

On The Disqualification of Personal Testimony

By Rabbi Dovid Markel

In Maimonides' Laws of Testimony (12:2) he codifies the law that an individual cannot be considered guilty based on their own testimony:

“A person is not disqualified as a witness because of a transgression on the basis of his own testimony. What is implied? A person comes to court and admits that he stole, robbed, or lent money at interest. Although his own statement is sufficient to obligate him to make financial restitution, it does not disqualify him as a witness. Similarly, if he states that he ate meat from an animal that was not slaughtered in a ritual manner or had relations with a woman forbidden to him, he is not disqualified until two witnesses testify concerning the transgression. The rationale is that a person is not deemed as wicked on the basis of his own testimony.”

In this law Maimonides expresses the clause that a person cannot testify in a matter that pertains to their person.¹

The source of this law is Talmud (Sanhedin 9b) concerning whether an individual can testify on something that is self-incriminating:

R. Yosef said: If a man says that so and so committed sodomy with him against his will, he himself with another witness can combine to testify to the crime. If, however, he admits that he acceded to the act, he is a wicked man [and therefore disqualified from acting as witness] since the Torah (Shemot 23:1) says: do not place your hand with a wicked person to be a false witness. Raba said: Every man is considered a relative to himself, and no one can incriminate himself.

Because a person cannot testify on their own person, they are not believed to make incriminate themselves.²

The Reasoning

In the reasoning as to why a person cannot testify about themselves there are two reasons that are postulated.

¹ See Talmud Bava Metzia 3a that in matters of money a person own admission carries the weight of a hundred witnesses. See however Rashi, Talmud Yevamoth 25b that states that the above clause—that one's testimony is not accepted—does not apply to matters of money. Ketzot, (Choshen Mishpat 34:4) explains that this is because in money the individual *creates* new debt with his admission, but is believed—per say—that there was an existent debt. See though the other opinions discussed there.

² The Kovetz Ha-arot 22:1 adds an additional reason predicated on the sentence “Every man is considered a relative to himself, and no one can incriminate himself,” which implies that there are two disparate reasons. A person cannot testify that they are a *rasha* he explains because of the inherent logical contradiction. If the person is believed that they are a *rasha* that creates a situation where they disqualified from testifying and therefore their testimony is inadmissible.

- 1) This exclusion is a derivative of the law that a relative cannot testify. The Talmud (Sanhedrin 27b) derives from the verse (Devarim 24:16): “Fathers shall not be put to death because of sons, nor shall sons be put to death because of fathers,” that a relative is not believed to testify. If a person is prohibited from testifying concerning a relative, he is for sure precluded from testifying about his closest relative—himself.³
- 2) The exclusion is derived from the verse (Devarim 19:15) “By the mouth of two witnesses, or by the mouth of three witnesses, shall the matter be confirmed.” The entire definition of testimony is that a *separate* party *confirms* that an act was done. By its very description the doer and the testifier must be two distinct units.⁴

While the reasoning that drives this law seems inconsequential, there is a practical implication whether the marginalization is due to relation or to a deficit in the very definition of testimony.

The Implication

It is the difference between whether the testimony is a *bad* testimony or not considered a testimony to begin with.

The Talmud (Makot 5b) derives from the above verse (Devarim 19:15) “By the mouth of two witnesses, or by the mouth of three witnesses, shall the matter be confirmed,” that a testimony that is partially invalidated is considered completely annulled.

This is understood from the verses’ mention of the seemingly superfluous statement that the testimony is confirmed by three witnesses; surely if two witnesses are valid, three are as well.

Rather, this teaches us that the witnesses are viewed as a cohesive *unit* viewed as a single body of testimony—if part of the unit is disqualified the entire unit is ineligible.

In the words of Maimonides (Laws of Testimony 5:3):

Devarim 19:15 states: "On the basis of the testimony of two witnesses or on the basis of the testimony of three witnesses...," establishing an equation between three witnesses and two witnesses. Just as when there are two witnesses, if one of them is discovered to be a relative or unfit to deliver testimony, the entire testimony is nullified; so, too, if there are three - or even 100 - witnesses and one of them is discovered to be a relative or unfit to deliver testimony, the entire testimony is nullified. This applies both in matters involving financial law and in cases involving capital punishment.

³ See Aruch on the section of Karov as well as the reasoning in Rashi, Sanhedrin 9b.

⁴ Shut HaRaBad Sec. 149. See as well Maimonides (Laws of Courts 18:6) that seems to posit another reason that we suspect that the reason that the person testify about himself is depressed and wishes to inflict pain on himself. However, this does not seem to be an entirely separate reason than the first reason that suggests that it because of relation—the problem with a relative is because of the internal bias (Bava Batra 159a, Kovetz Shiurim *ad loc* 424. See however, Tzafnat Pa-aneach, Klalei Hatorah Vhamitzvot Vol. 2 Sec. Kerovim Le-edut), which is extant in this situation as well towards a negative outcome.

Accordingly can be understood the implication to our scenario. In a situation where a group of witnesses came to testify concerning the person's guilt and one of the witnesses was the person *himself*, it makes a monumental difference whether it is considered *unfit testimony* or not a testimony *at all*.

If it is *unfit testimony* then the entire testimony is disqualified as per the above Talmudic clause. However, if it is not considered testimony *at all*, then the fact that the individual himself testified has no implications of the rest of testimony.