticate their signatures (*Tosafot*; Rosh; *Tur*). Others maintain that even the Rambam would agree that an additional witness is effective when the witnesses do not recall the incident (*Beit Yosef*). The *Shakh* proved that Rav Yosef Caro reconsidered and ultimately agreed with most commentaries that the Rambam disagrees in that case as well (Rambam *Sefer Shofetim*, *Hilkhot Edut* 8:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:10).

Where one of the witnesses died – הֵיכָא דְּמִית חַד מִינַּיְיהוּ: If one of the signatories to a document dies, the surviving witness may not testify to authenticate both his signature and the signature of the dead witness, as this would lead to most of the money being collected based on the testimony of a single witness. This is in accordance with the Gemara's explanation that the witnesses testify about the sum of one hundred dinars in the document (Rambam *Sefer Shofetim*, *Hilkhot Edut* 7:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:13).

NOTES

About the sum of one hundred dinars that is in the document – עַל מָנֶה שֶׁבַּשְּׁטָר: The dispute between the halakhic authorities in this regard (see HALAKHA) is tied to understanding the dispute between the *tanna'im* here. From Rashi's formulation, apparently, the Rabbis, who said that the witnesses are testifying about the sum of one hundred dinars that is in the document, are referring to a case where the witnesses testify: We saw the loan take place. That is the Rid's understanding of Rashi's opinion and is also the opinion of the Rambam, who says that if the witnesses do not remember the actual incident, even if they testify to authenticate their signatures, it is not considered testimony at all. The Rambam even adds that any judge who rules otherwise is lacking in his understanding of civil law. However, many early commentaries object to various aspects of this explanation, as this calls into question the very procedure of ratifying a document by means of authentication of the signatures. Although according to the Rambam there is a distinction between a case where the witnesses say that they do not remember the incident, where their testimony would be disqualified, and a case where the signatures are authenticated and the witnesses say nothing more, where the legal status of their testimony is as though it were cross-examined in court and it is valid.

Some seek to cite proof for the opinion of the Rambam from the parallel discourse on this topic in the Jerusalem Talmud; however, the proof is far from conclusive (see Meiri). Therefore, most other early commentaries agree with *Tosafot*, who explain that the dispute between Rabbi Yehuda HaNasi and the Rabbis is not about the content of the testimony but about its meaning. According to Rabbi Yehuda HaNasi, the testimony of the signatories, of other witnesses, or of the court, who compare the handwriting of the signatories to their signatures in other documents, is authenticating the signatures on the document, and once their signatures are authenticated, the testimony of the signatories becomes like testimony cross-examined in court. The Sages maintain that the authentication of the signatures verifies the original testimony with regard to the hundred dinars recorded in the document. Even if the witnesses do not remember their original testimony, they verify that testimony by authenticating their signatures (see Ritva).

וְהָכָא לְחוּמְרָא וְהָכָא לְחוּמְרָא,

And one would have thought that Rabbi Yehuda HaNasi would rule **stringently here:** When both signatories are alive they must add another witness with them to authenticate the signatures of the two witnesses, as perhaps they are testifying about their handwriting; **and** he would rule **stringently here:** When one of the signatories died they must add two witnesses, as perhaps the witnesses are testifying about the sum of one hundred dinars that is in the document.

קָא מַשְׁמַע לָן: דְּרַבִּי מִיפַּשַׁט פְּשִׁיטָא לֵיהּ, בֵּין לְקוּלָּא בֵּין לְחוּמְרָא. דְּאָמַר רַב יְהוּדָה אָמַר רַב: שְׁנַיִם הַחֲתוּמִין עַל הַשְּׁטָר וּמֵת אֶחָד מֵהֶן – צְרִיכִין שְׁנַיִם מִן הַשּׁוּק לְהָעִיד עָלָיו, בְּזוֹ רַבִּי לְקוּלָּא וְרַבָּנַן לְחוּמְרָא.

Therefore, the Gemara **teaches us that** the matter **was clear to Rabbi** Yehuda HaNasi, that they are testifying about their handwriting, and he ruled accordingly **both leniently,** requiring only one additional witness when one of the signatories died, **and stringently,** requiring an additional witness when both signatories are alive. **As Rav Yehuda said** that **Rav said:** With regard to **two** witnesses **who were signatories to a document and one of them died, they require two** others **from the street** to **testify about** the signature of the one who died, and **in this** case, **Rabbi** Yehuda HaNasi rules **leniently** and requires only one additional witness, **and the Rabbis** rule **stringently** and require two additional witnesses.

וְאִי לֵיכָּא תְּרֵי אֶלָּא חַד מַאי? אֲמַר אַבָּיֵי: לִכְתּוֹב חֲתִימַת יָדֵיהּ אַחַסְפָּא, וְשָׁדֵי לֵיהּ בְּבֵי דִּינָא, וּמַחְזְקֵי לֵיהּ בְּבֵי דִּינָא (וְחָזוּ לֵיהּ), וְלָא צָרִיךְ אִיהוּ לְאַסְהוּדֵי אַחֲתִימַת יָדֵיהּ, וְאָזֵיל אִיהוּ וְהַאי וּמְסַהֲדֵי אַאִידָּךְ.

The Gemara asks: **And if there are not two** witnesses capable of authenticating each signature, **but only one, what** can be done to ratify the document? **Abaye said: Let** the surviving witness **write his signature on an earthenware** shard[NH] **and cast it into the court. And the court** then **ratifies** the document **by seeing** that it is **his** signature. **And** then **he does not need to testify** and authenticate **his signature. But he and this** other witness **go and testify** to authenticate **the other** signature of the deceased witness. In that case, even according to the Rabbis, one additional witness is sufficient.

וְדַוְקָא אַחַסְפָּא, אֲבָל אַמְּגִלְּתָא – לָא. דִּלְמָא מַשְׁכַּח לָהּ אִינִישׁ דְּלָא מַעֲלֵי, וְכָתַב עִילָּוֵיהּ מַאי דְּבָעֵי, וּתְנַן: הוֹצִיא עָלָיו כְּתַב יָדוֹ שֶׁהוּא חַיָּיב לוֹ – גּוֹבֶה מִנְּכָסִים בְּנֵי חוֹרִין.

The Gemara notes: **And** he writes his signature for the purpose of comparison **specifically on an earthenware** shard, **but not on parchment,** due to the concern that **perhaps an unscrupulous person will find it and write on it whatever he wants,** e.g., the undersigned owes him money. **And we learned** in a mishna (*Bava Batra* 175b): If a creditor **produced** a document **about** another written in the other person's **handwriting,**[H] in which it is written **that** the other person **owes him** money, even if there are no witnesses he is obligated to pay, and the claimant **may collect** payment **from unsold property.** One can collect repayment of a loan that is documented on a promissory note signed by two witnesses even from the borrower's land that was sold. With the document signed by the debtor, the creditor may collect payment from unsold property. Due to the potential for deceit with a signature on parchment, one provides a signature sample written on earthenware.

אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל: הֲלָכָה כְּדִבְרֵי חֲכָמִים. פְּשִׁיטָא, יָחִיד וְרַבִּים הֲלָכָה כְּרַבִּים! מַהוּ דְּתֵימָא: הֲלָכָה כְּרַבִּי מֵחֲבֵירוֹ, וַאֲפִילּוּ מֵחֲבֵירָיו, קָא מַשְׁמַע לָן.

Rav Yehuda said that **Shmuel said: The *halakha* is in accordance with the statement of the Rabbis** in the mishna that each of the two signatories need testify only about his own signature to ratify the document. The Gemara asks: That is **obvious,** as the principle is: In a dispute between **an individual** Sage **and multiple** Sages, **the *halakha*** is ruled **in accordance with** the opinion of **multiple** Sages. The Gemara answers: **Lest you say** that just as there is a principle: **The *halakha*** is ruled **in accordance with** the opinion of **Rabbi** Yehuda HaNasi in disputes **with his colleague,** there is also a principle that the *halakha* is ruled in accordance with his opinion **even** when he disagrees **with his** multiple **colleagues;** therefore, Rav Yehuda **teaches us** that Shmuel said that the principle applies only to disputes with an individual colleague.

סִימָן נח נד חד. אֲמַר לֵיהּ רַב חִנָּנָא בַּר חִיָּיא לְרַב יְהוּדָה, וְאָמְרִי לָהּ רַב הוּנָא בַּר יְהוּדָה לְרַב יְהוּדָה, וְאָמְרִי לָהּ רַב חִיָּיא בַּר יְהוּדָה לְרַב יְהוּדָה: וּמִי אֲמַר שְׁמוּאֵל הָכִי?

§ The Gemara provides **a mnemonic** for the names and patronyms of the *amora'im* associated with the statement cited below: ***Nun ḥet*** for Rav Ḥinnana bar Ḥiyya, ***nun dalet*** for Rav Huna bar Yehuda, and ***ḥet dalet*** for Rav Ḥiyya bar Yehuda. **Rav Ḥinnana bar Ḥiyya said to Rav Yehuda, and some say** it was **Rav Huna bar Yehuda** who **said** it **to Rav Yehuda, and some say** it was **Rav Ḥiyya bar Yehuda** who **said** it **to Rav Yehuda: And did Shmuel say that** the *halakha* is in accordance with the statement of the Rabbis?

NOTES

Let the surviving witness write his signature on an earthenware shard – לִכְתּוֹב חֲתִימַת יָדֵיהּ אַחַסְפָּא: Ostensibly, this Gemara indicates that one cannot collect payment with a document written on earthenware. The Ramban and others explain that writing on earthenware can easily be forged, and one may not collect a debt with a document that can easily be forged. *Tosafot* question this from the fact that it is stated (*Kiddushin* 9a; 26a) that a document or bill of divorce written on earthenware is a legitimate document. Some answer that the halakhic ruling that earthenware documents are legitimate documents is in accordance with the opinion that it is the witnesses to the transmission of the document who effect the transaction, and therefore the signatures are not significant (*Tosafot*).

Others explain that with regard to a bill of divorce and bills of purchase, whose primary function is to be used at the moment that the document is transferred from the husband to the wife or from the buyer to the seller, there is no insistence that the document be written in a manner where it cannot be forged. The Ritva writes, citing Rabbeinu Tam, that in the case where earthenware documents are legitimate it is referring to text that was chiseled into the earthenware, which cannot be easily forged. Citing Rabbeinu Yeḥiel, others explain that the earthenware then was not smooth and therefore the document could not be easily forged. The reason that the Gemara here suggested writing the signature on earthenware is that people tend not to notice discarded earthenware shards and will therefore not come to use the shard for forgery. Others explain that signing on clay is unusual, and therefore one will take precautions to ensure that his signature on a shard will not be used improperly (Meiri). The simple understanding is that standard procedure was to discard and shatter earthenware with a signature sample that was used in court.

HALAKHA

Let the surviving witness write his signature on an earthenware shard – לִכְתּוֹב חֲתִימַת יָדֵיהּ אַחַסְפָּא: If one of the signatories to a document dies, and the other signatory and one additional witness seek to authenticate the signatures, the surviving witness should not authenticate his own signature. Instead he should write his signature on an earthenware shard in the presence of two independent witnesses, who then authenticate his signature in court. Then, the surviving signatory, together with the additional witness, authenticate the dead witness's signature, in accordance with the opinion of Abaye. The reason that it should be written on a shard or, according to *Tosafot*, at the beginning of a scroll, is to prevent its fraudulent misuse (Rambam *Sefer Shofetim*, *Hilkhot Edut* 7:5; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:13).

If one produced a document about another written in his handwriting – הוֹצִיא עָלָיו כְּתַב יָדוֹ: If a creditor produces a document in which a debtor wrote in his handwriting, or if the debtor signed a document that he owes the creditor money, despite the fact that the document is not signed by witnesses, it may be used to collect from his unsold property. If the alleged debtor authenticates his signature but claims that the loan never took place, the debtor's claim is accepted based on the halakhic principle, known as *miggo*, that the ability to make a more advantageous claim grants credibility to the claim he actually makes, as had he claimed that he repaid the money, the claim would have been accepted. The creditor then takes an oath of inducement instituted by the Sages and is exempt from payment. Others disagree and maintain that one's claim that he repaid a loan that appears in a document written in his handwriting would not be accepted (*Tosafot*; Rambam *Sefer Mishpatim*, *Hilkhot Malve VeLoveh* 11:3 and see 27:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 69:1, 2).

HALAKHA

A witness and a judge join together – עֵד וְדַיָּן מִצְטָרְפִין: If there are neither two witnesses to authenticate the signatures of the witnesses nor two witnesses to authenticate the signatures of the judges who ratified the document, and one of the signatory witnesses authenticates his signature and one judge or two independent witnesses authenticate the signature of the judge on the document of ratification, their testimonies do not join together to authenticate the document, because their testimonies are not addressing the same matter, in accordance with the rulings of Rava and Rav Ashi (Rambam *Sefer Shofetim*, *Hilkhot Edut* 4:6; *Shulḥan Arukh*, *Ḥoshen Mishpat* 30:12 and 46:14).

PERSONALITIES

Rami bar Yeḥezkel – רָמִי בַּר יְחֶזְקֵאל: Rami, a contraction of Rav Ami bar Yeḥezkel, was the younger brother of Rav Yehuda. Although in his youth he studied Torah under Rav and Shmuel, Rami ascended to Eretz Yisrael where he became familiar with many ancient traditions, principally previously unknown *baraitot*. In the Jerusalem Talmud he appears as Rav Ami or Imi bar Yeḥezkel. Ultimately, he returned to Babylonia, as indicated by the expression: When he came, and he brought with him the Torah of Eretz Yisrael. His traditions were considered precise and significant to the extent that they led to the rejection of statements of Rav Yehuda.

וְהָא הַהוּא שְׁטָרָא דְּנָפֵיק מִבֵּי דִּינָא דְּמָר שְׁמוּאֵל, וְהָוָה כְּתִיב בֵּיהּ: מִדְּאַתָא רַב עָנָן בַּר חִיָּיא וְאַסְהֵיד אַחֲתִימוֹת יְדֵיהּ וְאַדְּחַד דְּעִמֵּיהּ, וּמַנּוּ – רַב חָנָן בַּר רַבָּה, וּמִדְּאַתָא רַב חָנָן בַּר רַבָּה וְאַסְהֵיד אַחֲתִימוֹת יְדֵיהּ וְאַדְּחַד דְּעִמֵּיהּ, וּמַנּוּ – רַב עָנָן בַּר חִיָּיא, אִשְׁתַּרְנוּהִי וְקַיְּימְנוּהִי כְּדַחֲזִי!

But wasn't there **that document that emerged from the court of Master Shmuel, and it was written with regard to** that document: **From** the fact **that Rav Anan bar Ḥiyya came** before the court **and testified about his signature and about** the signature **of the one who** signed the document **with him, and who was that** other signatory, **Rav Ḥanan bar Rabba; and from** the fact **that Rav Ḥanan bar Rabba came** before the court **and testified about his signature and about** the signature **of the one who** signed the document **with him, and who was that** other signatory, **Rav Anan bar Ḥiyya; we certified and ratified** this document **as appropriate.** If Shmuel ruled in accordance with the opinion of the Rabbis there would have been no need for each to testify about the signature of his fellow witness.

אֲמַר לֵיהּ: הַהוּא שְׁטָרָא דְּיָתְמֵי הֲוָה, וְחָשׁ שְׁמוּאֵל לְבֵית דִּין טוֹעִין. וְסָבַר שְׁמוּאֵל: דִּלְמָא אִיכָּא דִּסְבִירָא לֵיהּ הֲלָכָה כְּרַבִּי מֵחֲבֵירוֹ וְלֹא מֵחֲבֵירָיו, וּבְהָא – אֲפִילּוּ מֵחֲבֵירָיו, סָבַר אֲעָבִיד רַוּוחָא כִּי הֵיכִי דְּלָא מַפְסְדֵי יַתְמֵי.

Rav Yehuda **said to him: That was a document for** the benefit of **orphans, and Shmuel was concerned** about the potential **for an error of the court. And Shmuel thought: Perhaps there is** a court **that holds** that in general, **the *halakha*** is ruled **in accordance with** the opinion of **Rabbi** Yehuda HaNasi in disputes **with his colleague but not** in disputes **with his** multiple **colleagues, and in this** case, the *halakha* is ruled in accordance with his opinion **even** in disputes **with his** multiple **colleagues,** and the court will not ratify the document if each witness testifies only about his own signature. Therefore **he thought: I will perform** ratification of the document in an **expansive** manner, in accordance with all opinions, to ensure **that the orphans will not lose** money to which they are entitled.

§ אָמַר רַב יְהוּדָה אָמַר שְׁמוּאֵל: עֵד וְדַיָּן מִצְטָרְפִין.

§ **Rav Yehuda said** that **Shmuel said:** If a document came before a court and the court ratified it, and then the document was produced in order to collect the debt, at which time the borrower contested its validity and claimed that it was forged, one **witness** who was a signatory on the document **and a judge** who ratified the document **join** together[H] to testify that the document is valid.

אֲמַר רָמִי בַּר חָמָא: כַּמָּה מַעֲלְיָא הָא שְׁמַעְתָּא. אֲמַר רָבָא: מַאי מַעֲלְיוּתָא? מַאי דְּקָא מְסַהֵיד סָהֲדָא לָא קָא מְסַהֵיד דַּיָּנָא, וּמַאי דְּקָא מְסַהֵיד דַּיָּנָא לָא קָא מְסַהֵיד סָהֲדָא!

Rami bar Ḥama said: How excellent is this *halakha*. Rava said: In **what** way is that **excellence** manifested? **That which the witness testifies,** i.e., authenticating his signature and confirming the incident that he witnessed, **the judge does not testify,** as the judge testifies that the document was ratified. **And that which the judge testifies, the witness does not testify.** There are not two witnesses testifying to either matter.

אֶלָּא, כִּי אֲתָא רָמִי בַּר יְחֶזְקֵאל אָמַר: לָא תִּצְיתִינְהוּ לְהָנֵי כְּלָלֵי דְּבֵי יְהוּדָה אָחִי מִשְׁמֵיהּ דִּשְׁמוּאֵל.

Rather, when Rami bar Yeḥezkel[P] came, he said: Do not listen to those principles that my brother Rav **Yehuda** bar Yeḥezkel **established in the name of Shmuel** with regard to a witness and a judge joining together to testify.

Perek **II**
Daf **21** Amud **b**

אִיקְלַע רַבְנַאי אֲחוּהּ דְּרַבִּי חִיָּיא בַּר אַבָּא לְמָחֳבָן שׁוּמְשְׁמֵי, וַאֲמַר: הָכִי אֲמַר שְׁמוּאֵל: עֵד וְדַיָּן מִצְטָרְפִין. אֲמַר אֲמֵימָר: כַּמָּה מַעֲלְיָא הָא שְׁמַעְתָּא! אֲמַר לֵיהּ רַב אַשִׁי לַאֲמֵימָר: מִשּׁוּם דְּקַלְסָה אֲבוּהּ דְּאַמָּךְ אַתְּ נָמֵי מְקַלְסַת לָהּ? כְּבָר פִּרְכָה רָבָא.

The Gemara relates: **Ravnai, brother of Rabbi Ḥiyya bar Abba, happened to** come and **sell sesame, and he said** that **this** is what **Shmuel said: A witness and a judge join** together to testify. **Ameimar said: How excellent is this *halakha*. Rav Ashi said to Ameimar: Due to** the fact **that** Rami bar Ḥama, **father of your mother, praised it, you also praise** [***mekallesat***][L] **it? Rava already refuted** that statement and proved it incorrect.

LANGUAGE

Praise [*mekallesat*] – מְקַלְסַת: Apparently from the Greek, this term means praise. Some say that it is from the word καλός, *kalos*, meaning beautiful, or from a similar root. In the Bible the term means the opposite, derision.

אָמַר רַב סָפְרָא אָמַר רַבִּי אַבָּא אָמַר רַב יִצְחָק בַּר שְׁמוּאֵל בַּר מָרְתָא אָמַר רַב הוּנָא, וְאָמְרִי לֵיהּ אָמַר רַב הוּנָא אָמַר רַב: שְׁלֹשָׁה שֶׁיָּשְׁבוּ לְקַיֵּים אֶת הַשְּׁטָר, שְׁנַיִם מַכִּירִין חֲתִימוֹת יְדֵי עֵדִים וְאֶחָד אֵינוֹ מַכִּיר, עַד שֶׁלֹּא חָתְמוּ – מְעִידִין בְּפָנָיו וְחוֹתֵם, מִשֶּׁחָתְמוּ – אֵין מְעִידִין בְּפָנָיו וְחוֹתֵם.

§ **Rav Safra said** that **Rabbi Abba said** that **Rav Yitzhak bar Shmuel bar Marta said** that **Rav Huna said;** and some say that **Rav Huna said** that **Rav said:** With regard to **three** judges **who convened to ratify a document,**[H] and **two** of them **recognize the signatures of the witnesses** on the document, **and one does not recognize** them; **as long as** the two judges **did not** yet **sign** to ratify the document, they **testify** and authenticate the signatures **before** the third judge, and based on that testimony, the third judge **signs** the document of ratification together with the first two judges. However, **once** the two judges **signed** the ratification, **they may not testify before him and** have him **sign**[N] the ratification. The formula of the ratification is: We verified and ratified this document in a forum of three. Since when the first two judges signed the ratification, they were not a forum of three, the ratification is invalid.

וּמִי כָּתְבִינַן? וְהָאֲמַר רַב פַּפִּי מִשְּׁמֵיהּ דְּרָבָא: הַאי אַשְׁרְתָא דְּדָיְינֵי דִּנְיכְתַּב מִקַּמַּיְיהוּ דְּנִיחֲווּ סָהֲדֵי אַחֲתִימַת יְדֵיְיהוּ – פְּסוּלָה, דְּמִתְחֲזֵי כְּשִׁקְרָא. הָכָא נַמִּי מִתְחֲזֵי כְּשִׁקְרָא!

The Gemara asks: **And do we write** the ratification of a document before all of the judges verify the signatures of the witnesses? **But didn't Rav Pappi say in the name of Rava: This ratification of judges that was written before the witnesses related** testimony **about their signatures is invalid,** even if the witnesses later authenticate their signatures, as **it seems like a lie,** since when they drafted the ratification they were not yet aware that they would be able to ratify the document? **Here too,** when the judges drafted the ratification before the third judge can verify the signatures, **it seems like a lie.**

אֶלָּא אֵימָא: עַד שֶׁלֹּא כָּתְבוּ – מְעִידִין בְּפָנָיו וְחוֹתֵם, מִשֶּׁכָּתְבוּ – אֵין מְעִידִין בְּפָנָיו וְחוֹתֵם.

The Gemara answers: **Rather,** emend the statement and **say: As long as** the two judges **did not** yet **write** the ratification of the document, they **testify** and authenticate the signatures **before** the third judge, and based on that testimony, the third judge **signs** the ratification together with the first two judges. However, **once** the two judges **have written** the ratification, **they may not testify before him and** have him **sign** the ratification.

שְׁמַע מִינָּהּ תְּלַת: שְׁמַע מִינָּהּ: עֵד נַעֲשֶׂה דַּיָּין. וּשְׁמַע מִינָּהּ: דַּיָּינִין הַמַּכִּירִין חֲתִימוֹת יְדֵי עֵדִים אֵין צְרִיכִין לְהָעִיד בִּפְנֵיהֶם. וּשְׁמַע מִינָּהּ: דַּיָּינִין שֶׁאֵין מַכִּירִין חֲתִימוֹת יְדֵי עֵדִים – צְרִיכִין לְהָעִיד בִּפְנֵי כָּל אֶחָד וְאֶחָד.

The Gemara notes: **Conclude from** the statement of Rav Huna **three** *halakhot*: **Conclude from it that a witness** can **become a judge,** as the two judges who testified to authenticate the signatures signed the ratification as judges and were not disqualified due to a conflict of interest. **And conclude from it** that **judges who recognize the signatures of** the **witnesses**[H] **do not require** other witnesses **to testify before them. And conclude from it** that in cases involving **judges who do not recognize the signatures of the witnesses,** witnesses **are required to testify before each and every one of them,** and no judge may issue a ruling based on testimony brought before the other judges.

מַתְקִיף לָהּ רַב אַשִׁי: בִּשְׁלָמָא, עֵד נַעֲשֶׂה דַּיָּין – שָׁמְעִינַן מִינָּהּ. אֶלָּא דַּיָּינִין הַמַּכִּירִין חֲתִימוֹת יְדֵי עֵדִים אֵין צְרִיכִין לְהָעִיד בִּפְנֵיהֶם, דִּלְמָא לְעוֹלָם אֵימָא לָךְ: צְרִיכִין, וְשָׁאנֵי הָכָא דְּקָא מְקַיְּימָא הַגָּדָה בְּחַד!

Rav Ashi strongly **objects** to the conclusions drawn by the Gemara. **Granted,** the fact that **a witness** can **become a judge we** can **conclude from** the statement of Rav Huna. **However,** the fact that **judges who recognize the signatures of witnesses do not require** other witnesses **to testify before them** cannot be concluded from the statement of Rav Huna. **Perhaps, I will say to you** that **actually** judges **require** witnesses to testify before them; **and here,** in this case, **it is different, as** the requirement of the **statement** of testimony **is fulfilled with** the testimony of the two judges before the **one** judge[N] who did not recognize the signatures. However, in a case where there is no statement of testimony at all, there could be no ratification of the document.

וְדַיָּינִין שֶׁאֵין מַכִּירִין חֲתִימוֹת יְדֵי עֵדִים צְרִיכִין לְהָעִיד בִּפְנֵי כָּל אֶחָד וְאֶחָד, דִּלְמָא לְעוֹלָם אֵימָא לָךְ: אֵין צְרִיכִין, וְשָׁאנֵי הָכָא – דְּלָא קָא מְקַיְּימָא הַגָּדָה כְּלָל!

And furthermore, with regard to the conclusion that in cases of **judges who do not recognize the signatures of the witnesses,** witnesses **are required to testify before each and every one** of them, **perhaps, I will say to you** that **actually,** in general, witnesses **are not required** to testify before each and every judge; **and here,** in this case, **it is different, as** were it not for the testimony of the two judges before the third judge, the requirement of the **statement** of testimony would **not be fulfilled** at all. In a case where there is other testimony, perhaps one may rely on the knowledge of others in order to ratify the document.

HALAKHA

Three judges who convened to ratify a document – שְׁלֹשָׁה שֶׁיָּשְׁבוּ לְקַיֵּים אֶת הַשְּׁטָר: With regard to three judges who convene to ratify a document, two of whom recognize the signatures of the witnesses and one of whom does not, according to several early commentaries (Rif; Rambam; Rashba; *Smag*) they may write the ratification document; the two judges who recognize the signatures then testify before the third, after which all three sign the ratification, in accordance with the opinion of Rav Huna in the name of Rav. Although this is not the Gemara's conclusion, that conclusion is in accordance with the opinion of Rav Pappi that is rejected elsewhere (Radbaz). Others disagree and maintain that writing the ratification to be signed by all three before the two judges testify before the third would create an impression of falsehood. According to this opinion, Rav Pappi's opinion is not rejected with regard to the ratification of documents (Rosh; *Tur*; Rambam *Sefer Shofetim*, *Hilkhot Edut* 7:6; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:24).

Judges who recognize the signatures of the witnesses – דַּיָּינִין הַמַּכִּירִין חֲתִימוֹת יְדֵי עֵדִים: If the judges recognize the signatures of the witnesses they may certify the document without the testimony of witnesses, in accordance with the Gemara's conclusion from that which Rav Huna said that Rav said, which was not rejected due to the difficulty posed by Rav Ashi (*Beit Yosef*; Rambam *Sefer Shofetim*, *Hilkhot Edut* 6:2; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:7).

NOTES

Once they signed they may not testify before him and have him sign – מִשֶּׁחָתְמוּ אֵין מְעִידִין בְּפָנָיו וְחוֹתֵם: Some explain that the reason that the two judges cannot testify before the third once they signed the ratification is because they then become interested parties, as they do not want their signatures invalidated (Rid; *Tosafot*). Others explain that if two judges signed before the third judge heard the testimony, they can no longer testify before the tribunal, as in retrospect it is clear that they signed a false declaration, as they were not permitted to sign the document until all the judges are aware of the matter (Rashi). The Ritva adds that it does not merely seem like a lie, it is actually a lie. Some early and later commentaries (*Talmidei Rabbeinu Yona*; *Korban Netanel*) note that there is a practical difference between these two explanations in a case where it is witnesses and not the other two judges who testify before the third judge. According to the explanation that they signed a false declaration, the document would not be ratified even in this case. Others reject that distinction (Meiri; see Rashi).

As the requirement of the statement of testimony is fulfilled with the testimony of the two judges before the one judge – דְּקָא מְקַיְּימָא הַגָּדָה בְּחַד: In *Tosafot* and with variations in other early commentaries, the question is raised: Based on the statement of Rav Ashi, it appears that hearing testimony from witnesses is superior to the judge witnessing the incident himself, in direct contradiction of that which is stated in the Gemara with regard to sanctification of the month. Others distinguish between the cases and explain that the concept of a judge witnessing an incident being superior to hearing testimony from witnesses is a principle that applies specifically to the sanctification of the month, with regard to which it is written: "This month shall be for you" (Exodus 12:2), which is interpreted: See this moon and sanctify the month; in other cases, testimony is preferable (Ritva). Others arrive at the same conclusion based on the verse: "And the two men…shall stand before God" (Deuteronomy 19:17), which indicates that in monetary matters testimony is required (Ramban; see *Tosafot*). The Ra'avad distinguishes between different types of testimony. In testimony about the new moon, which is witnessed by all, there is no formal requirement of testimony; however, for testimony about ratification of documents, which involves information that is not universally known, explicit testimony is required.

יְתֵיב רַבִּי אַבָּא וְקָאָמַר לָהּ לְהָא שְׁמַעְתָּא דְּעֵד נַעֲשֶׂה דַּיָּין. אֵיתִיבֵיהּ רַב סָפְרָא לְרַבִּי אַבָּא: רָאוּהוּ שְׁלֹשָׁה וְהֵן בֵּית דִּין – יַעַמְדוּ שְׁנַיִם וְיוֹשִׁיבוּ מֵחַבְרֵיהֶם אֵצֶל הַיָּחִיד, וְיָעִידוּ בִּפְנֵיהֶם, וְיֹאמְרוּ "מְקוּדָּשׁ מְקוּדָּשׁ", שֶׁאֵין הַיָּחִיד נֶאֱמָן עַל יְדֵי עַצְמוֹ. וְאִי סָלְקָא דַּעְתָּךְ דְּעֵד נַעֲשֶׂה דַּיָּין – לָמָּה לִי כּוּלֵּי הַאי? לֵיתְבוּ בְּדוּכְתַּיְיהוּ וְלִיקַדְּשִׁי!

The Gemara relates: **Rabbi Abba sat and stated this *halakha* that a witness** can **become a judge.**[H] **Rav Safra raised an objection to** the opinion of **Rabbi Abba** from a mishna (*Rosh HaShana* 25b): If **three** people **saw** the new moon[H] **and they** constitute **a court, two** of them **should stand and seat two of their colleagues** to sit **near** the remaining **individual** judge. **And** the two **should testify before** the three judges, **and they should** then **recite** the standard formula for sanctifying the month: **Sanctified is the month, sanctified.** Two others must join the original judge to form a tribunal of three judges, **as an individual** judge **is not deemed credible** to sanctify the month **by himself. And if it enters your mind** to say **that a witness** can **become a judge, why do I** need **all this? Let** the three judges remain **seated in their place and sanctify** the month,[B] as they can be both witnesses and judges.

אֲמַר לֵיהּ: אַף לְדִידִי קַשְׁיָא לִי, וּשְׁאֵילְתֵּיהּ לְרַב יִצְחָק בַּר שְׁמוּאֵל בַּר מָרְתָא, וְרַב יִצְחָק לְרַב הוּנָא, וְרַב הוּנָא לְחִיָּיא בַּר רַב, וְחִיָּיא בַּר רַב לְרַב, וַאֲמַר לְהוּ: הַנַּח לְעֵדוּת הַחֹדֶשׁ דְּאוֹרַיְיתָא, וְקִיּוּם שְׁטָרוֹת דְּרַבָּנַן.

Rabbi Abba **said to** Rav Safra: That mishna **was difficult for me** to understand **as well, and I asked Rav Yitzḥak bar Shmuel bar Marta** about **it, and Rav Yitzḥak** asked **Rav Huna, and Rav Huna** asked **Ḥiyya bar Rav, and Ḥiyya bar Rav** asked **Rav, and** Rav **said to them: Leave** the case of **testimony** to sanctify **the month, as** it is mandated **by Torah** law,[N] and the guidelines are more stringent, **and** the requirement of **ratification of documents is** mandated **by rabbinic** law,[HN] where the guidelines are more lenient. In that case a witness can become a judge.

HALAKHA

A witness can become a judge – עֵד נַעֲשֶׂה דַּיָּין: If a witness testifies in a certain case, he may not also serve as judge in that case, even in monetary cases. If he witnessed the incident but did not testify, he may serve as judge in that case, even if his ruling is influenced by what he saw, in accordance with the opinion of Rabbi Tarfon (*Makkot* 7a; see *Kesef Mishne*). According to *Tosafot* and the Rosh, even if he did not testify he may not serve as a judge in capital cases, in accordance with the opinion of Rabbi Akiva. However, in matters involving rabbinic law, a witness may serve as a judge (Rambam *Sefer Shofetim*, *Hilkhot Edut* 5:8; *Shulḥan Arukh*, *Ḥoshen Mishpat* 7:5).

If three people saw the new moon – רָאוּהוּ שְׁלֹשָׁה: If three members of the court saw the new moon after sunset on the twenty-ninth of the month, they seat two other judges with one of them, and the two original judges testify before the three judges, who proceed to sanctify the month (Rambam *Sefer Zemanim*, *Hilkhot Kiddush HaḤodesh* 2:9).

And the requirement of ratification of documents is by rabbinic law – וְקִיּוּם שְׁטָרוֹת דְּרַבָּנַן: Since the requirement to ratify documents is an ordinance instituted by the Sages, the Rema ruled in several cases that a document may be ratified by a single Torah scholar or expert judge, as, in matters of rabbinic law, he has the authority of a tribunal of three laymen (Rambam *Sefer Shofetim*, *Hilkhot Edut* 6:1; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:4).

BACKGROUND

Sanctification of the month – קִידּוּשׁ הַחוֹדֶשׁ: Sanctification of the month is the process of judicial deliberation and the declaration issued by the ordained court announcing the beginning of a new month. In ancient times, when the new month was determined according to the testimony of witnesses, people who saw the new moon appeared before a central court comprised of members of the Great Sanhedrin to testify. Their testimony was examined, and if it was accepted by the court the new month would be announced and sanctified. Opinions are divided among the *tanna'im* as to whether only a New Moon following a month of twenty-nine days was formally sanctified on the thirtieth day, or whether the New Moon following a month of thirty days was also formally sanctified on the thirty-first day.

The moon's monthly cycle is slightly more than twenty-nine-and-a-half days. In the Talmud, unless stated otherwise, a month consisted of twenty-nine days. Because of this inconsistency, it was frequently necessary to add an additional day to the month. During the long period in antiquity when the Hebrew calendar was established by the court based on the testimony of witnesses who had seen the new moon, the addition of an extra day to a month was determined by their testimony. If the moon was sighted on the night after the twenty-ninth day of the month, the next day was declared the first day of the following month. If, however, the moon was not sighted that night, or if witnesses to the new moon did not appear in Jerusalem to testify the following day, an extra day was added to the previous month, rendering it a month of thirty days. In that case, both the thirtieth and the thirty-first day were celebrated as the New Moon. Since the fourth century CE the Jewish calendar has operated on a fixed astronomical system in which, as a rule, months of twenty-nine days alternate with those of thirty days.

NOTES

Leave the case of testimony to sanctify the month, as it is by Torah law – הַנַּח לְעֵדוּת הַחֹדֶשׁ דְּאוֹרַיְיתָא: Various explanations were provided for the fact that a witness cannot become a judge. Some *ge'onim* write that this is a stringency applicable specifically to the sanctification of the month, as the Festivals are determined based on that sanctification, which therefore could have ramifications involving *karet*, e.g., eating on Yom Kippur, or eating *ḥametz* on Passover. In monetary matters there is no similar requirement. Most commentaries, however, reject that distinction. Some explain that the fact that a witness cannot become a judge is a Torah decree based on the verse: "And the two men…shall stand before God" (Deuteronomy 19:17; see *Tosafot* and Ritva). Others explain that all testimony must be subject to being rendered false, conspiring testimony. If the witnesses were also the judges, they would not allow their testimony to be refuted (see *Tosafot*). Other *ge'onim* explain that the witnesses must testify while standing, and judges are required to sit. Some later authorities ask, based on that understanding, how can a witness ever become a judge? The Gemara answers that it is clear that the requirement for the witnesses to testify while standing does not invalidate testimony given while seated after the fact, as there are cases, e.g., a witness who is a Torah scholar, where it is permitted for the witness to testify while seated (Rashash).

And the requirement of ratification of documents is by rabbinic law – וְקִיּוּם שְׁטָרוֹת דְּרַבָּנַן: Most commentaries understand that by Torah law there is no requirement to ratify a document; the document itself is sufficient unless there was a mistake or a forgery. On that basis, Rav Hai Gaon and others write that if one of the judges who participated in the ratification is disqualified, the ratification is not voided, because it is a requirement only by rabbinic law (see HALAKHA). However, the Rambam apparently explains to the contrary, that the ratification of documents is a leniency. By Torah law, full-fledged testimony is required with regard to the loan itself, and testimony written in a document is ineffective. The Sages instituted that the judges may rely on ratification of the document through authentication of the signatures (see *Shita Mekubbetzet*).

אָמַר רַבִּי אַבָּא אָמַר רַב הוּנָא אָמַר רַב: שְׁלֹשָׁה שֶׁיָּשְׁבוּ לְקַיֵּים אֶת הַשְּׁטָר, וְקָרָא עֲרָעָר עַל אֶחָד מֵהֶן, עַד שֶׁלֹּא חָתְמוּ – מְעִידִין עָלָיו וְחוֹתֵם, מִשֶּׁחָתְמוּ אֵין מְעִידִין עָלָיו וְחוֹתֵם.

§ **Rabbi Abba said** that **Rav Huna said** that **Rav said:** In the case of **three** judges **who convened** as a tribunal **to ratify a document, and** a person **raised a challenge** with regard to the fitness **of one of them**[N] to serve as a judge,[H] thereby preventing ratification of the document, **as long as they did not** yet **sign** the ratification, the other two judges **may testify about** the acceptability of the judge whose fitness was challenged, and **he** then **signs** the ratification. However, **once they signed** the ratification, **they may no** longer **testify about his** fitness **and** thereby enable him to **sign** the ratification. Once they sign, their testimony is no longer impartial because there is a conflict of interest as they seek to avoid being associated with a tribunal tainted by an unfit judge.

עֲרָעָר דְּמַאי? אִי עֲרָעָר דְּגַזְלָנוּתָא

The Gemara elaborates: With regard to **a challenge of what** sort was this *halakha* stated? **If** it was **a challenge** based on an allegation **of theft,**

NOTES

And a person raised a challenge with regard to the fitness of one of them – וְקָרָא עֲרָעָר עַל אֶחָד מֵהֶן: Rashi and others explain that after signing the ratification the two judges can no longer testify in support of their colleague due to a conflict of interest, as they do not wish to have their signature on the ratification rendered false. Rabbeinu Ḥananel, however, explains that their conflict of interest is due to the fact that it would become apparent that there was never a legitimate court session, as one of them was not fit to judge. The result is that any rulings that they issued are null and void. According to this opinion, not only is the testimony of the judges ineffective, but even if other witnesses testify after the ratification was signed that the judge is fit, the ruling is similarly null and void.

HALAKHA

And a person raised a challenge with regard to the fitness of one of them to serve as a judge – וְקָרָא עֲרָעָר עַל אֶחָד מֵהֶן: If three judges convene to certify a document, and two witnesses testify that one of the judges is guilty of a crime, e.g., robbery, and disqualified from serving as a judge, and two other witnesses testify that the judge has since repented for his crime; if the second pair of witnesses testified before the judges signed the ratification, all three judges may sign the ratification. If the judges signed the ratification before receiving the testimony that the third repented, he is not considered part of the tribunal (Rif; Rambam; based on the explanation of Rabbeinu Ḥananel). Others rule, according to Rashi's interpretation, that the two other judges cannot testify in support of the third after they signed the ratification; however, if witnesses testify that he repented, even after the judges signed the ratification, he is considered a member of the tribunal (Rambam *Sefer Shofetim*, *Hilkhot Edut* 6:7; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:26).

Perek **II**
Daf **22** Amud **a**

תֵּרֵי וּתְרֵי נִינְהוּ, אִי עֲרָעָר דְּפָגֵם מִשְׁפָּחָה – גְּלוּיֵי מִלְּתָא בְּעָלְמָא הוּא! לְעוֹלָם אֵימָא לָךְ: עֲרָעָר דְּגַזְלָנוּתָא, וְקָאָמְרִי הָנֵי: יָדְעִינַן בֵּיהּ דַּעֲבַד תְּשׁוּבָה.

the witnesses who testified that he is unfit and the judges who testified that he is fit **are two** witnesses **and two** witnesses[NH] who contradict them, and in that case, the allegation of theft is not completely eliminated. **If** it was **a challenge** based on an allegation of **flawed lineage,**[H] e.g., he is a Canaanite slave and therefore unfit to serve as a judge, that **is a mere revealing of a matter**[N] that will ultimately be revealed in any case and does not require actual testimony. Therefore, there is no conflict of interest preventing the judges from asserting his fitness after they signed. The Gemara concludes: **Actually, I will say to you** that it was **a challenge** based on an allegation **of theft, and these** judges **say: We know about him that he repented** and is now fit to serve as a judge. In that case, their testimony does not contradict the original testimony that he was guilty of theft.

NOTES

They are two witnesses and two witnesses – תֵּרֵי וּתְרֵי נִינְהוּ: Rashi explains that since there are two pairs of witnesses that contradict each other, the status of the judge remains uncertain, and the testimony in support of the judge whose fitness was challenged is ineffective. Rabbeinu Ḥananel explains that on the contrary (see *Tosafot*), since this is a case of contradictory testimonies, the judge retains his presumptive status of fitness. In his opinion, the Gemara's question is: If two pairs of witnesses contradict each other, even after they signed the document of ratification, shouldn't the two judges be able to testify with regard to the judge's fitness and retroactively establish that he was fit from the outset? Most commentaries agree with Rashi's opinion, and the Rif adds that in this case of uncertainty there is a confrontation between two presumptions. One, the presumption establishing the money that the lender is seeking to collect in the possession of the borrower, and two, the judge's presumptive status of fitness. Therefore, the judge remains unfit. The early commentaries extensively discuss whether one relies on presumptive status in all cases where it is confronted by the possession of money, or does it take precedence only in specific cases?

That is a mere revealing of a matter – גְּלוּיֵי מִלְּתָא בְּעָלְמָא הוּא: Since flawed lineage, as opposed to lack of fitness due to transgression such as theft, is a matter of public record, the testimony of the judges and, all the more so, of independent witnesses merely reveal a matter that is already known and is not considered full-fledged testimony. The Ritva adds that the presumptive status of most families, unless proven otherwise, is they are of unflawed lineage; therefore, by testifying that he is of unflawed lineage, they are merely restoring his presumptive status. The Ramban explains that because the witnesses are testifying about the lineage of the entire family, there is no direct testimony with regard to the judge.

HALAKHA

They are two witnesses and two witnesses – תֵּרֵי וּתְרֵי נִינְהוּ: If two witnesses testify that a person is disqualified from serving as a witness due to a transgression that he performed, and two witnesses contradict their testimony, he is disqualified from serving as a witness, due to the uncertainty, until witnesses testify that he repented, in accordance with the explanation of Rashi and the ruling of most authorities (Rambam *Sefer Shofetim*, *Hilkhot Edut* 12:3; *Shulḥan Arukh*, *Ḥoshen Mishpat* 34:28).

A challenge based on an allegation of flawed lineage – עֲרָעָר דְּפָגֵם מִשְׁפָּחָה: If the qualifications of a judge are challenged based on an allegation of flawed lineage, e.g., he is a slave or a gentile, and after the two other judges signed the ratification it is discovered that he is in fact qualified, he may add his signature to the ratification, as the testimony which dismissed the challenge against his qualifications merely revealed the matter of his lineage (Rambam *Sefer Shofetim*, *Hilkhot Edut* 6:7; *Shulḥan Arukh*, *Ḥoshen Mishpat* 46:27).