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Sanhedrin Daf 5

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Authorization to Judge

The *Gemora* cites a *braisa*: Monetary cases are judged by three judges, but if there is one who is recognized by the public as an expert, he can judge by himself.

Rav Nachman said: A person like me can judge monetary cases by himself. And Rabbi Chiya said the same thing.

The *Gemora* inquires: Does the statement “a person like me” mean that he has learned a lot (*knowledge*) from his teachers, and he is able to reason them out on his own, and he has also obtained authorization (*from the Reish Galusa – Head of the Exile, to adjudicate monetary cases by himself*), but if he had not obtained authorization, he cannot adjudicate by himself; or perhaps, his judgment is valid even without such authorization?

The *Gemora* attempts to bring a proof from the following: Mar Zutra, the son of Rav Nachman, judged a case by himself and made a mistake in his decision. He came before Rav Yosef, and he was told: If they accepted you as their judge (*completely – that even if you err, they will not sue you for payment*), you are not liable to pay any damages. Otherwise, go and compensate the injured party. It can be inferred from here that the judgment of one, even though he was not authorized, is valid.

Rav said: Whoever wishes to adjudicate monetary cases by himself and be free from liability in case of a mistake in his decision, should obtain authorization from the *Reish*

Galusa. And Shmuel also said: Obtain authorization from the *Reish Galusa*.

It is clear that an authorization from the *Reish Galusa* here (*in Bavel*) is effective for here, and an authorization from the *Nasi* there (*in Eretz Yisroel*) is effective for there (*and he is allowed to judge*). Furthermore, the authorization received here is valid there, because the authority in Bavel is designated as a scepter (*which connotes a great degree of authority, one in which he is able to declare someone’s property as ownerless*), whereas the authority of *Eretz Yisroel* is only regarded as a legislator (*denoting a lower degree of authority*), as it was taught in a *braisa*: *The scepter shall not depart from Yehudah*. This refers to the *Reish Galusa* of Bavel who rule over Israel with a rod. And a scholar from among his descendants; this refers to the descendants of Hillel (*the Nasi in Eretz Yisroel*) who teach the Torah in public.

What, however, is the *halachah* if permission was given there? Is it effective here?

The *Gemora* resolves this from the following: Rabbah bar Chanah issued an erroneous judgment in Bavel. He then came before Rabbi Chiya, who said to him: If they accepted you as their judge (*completely – that even if you err, they will not sue you for payment*), you are not liable to pay any damages. Now, Rabbah bar Chanah did receive permission (*from the Nasi in Eretz Yisroel, and nevertheless, since he did receive permission from the Reish Galusa, it is regarded as if he did not receive permission at all, and he would be*



obligated to pay). We may infer from here that the authorization from *Eretz Yisroel* is not effective for Bavel.

The *Gemora* asks: And is the authorization from *Eretz Yisroel* not effective in Bavel!? But did not Rabbah bar Rav Huna, when quarrelling with the members of the household of the *Resh Galutha*, maintain, “I did not receive my authorization from you; I received it from my father who received it from Rav, and Rav from Rabbi Chiya, and Rabbi Chiya received it from Rebbe (*who was the Nasi in Eretz Yisroel; but evidently, that authorization is adequate to judge in Bavel!*)!?”

The *Gemora* answers: He was only trying to push them off with mere words.

The *Gemora* asks: And since the authorization (*from the Nasi*) is not effective at all (*in Bavel*), why did Rabbah bar Chanah receive authorization (*from the Nasi when he descended to Bavel*)?

The *Gemora* answers: It was effective for the cities that stood near the borders of *Eretz Yisroel*.

The *Gemora* asks: What authorization did Rabbah bar Chanah receive there?

The *Gemora* relates: When Rabbah bar Chanah was about to go to Bavel, Rabbi Chiya said to Rebbe, “My brother’s son is going to Bavel. May he issue rulings in matters of prohibitions and permissions?” Rebbe answered, “He may.” He asked further, “May he decide monetary cases?” Rebbe answered, “He may.” He asked further, “May he permit firstborn animals (*by determining that it has a blemish, it is permitted to be slaughtered; this can only be done through an expert*)?” Rebbe answered, “He may.” When Rav went to Bavel, Rabbi Chiya said to Rebbe, “My brother’s son is going to Bavel. May he issue rulings in matters of prohibitions and permissions?” Rebbe answered, “He may.” He asked further, “May he decide

monetary cases?” Rebbe answered, “He may.” He asked further, “May he permit firstborn animals?” Rebbe answered, “He may not.”

The *Gemora* asks: Why did Rabbi Chiya call Rabbah bar Chanah “my brother’s son” and Rav “my sister’s son”? And it cannot be that it was actually so, since a Master said that Aivu (*Rav’s father*), Chanah (*Rabbah’s father*), Shila, Marsa and Rabbi Chiya were all the children of Abba bar Acha Karsela of Kafri!? [*We see that Rabbah bar Chanah and Rav were both Rabbi Chiya’s brother’s sons!?*]

The *Gemora* answers: Rav was also Rabbi Chiya’s sister’s son (*on his mother’s side; Rav was the son of Rav Chiya’s brother, whose name was Aivu, and Rav was also the son of Rav Chiya’s sister whose name was Ima. Rav was the son of Rav Chiya’s half brother and also the son of Rav Chiya’s half sister*), while Rabbah bar Chanah was only his brother’s son. Alternatively, you might answer that he chose to call him his sister’s son, on account of his exceptional wisdom, as it is written: *Say to wisdom, you are my sister*.

The *Gemora* asks: Why didn’t Rebbe allow Rav to permit the firstborn animals? You cannot answer that he was not wise enough, for we just asserted that he was exceptionally wise! It cannot be answered that he was not an expert at determining what is a blemish, for Rav said: I spent eighteen months with a shepherd in order to learn precisely what a permanent blemish is and what is merely a passing blemish!?

The *Gemora* answers: Rebbe withheld that authorization from Rav as a special mark of honor to Rabbah bar Chanah (*that he would be allowed to rule on the blemishes; and Rav was respected anyway*). Alternatively, you might answer that for the very reason that Rav was an extraordinary expert in judging blemishes, he might therefore declare permissible (*to slaughter*) a permanent blemish which others would not have known about at all. Consequently, people might say that Rav permitted a certain type of



blemish and they will therefore declare permissible a firstborn animal with a passing blemish.

The *Gemora* asks: why was it necessary for Rabbi Chiya to ask Rebbe if they should be permitted to issue ruling? If they knew how, why did they need permission?

The *Gemora* answers: This was necessary due to the following incident recorded in a *braisa*: Once Rebbe went to a certain place and he saw its inhabitants kneading their dough with utensils that were *tamei*. They explained to him that a certain disciple came there and taught them that water from a marsh (*mei bitza'm*) does not make the food susceptible for *tumah*. In truth, he was referring to the liquid of eggs (*mei beitzim*), but they thought he said *mei bitza'm*. They further erred in the understanding of the following *Mishna*: The waters of Keramion and Figah River are unfit for use as purification water (*of the parah adumah – red heifer*) because they are from a marsh. They thought that since this water was unfit for purification, it likewise cannot render food liable to become *tamei*. But this conclusion is wrong, for with regard to the purification waters, spring water is required (*and not water from a marsh*), however, water from any source can prepare food to become *tamei*. The *Tanna* taught that it was at that time that it was decreed that a disciple must not issue decisions unless he was granted permission by his teacher (*who must ensure that the disciple will be understood clearly*).

The *Gemora* records a related incident: Tanchum the son of Rabbi Ammi went to Chasar, and expounded that they are permitted to soak wheat before grinding on Pesach (*for since it will be pounded immediately after the soaking, there is no concern that it will become chametz*). They asked him: Doesn't Rabbi Mani of Tzur (*your teacher*) live here, and has it not been taught that a disciple should not issue a *halachic* ruling when his teacher is nearby, unless there is a distance of three *parsaos* — the space occupied by the encampment of Israel — between them? He answered them: I did not realize that he was here.

The *Gemora* records another incident: Rabbi Chiya saw a man standing in a cemetery and asked him: Are you not the son of So-and-so who was a *Kohen*? "Yes," he answered, "but my father was a man of "raised eyes," and set his eyes upon a divorced woman, and by marrying her, disqualified his son from the *Kehunah*.

The *Gemora* notes: It is obvious that a partial authorization is effective, as has already been said (*that Rav was permitted to be a judge for monetary cases, but he was not allowed to rule on a firstborn's blemishes*). But, the *Gemora* asks, is a conditional authorization effective?

The *Gemora* proves that it is effective from that which Rabbi Yochanan said to Rabbi Shemen (*when Rabbi Shemen was leaving to Bavel*): You are authorized to judge until you return to us. (4b – 5b)

INSIGHTS TO THE DAF

Mother's Name

The Seder Hadoros (*erech: Rav Shmuel bar Marsa*) writes that he is uncertain if the name Marsa is the name of a man or the name of a woman.

In the Teshuvos Hageonim it is written: You asked regarding Yoav ben Tzeruyah – why was he called by the name of his mother? And what was his father's name? His father's name is known, for it is written (Divrei Hayamim I: 4, 14): and Serayah begot Yoav, the leader of Gei Harashim. And since his mother (*Tzeruyah*) was the sister of King David, he was called after her name.

This also explains why Rabbi Shimon ben Pazi was called after his mother's name, for she was the daughter of Rabbi Chiya, as we learned in Yevamos (65b).

Rabbah bar Chanah as well can be explained in this manner, for Chanah was the sister of Rabbi Chiya.

Rav Yitzchak bar Shmuel bar Marsa is also explained in this manner, for Marsa was the sister of Rabbi Chiya, as it was taught in Sanhedrin (5a) that Aivu (*Rav's father*), Chanah (*Rabbah's father*), Shila, Marsa and Rabbi Chiya were all the children of Abba bar Acha Karsela of Kafri.

In other Teshuvos Hageonim, it is stated like that as well that Marsa was the mother of Shmuel and the sister of Rabbi Chiya.

Rabbeinu Gershom in Bava Basra (52a) writes that Marsa is a woman's name.

The Rashbam learns that Marsa is the name of a scholar, the brother of Rabbi Chiya.

Seder Hadoros cites a Zohar that Pazi was the father of Rabbi Shimon ben Pazi, not his mother.

"The scepter will not be removed from Yehudah" (Bereishis 49:10).

HALACHAH ON THE DAF

Ruling in the Presence of one's Teacher

A disciple should not issue a *halachic* ruling in the presence of his teacher. This is one of the many *halachos* that pertain to a *talmid* (*disciple*) in regard to his *Rebbi muvhak* (*a teacher that taught him a majority of his Torah knowledge*), due to the fact that he is obligated to revere him. A *talmid* that does issue a *halachic* ruling in the presence of his teacher is liable to death.

Tosfos points out that a *talmid* may not rule within three *parsaos* of his teacher, even if his teacher gave him permission to do so. A *talmid* that is out of the range of

three *parsaos* may only rule in an unofficial manner, but to establish himself as a judge, he will not be permitted until his teacher gave him permission to do so, or when his teacher dies. (Yoreh De'ah 242:4)

Rif and Rambam explain that if the *talmid* is a *talmid chaver* - a student that did not learn most of his Torah knowledge from this teacher (Rambam's definition), then he may rule even within three *parsaos*. Rama cites an opinion that even a *talmid chaver* cannot rule in the immediate vicinity of his teacher (*ibid*).

What exactly constitutes that a *talmid* has ruled?

1) Only if an actual issue came up, but if he was merely asked his opinion on a hypothetical case then he is permitted to reply (*ibid* 242:7).

2) Only when asked a question that is a novel *halachah* to the person who asked the question, but if it's a common *halachah* that everyone knows about (*i.e. he knows that such a concept exists, but he doesn't know the ruling in his case*), then the *talmid* may answer (*ibid* 242:8).

A *talmid* may rule even in front of his teacher that something is forbidden in order to stop a person from committing a transgression, since we do not give respect to a teacher when a desecration of Hashem's Name is at stake (*ibid* 242:11).

A *talmid* that did not yet reach the level of Torah that enables him to rule and does so, is called a host of harsh names, among them *shoteh* and *rasha* (*ibid* 242:13).

A judge that drank wine may not issue rulings, unless the question is something that is explicitly written in the Torah, for example that blood may not be eaten (*ibid*). Once he is certain that the wine has left him then he may rule once again (Shach). Similarly if he is distressed, he may not rule (Bach).