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**Disqualify One, Disqualify Both**

**Expositions**

When Ravin arrived he said in the name of Rabbi Yochanan: The first case is regarding a litigant who says both the witnesses and judges should be disqualified, and successfully discredits the witnesses. Being that he discredited the witnesses, he is entitled to also disqualify the judges for this case. The second case is where he manages to disqualify the judges but not the witnesses. Being that he disqualified the witnesses, his disqualification of the witnesses is accepted.

Rava asks: It is of no consequence if we say that because he was correct about the witnesses he can disqualify the judges, as they can always go to a different *Beis Din*. However, how can we say that because he disqualified the judges, the witnesses are also disqualified?! There are no other witnesses!

The *Gemora* answers: It must be that the case is where there is another pair of witnesses.

The *Gemora* asks: Do you mean that if there is not another pair of witnesses, he cannot disqualify the witnesses? This is then the same answer as that given by Rav Dimi earlier (23b)! [What would Ravin be adding with his answer?]

The *Gemora* answers: The difference between them is whether or not we use this logic that because he was correct about one, we believe him regarding the other. This is true according to Ravin, but not according to Rav Dimi. (24a)

The *Gemora* discusses Rish Lakish’s previous question (regarding Rabbi Meir’s statement in the *Mishna*): 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). Did Rish Lakish really say this? Didn’t Ulla say that someone who saw Rish Lakish in the *Beis Medrash* seemed to think that he was uprooting mountains and grinding them against each other! [If he knew Rabbi Meir was wrong, he could have been much sharper about criticizing his opinion!]

Ravina asks: Someone who saw Rabbi Meir in the *Beis Medrash* seemed to think that he was uprooting giant mountains and grinding them against each other! [In other words, there is no question, as Rish Lakish recognized Rabbi Meir was greater than he was.]

Rather, the *Gemora* explains that we meant to teach that Torah scholars care for each other so much, as Rish Lakish described Rabbi Meir as having a “holy mouth” and wanted to explain his (otherwise incomprehensible) opinion.

This is akin to Rebbe who was sitting when he stated: It is forbidden to wrap cold items on *Shabbos* (to preserve their coolness).



Rabbi Yishmael the son of Rabbi Yosi told Rebbe: My father permitted this to be done on *Shabbos*!

Rebbe said: The elder has already ruled.

Rav Pappa says: See how much they care for each other! If Rabbi Yosi was alive, he would have had to sit as a student before Rebbe! This is evident from the fact that Rabbi Yishmael the son of Rabbi Yosi was filling his father's place which was before Rebbe. Even so, Rebbe said that the elder has already ruled.

Rabbi Oshaya says: What does the verse mean when it says, "*And I took for Myself two sticks, one I called Noam and one I called Chovlim*"? "*Noam*" refers to the Torah scholars of *Eretz Yisroel*, who are pleasant to each other in *halachic* matters. "*Chovlim*" refers to the Torah scholars of Babylon, who insult each other in *halachic* matters.

It is written: *And he said, "These are the two sons of Yitzhar that are standing...and two olives tress next to it."* "*Yitzhar*," Rabbi Yitzchak says, refers to the Torah scholars of *Eretz Yisroel*, who are pleasant to each other in *halachic* matters like olive oil. "*And two olives trees next to it*" refers to the Torah scholars of Babylon, who are bitter to each other in *halachic* matters like an olive tree.

"*And I lifted up my eyes and I saw two women going out and there was wind by their wings, and one had wings like the wings of a stork, and it carried the eifah between Heaven and earth. And I said to the angel who was talking to me, "Where are they taking the eifah?" And he said to me, "To build it a house in the land of Shinar."* Rabbi Yochanan says in the name of Rabbi Shimon ben Yochai: This refers to flattery and haughtiness that came down to Babylon.

The *Gemora* asks: Did haughtiness come to Babylon? Didn't the master say: Ten *kav* of haughtiness went down into the

world; nine went to Eilam and the other was divided amongst the rest of the world?

The *Gemora* answers: It went down to Babylon, and eventually made its way to Eilam. This is apparent from the fact that the verse quoted above says, "*To build it a house in Shinar (Babylon).*"

The *Gemora* asks: Didn't the master say that a sign of haughtiness is poverty, and poverty went to Babylon? [*The Toras Chaim explains that one cannot say it eventually went to Eilam, as there is still poverty in Babylon!*]

The *Gemora* answers: What does this "poverty" mean? It means poverty in Torah. This is as the verse states, "We have a little sister who does not yet have breasts." Rabbi Yochanan says: This refers to Eilam, where they merited to learn, but not to teach.

The *Gemora* asks: What does the word "Bavel" -- "Babylon" imply?

Rabbi Yochanan says: It is mixed with Scripture, *Mishna*, and *Gemora*.

"*In the darkness you have placed me like the dead of the world.*" Rabbi Yirmiyah says: This refers to the Babylonian Talmud. [*The Netziv writes that this is praise for the Talmud, that even though it was written under difficult "dark" conditions, they were still able to produce a tremendous work.*] (24a)

### **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. If he owed his friend an oath, and his friend said (*instead of taking a serious oath of*



*Beis Din*), “Swear to me on your life,” Rabbi Meir says he can retract this as a substitute to the oath of *Beis Din*, while the *Chachamim* say he cannot. (24a)

### **Explaining the Mishna**

Rav Dimi the son of Rav Nachman the son of Rav Yosef says: The case of the *Mishna* is where the father is accepted as one of three judges.

Rav Yehudah says in the name of Shmuel: The argument in the *Mishna* is regarding a case where the claimant says that he accepts this judge, and the money will be forgiven to the plaintiff if the judgment is against him. However, if the defendant says he accepts this and will pay if the judgment is against him, he cannot retract his permission for the father to be a judge.

Rabbi Yochanan says: There is an argument in the latter case.

They inquired into Rabbi Yochanan’s position: Did he mean that there is only an argument in the latter case, but everyone agrees in the former case that he cannot retract? Or did he mean that the *Mishna’s* argument is in both cases?

The *Gemora* answers this question from Rava’s statement. Rava says: The argument is in the latter case, but everyone agrees in the former case that he cannot retract. If Rabbi Yochanan also holds this way, Rava and Rabbi Yochanan share the same opinion. If Rabbi Yochanan holds that they argue in both cases, whose opinion does Rava share?

The *Gemora* answers: Rava could very well have his own opinion.

Rav Abba bar Tachlifa asked a question on Rava from our *Mishna*. The *Mishna* states: If he owed his friend an oath, and his friend said (*instead of taking a serious oath of Beis*

*Din*), “Swear to me on your life,” Rabbi Meir says he can retract this as a substitute to the oath of *Beis Din*, while the *Chachamim* say he cannot retract. This must be referring to a case of someone who swears and therefore does not pay (*and proves that they argue regarding a case where the claimant is going to forgo payment due to his agreeing to this oath*).

The *Gemora* answers: No, it is referring to a case where the defendant cannot swear (*i.e. he is unable to because he is a thief and not believed*), and therefore the defendant agrees that the claimant should take an oath and collect. [*There is therefore no proof that they argue when the claimant wants to retract.*]

The *Gemora* asks: Wasn’t this already stated by the first part of the *Mishna*?

The *Gemora* answers: The *Mishna* says a case where he is dependent on others (*accepting one of their fathers as a judge*), and a case where he is dependent on himself (*he agrees to believe a certain type of oath*). Both cases are necessary. If it would only say a case where he is dependent on others, it is possible that Rabbi Meir only says he can retract in this type of case. This is because he does not really commit to these arrangements, as who really knows if one of the fathers will acquit him? However, when he assesses that he will accept a certain type of oath, perhaps Rabbi Meir will agree that he cannot retract his acceptance. If the only case stated was where he is dependent on his own assessment, it is possible that the *Chachamim* hold he cannot retract in this case. However, in a case where he is dependent on others, perhaps they would agree that he can retract. This is why both cases are necessary.

Rish Lakish says: The argument in the *Mishna* is before the verdict. However, once a verdict is reached, everyone agrees they cannot retract. Rabbi Yochanan says that they argue after the verdict is reached.



They inquired: Does Rabbi Yochanan mean they argue after the verdict is reached, but before that everyone agrees they can retract? Or does he mean that the argument is both before and after a verdict is reached?

The *Gemora* attempts to answer this question with Rava's statement. Rava says: If one accepts a relative or unfit person, he can retract this acceptance before the verdict, but not afterwards. If we say they argue after the verdict, but before the verdict everyone agrees one can retract, Rava holds like Rabbi Yochanan. However, if they argue in both cases, who will Rava hold like? It must be they argue after the verdict and not before. [See *Rashi* regarding why we don't answer as we did previously that Rava is merely a third opinion.]

Rav Nachman bar Yitzchak sent to Rav Nachman bar Yaakov: Teach us, Rabbi. Is the argument before the verdict or after the verdict, and whose opinion is the law?

He replied: The argument is after the verdict and the law is like the *Chachamim*.

Rav Ashi says: He sent him the following question. Is the argument regarding when the defendant says he will accept this and pay, or when the claimant says he will accept this and forgo the money? Additionally, whose opinion is the law?

He replied: The argument is regarding when the defendant says he will accept this and therefore pay, and the law is like the *Chachamim*.

This is the way it was taught in Sura. In Pumbedisa they taught that the question was as follows: Rabbi Chanina bar Shalmei says: They sent from Rav to Shmuel, teach us Rabbi, if he wishes to retract before a verdict was reached, but they made a *kinyan* on this agreement (*that he would*

*not retract*), can he retract? Rav replied: Nothing can be changed after a *kinyan* is made. (24a – 24b)

### **Mishna**

The following people are unfit to give testimony or judge. If someone gambles, lends with interest, flies pigeons (*explained later*), and sells *Shemittah* produce, he is unfit to testify. Rabbi Shimon says: They originally called them gatherers of *Shemittah*, but when the bandits increased, they eventually called them merchants of *Shemittah*. Rabbi Yehudah says: When are they unfit for testimony and judgment, when they have no other job. However, if they have another job, they are fit to testify and judge. (24b)

### **Gambling**

The *Gemora* asks: What is wrong with gambling?

Rami bar Chamah says: This is an *asmachta*, and therefore not a valid *kinyan*. [*In other words, being that the gambler only puts his money on the line because he thinks he will win, he is not really agreeing that his money should be taken. Accordingly, when he loses, his money is being stolen from him.*]

Rav Sheishes says: This is not called an *asmachta*. Rather, the reason he is unfit to give testimony is because he is not involved in settling the world.

The *Gemora* asks: What is the difference between their opinions? The difference is in a case where he has another job. This is as the *Mishna* says: Rabbi Yehudah says: When are they unfit for testimony and judgment, when they have no other job. However, if they have another job, they are fit to testify and judge. This implies that the reason they are unfit is solely because they are not involved in settling the world (*working for a living*)! This is difficult for Rami bar Chamah, as he implies the reason is theft! (24b)



## INSIGHTS TO THE DAF

### Gamblers

The *Mishna* lists gamblers among those who are unfit to judge, and as Rashi points out, unfit to testify, since they are regarded as *re'shaim*. There is a discussion in the *Gemora* as to why a gambler is unfit to testify or judge. Rami Bar Chamah holds that it is an issue of "*asmachta*," which means that the money he wins is regarded as stolen. Rav Sheishes disagrees and attributes the disqualification to not being involved in furthering the general welfare of the public. The *Gemora* points out that the difference between the two opinions would be a situation where he has another job aside from gambling. The issue of "*asmachta*" would apply regardless of whether he has another means of support, whereas the issue of furthering the general welfare of the public would only apply if he has no other means of support.

Tosfos points out that both opinions in the *Gemora* agree that the disqualification is only Rabbinic, because even the opinion who considers it theft due to "*asmachta*," since he doesn't realize the severity of the prohibition; he is not invalidated as a witness on a Biblical level. Regardless, we rule according to Rav Sheishes that the disqualification is attributed to him not being involved in furthering the general welfare of the public which would surely be Rabbinic.

There is a dispute between the Rambam and Rashi as to the nature of the disqualification of not being involved in furthering the general welfare of the public. The Rambam associates this with theft. Since the loser isn't willingly forfeiting his money to the winner, it is considered "*avak gezel*." The *S"ma* (C.M. 34:40) explains the position of the Rambam - since it is not technically theft, the Rabbis only considered it to be a problem if his main livelihood was

coming from his gambling earnings. When the *Gemora* stipulates that he is only disqualified if he doesn't have another means of earning a living, the *Gemora* really means to say that he doesn't have another source of income. If he has another source of income, or is wealthy so that he doesn't need the gambling earnings for support, he would be eligible to serve as a witness. However, if he had another income, but required the earnings from gambling to support himself, he would be disqualified. The *Gr"a* (C.M. 203:44) disagrees with the approach of the *S"ma* and explains that the Rambam actually rules like Rami bar Chamah that an "*asmachta*" is not binding, and therefore, he considers it to be theft. But, the *Gr"a* holds that even though it is stealing, the Sages only invalidated him when he has no other livelihood.

Rashi considers the issue of not being involved in furthering the general welfare of the public to have nothing to do with theft. Rashi considers the issue to be an indication of a very low level of fear of Heaven. The *S"ma* explains that this only applies to someone who doesn't work and doesn't realize the difficulties involved in earning money and would be prone to testify falsely (*because he associates money as "easy-come, easy-go," and doesn't take it seriously*). But someone who works, even if he can't support himself without the added income from gambling, wouldn't be disqualified for testimony since he realizes the challenges of earning a living.

The Shulchan Aruch, who follows the Rambam, and considers the problem of gambling to be associated with theft, follows his own opinion (c.m. 370:3) where he writes that one who gambles with gentiles would not be in violation of theft (*since only actual and direct theft is forbidden from a gentile, but not when he loses in gambling and agrees to give the money*). Rashi would certainly not make this distinction and would hold that even one who gambles with gentiles would be disqualified to testify. Even according to the Rambam, the Shulchan Aruch frowns upon gambling and writes: However, it is forbidden to



occupy oneself with matters of vain, for a person should only occupy his time with wisdom and matters that benefit the general welfare of the public.

## DAILY MASHAL

### *Rules of the Game and the Rules of Life*

Rabbi Nachum of Stepinesht, the son of Rabbi Yisrael of Ruzhin, once entered his *beis midrash* during Chanukah and saw some *chasidim* playing checkers. Seeing their Rebbe, they were taken aback, but Rabbi Nachum approached and asked them, "Do you know the rules of the game? Now listen carefully:

- 1) You give one piece to get back two.
- 2) You mustn't avoid your move.
- 3) You mustn't make two moves with one turn.
- 4) Go forward, but never backward.
- 5) When you get to the top, you can go anywhere (Rav S.Y. Zevin, *Sipurei Chasidim al HaMo'adim*, p. 267).

## HALACHAH ON THE DAF

### *Hatmanah*

The *Gemora* rules that one may be *matmin* (*insulate*) a cold food or drink on *Shabbos*. The *Shulchan Aruch* (*Orach Chaim* 257:6) clarifies that one may only do so when the insulation does not add heat (*eino mosif hevel*), and his whole purpose of doing so is to ensure that the item will not become too cold. If however it does add heat (*mosif hevel*), then it is forbidden to insulate it even prior to *Shabbos*.

In generations past, in order to keep the cooked food warm once it was taken off the fire, it was insulated. Although there isn't any *issur melachah* with *hatmanah* per se, the *Chachamim* nevertheless forbade it so as not to violate the

*issur of bishul* in the event that before the insulation he would find that the item cooled off and then he would return it to the fire. Therefore one may not do *hatmanah* on *Shabbos* even when the insulation is not *mosif hevel* (ibid 257:1).

The *Chachamim* additionally forbade insulating an item in a place where it's *mosif hevel* even before *Shabbos*. The reason being since in the times of the *Gemora* the ideal place for *mosif hevel* was in the ash next to the fire, and he might come to stir the ash on *Shabbos* to heat up the insulated food, thereby violating a form of *mavir* (ibid).

Reb Moshe Feinstein (*Igros Moshe Orach Chaim* 4:74 - *Hatmanah*) explains that it is forbidden to insulate an item in a manner of *mosif hevel* even early Friday morning. [One cannot infer that Reb Moshe held that there isn't any problem of *hatmanah* if it was insulated before Friday, since the question he was addressing was regarding Friday morning. On the contrary, it is pretty clear from his wording that it would be forbidden to do so no matter when it was insulated.]