

In which day

באיזה יום –

OVERVIEW

Our גמרא cites a משנה that the עדים are asked seven חקירות, including which date (of the month) and which day of the week the incident took place. It would seem to be a duplicity, for once we know the day of the month we (presumably) know the day of the week. תוספות expands on this question and answers it.



תוספות asks:

תנימה כיון דכבר כיוונו יום אחד לחדש¹ למה למשיילינהו באיזה יום –

It is astounding! Since their testimony already coincided to the same day of the month, why do we ask them which day of the week -

והלא אפילו לא כיוונו איזה יום –

For even if their testimony will not coincide as to which day (of the week) the incident took place, it will not matter, for concerning their subsequent testimony as to the day of the week -

הו להו חוזרין ומגידין² ואין יכולין לחזור בהם³ אחר כדי דבור⁴ –

They will be considered as recanting their testimony and they cannot lawfully recant their testimony after the period of a דיבור. It seems that in any event this question (of באיזה יום) is irrelevant; whether they testify as to the same day (of the week) or not, since they offered the same date (of the month) their testimony is upheld. The question is why do we ask them on which day of the week did it occur.

תוספות answers:

ויש לומר כיון דז' חקירות ילפינן מקראי⁵ בפרק היו בודקים (סנהדרין דף מ, א) –

And one can say; since these seven חקירות are derived from פסוקים as the גמרא states in פרק היו בודקים -

צריך שלא יכחישו זה את זה ושלא יכחישו את עצמן –

¹ תוספות assumes that they agree as to the date; for otherwise their testimony is immediately contradicted. See however the second answer of תוספות.

² If both עדים testified that the incident took place on the second of the month, which was (for instance) a Monday and when questioned as to the day of the week, one עד (or both for that matter) testified it happened on Tuesday; we will disregard the latter testimony. Once they said it happened on the second (which was a Monday) they can no longer claim it happened on a Tuesday.

³ See 'Thinking it over # 1.

⁴ כדי דיבור is the time that it takes to say שלום עליך רבי. Once this time elapsed after they concluded their testimony they can no longer change their testimony. We consider only their initial testimony.

⁵ The גמרא derives it from the פסוקים of (יג, טו) [ראה] (דברים) (שם יט, יח) and (שם יט, יח) (דברים) [שופטים] (יז, ד).

It is necessary to ask all these חקירות in order that the עדים do not contradict each other, and that they should not contradict⁶ themselves.⁷

תוספות offers another answer:

אי נמי נפקא מינה לאחד אומר בב' בחודש ואחד אומר בג' כדפרישית⁸:

Or you may also answer; the relevance of באיזה יום will be apparent when one עד testifies that it happened on the second of the month and the other testifies on the third, as I previously explained. If they subsequently agreed to the day of the week, their testimony is upheld, for we assume that one of the witnesses was not aware of the עיבורו (חסרונו) של חודש. If however they disagree as to the day of the week as well, then their testimony is disqualified (because they disagreed as to the date of the month [and the weekday]).

SUMMARY

There are two (alternate) purposes for asking 'which day'. If the עדים contradict each other [or themselves] concerning [the date and] the day, their testimony is disqualified. Alternately if the dates of the month are off by one day the עדות can be upheld if they agree on the day of the week.

THINKING IT OVER

1. תוספות asks that if they agreed to the date they cannot retract their testimony concerning the weekday¹⁰. Seemingly the עד could retract and claim that he was mistaken concerning עיבורו של חודש!¹¹

2. If the עד changes his testimony¹² (by the השבוע יום) how do we consider his testimony; do we follow his last statement or do we consider both statements?¹³

⁶ It is apparent from תוספות that if they contradict each other (or themselves) concerning the weekday (even if they agree on the date) the עדות is nullified (since the seven חקירות is מדאורייתא).

⁷ It would therefore seem that the rule of אינו חוזר ומגיד does not apply until after the end of the חקירות; however during the חקירות the עד can be חוזר ומגיד. See ה"ב מ"ת אות צב. See "Thinking it over # 2.

⁸ [It may be that] according to this answer if their testimony coincides concerning the date it is not necessary to ask them concerning the day of the week.

⁹ זה יא,ב בתוספות ד"ה זה. There תוספות explained that asking באיזה יום is tantamount to asking if they are aware of עיבורו של חודש.

¹⁰ See footnote # 3.

¹¹ See מהרש"א הארוך, צל"ח, פנ"י, אור החמה וכו'.

¹² See footnote # 7.

¹³ See דבר שמואל.