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Advancing an Argument

The *Mishna* had stated: Regarding monetary cases - all 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.

The *Gemora* explains the word “all” to be referring even to the witnesses.

The *Gemora* notes that if this is the correct interpretation, the *Mishna* would be in accordance with Rabbi Yosi the son of Rabbi Yehudah, and not the *Chachamim*, for it was taught in a *braisa*: *A single witness shall not talk about a soul*. This means that we do not accept any argument advanced by the witness, whether it is for acquittal or for conviction. Rabbi Yosi the son of Rabbi Yehudah says: He may advance an argument for acquittal, but not for conviction.

Rav Pappa explains that when the *Mishna* says “all,” it means to include the disciples (*that are sitting before the judges*), and the *Mishna* is following both opinions (*mentioned in the braisa above*).

The *Gemora* asks: What is the reasoning of Rabbi Yosi the son of Rabbi Yehudah?

The *Gemora* answers: *A single witness shall not talk about a soul that he shall die*. This implies that he cannot say anything to make the person guilty, but can say things to make him innocent.

The *Gemora* asks: Why do the *Chachamim* hold the way they do?

Rish Lakish answers: They say that he may not advance any argument at all because it looks like he is being partial to his previous testimony.

The *Gemora* asks: What do the *Chachamim* do with the verse, “*that he shall die*”?

The *Gemora* answers: They understand that it is referring to one of the students (*not one of the witnesses*). This is as the *braisa* states: If one of the witness’s say, “I can advance an argument to show he is innocent,” how do we know that we do not listen to him? The verse says: *A single witness shall not talk about a soul*. How do we know that if one of the students wants to advance an argument to show he is guilty that we do not allow him to do so? The verse states: *A single witness shall not talk about a soul that he shall die*.

The *Mishna* had stated: 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.

Rav says: This (*that he cannot argue for conviction once he has stated something in the defendant’s favor*) is only when they are discussing the case. However, he is allowed to vote that he is guilty even if he originally stated a reason why he is innocent.

The *Gemora* asks a question on this from a *braisa*. The *braisa* states: The next day they (*the judges*) get up and come to *Beis Din*. The one who stated he was innocent says, “I state he is innocent, and vote this way.” The one who stated he was guilty states, “I state he is guilty, and vote that he is guilty.” If someone said he is guilty he can retract and state he is

innocent, but if he said he is innocent he cannot retract and state that he is guilty. This *braisa* is discussing the verdict, and therefore when it says, “If someone said he is guilty he can retract and state he is innocent,” it implies this he cannot change his vote!?

The *Gemora* answers: And according to you, is there no further deliberation after the first day? The *braisa* is merely discussing the continuation of the debate among the judges, not the actual vote.

The *Gemora* asks another question on Rav from a *braisa*. The *braisa* states: Both sides discuss the case with each other, until those who wish to vote for conviction agree to those who wish to vote for his innocence. If those voting for acquittal can vote for conviction, why didn't the *braisa* state this possibility as well?

The *Gemora* answers: The *Tanna* would rather give an example of finding one innocent, not guilty.

The *Gemora* asks another question on Rav. Rabbi Yosi bar Chanina states: If one of the students who argued that he is innocent died, he is looked upon as if he is alive and in his place. If Rav was correct, why don't we say that he would have retracted his words?

The *Gemora* answers: The reason is because he never retracted.

The *Gemora* asks: Didn't they send a message from *Eretz Yisroel* that according to Rabbi Yosi bar Chanina's opinion, he is arguing on Rav?

The *Gemora* answers: No. They actually sent that he is not arguing on Rav.

The *Gemora* asks another question on Rav from a *braisa*. The *braisa* states: Two scribes would stand before them, one at the right of the judges and one at the left, and they would

write the words of those arguing for his innocence and for those arguing for conviction.

The *Gemora* asks: It is understandable that they would write the words of those arguing for conviction in order that if they had another reason the next day regarding his guilt, they would have to wait another day before voting for conviction. [*This is because after giving a new reason, they had to wait another day before voting.*] However, why did they have to write down the reason for those arguing for his innocence? It must be to record that they said he was innocent, and to show that they cannot change their minds for the final vote!?

The *Gemora* answers: No. It was in order that two people who say argue for his innocence should not give the same reason based on two different verses. This is as Rabbi Assi asked Rabbi Yochanan: What happens if two judges who say he is innocent do so for the same reason, but they each are based on different verses? Rabbi Yochanan replied: They are only considered one opinion (*as one of them is definitely wrong*).

The *Gemora* asks: How do we know this?

Abaye says: The verse states: *One thing has God spoken, but two I heard, for power belongs to God*. This teaches us that while one verse can teach many lessons, two verses do not teach the same lesson.

It was taught in the Academy of Rabbi Yishmael: *And like a hammer that a rock shatters*. Just like the hammer breaks into many pieces, so too a verse can yield many teachings. [See *Tosfos* that presents another explanation that the rock breaks into many pieces. Both teach the same lesson.] (33b – 34a)

One Teaching from Two Verses

The *Gemora* asks: What is a case where one teaching is derived from two verses?

Rav Zevid answers: There is a case in the *Mishna*. The *Mishna* states: The Altar sanctifies what is appropriate for it. Rabbi

Yehoshua says: Whatever is appropriate for the fire of the Altar should not be taken off the Altar once it is put on. [This is despite the fact that it became invalid after it was slaughtered (see Rashi for exceptions).] This is as the verse states: *The olah offering on its pyre.* This teaches us that just as an *olah* that is fit to be placed on the fire of the Altar should not be taken off (even if deemed invalid), so too anything that is fit to be placed on the fire of the altar should not be taken off (once it has been erroneously placed there). Rabban Gamliel says: Whatever is appropriate for the Altar should not be taken off the Altar once it is put on. This is as the verse states: *It, the olah offering, shall be upon the pyre upon the Altar.* This teaches us that just as an *olah* that is fit to be placed on the Altar should not be taken off, so too anything that is fit to be placed on the Altar should not be taken off. Both are including invalid sacrifices to be able to stay on the Altar, but are doing so from different verses. Rabbi Yehoshua derives from “the pyre,” while Rabban Gamliel derives from the extra “the Altar.”

The *Gemora* asks: Don’t they indeed argue regarding more than the source? The end of the *Mishna* says: There is no difference between Rabban Gamliel and Rabbi Yehoshua besides blood and libations (that are disqualified)! According to Rabban Gamliel, they are placed on the Altar and therefore would not be taken down, but according to Rabbi Yehoshua, they do not go on the fire and would be taken down! [This therefore is not a good example, as they are not learning the exact law from two different sources.]

Rather, Rav Pappa says, an example is the following *braisa*. The *braisa* states: Rabbi Yosi HaGelili says that being that it says: *Whatever touches the Altar should become sanctified,* I understand that anything that goes on the Altar becomes holy (and cannot be taken down), even if it is not fit for the Altar at all. This is why the verse says, “lamb.” Just as lambs are fit for the Altar, so too this law only applies to things that are fit for the Altar. Rabbi Akiva derives this from the word “*olah*.” Just as an *olah* is fit for the Altar, so too this law only applies to things that are fit for the Altar. Both opinions are excluding things that are unfit, and learn this from different sources.

The *Gemora* asks: Doesn’t Rav Adda bar Ahavah say that the difference between them is a bird *olah* (that becomes invalid)? The one who derives from “lamb” will not agree that this applies to a bird *olah* (and if it becomes disqualified, it will be taken down), whereas the one who derives this from “*olah*” will say that it applies to a bird *olah* as well.

Rather, Rav Ashi says: An example is the following *braisa*. The *braisa* states: *It will be considered as blood for that man, he has spilled blood.* This includes sprinkling blood (in the prohibition of offering a *korban* outside the Temple); these are the words of Rabbi Yishmael. Rabbi Akiva says: *Or a sacrifice.* This includes one who does sprinkling. They both include sprinkling, and they derive it from different verses!

The *Gemora* asks that this is still not an example based on Rabbi Avahu’s statement. Rabbi Avahu says: The difference between them is whether one sins once or twice if he both slaughters and sprinkles. According to Rabbi Yishmael, he only transgresses once for both actions, and according to Rabbi Akiva he transgresses twice.

The *Gemora* answers: Abaye says that even Rabbi Akiva only says he is liable for one sin, as the verse says: *There you will offer your olahs, and there you will do.* The verse combines all of the actions of bring a sacrifice (regarding this prohibition). [In conclusion, according to Abaye’s understanding of Rabbi Akiva, Rabbi Akiva and Rabbi Yishmael derive the same law out of two different verses.] (34a – 34b)

Judging by Night

The *Mishna* had stated: Monetary cases are judged during the day and may be completed during the night; but capital cases must be judged and completed during the day.

The *Gemora* asks: How do we know this?

Rabbi Chiya bar Pappa says: The verse says: *And they will judge the nation at any time.*



The *Gemora* asks: If so, why does the *Mishna* say that the start of the case must be during the day?

The *Gemora* answers: This is based on Rava's teaching. Rava asks: The verse states: *And they will judge the nation at any time*. Yet it also states: *And it will be on the day that he bequeaths to his children*. [This implies judgment is during the day.] It must be that the beginning of judgment must be during the day, while the verdict can take place at night.

The *Gemora* observes that our *Mishna* is unlike Rabbi Meir. The *braisa* says that Rabbi Meir said: What is the verse teaching us when it says: *Based on his word will every dispute and affliction be decided*? What do these two have to do with each other? It must be the verse is teaching us to compare them to each other. Just as *tzaraas* afflictions are only seen by the *Kohen* during the day, as the verse states: *And on the day the healthy flesh appears*, so too monetary disputes are only judged during the day. Additionally, just as *tzaraas* afflictions cannot be ruled upon by a blind man, as the verse states: *Wherever the eyes of the Kohen can see*; so too a blind man cannot judge monetary cases. In contrast, we also compare monetary cases to *tzaraas* afflictions. Just as a relative cannot judge a monetary case, so too, a relative cannot rule regarding *tzaraas* afflictions. One might think that we should therefore say that just as judgment of a monetary case must be done with three people, so too *tzaraas* afflictions must be judged with three people. This is logical based upon the following *kal vachomer*: If judgment regarding one's money is done with three people, then judgment regarding one's body should certainly be done with at least three people! This is why the verse says: *And he will be brought to Aharon the Kohen or to one of his sons* etc. This teaches that one *Kohen* can rule regarding a *tzaraas* affliction. (34b)

Blind Judge

There was a blind judge in Rabbi Yochanan's neighborhood, and Rabbi Yochanan did not protest.

The *Gemora* asks: Didn't Rabbi Yochanan say that the law follows an anonymous *Mishna*, and the *Mishna* says: Whoever is fit to judge is fit to testify, but there are some who can testify but not judge? Rabbi Yochanan himself says this excludes a person who is blind in one eye from judging!?

The *Gemora* answers: Rabbi Yochanan found a different anonymous *Mishna* that argues. Our *Mishna* says: One judges monetary cases during the day and gives the verdict at night (implying a blind man can judge).

The *Gemora* asks: Why is one anonymous *Mishna* better than the other?

The *Gemora* answers: It is possible that the anonymous *Mishna* represents the opinion of the *Chachamim*, who are the majority, is better than one representing the opinion of Rabbi Meir.

Alternatively, the *Gemora* answers: Our *Mishna* is more of an authority on this topic, as it is taught together with other laws dealing with judicial procedures.

The *Gemora* asks: What does Rabbi Meir do with the verse: *And they will judge the people at all times*?

Rava answers: This shows that one can also judge on cloudy days. For it was taught in a *Mishna*: One cannot observe *tzaraas* afflictions in the early morning, towards evening, in the house, or on a cloudy day, as dull colors look brighter (as there is not strong light). One also cannot observe *tzaraas* afflictions at high noon, because bright marks look dull.

The *Gemora* asks: What does Rabbi Meir do about the verse: *And it will be on the day that he bequeaths to his children*?

He requires it for the teaching stated by Rabbah bar Chanina before Rav Nachman. He said: *And it will be on the day that he bequeaths to his children*. This teaches us that inheritance is given during the day, but not the night.



Abaye challenged him, asking whether one who dies at night is not inherited.

Rather, Abaye asked if he means that the *adjudication* of inheritance cannot be done at night, just like the beginning of any court case, which must be during daytime.

Abaye then quoted a *braisa* and accompanying statements, which discuss this in more detail. The *braisa* says that from the verse that states inheritance is a *chukas mishpat - rule of judgment* - we learn that inheritance is considered an area of monetary judgment. Rav Yehudah says in the name of Rav that if three people enter to visit a deathly ill person who wishes to distribute his inheritance, they may act as witnesses and write down his instructions, or as judges, directly implementing his instructions. If two enter to visit, they are not enough to comprise a court, and therefore may only act as witnesses, and write down his instructions.

Rav Chisda explains that Rav Yehudah only allowed the three to act as judges if they entered during the day, but if they entered at night, they may only act as witnesses, since the adjudication of inheritance is considered equivalent to the start of a court case, and may only be done during daytime. Once they have entered in the capacity of witnesses, they may no longer act as judges, since a witness may not simultaneously be a judge.

Rabbah bar Chanina told Abaye that this was his intent when explaining the verse's use of the word *yom* – *day*. (34b)

INSIGHTS TO THE DAF

THE HAMMER OR THE STONE

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The *Gemora* expounds the verse, "uch'Fatish Yefotzetz Sala" (Yirmeyahu 23:29), which describes the words of Hash-m.

D'Vei Rebbi Yishmael derives from this verse that "just as a hammer divides into many sparks, so, too, one verse teaches many lessons."

The subject and object of the verse are unclear. Do the words "uch'Fatish Yefotzetz Sala" mean that Hashem's words are "like a hammer that shatters a stone into many fragments," with the stone the object which is shattered by the hammer, or does the verse mean "like a hammer that is shattered to pieces when it strikes the hard stone," with the hammer the object that is shattered by the stone?

(a) **TOSFOS** (DH Mah Patish) quotes **RABEINU SHMUEL** who explains that the Girsas of our text of the *Gemora* is incorrect. Our text reads that the hammer is "Mis'chalek." This form of the word means that the hammer *itself* becomes broken into pieces. Rabeinu Shmuel says that d'Vei Rebbi Yishmael means that the *stone* is shattered into many pieces, not the hammer. The correct text is that the hammer is "Mechalek" the stone into many pieces. (See also **RASHI** to Shabbos 88b, DH Mah Patish.)

Tosfos questions this explanation. According to Rabeinu Shmuel, the main point of the *Gemora's* metaphor is the shattering of the stone, not the function of the hammer. The *Gemora* should say that just as the *stone* shatters into many parts, from one verse many lessons can be derived. Why does the *Gemora* focus on the *hammer* which shatters the stone, if the main point is the division of the stone, and not that the hammer that shatters it? Moreover, a similar statement is made by the *Gemora* in Shabbos (88b), which also uses the word "Mis'chalek." There, too, the *Gemora* should focus on the stone that is shattered, and not on the hammer that shatters it.

(b) Tosfos quotes **RABEINU TAM** who explains that the *Gemora* indeed means that the *hammer* itself shatters when it hits a strong stone. Rabeinu Tam cites supports for this explanation from the Midrash Rabah in Eichah. The Midrash relates that a person sought to check the sturdiness of a piece of sapphire. He placed the stone onto an anvil and hit it with

a sledgehammer. The anvil split, the sledgehammer broke, and the sapphire remained intact. The Midrash says that this is the meaning of the verse, "uch'Fatish Yefotzetz Sala." Accordingly, the translation of the verse is "like a hammer that the hard stone shatters." (See the **ARUCH LA'NER** who quotes other verses which are written in a similar manner.)

Tosfos in Sukah (52a, DH Im Barzel) questions Rabeinu Tam's explanation from the *Gemora* in Ta'anis (4a). Rav Ashi there says that any Talmid Chacham who is not as tough as a stone (that is, he is not able to rebuke his constituents; see **CHIDUSHEI HA'GE'ONIM** in **EIN YAKOV**) is not a Talmid Chacham, as the verse says, "uch'Fatish Yefotzetz Sala." The *Gemora* there seems to compare the Talmid Chacham to a hammer which must be strong and capable of breaking stones. How does Rabeinu Tam reconcile his explanation of the verse (that the hammer itself breaks) with the *Gemora* in Ta'anis which clearly implies that the stone breaks?

The Aruch la'Ner in Sukah answers that the dispute between Rabeinu Tam and Rabeinu Shmuel is actually a dispute in the *Gemora* itself. Rav Ashi in Ta'anis (4a) disagrees with d'Vei Rabbi Yishmael (and with the Midrash in Eichah), who understands that the verse refers to a hammer that splits a rock, and not to a hammer that is split by a rock. Indeed, the *Gemora* in Shabbos records other Amora'im who derive from other verses the idea of d'Vei Rabbi Yishmael, which implies that they also do not agree with his Derashah from this verse, presumably because they understand that this verse refers to a hammer that splits a stone, and not a stone that splits a hammer.

HALACHAH ON THE DAF

When to Judge

A *Beis Din* cannot begin judging a case at night. Although the Mechaber (Choshen Mishpat 5:2) rules in accordance with this *Gemora*, the S'ma quotes a Tshuvah Maharam that is of the opinion that if the two litigants agreed to have the case judged at night, it is permitted to even have the *techilas din* at night. Based on this, says the S'ma, we are accustomed to

begin judging the case at night. He gives an interesting rationale, as to why it is permitted (*even though the Gemora forbade it*). We know that a person who is blind in both eyes may not be a *dayan* (ibid 7:2), since for him it is "night" even during the daytime. Therefore, reasons the S'ma, that we who have candles at night and can see as if it day, are permitted to judge at night!

Additionally, *Beis Din* does not judge on Shabbos and Yomim Tovim. The Pischei Teshuvah adds that the judges of a *Beis Din* should not even convene in a house where their *Beis Din* is located, lest we assume that they are there to judge a case.

Beis Din does not judge on Erev Shabbos or Erev Yom Tov either, but they may accept a litigant's claim and rule after Shabbos or Yom Tov.

DAILY MASHAL

Untoward Humility

The *Gemara* in Gittin 56a relates that the Caesar sent an animal to be sacrificed in the Temple and that Bar Kamtza caused it to bear a disqualifying defect. The sages wondered whether they should sacrifice the animal to avoid dishonoring the Caesar or kill Bar Kamtza but changed their minds when opposed by Rabbi Zecharyah ben Avkulas. Rabbi Yochanan said that "the humility of Rabbi Zecharyah ben Avkulas destroyed our house, burnt the Temple and exiled us from our land" as the Caesar was angered and attacked Yerushalayim.

How did Rabbi Zecharyah ben Avkulas show humility? The Vilna Gaon zt"l offers an explanation based on our sugya, that "cases involving a death penalty are first deliberated from the side" – i.e., by the least honored *dayan* of the Sanhedrin, as one mustn't disagree with the leader of the Sanhedrin. The sages did not agree with Rabbi Zecharyah ben Avkulas but could not oppose him, as he was the leader of the Sanhedrin. Nonetheless, they could have expressed their opinion before he expressed his, but his humility caused him to sit at the side of the Sanhedrin, and express his opinion first, after which they could not argue with him...(Divrei Eliahu).