Who can act as a witness, and who can not?

As we have explained yesterday Jewish Law requires the presence of two adult male witnesses in a marriage ceremony.

Not any man is competent to act as a witness.

Some illustrations:

Biblical Law disqualifies the testimony of a relative. This is learned from the verse in Deut. 24:16 which describes capital punishment “Parents are not to be put to death for their children…. nor children put to death for their parents”

Jewish Law explains that in the same way relatives are not competent to testify in a criminal case, they are disqualify to testify in any other case, civil, commercial, etc. Now, once we know that relatives are disqualified as witnesses, we need to clarify what is the degree and nature of the closeness which would disqualify a person from bearing testimony in a wedding ceremony. For example: is a second or a third cousin considered a close relative? Is a brother in-law considered a relative to this effect? etc. The law that explains which relatives are qualified and which are disqualified as witnesses is very complex and they can be found in the Shulhan ‘Arukh, Hoshen Mishpat chapter 33).

Three examples:

1. The Mishna in Sanhedrin 3:4 lists as disqualified witnesses the following relatives: father, brother, uncle, brother-in-law, stepfather, father-in-law, and their sons and sons-in-law. The rule was extended to cover nephews, cousins and many other in-laws.

2. There is another important rule known as “ishto kegufo”,

lit. “his wife, as himself”. Which means that the husband of a relative is disqualified as his wife is. For example: if the wife is the bride’s sister or cousin, her husband cannot act as a witness, even though he is not a blood relative of the bride.

3. Witnesses who are related to one another are incompetent to testify together, even when they are not related to the bride and groom.

Aside from relatives Jewish Law also disqualifies a man to act as a witness until he reaches the age of 13. In some other legal cases, to buy o sell real estate for example, the minimum age required by Jewish Law is 20 (MT, Edut 9:6).

The wicked (resha’im) are incompetent to act as witnesses. This includes: criminals, swindlers, perjurers and informers. Individuals who have committed capital offenses, thieves and robbers, usurers, tricksters, gamblers and gamesters, as well as idlers who are suspected of spending their leisure in criminal activities (see more details in Shulḥan ‘arukh Ḥoshen Mishpat Chapter 34).

A man who has no basic knowledge of Tora (Bible) or Mishna, nor of civilized standards of conduct (derekh erets), is presumed to be idle and disorderly and therefore is considered to be incompetent as a witness. This presumption, however, is rebuttable by evidence that, notwithstanding the man’s illiteracy, his conduct is irreproachable.

A person called to attest or testify together with another person whom he knows to be incompetent as a witness must decline to testify, since the incompetence of any one witness invalidates the testimony of the whole group of witnesses.

This is why in a marriage ceremony the Rabbi will very carefully select two witnesses and indicate to the groom to appoint them “to the exclusion of all others”, i.e., other people who are incidentally witnessing the ceremony and who might not qualify as witnesses.