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Reversing a Decision

The *Mishna* had stated: The verdict of monetary cases may be reversed, whether for non-liability or for liability.

The *Gemora* asks a contradiction from another *Mishna*: If a judge in giving judgment in a monetary case has declared innocent the person who was really liable or made liable a person who was really innocent, declared *tamei* a thing which was really *tahor*, or declared *tahor* a thing which was really *tamei*, his decision would stand, but he would have to make reparation out of his own property. [*Evidently, the verdict is not reversed!?*]

Rav Yosef said: this is not a difficulty, for our *Mishna* is referring to an expert judge (*who has been ordained, and is empowered to reverse his own verdict*), whereas the other *Mishna* is referring to a non-expert judge (*who cannot issue a new ruling, for the defendant will say, “I do not wish to heed your second ruling; only your first”*).

The *Gemora* asks: And if he is an expert, may he reverse his verdict? But we learned in that *Mishna*: If he was an expert (*and erred in judgment*), he is exempt from any liability.

Rav Nachman answers: Our *Mishna* is referring to a case where there is a court superior to this one in learning and numbers (*so he may reverse his opinion, for the other court will agree with his reversal*); whereas in the other *Mishna*, there is no court available superior to this in learning and numbers.

Rav Sheishes answers the contradiction: Our *Mishna* is referring to a case where the judge erred regarding a law

(*explicitly*) cited in a *Mishna*; whereas there, it is referring to a case where he erred in the weighing of conflicting opinions. For Rav Sheishes said in the name of Rav Assi: If he erred in a law cited in the *Mishna*, the decision is reversed; however, if he erred in the weighing of conflicting opinions, the verdict may not be reversed.

Ravina asked Rav Ashi: If he erred regarding a teaching of Rabbi Chiya or Rabbi Oshaya, is that regarded as erring in an explicit ruling?

He answered: Yes.

Ravina asked: And even in a statement of Rav and Shmuel?

He answered: Yes.

Ravina asked: And even in a law stated by you and me?

Rav Ashi retorted: Are we then reed cutters in a swamp (*that our statements should be ignored*)!?

The *Gemora* asks: How are we to understand “the weighing of conflicting opinions”?

Rav Pappa answered: If, for example, two *Tannaim* or *Amoraim* argue, and it has not been explicitly settled with whom the law rests, but the judge rules according to the opinion of one of them, while the general consensus is to follow the other, this is a case of an error in the weighing of conflicting opinions.

Rav Hamnuna asked Rav Sheishes: It once happened that Rabbi Tarfon ordered a cow (*from Menachem*), whose womb



had been removed, so he gave it to the dogs (*as a tereifah*). When the matter was brought before the Sages in Yavneh, they permitted the cow to be eaten, for Todos the Physician stated that no cow or sow was allowed to leave Alexandria in Egypt unless her womb had first been cut out, so as to prevent her from bearing young. [*Since we know that they lived, they obviously are not regarded as tereifos!*] Rabbi Tarfon (*upon realizing his mistake*) exclaimed: Your donkey is gone, Tarfon! [*He thought that he would have to sell his donkey in order to procure funds to repay the owner for the loss which he caused.*] But Rabbi Akiva said to him: You are exempt from any liability, since he who is widely recognized as an expert is free from making restitution (*for a mistaken verdict*). Now if your answer is correct, he should have said to him: You erred regarding a law cited in a *Mishna*, and he who errs in a law cited in the *Mishna*, may reverse his decision!?

The *Gemora* answers: He meant two things: Firstly, you have erred in a law cited in the *Mishna*, and he who errs in a law cited in the *Mishna* may reverse his decision. And secondly, even if you had erred in the weighing of conflicting opinions, you are a widely recognized expert, and accordingly, you are exempt from liability to pay compensation.

Rav Nachman bar Yitzchak asked Rava: What was Rav Hamnuna asking Rav Sheishes from the case with the cow? How can he reverse his decision after the cow was fed to the dogs?

Rava answers: This is what Rav Hamnuna meant: Should you say, that he who errs regarding a law cited in the *Mishna* may not reverse the decision, it is correct – for since we see that his decision stands, Rabbi Tarfon was apprehensive (*for then he was the one who inflicted the damage*), whereupon Rabbi Akiva said to him: You are recognized as an expert, and therefore free from any liability. But if you say that he who errs in a law stated in the *Mishna* may reverse his decision, then Rabbi Akiva should have said to him: Since if the cow were still in existence, your decision would have been invalid and you would have done nothing, so too now (*that the cow is dead*) you have done nothing (*and therefore not*

responsible; the fact that he was the cause for the loss of the cow is inconsequential, for that is regarded as grama – an indirect damage).

Rav Chisda suggests an alternative resolution to the contradiction: The other *Mishna* is referring to a case where the judge took the money with his hand and gave it to the other (*and therefore his ruling cannot be reversed*); whereas our *Mishna* is referring to a case where he did not take the money with his hand and give it to the other.

The *Gemora* asks: How can that be accomplished in the case where the judge ruled (*erroneously*) that the one who is liable is not liable (*how can he do that with his hand*)?

The *Gemora* answers that when a judge declares someone not to be liable, that is regarded as a direct implantation of justice (*and therefore it cannot be reversed*).

The *Gemora* challenges this explanation and remains with a difficulty.

Ravina suggests that the other *Mishna* is referring to a case where the other party was holding a security for the loan in his hand, and the judge (*erroneously*) took the security from him and gave it back to the defendant. [*He directly implemented his decision and therefore it cannot be reversed.*]

The *Mishna* had stated: Capital cases are reversed only for acquittal, but not for conviction.

The *Gemora* cites a *braisa* which cites Scriptural sources for the following two *halachos*:

1. If someone was leaving the court on his way to be executed, and someone said, "I can advance an argument in favor of acquittal," we listen to him, and return the defendant to court.
2. If someone was leaving the court after being acquitted, and someone said, "I can advance an argument in favor of his conviction," we do not listen to him, and return the defendant to court.

Rav Simi bar Ashi says that the reverse is applicable to someone who incites others to commit idolatry. [*He is returned if someone can advance an argument to convict him, but not if someone wishes to have him acquitted.*]

Rav Sheishes told Rabbi Zeira that someone who is liable to exile (*for murdering unintentionally*), and someone who is liable to lashes is treated as a capital case (*and if they are acquitted, the decision cannot be reversed*). These *halachos* are derived from a *gezeirah shaveh*.

The *Mishna* had stated: Capital cases are reversed only for acquittal, but not for conviction.

Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: It is only when the judge erred regarding something that the Sadducees do not agree with (*i.e., something that is not explicitly stated in the Torah*), but if he erred in something that they would agree with, the decision may be reversed (*even to convict*), for this is something that he could go read in school (*and is not regarded as a valid verdict to begin with*). (33a – 33b)

INSIGHTS TO THE DAF

Why we mustn't disagree with the Tannaim and Amoraim

If he errs in a matter mentioned in the *Mishna*, his decision is reversed.

Our *sugya* discusses the event of a *dayan* who erred and issued a mistaken verdict: "If he errs in a matter mentioned in the *Mishna*, his decision is reversed." In other words, any ruling that contradicts a *Mishna* is void.

The Rishonim (*Rosh*, §6, and the *Baal Hamaor*) explain that in addition to a ruling opposing a *Mishna*, any decision that contradicts a halachah which the *dayan* mustn't dispute is also void. The Raavad (and *Rosh*, *ibid*; etc.) therefore holds that a *dayan* who rules in opposition to the Geonim is

regarded as having erred in a matter mentioned in the *Mishna* as we mustn't disagree with the Geonim. In addition, the *Rosh* (*ibid*) asserts that even if a *dayan* may disagree with another *halachic* authority, he is considered as having erred in a matter mentioned in the *Mishna* if, had he known of that authority's decision, he would have reversed the ruling.

How did it become universally accepted that later *poskim* must not refute the rulings of previous generations to the point that any deviation from the ruling of a *Mishna* is regarded as an error? Also, why must an Amora never disagree with a Tanna, as we often encounter in the *Gemora* that an Amora's statement is discarded if found to disagree with a *Mishna* or a *beraisa*? Who established this hierarchy? Indeed, there are two answers to the question, involving the status of the *Mishna* and the Babylonian Talmud and that of the earlier *poskim* in contrast to the status of later *poskim*.

Our sages' acknowledgement upon the completion of the *Mishna* and Talmud: In his *Kesef Mishna* on the *Yad Hachazakah* (*Hilchos Mamrim* 2:1), Rabbi Yosef Karo comments: "we can say that at the time of the completion of the *Mishna* all **agreed and accepted** that later generations would not contest it. The same applies to the completion of the *Gemora*, that since its final redaction no one may disagree with it." In other words, the Jewish people accepted entirely that they would never disagree with the sages of the *Mishna* and *Gemora*. Indeed, in his preface to his *Yad Hachazakah*, the Rambam writes: "However, everyone must obey the Babylonian Talmud and we must force every community to follow the customs of the sages of the *Gemora* and institute decrees accordingly as everything mentioned in the *Gemora* has been accepted by all Israel. Moreover, those sages who decreed, ruled or judged that the halachah should be such comprised all the sages of Israel or most of them; they received the oral tradition concerning the principles of the entire Torah, generation after generation from Moshe."

The gap between former and later generations: What is the nature of this agreement whereby our sages and the entire Jewish people accepted the *Mishna* and the Babylonian

Talmud? The Chazon Ish explains that “they did not do their predecessors a favor but were rather obligated by the truth” (*Kovetz ‘Inyanim, He’aros HaChazon Ish, 2*). In other words, after the completion of the *Mishna* and Talmud our sages realized that there was a great gap between them and previous generations and they could never disagree.

HaGaon Rav Elchanan Wasserman (ibid, in reply to the above remarks) asserts that this explanation is inadequate as sometimes a great *halachic* authority appears in a later generation who is considered equal to previous sages. HaGaon Rav Chayim of Volozhin, for example, mentions that the Vilna Gaon could have been on the same level as the Rashba or even the latter’s mentor, Ramban. Rav Hai Gaon was also known to have been greater than all previous Geonim, though he was the last. Could such a person disagree with previous authorities? The *Gemora* hardly mentions any exceptions and we must therefore seek another reason.

Rav Elchanan asserts that we should explain the issue on the strength of the assumption that the agreement on the part of **all** our sages has the validity of the supreme authority of the Sanhedrin. Though the Sanhedrin had to number 70 *dayanim* and convene in the Temple, the agreement of all later sages was not thus limited and their decision was valid anywhere, just like the *Sanhedrin’s*. At the completion of the *Mishna* and the Talmud, all or most of our sages convened and no one may therefore disagree with the halachos ruled in the *Mishna* and *Gemora* (*Kovetz Shi’urim, II, Kuntres Divrei Soferim, 2*, expanded in *Kovetz ‘Inyanim*, pp. 198-201, based on – among other sources – Rambam in *Hilchos Sanhedrin, 2*; Rambam asserts that a meeting of all Torah scholars may renew the original rabbinical ordination [*semichah*], providing they received the tradition according to the principles of the Torah generation after generation going back to Moshe; see *Beis Yishai* by HaGaon Rav S. Fisher and *Kovetz Shi’urim* on Bava Basra, #633, who cites the opinion of HaGaon Rav Chayim of Brisk that an Amora **may** disagree with a Tana but the *Gemora* asks on an Amora contradicting a Tana because if the Amora had known of the *Tanna’s* statement, he would not have

disagreed; see *Yad Melech* by Rav D. Man on *Hilchos Mamrim*).

Till now we have addressed the general agreement of all our sages regarding the uncontested status of the *Mishna* and Babylonian Talmud. Let us now examine the status of the *halachic* authorities after the completion of the Talmud.

Indeed, some believe that the rulings of the Geonim should not be considered as definite halachah (*Ba’al HaMaor*; see Rambam’s commentary on the *Mishna*, Bechoros 4:4). On the other hand, there are opinions that no authority, even a Rishon, may disagree with a decision of a previous *posek* and, as the *Rosh* asserts: “Even the sages after the Geonim were not insignificant” (cited by the *Tur, C.M. 25*). Still, if a *posek* has a strong question disturbing the basis of a previous ruling, he may disagree as “he may take issue with the decisions of the Geonim not elucidated in the Talmud edited by Ravina and Rav Ashi” (*Rosh, ibid*).

DAILY MASHAL

We should emphasize that all the above applies to an ordained rabbi who definitely understands the statements of previous authorities before he decides to disagree. However, if the gap between the generations and the difference in intellectual capacity prove that we fail to completely understand previous authorities, we must, of course, never disagree with them as to disagree with anything, we must first understand it (*Kovetz ‘Inyanim, ibid*). As for the halachah, *Shulchan ‘Aruch (C.M. 25:1)* rules that no *dayan* may disagree with a decision explicitly determined by a previous authority (see *Remo, ibid*, who cites the above opinion of the *Rosh*, and see *Pischei Teshuvah*).