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Horayos Daf 3

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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Individual Relying on the Court

[Rav Yehudah had quoted Shmuel (above 2b) who says that the Mishna follows Rabbi Yehudah, but the Sages say that if the nation did not follow the ruling, an individual who relied on the court is obligated in a chatas.]

Rav Nachman says in the name of Shmuel: The Mishna (which stated that if an individual sinned, relying on the court, he is exempt from bringing a chatas) is in accordance with Rabbi Meir, but the Sages say that if an individual relied on the court, he is obligated to bring a chatas.

The Gemora asks: Which statement of Rabbi Meir and which of the Sages?

The Gemora answers: It was taught in a braisa: If they had ruled (mistakenly – to transgress a prohibition that is punishable with kares) and they acted accordingly, Rabbi Meir exempts them and the Sages maintain that they are liable. The Gemora analyzes the braisa: Now, who are those that acted? If it is referring to the court, what would be the reason of the Sages who maintain that they are liable (to bring the communal-error bull)? Surely it was taught in a braisa: I might have thought that a court who issued an erroneous ruling and acted accordingly are liable, it was therefore taught: *The congregation, and they transgress* – which indicates that the ‘transgression’ depends on the congregation (it is they who must sin in order for there to be liability) and the ‘ruling’ depends on the court. Rather, it must be that the meaning is that the court ruled and the majority of the congregation acted accordingly. But then the question arises: What is the reason why Rabbi Meir exempts them? Rather, it must be concluded that the court ruled and the majority of the congregation acted accordingly, and the point of issue between

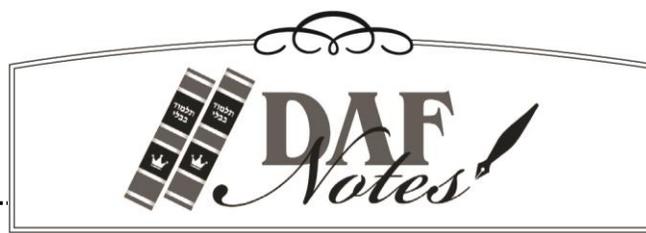
them is the following: Rabbi Meir holds that an individual who acted based upon the ruling of the court is exempt from a chatas, and the Sages hold that an individual who acted under the authority of the ruling of the court is liable!

Rav Pappa, however, said: All agree that an individual who acted based upon the ruling of the court is exempt from a chatas, but they disagree whether the court is counted to complete the majority of the congregation (in order to be liable for the communal-error bull; the case is where exactly half the congregation sinned and members of the court as well). The Sages hold that the court is counted to complete the majority of the congregation, and Rabbi Meir maintains that the court is not to be counted to complete the majority of the congregation.

Alternatively, you can say that the case is that the court ruled and a majority of the congregation acted accordingly, and who are these Sages? It is Rabbi Shimon, who stated that both the congregation and the court bring the communal-error bull.

Alternatively, you can say that the case is that the court ruled and one tribe acted in accordance with the ruling of its own court, and who are these Sages? It is Rabbi Yehudah, who stated in a braisa: A tribe that acted on the authority of a ruling of its court, that tribe is liable to bring the communal-error bull.

Alternatively, you can say that the case is that the court ruled and the sin was committed by six tribes, who comprise a majority of the congregation, or by seven tribes although they did not comprise a majority of the congregation, and who are these Sages? It is Rabbi Shimon ben Elozar, for it was taught in a braisa: Rabbi Shimon ben Elozar said in his (Rabbi Meir’s) name: If the sin was committed by six tribes, who comprise a majority of the congregation, or by seven tribes although they did not



comprise a majority of the congregation, they are liable to bring the communal-error bull.

Rav Assi said: In the case of an erroneous ruling of a court, the majority of the inhabitants of *Eretz Yisroel* are to be taken into account (and not those living in the *Diaspora*). He cites a Scriptural source to prove this. (3a)

Inquiries

The *Gemora* notes: It is obvious that in a case where a majority of the congregation sinned (based upon the authority of a ruling of the court) and has been reduced (for some of them died before the bringing of the *korban*) to a minority – this is a matter of dispute between Rabbi Shimon and the Sages (where below (10a) they argue regarding a commoner sinned and then became the *Kohen Gadol* or the *Nasi*). What, the *Gemora* asks, is the law where a minority sinned, and then they became the majority (for some of those who did not sin died)? Do Rabbi Shimon and the Sages differ in this case as well? Rabbi Shimon, who follows the status of the person at the time of the awareness of the sin, would hold that they are liable (to bring the communal-error bull, for at the time they became aware of the sin, they were the majority), and the Sages, who follow the status of the person at the time of the transgression, would exempt them (for at the time that they sinned, they were the minority), or not?

The *Gemora* questions the inquiry: How can the two cases be compared? It was only heard that Rabbi Shimon followed the time of the awareness as well in a case where both the awareness and the transgression were during the time that he was liable for a *chatas* (i.e., if he realized that he sinned before he became the *Kohen Gadol* or *Nasi* – he therefore is subject to a *chatas*); however, that he follows the time of the awareness alone, have you ever heard, for if this would be so, they (the *Kohen Gadol* or *Nasi*) should be required to bring their (special) offering according to their present status (for although they sinned as a commoner, they now have an elevated status; since Rabbi Shimon maintains that they are not liable for any *korban*, this proves that the time of awareness and the time of the

transgression are critical factors in determining his *chatas* liability). Rather, it must be concluded that Rabbi Shimon requires both the time of the transgression and the time of its awareness (and therefore in our case, they would not be subject to the communal-error bull, for although they were a majority at the time of awareness, they were the minority at the time the sin was committed).

They inquired: What is the *halachah* where the court ruled that *cheilev* (forbidden fats) was permitted and a minority of the congregation acted upon their ruling, and then the court reversed their decision, and again they erroneously ruled that it was permitted, and another minority acted upon their ruling? [Do these two minorities combine to be regarded as a majority, and the court would be liable to bring a communal-error bull, or not?]? Do we say that since they were two different times of awareness, they do not combine, or since both rulings pertained to *cheilev*, they do combine?

And if you will decide that, since both rulings pertain to *cheilev*, they do combine, what would be the law where one minority sinned by eating the *cheilev* on the abomasum (based upon the court's ruling), and a different minority ate the *cheilev* on the small intestines? Do we say that here definitely, since the prohibitions are derived from two distinct verses, they do not combine, or, perhaps, since both rulings pertained to *cheilev*, they do combine?

And if you will decide that, since both rulings pertain to the name *cheilev*, they do combine, what would be the law where one minority sinned by eating *cheilev* (based upon the court's ruling), and a different minority ate blood? Do we say that here definitely, since these are two distinct prohibitions and they are not similar to each other (e.g., the prohibition against eating blood applies to both domestic animals and wild animals, whereas the prohibition against eating blood applies only to domestic animals) they do not combine, or perhaps, since the same kind of sacrifice (an ordinary *chatas*) has to be brought in both cases, they do combine?

And if you will decide that, since in both rulings - the same kind of sacrifice (*an ordinary chatas*) has to be brought, they do combine, what would be the law where one minority sinned by eating *cheilev* (*based upon the court's ruling*), and a different minority committed idolatry? Do we say that here definitely, since in this case, the prohibitions and the sacrifices are not the same, they do not combine, or, perhaps, since the punishment for both prohibitions is that of *kares*, they are to be combined. The *Gemora* leaves these questions unresolved.

They inquired further: What is the law where a court ruled that *cheilev* was permitted and a minority of the congregation acted accordingly, and the members of that court died and another court that was appointed also ruled that *cheilev* was permitted, and another minority acted in accordance with that ruling?

The *Gemora* notes: According to the one who maintains that the court brings the sacrifice (*the communal-error bull*), no question arises, for, surely, they are no longer in existence. The question, however, arises according to the one who holds that the congregation brings the sacrifice. The congregation, surely, exists (*and therefore the two minorities should combine*); or perhaps, it is necessary to have the awareness of the court that ruled? The *Gemora* leaves this question unresolved. (3a – 3b)

Unanimous Ruling

Rabbi Yonasan said: Where a hundred judges sat down to Rule, they are not liable (*for ruling erroneously*) unless all of them ruled (*but if even one of them was silent, they are not liable*). He cites a Scriptural source for this. Rav Huna the son of Rav Hoshaya said: It is logical to understand the verse like that, for throughout the Torah there is an established rule that a majority is like all of it, and yet here it was written: *the entire congregation*. It must be concluded that even if there were a hundred judges (*they all must rule that way*).

The *Gemora* asks from our *Mishna*: If the court ruled and one of the judges or a student who is fit to rule knew that they erred, but he followed their ruling, whether he did it with them, after them, or without them, he is obligated in an individual *chatas*

sacrifice since he didn't rely on their ruling. From this it follows that it is only that person who is liable (*for he is learned*), but someone else is exempt; but why? The ruling, surely, was not finalized (*for one of them did not rule together with them*)!?

The *Gemora* answers: Here it is a case where that person nodded with his head (*in agreement; although he personally disagreed with the ruling*).

The *Gemora* asks from the *Mishna* below: Come and hear: If the court issued a ruling, and one of them knew that they erred and he said to them, "You are mistaken," they are exempt. It may be inferred from there that had he remained silent, they would have been liable and their decision would have been regarded as finalized! But why? Surely, they did not all rule!?

The *Gemora* answers: It may be answered that here also it is a case where he nodded with his head.

Rav Mesharsheya challenged Rabbi Yonasan from a *braisa*: Our Rabbis relied upon the words of Rabban Shimon ben Gamliel and upon the words of Rabbi Elozar the son of Rabbi Tzadok who said: No decree may be imposed upon the public unless a majority of the people can comply with it. And Rav Adda bar Abba said: What is the Scriptural proof for this view? *You are cursed with a curse, yet you rob me, even this entire nation*. Now, surely, it is written here: *this entire nation*, and yet a majority is regarded as all of them!? This is indeed a refutation of the opinion of Rabbi Yonasan. This is a refutation.

The *Gemora* asks: Why then did the Torah write: *the entire congregation*? It is to teach us the following: Where they (*all the judges*) are all present the decision is valid; but if not, their decision is invalid.

Rabbi Yehoshua ben Levi said: Even if there are ten judges judging a case, the chain (*of judging incorrectly*) hangs on the neck of all of them.

The *Gemora* asks: Is not this obvious (*they are all equally responsible*)?



The *Gemora* answers: It needed to be stated regarding the case of a disciple who sits in the presence of his teacher (*and remains silent when he issues an erroneous decision; he is also responsible*).

When a case was submitted to Rav Huna he used to gather ten scholars from the *Beis Medrash*. He said, "Now, each of them might carry a chip from the beam (*we will all share in the punishment if we issued an erroneous judgment*)."

When a *tereifah* (*an animal with a physical defect that will cause its death; it is forbidden to be eaten even if it would be slaughtered properly*) was submitted before Rav Ashi for inspection, he would gather all the butchers of Masa Mechasya. He said, "Now, each of them might carry a chip from the beam (*we will all share in the punishment if we issued an erroneous judgment*)."

Mishna

If the court gave a decision and they knew that they had erred, and they retracted, whether before they brought their atonement offering or had not yet done so, if a person acted on their decision, Rabbi Shimon exempts him (*from bringing a korban, for he relied upon the court's initial ruling*), but Rabbi Eliezer declares that it is doubtful (*if he relied upon himself or the court; and therefore he must bring an asham taluy*). What is it that is doubtful? If he remained at home he is liable, but if he went overseas he would be exempt (*for it was not his fault that he did not hear about the court's reversal*). Rabbi Akiva says: I admit that such a person is closer to being exempt than being liable. Ben Azzai said to him: Why is this one different from the one who stayed home? It is because the one who stayed home could have heard (*if he would have inquired*), but this one could not have heard.

If the court rendered a decision which voided an entire body of a law, saying, for example, "There is no menstruation law (*niddah*) in the Torah; there is no *Shabbos* in the Torah; there is no idolatry in the Torah, they are exempt (*from the communal-*

error bull). If they gave a decision abolishing part and sustaining part, then they are liable. What is the case? If they said that there is a law of a menstruant in the Torah, but if a man cohabits with her while she maintains a *shomeres yom kneged yom* – (*this is the law during these days: If she saw blood only one day, she must observe one day in cleanness, corresponding to the day of uncleanness, i.e., she immerses on the day following the day of uncleanness, and if she does not see blood on this day, then she is clean in the evening.*) he is exempt; there is *Shabbos* in the Torah, but one carrying from a private domain to a public one is exempt; idol worship is forbidden in the Torah, but one who merely bowed is exempt - they are liable, for it is written: *And a matter becomes hidden, a matter (part of it), but not the entire thing.* (3b)

Court's Reversal

Rav Yehudah said in the name of Rav: What is Rabbi Shimon's reason? It is because he acted with permission of the court.

There were those that said that Rav Yehudah said in the name of Rav: Rabbi Shimon used to say that when a ruling of the court has spread to a majority of the congregation, if an individual acted according to it (*even if the court has since then reversed itself*), he is exempt; for a court's ruling was given only for the purpose of distinguishing between one who acts inadvertently and one who acts deliberately (*so if he relied on the court, even though they had subsequently reversed their decision, he has still acted inadvertently, and one who acts inadvertently based upon the ruling of the court is exempt from a chatas*).

The *Gemora* asks on Rabbi Shimon from a *braisa*: We make a new collection (*from the congregation*) to purchase the bull for communal error and for the goats for idolatry; these are the words of Rabbi Shimon. Rabbi Yehudah said: They are purchased from the funds of the Temple treasury. Now, why (*does Rabbi Shimon exempt the individual from a chatas after the communal-error bull has been brought*)? Since a collection was made for the purchase of the sacrifices, he has obviously become aware of the court's reversal!?



The *Gemora* answers: You can say that the case is, for instance, where the collection was made without specifying its purpose.

Alternatively, you can say that he was not in town at the time of the collection.

Alternatively, you can say that Rabbi Yehudah and Rabbi Meir's opinions should be reversed. (3b)

HALACHAH ON THE DAF

Being a Dayan

The *Gemora* discusses the responsibilities of a *dayan* (judge). The Shulchan Aruch (Choshen Mishpat 10:1) exhorts a *dayan* to be patient when judging what the *halachah* is, and not to answer flippantly. A *dayan* should make 100 percent sure in his mind that this is indeed the *halachah* before *paskening*, and a *dayan* that doesn't do so is labeled a *shoteh*, *rasha* and a haughty person.

Similarly if a *dayan* compares the question that he is asked to another case, and doesn't ask a Torah scholar who is greater than him for his opinion, he too is categorized as a *rasha* that is a haughty person.

The Torah does not look favorably on a Torah scholar who is not on the level of being a *dayan*, and yet judges cases. Nor does it appreciate a scholar of high caliber who abstains from becoming a *dayan*. However, if he abstains due to the fact that there is another *dayan* in town, then he is to be commended.

A *dayan* should always try to make a compromise rather than to judge the case, even if he is one hundred percent sure of the *halachah*.

A *dayan* has an obligation to treat each case brought before him, even if it involves a negligible amount of money, with his full attention and seriousness.

DAILY MASHAL

Willing to do and Knowing what to do

Without an understanding of the practice of halacha, the great ideals and inspiration of the Torah are almost rendered meaningless and unachievable.

Rabbi Berel Wein writes: I think that this idea is borne out by the famous statement of the Jewish people when asked if they wished to accept the Torah. Their answer is recorded as: "We will do and we will listen." All commentators and the Talmud comment upon the apparently reverse order of this statement. People usually listen for instructions before they "do." But the simple answer is that the people of Israel realized that listening alone will be insufficient.

The great and holy generalities of the Torah are valid only if they are clearly defined, detailed and placed into everyday life activities. We have to "do" in order to be able to "listen" and understand the Torah's guidance and wishes fully. The Talmud records that a non-Jew once told a rabbi that the Jews were a "hasty and impulsive people" in accepting the Torah without first checking out its contents. But in reality, that holy hastiness of Israel was a considered and mature understanding that a Torah of ideas and inspiration alone without a practical guide to life would not last over the centuries of Jewish history.

Only those who are willing to "do" and who know what to "do" will eventually appreciate intellectually and emotionally the greatness of Torah. Only then will they be able to truly "listen" and appreciate the great gift that the Lord has bestowed upon Israel – the eternal and holy Torah.