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### **Mishna**

Monetary lawsuits are judged by three. One litigant chooses for himself one (*court*) and the other one chooses for himself one, and both of them choose for themselves another one; these are the words of Rabbi Meir. [*The Gemora will explain this.*] But the *Chachamim* say: The two judges choose another.

Each litigant may disqualify the judge selected by the other; these are the words of Rabbi Meir. But the *Chachamim* say: When is this so? It is only when he brings proof that they are relatives or otherwise ineligible, but if they were eligible or experts, he may not disqualify them.

Each litigant may disqualify the witnesses of the other; these are the words of Rabbi Meir. But the *Chachamim* say: When is this so? It is only when he brings proof that they are relatives or otherwise ineligible, but if they were eligible or experts, he may not disqualify them. (23a)

### **Choosing a Beis Din**

The *Gemora* asks: What does the *Mishna* mean when it stated that one litigant chooses for himself one (*court*) and the other one chooses for himself one? Three judges are sufficient to judge a monetary case!?

The *Gemora* explains: If each litigant chooses a different *Beis Din*, (and they each disqualify the other one), they must jointly choose a third.

The *Gemora* asks: Can then the debtor too disqualify the *Beis Din* chosen by the creditor? Didn't Rabbi Elozar say that the *halachah* (of forcing the other to go to a more expert *Beis Din*

*instead of a local one*) refers only to the creditor; but the debtor can be compelled to appear at a *Beis Din* in his town (for it is unfair to compel the creditor to expend more money by traveling outside of his own town)!?

The *Gemora* answers: It is as Rabbi Yochanan said (*below; with regards to a different question*): This was taught only in reference to the Surian (*secular*) courts (*they were Jewish judges, but they were not familiar with halachah; they ruled based upon logic and the law of the land*); and so here too the *Mishna* was referring to the Surian (*secular*) courts (and that is why the debtor can force the creditor to travel to a different *Beis Din* – one which is more qualified), but not with respect of a *Beis Din* made up of experts (*the debtor cannot reject such a court*).

Rav Pappa answers: The *Mishna* may even refer to expert courts, but it is in reference to courts such as Rav Huna and Rav Chisda (*which were located in the same town*) for the debtor can say, “Am I troubling you at all (*by forcing you to go to a different Beis Din*)?”

The *Gemora* asks (*on the interpretation of the Mishna above that each litigant chose one Beis din, and they, in turn, were rejected by the other*): the *Mishna* had stated: But the *Chachamim* say: The two judges choose another. And if you will say like we said above, does it make sense that the disqualified courts will choose a third one? And furthermore, what does the *Mishna* mean when it stated that one litigant chooses for himself one (*court*) and the other one chooses for himself one? [*It sounds like it is mandatory for each of them to chose one court; according to the previous interpretation, it is only if one of them has been rejected by the other litigant!*!?

Rather, the *Mishna* means that each litigant chooses one judge (*to be on the court*), and both litigants jointly choose a third one.

In *Eretz Yisroel*, they explained the reason for this in the name of Rabbi Zeira: Since each one of them selected a judge, and together they selected the third, a correct judgment will be rendered (*and the loser will not have any complaints, for he himself chose one of the judges*).

The *Mishna* had stated: But the *Chachamim* say: The two judges choose another.

The *Gemora* suggests that their dispute (*if the litigants or the judges choose the third judge*) is dependent on that which Rav Yehudah said in the name of Rav. For Rav Yehudah said in the name of Rav: Witnesses do not sign a document unless they are aware who is signing with them (*for they do want to be embarrassed by being disqualified due to the disqualification of the other witness*). Rabbi Meir does not agree with this dictum, while the *Chachamim* accept it (*and hold that the judges will not agree to judge unless they know who the third judge will be*).

The *Gemora* rejects this explanation: Perhaps they all agree with Rav Yehudah's statement in the name of Rav, and they do not dispute that the judges must consent to the third judge; they only differ as to whether the consent of the litigants is required as well. Rabbi Meir maintains that the consent of the litigants is also required, while the *Chachamim* hold that only the consent of the judges is required, but not that of the litigants.

The *Gemora* cites a *braisa* which supports Rav Yehudah's statement in the name of Rav: The pure-minded people in Yerushalayim used to act as follows: They would not sign a document without knowing who was signing with them; they would not sit in judgment unless they knew who was sitting in judgment with them; and they would not dine at a meal without knowing who was dining with them (*for it is*

*degrading to Torah scholars to dine with unlearned men*). (23a)

### ***Disqualifying the Other***

The *Mishna* had stated: Each litigant may disqualify the judge selected by the other.

The *Gemora* asks: On what grounds can the judge be disqualified?

Rabbi Yochanan answers: This was taught only in reference to the Surian (*secular*) courts (*a litigant has a right to reject him out of hand; a qualified judge, however, cannot be arbitrarily rejected*).

The *Gemora* asks: He does not have a right to reject a qualified judge!? But the latter part of the *Mishna* states: But the *Chachamim* say: When is this so? It is only when he brings proof that they are relatives or otherwise ineligible, but if they were eligible or experts, he may not disqualify them. Evidently (*since they are arguing with Rabbi Meir*), Rabbi Meir maintains that even expert judges may be disqualified!?

The *Gemora* explains: This is what the *Chachamim* were saying: But if they were eligible (*even though they were from the Surean courts*), they are regarded as expert judges, and may not be disqualified. [*It emerges that they all agree that expert judges may not be arbitrarily disqualified.*]

The *Gemora* asks from a *braisa*: The *Chachamim* said to Rabbi Meir: It does not make sense that a litigant can reject a judge who is known to the public as an expert judge! [*Seemingly, Rabbi Meir maintains that he can disqualify such a judge; this is contrary to Rabbi Yochanan's explanation!?*]

The *Gemora* explains what the *Chachamim* were really saying: It does not make sense that a litigant can reject a judge who has been accepted by the public as an expert judge (*even though, in truth, he is not an expert!*)!

The *Gemora* cites a *braisa* supporting Rabbi Yochanan's viewpoint: One can continue rejecting judges until he verbally accepts them before judges who are known to the public as expert judges; these are the words of Rabbi Meir. [*Evidently, Rabbi Meir maintains that expert judges cannot be rejected (this is derived from the fact that he cannot reverse his acceptance if it was spoken before expert judges).*]

The *Gemora* asks: But witnesses are considered experts (*they are accepted as long as they are not related or otherwise ineligible*), and yet Rabbi Meir said (*in our Mishna*) that each litigant may disqualify the witnesses of the other!? [*Seemingly, Rabbi Meir maintains that he would be able to disqualify such a judge as well; this is contrary to Rabbi Yochanan's explanation!?*]

The *Gemora* answers: Surely it has been stated regarding this: Rish Lakish said: Can it be that a holy mouth (*such as Rabbi Meir's*) should utter such a thing (*that a litigant can arbitrarily disqualify witnesses brought by the other party*)!? The *Mishna* should read: The witness (*each litigant may disqualify the witness – in the singular – of the other*).

The *Gemora* asks: But for what purpose is the single witness testifying? It cannot be to make the other party pay money, for his testimony is Biblically invalid (*for the Torah requires two witnesses for all money matters*)! If it is for the purpose of administering an oath (*which one witness has the power to do*), then his testimony is regarded as two witnesses (*in that respect he is an expert, and he cannot be disqualified*)!?

The *Gemora* answers: It is in respect of the payment of money, but we are referring to a case where the litigant (*initially*) voluntarily accepted his testimony as equivalent to that of two witnesses (*and now wishes to retract; Rabbi Meir holds that he may now reject his testimony, whereas the Chachamim hold that he cannot disqualify him without proof that he is ineligible*).

The *Gemora* asks: What then is the novelty of Rabbi Meir's ruling? He cannot be teaching us that he may retract his

acceptance, for that we have already learned once in a *Mishna*: If a litigant says, "I accept my father as a judge," or he says, "Your father is acceptable to me as a judge," or he says, "I accept these three cattle herders as judges," Rabbi Meir says: He may afterwards retract his acceptance, but the *Chachamim* say that he cannot. And Rav Dimi the son of Rav Nachman the son of Rav Yosef said that the *Mishna* is referring to a case where said that he accepts them as one of the judges. [*If we know that Rabbi Meir holds that he may retract his acceptance of a judge, what is he teaching us here that he may retract his acceptance of a single witness?*]

The *Gemora* answers: Both teachings are needed, for we might have thought the following: Perhaps the *Chachamim* hold that he cannot retract only by the case of the "fathers," for they are fit to be judges in cases where they are not related to the litigants; and perhaps Rabbi Meir holds that he can retract only by the case of the single witness, for a single witness is never able to testify. The two teachings teach us that they argue in both cases.

The *Gemora* asks: By the fact that the *Mishna's* first case states "the judge" (*in the singular*), and the latter case states "the witnesses" (*in the plural*), it is clearly proof that Rabbi Meir holds that a litigant may in fact reject the witnesses produced by the other (*contrary to Rish Lakish's interpretation of the Mishna; if so, the challenge to Rabbi Yochanan returns: How can he arbitrarily reject the expert witnesses brought by the other party*)!?

Rabbi Elozar explains the *Mishna* to be referring to a case where the litigant and another come to disqualify the witnesses produced by the other party.

The *Gemora* asks: Isn't he partial regarding this testimony (*how can he be believed at all*)?

Rav Acha the son of Rav Ikka answers that they are testifying that the other witnesses have a general flaw (*and they should be disqualified from all testimonies – not only regarding this particular case*).

The *Gemora* explains: It cannot be referring to a case where they claim that the witnesses are thieves, for they would not be trusted on this, since he is impartial regarding this testimony. Rather, it is referring to a case where they claim that the witnesses come from a family of slaves (*and are therefore disqualified as witnesses*). Rabbi Meir holds that they are trusted, for they are testifying about the entire family, and they (*the opposing set of witnesses*) indirectly become disqualified as well, whereas the *Chachamim* maintain that they are not trusted, for the bottom line is that they are impartial regarding this testimony (*for they are attempting to disqualify the opposing set of witnesses*).

When Rav Dimi came from *Eretz Yisroel*, he said in the name of Rabbi Yochanan: The dispute in the *Mishna* involves the following case: One litigant said that he could produce two pairs of witnesses (*and in the meantime, he only brought one; the other litigant, together with another witness, wish to disqualify the first set of witnesses*). Now, Rabbi Meir holds that the litigant is obligated to verify his statements regarding his second set of witnesses (*and otherwise, he will lose the case; accordingly, the other litigant can reject the first set of witnesses, for the litigant is impartial in the matter, since it doesn't make any difference; the litigant who claimed that he has two sets of witnesses must produce the second set in order to win the case*), while the *Chachamim* say that he is not so obligated to substantiate his claim (*with regards to the second witnesses; there is therefore partiality with respect to the first set of witnesses and they cannot be rejected without proof*). However, if the litigant claims that he has only one pair of witnesses, all agree that they cannot be disqualified.

Rav Ami and Rav Assi asked Rabbi Yochanan: What would happen if the second set of witnesses were found to be relatives or otherwise ineligible (*according to Rabbi Meir, does the disqualification of the first set of witnesses remain, for now it has emerged that the litigant is partial, for if they are not disqualified, he loses the case*)?

Rabbi Yochanan responded to them: They have already testified (*and once we have accepted the disqualification based upon the litigant and the other witness, the disqualification remains*).

Others say that it was Rav Ashi who responded in that manner.

The *Gemora* suggests that the dispute between the *Chachamim* and Rabbi Meir is the same as that which Rebbe and Rabban Shimon ben Gamliel disagree about, for it was taught in a *braisa*: If one wishes to adjudicate with both a contract and usage, Rebbe says that we judge based on the contract, while Rabban Shimon ben Gamliel says that we judge based on the usage. The *Gemora* (in Bava Basra 169b) concludes that the case they argue is where one claims ownership of a field, and the other litigant claims that *he* owns the field by virtue of his holding a sales contract from the claimant to a third party, and also by the fact that he has lived on the land for three years. Rebbe holds that a contract is acquired by a transfer, and therefore his possession of the sales contract suffices, while Rabban Shimon ben Gamliel holds that transferring a contract does not acquire it, and he must therefore rely only on his usage.

The *Gemora* rejects the comparison, for perhaps Rebbe held like that (*that he must substantiate his claim*) only in the case of *chazakah*, which is effective proof only because of a deed. But here, since the effectiveness of one pair is independent of the other, even Rebbe would agree that the litigant does not need not to verify his statements. (23a – 23b)

## INSIGHTS TO THE DAF

### *Sitting with other Judges*

The Tur writes that any judge who knows that a different judge is a thief or otherwise evil should not sit in judgment with him. And this is how the pure-minded people of Yerushalim conducted themselves. They would not sit in judgment unless they knew who was sitting in judgment with them.





The Perishah asks that the Tur's language is not precise, for it would seem from his words that the pure-minded people of Yerushalayim would not sit in judgment except with people whom they knew to be thieves or evil!? And behold, in truth, they would not sit with people about whom they were even uncertain about their character! The Rambam's language, however, is more precise.

The Perishah explains the Tur as follows: There is a strict prohibition against sitting in judgment with someone who is known to be a thief or otherwise evil. This is not merely pious conduct, but rather, it is something which is forbidden to do. There is a level higher than that, and that is not to sit in judgment with people that you are unsure about. This is how the pure-minded people of Yerushalayim would conduct themselves. Even if they did not know for certain that the other person was evil, they still, as an act of righteousness, would not sit with them.

The Bach reaches a slightly different conclusion. He states that an ordinary person should not sit with others in judgment only if he knows that they are evil; however, if he does not know, there is no concern whatsoever. However, prominent people, such as the pure-minded people of Yerushalayim, they should not sit in judgment with others unless they are certain as to their character.

The Aruch Hashulchan writes *l'halachah* that since we can presume that all Jewish people have a fine character, there is no reason to assume that someone is a thief, and therefore, there is no prohibition against sitting in judgment with someone that you do not know. It is regarded as "*hiddur*" to be wary of such people.

The Shvus Yaakov holds that if one of the judges does not know the other two, he should not sit in judgment with them; however, if two of the judges know each other, but they do not know the character of the third, there is no prohibition against sitting in judgment with him, for the majority of the *Beis Din* is proper. This is the case that the pure-minded

people of Yerushalayim were strict about; they were extra careful even if it was only one of the judges that they were uncertain about.

## HALACHAH ON THE DAF

### *Table Manners*

The *Gemora* mentions that the pure-minded people of Yerushalayim did not enter to eat a meal unless they knew who would be eating with them. Rashi explains that it was considered degrading for a Torah scholar to eat with an unlearned person.

The Be'er Heitiv (Orach Chaim 170 s.k.) cites Mateh Moshe who holds that this *halachah* applies even by a *seudas mitzvah*. The Biur Halachah cannot find a source for his ruling, and notes that we don't refrain from doing so. Furthermore, he maintains that even the Mateh Moshe would agree in an instance where there is a benefit for the participants when a *talmid chacham* enhances a *seudah* with his presence, then, he may do so. Also it is possible that the Mateh Moshe would concur that a *talmid chacham* may participate in a regular *seudas mitzvah*, if a) there are other *talmidei chachamim* there as well, or b) if he is sitting by himself (*he deduces this from the above mentioned Rashi who states that it is g'nai for a talmid chacham to sit next to an am ha'aretz at a meal*).

The reason for this *halachah* is because a *talmid chacham* eats in a more refined manner than the *am ha'aretz*. This is not simply a matter of finesse, rather, there are explicit *halachos* that are mentioned in the *poskim* (*aside from the halachos that the Shulchan Aruch in siman 170 speaks about*), on how to conduct oneself during a meal.

A small sampling:

1. Talking while eating is discouraged (Mechaber *ibid* 170:1).
2. The proper amount to eat at a time is less than a *k'beitzah* (*ibid* 170:7).

3. When drinking, the entire cupful should not be consumed in one gulp, rather it is proper to finish it in two swallows (ibid 170:8).
4. It is improper to take a bite out of the food and then leave it on the table (ibid 170:11).
5. One should not eat or drink while standing (Be'er Heitiv ibid citing Rokeiach).
6. It is proper for the host to show the guests where the restroom is (M'kor Chaim).
7. One should not lick his fingers during eating (Rokeiach).
8. It is impolite to wolf down the food, rather, eating should be done slowly (Ben Ish Chai).

#### **DAILY MASHAL**

Some years ago a senior diplomat of the American consulate was walking through the streets of the Orthodox Geulah neighborhood of Yerushalayim. Deeply impressed by the sukkos that appeared in thousands of forms and styles, seemingly out of nowhere, during the seven days of the holiday and charmed by the festive atmosphere that engulfed the Jewish streets, he wanted to see the "great rejoicing," as Simchas Torah had been described to him. "They dance without any drums, trumpets, organs or any other musical instrument. The Jews dance for hours in joy," he was told.

Born and bred a gentile, he was captivated by the festive charm and found his way to the beis midrash of the Chevron Yeshivah in Geulah. Shying into a corner, he was scanning the hundreds of dancers when he suddenly noticed that several of them at the hub of the circle were hugging some long cylindrical articles to their hearts while other groups of celebrants were circling them in song and dance. "What are they holding?" he asked his companion. "Those are scrolls of the Torah," came the answer. To his wonderment, people explained that these were sheets of parchment rolled together, sheathed in velvet and bearing the handwritten text of the holy Torah given to Moshe at Mount Sinai with all the laws directing a Jew's life from birth to his last day on earth,

from morning to night: for every Jew, every day and every year.

The gentile was even more perplexed. "My whole life," he marveled, "I have never seen nor heard of such a thing: people dancing with their book of laws!? As a cultured person, I understand the need for laws and regulations that a government enforces on its citizens, as without them you just can't manage a country. Everyone recognizes the importance of laws but, deep inside, people feel some resentment to the laws that limit life and no nation hugs its book of laws or loves nor dances with it."

Indeed, there's something special about the Torah. It is our soul and joy. Our holy Torah, which accompanied our forefathers into exile and throughout their wanderings the world over, quenches the thirst of parched and weary souls and preserves the spirit of the Jewish people.