



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

**Tzvi Gershon ben Yoel (Harvey Felsen) o”h**

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

### **Mishna**

Monetary and capital cases alike require inquiry and questioning, as it is written: *There shall be one manner of law for you.* What is the difference between monetary and capital cases? Monetary cases are judged by three and capital cases by twenty-three. Monetary cases open with statements either for non-liability or for liability; but capital cases open only for acquittal, but not for conviction. Monetary cases are decided by (a majority of) one, whether for non-liability or for liability; but capital cases are decided by one for acquittal, and by two for conviction. The verdict of monetary cases may be reversed, whether for non-liability or for liability; but capital cases are reversed only for acquittal, but not for conviction. Regarding monetary cases - all (including the disciples) may advance an argument for non-liability and liability; but by capital cases - all may argue for acquittal, but all may not argue for conviction. By monetary cases - those who argue for liability may (later) argue for non-liability, and those who argue for non-liability may argue for liability; but by capital cases, those who argue for conviction may (later) argue for acquittal, but those who argue for acquittal may not retract and argue for conviction. Monetary cases are judged during the day and are completed during the night; but capital cases must be judged and completed during the day. Monetary cases are

completed on the same day, whether for non-liability or for liability; but capital cases are completed on the same day for acquittal, and on the following day for conviction. Therefore, they do not judge a capital case neither on the eve of *Shabbos* nor on the eve of *Yom Tov* (for one who is convicted must be executed on the same day, and that cannot be done on *Shabbos* or *Yom Tov*). In the deliberations regarding money matters, and cases of *taharah* and *tumah*, they commence from the greatest judge. In capital cases, they commence from the side (where the less distinguished judges sat). Everyone is eligible to judge monetary cases; but not all are eligible to judge capital cases - but only *Kohanim*, *Levi'im*, and *Yisraelim* whose daughters may marry *Kohanim*. (32a)

### **Inquiry and Questioning**

The *Gemora* asks: And do monetary cases really require inquiry and questioning? But this is contradicted from the following *braisa*: If a document is dated the first of *Nissan* in the *Shemittah* year, and witnesses came and said, “How can you testify to this document? Were you not with us on that day in such-and-such a place?” the document is nevertheless valid, and its witnesses remain competent, for we presume that they might merely have delayed writing it (they might have witnessed the loan on an earlier date, but postponed writing the document until the



*first day of Nissan*). Now if you should think that inquiry and questioning are necessary, how can we assume that they might have postponed writing it? [*It doesn't make sense to accept such testimony if the witnesses are required to specify when the event took place!?*]

The *Gemora* explains why this question was asked from a *braisa*, and not from a different *Mishna*.

(Mnemonic: *ChRPaSH*.) The *Gemora* presents four answers to the question.

Rabbi Chanina answers: Biblically, both monetary and capital cases must be conducted with inquiry and questioning, for it is said: *There shall be one manner of law for you*. What is the reason that the Sages have ordained that monetary cases do not require inquiry and questioning? It is in order that you should not lock the door in the face of borrowers.

The *Gemora* asks: If this is so, if they make a mistake in judgment, they should not be required to pay! [*However, we know the Gemora later implies they do have to pay!*]

The *Gemora* answers: This would certainly lock the door in the face of borrowers (*as potential lenders would not lend out of fear that they would not win their money back in court if the borrower refused to pay*)!

Rava answers: Our *Mishna* (*which is referring to the time after the Sages ordained that monetary cases do not require inquiry and questioning*) is dealing with penalty cases (*where there is no concern about lenders*

*not loaning; therefore, we inquire and question the witnesses*); whereas the *braisa* is referring to admissions and loans.

Rav Pappa answers that both the *Mishna* and the *braisa* is referring to cases of admissions and loans, but our *Mishna* is dealing with a case where the claim seems to be dishonest (*and therefore the witnesses are examined thoroughly*), and the *braisa* is discussing an ordinary case. This follows that which Rish Lakish taught based upon contradictory Scriptural verses that when it appears that a claim is dishonest, the judges should be doubly careful in their examinations of the witnesses.

Rav Ashi says that when the verse mentions "righteousness" twice, it is referring to justice and to compromise (*and it is up to the judges to decide which method should be implemented*). (32a – 32b)

### ***Justice and Compromise***

The *Gemora* cites a *braisa*: If two boats are sailing on a river in opposite directions, and they meet each other (*in a narrow place*). If both attempt to pass simultaneously, both of them will sink (*for they will certainly collide*); whereas, if they sail one after the other (*by one of them docking at the shore*), both can pass. Likewise, if two camels met each other while on the narrow ascent to Beis Choron; if they both ascend at the same time, both will fall into the valley, but if they ascend one after each other (*by one of them retreating to a place where there will be ample room for the other to pass*), both can go up safely. How then should they act? If one (*boat or camel*) is loaded and the other is not, the one that is not loaded should give



way (as a manner of justice – for it is less trouble for that one) to the one that is loaded. If one is closer (to its city) than the other, the one who is closer should give way to the other one. However, if both are equally close or far (from their city), make a compromise between them, and the one which goes first should compensate the other (for giving him that privilege).

The *Gemora* cites a *braisa*: Justice, justice you shall follow. This means that you shall follow an eminent *Beis Din*, as for example, you should follow Rabbi Eliezer ben Hurkanus to Lod. Follow Rabbi Yochanan ben Zakkai to Beror Chayil.

It has been taught in a *braisa*: The noise of grindstones at Burni is as if there was an announcement of “*Shavua ha’ben, shavua ha’ben*” (this is a sign that there will be a circumcision (which takes place after a week since the child was born), and the grinding was for the herbs needed to heal the child). [They did it in this way in order to hide the fact that a circumcision was taking place, for the Romans had decreed against it.] A light of a candle (was seen by day or many candles by night) at Beror Chayil is as if there was an announcement of “*Mishteh sham, mishteh sham*” (there will be a feast there for a bride).

The *Gemora* cites a *braisa*: Justice, justice you shall follow. This means that you shall follow to the place of the Academy (where there is a *Beis Din*; even if it is some distance away). You should follow Rabbi Eliezer to Lod. Follow Rabbi Yochanan ben Zakkai to Beror Chayil. Follow Rabbi Yehoshua to Peki’in, Rabban Gamliel to Yavneh, Rabbi Akiva to Bnei B’rak, Rabbi Masya to Rome, Rabbi Canania ben Teradyon to

Sichni, Rabbi Yosi to Tzipori, Rabbi Yehudah ben Beseirah to Netzivin, Rabbi Yehoshua to the Exile (Pumbedisa), Rebbe to Beis She’arim, the Sages to the Lishkas Hagazis (*Chamber of hewn stones*). (32b)

### **Opening with Non-liability**

The *Mishna* had stated: Monetary cases open with statements either for non-liability or for liability; but capital cases open only for acquittal, but not for conviction.

The *Gemora* asks: How do we open for non-liability by capital cases?

Rabbah says: We ask the defendant if he has any witnesses that will contradict the others.

Rav Kahana says: They tell the witnesses that it would seem from their words that the defendant will not be found guilty.

Abaye and Rava both say: The judges tell the defendant that if you did not kill anyone, you have nothing to fear.

Rav Ashi says: They announce: whoever knows any reason that will help acquit the defendant should come forward and testify.

The *Gemora* cites a *braisa* that accords with Abaye and Rava. (32b – 33a)

### **DAILY MASHAL**

#### ***Reb Moshe as the Eminent Judge***



The *Mishna* stated: In the deliberations regarding money matters, and cases of *taharah* and *tumah*, they commence from the greatest judge. In capital cases, they commence from the side (*where the less distinguished judges sat*).

Rashi explains the reason for starting from the less eminent judges by capital cases. It is based upon the verse: *Do not respond to a dispute (riv)*. The word “*riv*” is written without a “*yud*.” The verse can therefore mean: *Do not respond to a master*. If the greatest judge will argue that the defendant should not be convicted, the less eminent judges will feel that they cannot dispute his opinion, and they too will rule that he should be convicted. For this reason, we begin with the less distinguished judges.

Reb Moshe Feinstein Zt”l (O”C I; 109) was once deliberating in *halachah* with Reb Menasheh Klein, and Reb Moshe wrote to him as follows: That which you are avoiding to argue with me in *halachah* is not necessary, nor is it required, for this is the way of the Torah – everyone seeks to realize the truth. Heaven forbid for someone to remain silent in matters of *halachah*, whether he wishes to rule leniently or stringently. That which is derived from the verse is not that it is forbidden to dispute a master; rather, explains the Nimukei Yosef, the Torah is teaching us the manner in which the judges should state their opinions, for they were concerned that the less eminent judges would not wish to disagree with the more distinguished judges. Evidently, they are permitted to argue with him; we were merely concerned that they might not want to.

Furthermore, this is only when they are stating their opinion in order to issue a verdict; however, with respect to a discussion in learning, it is certainly permitted for a student to question and disagree with his teacher.

Reb Moshe concludes: Therefore, even if you consider me to be an eminent judge and scholar, you still are allowed to argue with me, and therefore, you are obligated to state your opinion, and there is nothing to avoid. However, with respect to this inquiry, the truth is the way I see it, and the matter is forbidden.

#### HALACHAH ON THE DAF

##### *Lit Candles*

The *Gemora* mentions an interesting custom: in the times when it was dangerous for a Jew to openly fulfill the *mitzvos*, the Jews were forced to come up with ingenious plans that would disguise their true intent. When they needed to circumcise an infant, they lit many candles, and this signaled for the rest of the Jews that a circumcision was taking place at that location.

Tosfos points out that this is where the custom originated to light candles by a circumcision. The Peri Megadim (Orach Chaim 559:3) cites Mahril who ruled that although we do not light candles in Shul on Tishah B’av as a sign of mourning, we do however light candles for a circumcision.

The Gilyon Maharsha derived from the above *Gemora* that we should accompany a groom with torches. The Ta’amei Haminhagim (960) quotes Tashbatz (467), that the source for this custom is from the Giving of the Torah, as it says: *All the people saw the thunder, flames...* (Shemos 20:14).