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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### ***Favoritism***

Rav’s innkeeper came in front of him for a judgment. Rav asked him whether he is his innkeeper, and he answered that he is. When Rav asked why he was there, he answered that he had a case for Rav to judge. Rav then disqualified himself, since he reminded Rav of the good that he did for him, affecting Rav’s impartiality. Rav commanded Rav Kahana to handle his case instead. When Rav Kahana saw that the innkeeper was overly comfortable with him, due to his connection to Rav, Rav Kahana sternly told him that he must listen to Rav Kahana’s judgment, or else he will excommunicate him, disconnecting him from Rav. (7b – 8a)

### ***Rules for Judges***

The *Gemora* continues explaining the commands of Moshe to the judges. Moshe said *kakaton kagadol tishmaun – you shall hear a small case just as a large case*. Rish Lakish explains that a judge must treat a case of a *perutah* just as well as he treats one of 100 *maneh*. He obviously must deliberate just as well, but Rish Lakish is teaching that he must adjudicate each case in the order they are received, irrespective of their worth.

Moshe said: do not fear anyone *ki hamishpat leilokim hu – because the judgment is God’s*. Rabbi Chama the son of Rabbi Chanina says that the wicked do not only unjustly transfer money between people, but they cause God to intervene to correct their unjust transfers. Thus, the verse says that the judgment, i.e., correcting the judgment, is the responsibility of God.

Moshe told the judges that if a case is too difficult for them, they should bring it to him. Rabbi Chanina (*some say Rabbi Yoshayah*) said that this statement was too haughty, and Moshe was punished for this by not knowing the laws of inheritance until he was asked by the daughters of Tzlafchad.

Rav Nachman bar Yitzchak challenges this, since Moshe did not say that he would answer any difficult case, but rather that he would answer what he could, and otherwise, *ushmativ – I will learn it* from Hashem.

Rather, Rav Nachman bar Yitzchak says, the rules of inheritance should have been taught directly by Moshe, but the daughters of Tzlafchad showed love of the land of Israel, and therefore they merited to be the catalyst for these laws. Similarly, the punishment for desecration of Shabbos should have been taught directly by Moshe, but the *mekoshesh*, who publicly desecrated *Shabbos*, was the catalyst. These show us that Hashem arranges the world to have the righteous be the catalyst for good things, and the wicked to be the catalyst for bad things.

Moshe records that he commanded the judges, but also that he commanded the nation. Rabbi Elozar ben Simlai explains that he commanded the nation to fear of the judges, and the judges to tolerate the nation, as much as a parent must tolerate his own child.

When Yehoshua was ascending to leadership, Moshe told him, *tavo – you will come* with the nation to the land, while



Hashem told him, *tavi* - you will bring the nation to the land. Rabbi Yochanan explains that Moshe told Yehoshua that he should form a partnership with the elders in leadership, while Hashem told Yehoshua that he must enforce his leadership on all with force, since there can only be one leader, and not multiple leaders. (8a)

### ***You're Invited...***

The *braisa* says that *zimun* – invitation requires three. The *Gemora* asks what sort of invitation is meant. It cannot mean invitation of a quorum to blessing after a meal, since another *braisa* lists both *zimun* and *birkas zimun* – the blessing by invitation (*blessing after a meal*). Even if that *braisa* can be understood to be one item, with the *birkas zimun* explaining *zimun*, a third *braisa* explicitly states that *zimun* needs three, and *birkas zimun* needs three, indicating that they are two separate items.

Rather, *zimun* means a summons to court, and the *braisa* is stating what Rava taught: If a summons to court is delivered in the name of three judges, the invitee can be censured if he refuses, but if it is delivered in the name of only one, no censure is allowed. However, if the summons was delivered on an official court day (*Monday or Thursday*), the invitee must assume it was in the name of the full court, and may be censured if he refuses to come. (8a)

- ***Judging Fines***

The *Mishna* listed a number of fines which must be adjudicated by three judges. Rav Nachman bar Rav Chisda asked Rav Nachman bar Yaakov how many judges are needed for cases of fines. The *Gemora* clarifies that he knew that three are needed, as stated in the *Mishna*. He was asking whether one expert judge suffices, as it does in cases of loans.

Rav Nachman bar Yaakov said that the *Mishna* that requires three judges for fines is referring to three experts, since Rav

says that even ten judges who are not expert may not judge cases of fines. Therefore, one expert is not sufficient for fines. (8a)

### ***Motzi Sheim Ra***

The *Mishna* cited a dispute between the Sages and Rabbi Meir regarding how many judges are needed for a case of a *motzi sheim ra* – one who claims his new wife is not a virgin. Rabbi Meir says only three are needed, while the Sages say twenty-three are needed, since there are cases that can lead to capital punishment, i.e., if witnesses establish that she was unfaithful once married.

The *Gemora* questions why the Sages require twenty-three judges, since in the current case there is no capital element.

The *Gemora* offers a number of explanations of the dispute:

1. Ulla says that the Sages are concerned that once the case begins, witnesses who can establish a capital offense for the wife may hear and come. We therefore begin with twenty-three judges. Rabbi Meir is not concerned that witnesses will hear and come.
2. Rava says that all agree that we are not concerned about witnesses coming. The case in dispute is when the husband claimed that he had a capital case against his wife, and therefore gathered a full court of twenty-three. When the husband couldn't find witnesses to prosecute the capital case, the court dispersed, and the husband then requested that the remaining judges adjudicate his monetary case, to void the wife's *kesuvah*. Rabbi Meir says the remaining judges can judge this case, while the Sages say this will denigrate the original judges, and therefore they must reconvene.

The *Gemora* cites a *braisa* that says that the Sages rule that if it was a monetary claim, only three judges are needed, but if it was a capital claim, twenty-three are needed.

The *Gemora* says that Rava can explain the first clause of the *braisa* as a case where the husband had no capital claim, and the second clause as one where he did have a capital claim.

Ulla says that the Sages require twenty-three to account for the possibility of witnesses coming later, so even if the husband made only a monetary claim, twenty-three judges are necessary.

Rava and Rav Chiya bar Avin explained the *braisa* according to Ulla. The first clause of the *braisa* is a case where the husband produced witnesses, but the wife's father then produced witnesses that refuted the husband's witnesses (*by testifying that they were not present at the time and place of their testimony*). At that point, the husband must pay a fine of 100 *sela* to the father, and for that, only three judges are necessary, since there is no further possibility of a capital case. However, the second clause of the *braisa* is a standard case of a husband who claims his wife was not a virgin, and since that may lead to a capital case, if witnesses come, twenty-three judges are necessary.

1. Abaye says that all agree that we are concerned that witnesses may come, and that we may not denigrate the original judges. The case of the dispute is where the husband has witnesses, who say that they warned the wife that she will be killed for her infidelity, but did not warn her how she will be killed. The *braisa* records that the Sages consider this to be a valid warning, while Rabbi Yehudah says a warning must include the method of capital punishment. The Sages in the *Mishna* follow the Sages in the *braisa*, and therefore consider this case to be a capital one, while Rabbi Meir agrees with Rabbi Yehudah, and considers this to be a purely monetary case.

2. Rav Pappa similarly says that the case is where the husband has witnesses, who did not warn the wife. However, the wife was a knowledgeable woman, who would know that her act was punishable by death. The

*braisa* says that Rabbi Yosi the son of Rabbi Yehudah says that one who is knowledgeable does not need to be warned by witnesses, since he cannot claim ignorance of his punishment. The Sages follow Rabbi Yosi the son of Rabbi Yehudah, and consider this a capital case, while Rabbi Meir does not, and considers this only a monetary case.

3. Rav Ashi similarly says that the case is where the husband has witnesses, but who warned her that she would be punished with lashes, but not death. Both Rabbi Meir and the Sages agree that she will be given lashes only, but they disagree how many judges are necessary for a case of lashes. Rabbi Meir follows the Sages later in the *Mishna*, who require only three judges, while the Sages follow Rabbi Yishmael, who requires twenty-three. (8b – 9a)

## INSIGHTS TO THE DAF

### *Motzi Shaim Ra*

The *Gemora* discusses what the dispute between the Sages and Rabbi Meir about the number of judges for a case of *motzi sheim ra* is actually about. Ulla and Rava explain that the dispute is not an inherent dispute of how many judges are needed for this case, but rather depends on an external concern that the Sages have. Ulla says the Sages are concerned with *la'az* – a rumor, while Rava says that the Sages are concerned with the honor of the originally convened court.

Rashi explains that according to both of these explanations, the issue brought before the court is the husband's demand to void the wife's *kesuvah*, since she was not a virgin at the time of marriage. Rashi explains that the husband is believed to void the *kesuvah*, as the *Gemora* in Kesuvos (10a) states, since the Sages, who instituted *kesuvah*, assumed that a man would not lie about this, since he stands to lose the money spent on his wedding meal.

Ulla is explaining that the Sages are concerned that when this case is brought to court, although the husband is not claiming infidelity, witnesses to infidelity may indeed hear of the case and come forward, transforming this to a capital case. We therefore begin with a court of twenty-three, to account for that possibility.

Rava says the case is where the husband did claim infidelity, but wasn't able to produce witnesses to prove it. When the court then dispersed, the husband requested that the remaining judges void the *kesuvah*. The Sages are concerned that adjudicating that with the partial court that remains would be disrespectful the original judges, and therefore they must reconvene.

The *Gemora* cites a *braisa*, which states that if *t'va'o mamon* – he claimed from him money, only three judges are needed, but if *t'vao nefashos* – he claimed from him a capital crime, twenty-three are needed. According to Rava, the first clause is a case where there was no claim of capital infidelity, and therefore there is no issue of the judges' honor, leaving a monetary case for three judges. However, according to Ulla, even if the case began as monetary, we should be concerned about witnesses arriving later.

Rava answers that the *braisa* is a case where the husband produced witnesses that testified to her infidelity, but these were fully refuted by the father's witnesses, who put the original witnesses in a different place at the time of their testimony. The husband is now liable 100 *sela* to the father for his false claim. The *braisa* is stating that to adjudicate the *father's* monetary claim, only three witnesses are necessary. According to Rashi, the *Gemora* is introducing the aspect of the father claiming his monetary damages only at this point in the *Gemora*. All earlier discussions of monetary judgment were purely of the husband's claim to void the *kesuvah*.

Tosfos (8a Motzi) cites Rabbeinu Tam, who disagrees with Rashi's reading of the *Gemora's* first two answers.

Rabbeinu Tam challenges Rashi's reading based on the following points:

1. *Motzi sheim ra* is listed in the *Mishna* along with fines paid by a rapist and a seducer, indicating that it similarly is a case of a fine. The husband's voiding the *kesuvah* does not fit this pattern, as it is purely a monetary case.
2. Generally, *motzi sheim ra* is used to refer to the money paid by the husband when his claim is found to be false.
3. The three judges required in the *Mishna* are experts. However, cases of voiding a *kesuvah* are routinely judged by non expert judges, outside of *Eretz Yisroel*, indicating that the *Mishna* is not discussing such a case.
4. Rashi's reading translates the *la'az* of Ulla as the witnesses hearing about the case and coming forward. Generally, *la'az* has a connotation of being a false rumor, not simply news spreading.
5. In Rava's explanation, the husband says to the remaining judges, "At least judge the monetary aspect." According to Rashi, all the husband wants to do is not have to pay the *kesuvah*, not collect any money. As long as the wife is not claiming it, he has no urgency to adjudicate the matter.
6. The *Gemora's* explanation of the *braisa* according to Rava's opinion is that the first clause is referring to a husband who is only adjudicating the *kesuvah*. The *braisa* says *tva'o mamon* – if he claimed from him money. According to Rashi, it should say he claimed from *her* (the wife), and in fact, the husband is not claiming anything, but simply refusing to pay.
7. Finally, when Rava explains the *braisa* according to Ulla's opinion, he explains that the second clause of the *braisa* is stating that at the outset of a husband's claim – at which point, it may lead to a capital case – twenty-three judges are needed. The simple reading of the *Gemora*, however, is that it is a different circumstance of the same case as the first clause, not a new case.
8. Rabbeinu Peretz points out that Rabbi Meir, one the opinions discussed, holds that a husband is obligated from the Torah to pay a *kesuvah*. The *Gemora* is *Kesuvos* that states that husband is believed to void his wife's *kesuvah* is



based on the assumption that the obligation of *kesuvah* is purely Rabbinic. Therefore, Rabbi Meir may not even agree that a husband may void the *kesuvah*, so he cannot be disputing how many judges are needed to deal with such a claim.

Instead, Rabbeinu Tam says that the whole discussion of *Motzi sheim ra* is of the 100 *sela* the husband must pay when his claim is disproven. Ulla says the case is when the husband brought witnesses, who were contradicted by the father's witnesses.

Rabbeinu Tam says that although the witnesses were not refuted (*by being placed at a different place at the time of testimony*), but simply contradicted in the details of their testimony, the husband still must pay, since his claim was dismissed by the court. (See Tosfos 8b v'haivi for further discussion of this position).

If the father's witnesses refuted the husbands' by putting them in a different place at the time of their testimony, we assume no further witnesses will come forward. However, since they only contradicted them, other witnesses may still come. The Sages are concerned that if the twenty-three judges are disbanded, and then a new court of twenty-three will be necessary if new witnesses come, it will lead to *la'az* - **false rumors** that the first court was incompetent and replace with the new court. We therefore leave the first court in place. Rabbi Meir is not concerned about such rumors.

Rava says that the case is where the father produced witnesses to refute the husband's witnesses. Since the husband's witnesses were trying to kill the wife, they are liable to the same punishment as *aidim zomemim* – *conspiring witnesses*. However, the case of the *Mishna* is where the court of twenty-three dispersed, due to some external event (*fear of the government, or another urgent matter they needed to attend to*). At that point, the father requested that the remaining judges adjudicate his

monetary claim. Rabbi Meir allows this, but the Sages say that this will disrespect the original twenty-three, and they must therefore be reconvened.

Rabbeinu Tam's reading of the *Gemora* addresses all of his issues with Rashi's:

1-3: As it usually does, *motzi sheim ra* in the *Mishna* refers to the money paid by the husband to the father, which is a fine. It is therefore listed with rape and seduction, and requires three expert judges.

4: The *la'az* is the *false* rumor people may spread about the original court.

5: The request to "At least judge the monetary aspect" is made by the father, who is trying to collect money from the husband.

6: The father is *claiming from him (the husband)* the money of the fine of *motzi sheim ra*.

7: The *braisa's* first clause is where the father's witnesses refuted the husband's before the verdict, and the husband's false witnesses are therefore not punished by death. However, the second clause is a similar case, but instead of the witnesses being refuted, they are contradicted, leaving the possibility that new witnesses will come, and establish infidelity.

8: Since we are not discussing the *kesuvah*, whether it is Rabbinic or from the Torah is irrelevant.

## HALACHAH ON THE DAF

### *Birchas Zimun*

The *Gemora* mentions that *zimun* needs at least three people. The *Gemora* in Brachos (47a) derives the concept of *zimun* from the verses of "*gadlu lashem iti*"... and "*ki shem Hashem ekra havu godel leilokeinu*," and from there, we also learn that a minimum of three is required (*since the singular is speaking to the plural and together they equal three*).



The person that received the honor of *bentching* starts off by saying “*rabbosai nivarech*” (some have the *minhag* to say it in yiddish “*rabbosai mir velen bentchin*”), and everyone else responds with “*y’hi sheim Hashem mivorach mei’atah v’ad olam.*” This originated with the Zohar. (Magen Avraham).

Immediately after that, he continues with “*nivarech she’achalnu m’shelo*” and the rest answer “*baruch she’achalnu m’shelo uv’tuvo chayinu.*” After that, he too repeats “*baruch she’achalnu m’shelo uv’tuvo chayinu*” (Orach Chaim 192:1). There is a *machlokes Achronim* if the other people *bentching* should answer amen, the *Mishna Berurah* writes that the *minhag* is not to answer.

If there are ten or more people that are *bentching* together then we add *Elokeinu* (*nivarech Elokeinu, baruch Elokeinu*). If he forgot to say *Elokeinu* and the others didn’t yet respond, then he may say it again properly; once they answered, however, he does not repeat it (ibid).

## DAILY MASHAL

### *The Thieves Who Were Not Caught*

If the *beis din* takes his garment as payment for his debt, he should sing a song and go on his way.

Our *Gemora* says that if a *beis din* takes a person’s garment in payment for some debt that they ruled he was to remunerate, he should be glad.

The Chafetz Chayim zt”l offered the following parable to explain this statement. A group of experienced bandits enlisted some new members and, so as to easily identify each other, agreed that all the members should wear the same clothing. Once, after a hard night’s work, they went to an inn where they ate and drank to inebriation. After the meal some of them refused to pay and the innkeeper let them go only if they gave him their identifying garments as

a pledge. A few days later the police found out about the bandits’ “uniform” and arrested them all, with the exception of those who had left their clothing at the inn. “Aha!” they laughed, “The innkeeper did us a big favor when he forced us to give him our clothing.”

A person should know, says the Chafetz Chayim, that any stolen garment or other purloined article in his possession is a reason for the loss of the rest of his wherewithal. If, then, a *beis din* takes that garment and gives it to the person to whom he owes a debt, they have done him a big favor as they have saved the rest of his possessions (Ahavas Chesed, II, Ch. 1).