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Mishnah

[It is a Biblical obligation to appoint Courts in all the settlements of Eretz Yisroel, as it is written: Judges and officers shall you make for yourself in all your gates (Deut. 16:18). There were three types of Courts: (1) the Court of three judges, which judged monetary lawsuits and lawsuits involving fines, (see beginning of this chapter); (2) the Court of twenty-three judges, i.e., the “Small Sanhedrin,” which judged capital lawsuits; (3) the Great Court of seventy-one, i.e., the “Great Sanhedrin,” or merely the “Sanhedrin,” which sat in the Lishkas Hagazis in the Beis Hamikdash. The Great Court judged the tribe that engaged in idolatry, the false prophet, and the Kohen Gadol, as will be taught in this chapter; it also appointed the Small Sanhedrins, and ruled on points of law. Meseches Sanhedrin elaborates on the proceedings of law-courts and their powers; laws of witnesses and their examination; how the judges discuss the material brought before them; how they deliver their rulings; how the four Court-imposed types of death penalty are executed, etc. The first Mishnah deals with lawsuits which are decided by three judges. Kahati]

Monetary cases are judged by three judges; thefts and injuries - by three; damages and half damages, double, fourfold and fivefold payments - by three; the rapist, the seducer and the defamer - by three; these are the words of Rabbi Meir. The *Chachamim*, however, say: The defamer is judged by twenty-three, because it involves capital litigation (*if she indeed committed adultery*).

Cases where a defendant will receive lashes are judged by three. In the name of Rabbi Yishmael, it was said - by

twenty-three.

The intercalation of the month - by three; the intercalation of the year - by three; these are the words of Rabbi Meir. Rabban Shimon ben Gamliel said: They begin with three, and they discuss it with five, and they conclude with seven, but if they concluded by three, it is intercalated.

Semichah of the elders (*the law is that the majority of individual sacrifices require semichah, i.e., the owner of the sacrifice with all his strength lays (somech) his two hands on the head of the live animal, and confesses over his sacrifice. The sacrifices of the public, however, do not require semichah, with two exceptions: (1) the goat that is sent forth on Yom Kippur requires semichah by the High Priest; (2) the bull of “the thing which is hid from the eyes of the assembly,” i.e., if the Sanhedrin erred unintentionally in its ruling and erroneously permitted something, the intentional transgression of which is punishable by kares and the unintentional transgression of which requires a chatas sacrifice, and the majority of the people acted in accordance with this ruling, and it later became known to the Sanhedrin that it had erred, the Torah states, “then the assembly shall offer a young bull for a sin-offering” (Vayikra 4:14). This sacrifice is called “the bull of the thing which is hid from the eyes of the assembly” and requires semichah by members of the Sanhedrin as it is written, “and the elders of the congregation shall lay their hands upon the head of the bull” (ibid., v. 15). This semichah is called in our Mishnah, in accordance with the wording in the Torah, “semichah of the elders.”) and breaking the heifer’s neck (i.e., if a person is found slain in a field, and the identity of*



the murderer is not known, the Torah writes, "Then your elders and your judges shall come forth, and they shall measure unto the cities which are round about him that is slain" (Devarim 21:2), and the city which is closest to the slain person brings a heifer whose neck is broken. Rabbi Shimon holds that the "measuring" mentioned in the Torah is performed by three members of the Sanhedrin, and the "breaking of the neck" stated in the Mishnah is not to be taken literally, for this act was performed by the elders of the city, as specified in the Torah, and not by the three judges. (Kehati) – by three; so said Rabbi (Yosi) Shimon. But Rabbi Yehudah says - by five.

Chalitzah (when a man dies childless, his brother has a mitzvah to perform yibum; if he declines, she submits to chalitzah, i.e. she removes his shoe, spits before him and declares that he does not want to marry her) and mi'un (A girl whose father had died could be given in marriage while still a minor (under the age of twelve) by her mother or older brother. This marriage is only valid Rabbinically. As long as she has not attained the age of twelve, she may nullify the marriage by refusing to live with her husband. This act of refusal, referred to as mi'un nullifies the marriage retroactively.), however, require three.

Neta reva'i (the fruit that grows from a tree in its fourth year; it must be brought to be eaten in Yerushalayim, or it can be redeemed and the money used in Yerushalayim to buy food), and ma'aser sheni (a tenth of one's produce that he brings to Yerushalayim and eats there in the first, second, fourth and fifth years of the Shemitah cycle; it can also be redeemed with money and the money is brought up to Yerushalayim, where he purchases animals for korbanos) whose value is not known (and he wishes to redeem them), is judged by three; the Temple property - by three; evaluations of movable property (if one says, "The value of So-and-so upon me," and he has no money, he gives movables to the Temple treasury) - by three. Rabbi Yehudah says: One of them must be a Kohen. Lands (belonging to hekdes) - by nine and a Kohen (to determine their value in

order to redeem them). A man is like them (if one says "The worth of so-and-so upon me," he is evaluated as a person being sold in the marketplace).

Capital cases are judged by twenty-three. The rove'a (an animal which has performed an act of bestiality) and the nirva (an animal on which an act of bestiality has been performed) - by twenty-three, as it is written: You shall kill the woman, and the beast, and it says: And you shall slay the beast (and we learn out that just as the person is judged for death by twenty-three judges, so is the animal). The ox that is stoned (for killing a person) is judged by twenty-three, as it is written: The ox shall be stoned, and its owner also shall be put to death, and we learn out that just as the death of the owner (requires twenty-three judges), so the death of the ox. The wolf, lion, bear, leopard, panther and snake - their death (if they killed a person) is judged by twenty-three. Rabbi Eliezer says: Whoever kills them first (before Beis Din) merits (for they are dangerous to society). Rabbi Akiva says: Their death is by twenty-three.

A tribe (that intentionally served idols), a false prophet, and the Kohen Gadol (who has committed a capital offense) are judged by a Court of seventy-one. A voluntary war (if they are not waging war against the seven nations that were occupying Eretz Yisroel) requires a Court of seventy-one. Yerushalayim and the Courtyards of the Beis Hamikdash are enlarged by a Court of seventy-one. A Court of seventy-one is required to appoint Sanhedrins (of twenty-three) for the tribes. An ir hanidachas (if most of the city worshipped idols, the city must be completely burnt) is declared by a Court of seventy-one. They may not declare an ir hanidachas on the border (between the Jews and the idolaters), and not three (when they are adjacent to each other), but one or two.

The Great Sanhedrin was of seventy-one, and the small one was of twenty-three. How do we know that the Great Sanhedrin is of seventy-one? It is written: Gather for Me seventy men of the elders of Israel, and with Moshe over

them, this makes seventy-one. Rabbi Yehudah says: The Great *Sanhedrin* was of seventy.

How do we know that the small *Sanhedrin* was composed of twenty-three? It is written: *And the congregation shall judge ... And the congregation shall save.* One congregation is needed to judge (*convict*) and another congregation is needed to save (*acquit*), which makes twenty. How do we know that a congregation is ten? It is written (*regarding the spies*): *How long shall I bear with this evil congregation?* This makes ten, for Yehoshua and Calev were excluded. And how do we know to bring another three? By implication, as it is written: *You shall not follow a majority to harm (to convict).* I infer from here that I may follow the majority to do good (*to acquit*). If so, why is it written: *It shall be decided according to the majority?* It teaches us the following: Not like your following (*the majority*) for good shall be your following for harm; your following for good is by a majority of one, whereas your following for harm is by two; and as a Court may not be an even amount of judges, an additional one is added, which makes twenty-three.

How many people should there be in the city that it should be eligible for a *Sanhedrin (of twenty-three)*? One hundred and twenty. Rabbi Nechemyah says: Two hundred and thirty, corresponding to rulers of tens. (2a1 – 2b1)

Judges by Monetary Cases

The *Gemara* asks: Do not thefts and injuries come under the category of monetary cases (*why are they necessary to be specified*)?

Rabbi Avahu answers: The *Tanna* is explaining the *Mishnah*: When the *Mishnah* says that monetary cases require three judges, it is referring only to thefts and injuries, but not to admissions and loans.

The *Gemara* notes: And it was necessary for the *Mishnah* to write them both. For had the *Tanna* mentioned only monetary cases, I might have thought that this included also cases of admissions and loans. This is why the *Tanna* taught cases of thefts and bodily injuries. And if the *Tanna* had mentioned only thefts and injuries, and not monetary cases, I might have thought that these included cases of admissions and loans, and the reason that the *Mishnah* specified particularly thefts and injuries is that the primary source for the regulation requiring three judges is written in connection with thefts and injuries. In connection with theft, it is written: The master of the house shall approach the judges.¹ And regarding bodily injuries, what difference is there in regard to an injury whether it is inflicted on one's person or on one's property.. This is why the *Tanna* stated (both cases to teach): What are the monetary cases? Theft and bodily injuries; thus excluding cases of admissions and loans.

The *Gemara* asks: And regarding what point do we exclude loans and admissions? It cannot be that three judges are not required, for Rabbi Avahu said: A monetary case judged by two judges is not a valid verdict! Rather, it must be that three ordained judges are not required.

This being the case, let us consider what is the determining principle of the *Tanna*. Does he hold that we have here an instance of mixture of sections, [in which case all the provisions in this section apply to cases of loans]? He should then demand ordained judges here also [since the term *Elohim* denoting ordained judges is mentioned in this place]. If on the other hand, he does not hold this view [and in this case the provisions in this section are limited to the cases of thefts as set forth], where is the authority for the necessity of three judges? — Indeed the *Tanna* accepts the principle of 'mixture of

¹The term 'Elohim' denoting 'Judges' occurs three times in this section.



sections' — and consequently, in accordance with the strict application of the law, in cases of loans, he would require [three] ordained judges — nevertheless they have become exempted from this regulation for the reason advanced by Rabbi Chanina, for Rabbi Chanina said: Biblically, both monetary and capital cases must be conducted with cross-examination 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 cross-examination and questioning? It is in order that you should not lock the door in the face of borrowers. (2b1 – 3a1)

INSIGHTS TO THE DAF

Monetary Cases are Judged by a Beis Din of Three

Should a *get* be delivered only before a *beis din*?

This week the Daf HaYomi learners have concluded Bava Basra and started tractate Sanhedrin and we take this opportunity to address an important topic connected with the beginning of Sanhedrin and the end of Bava Basra.

One of the striking subjects we most perceive as needing a *beis din* is divorce but, to our surprise, not all *halachic* authorities accept this assumption. The first *posek* to devote a broad discussion to this basic question was the Chief Rabbi of Prague, HaGaon Rav Yechezkel Landau, famed as the author of Responsa *Noda' BiYehudah* (2nd edition, E.H. 114). The *gaon* was asked to judge the validity of a bill of divorce (*get*) arranged by a certain rabbi who had enlisted his son-in-law and another person to form a *beis din*. As the rabbi and his son-in-law were relatives, the group of three cannot be defined as a *beis din* and the question remains if the *get* is valid though not having been delivered in the presence of a *beis din*. The *poskim* point out that the Talmud never indicates that a divorce should be enacted only in a *beis din* but the *Or Zarua'* (cited in *Terumas HaDeshen*, I, 248) states that a *beis din* is required,

and later *halachic* authorities began to search the Talmud for proof for either opinion.

Bava Basra (174b) quotes Abayei's question to Rava – "Indeed, does everyone divorce in a *beis din*?" – giving us to understand that there is no need for a *beis din*. Still, Rabeinu Gershom's commentary, printed alongside the *Gemara*, offers a different text – "Indeed, does everyone divorce in a **reputable** *beis din*? One can divorce in an **ordinary** *beis din*" – and according to this version, every *get* must be delivered in a *beis din*. On the other hand, the *Gemara* in Bava Basra 176a rules that a *get* without the signatures of witnesses is valid as long as the wife received it in the presence of witnesses. Apparently, though, asserts the *Noda' BiYehudah*, if a *get* must be delivered in a *beis din*, why does the *Gemara* omit that important detail? We must assume, then, that there is **no** need for a *beis din*.

The *Noda' BiYehudah* proves, however, that a *beis din* is required from Rashi's commentary at the beginning of Sanhedrin. Our *Mishnah* lists the procedures that become valid only if performed before a *beis din*, such as financial or property decisions, *chalitzah* or *mi'un* (the refusal of a girl under *bas mitzvah* age to stay with her husband). Rashi explains the need for a *beis din* in the case of *mi'un* as "everything that the *chachamim* instituted (i.e., all regulations *derabanan*) they instituted in a form approximating that required by the Torah." In other words, the regulation *derabanan*, that a girl under *bas mitzvah* age married off by her brother may object to the marriage and leave her husband, is performed without a *get*, but as *mi'un* resembles divorce, it must be performed before a *beis din*. The *Noda' BiYehudah* therefore deducts that a *get* must surely be delivered in the presence of a *beis din* (see Responsa *Beis HaLevi*, end of Part I; Maharam Schiff; Rashash and *Hagahos Rav Y.A. Chaver* at the end of the *Shas*; and *Hagahos Chasam Sofer* on *Noda BiYehudah*, at the end of the book, who explains that Rashi intended to compare *mi'un* only to *chalitzah*, which requires a *beis din*).

However, some *poskim* try to prove the opposite from our *Mishnah*. The *Mishnah*, after all, lists all the procedures requiring a *beis din* without including divorce. Still, the *Noda' BiYehudah* rejects this proof as the need for a *beis din* in divorce cases is based on the financial and property aspects of divorce and our *Mishnah* states explicitly that "financial cases are judged by a *beis din* of three." Referring to the specific question of the rabbi and his son-in-law, he ruled that the divorce should be performed again before a valid *beis din* because of the various *halachic* authorities requiring a *beis din*. Most Acharonim, however, believe that a couple is considered divorced even if the procedure was not enacted before a *beis din* (see a lengthy discussion of the topic in *Pischei Teshuvah*, 154; *Seder HaGet*, S.K. 8; and *Sedei Chemed*, *Ma'areches Get*, 1).

The Mi'un of Sulka, the Sister-in-law of Rabbi Yaakov Polak

Our sages instituted a regulation whereby a girl whose father had died could be wed in certain circumstances, though still under *bas mitzvah* age (see *Tur Shulchan 'Aruch*, E.H. 155). Such a girl may refuse to stay with her husband as long as she has not attained *bas mitzvah* age. Her marriage becomes void with no need for a *get* and our *Mishnah* asserts that she must declare her *mi'un* ("refusal") before a *beis din* of three. *Mi'un* occupies many *sugyos* throughout the Talmud and a chapter of 22 paragraphs in *Shulchan 'Aruch* (E.H. 155).

In our era the custom to marry off young girls has ceased except in Yemen, where it persisted to save them from certain decrees. One the other hand, till 500 years ago *poskim* discussed questions involving such marriages and, first and foremost, *mi'un*. Six hundred years ago there was a *posek* in Germany called Rabbi Menachem of Miersburg, author of *Me'il Tzedek* and sometimes known as Rabbi Menachem HaMeili for his masterwork. According to HaGaon Rav Shlomo Luria (*Yam shel Shlomo*, Yevamos, ch. 13, #17), "he instituted several regulations to protect the

Torah and was a great expert and his regulations and decrees were accepted throughout Ashkenaz (Germany and the neighboring lands)." One of his decrees did away with *mi'un* and required any wife to leave her husband only with a *get* in order to prevent people from saying that couples could part without a *get*, eventually leading to some disregard for the *mitzvah*. In addition, there was the suspicion that a girl would declare *mi'un* in the presence of unlearned persons who would not ascertain that she was still a minor, not requiring a *get*.

Five hundred and ten years ago, in 5252, an orphaned girl by the name of Sulka was married off by her mother and brother to a Torah scholar, Rabbi David Tzenner. After a while, and still being under *bas mitzvah* age, she expressed the wish to leave him and since her husband refused to divorce her with a *get*, her relatives instructed her in the procedure of *mi'un* and she performed that requirement. Her sister's husband was Rabbi Yaakov Polak, the founder of the *pilpul* method of Talmudic study, one of the leading Torah scholars of that generation and a *rosh yeshivah* in Prague, where he taught thousands of students. He agreed to the *mi'un* and allowed Sulka to remarry without a *get*.

Many leading *halachic* authorities vehemently objected to Rabbi Polak's decision, including one of his teachers – HaGaon Rav Y. Margalios, author of *Seder HaGet* – and MaharY Mintz (Responso, §13) who insisted that the procedure of *mi'un* should be discarded according to the regulation of Rabbi Menachem of Miersburg. They forbade Sulka to remarry without a *get* and even imposed excommunication (*niduy*) on anyone opposing their decision. Still, Rabbi Polak ignored their ruling, proved that the regulation against *mi'un* had not been accepted and that *mi'un* had been in practice since the era of Rabbi Menachem of Miersburg and married off Sulka without requiring her to receive a *get*. Rabbi Polak left Prague as a result of the stormy altercation and settled in Krakow, where he stayed for 35 years and established a large yeshivah which contributed greatly to turning Poland into



the most important center for Torah study in Europe for hundreds of years.

How was the *halachah* eventually decided regarding *mi'un*? Maharshal (*Yam shel Shlomo*, *ibid*) offers a short description of the above event, which occurred in the previous generation, and relates that according to his knowledge, Sulka's second marriage failed due to the annoyance of the leading Torah authorities. He holds that *mi'un* must no longer be performed and if enacted, the girl must not remarry without a *get* unless instructed otherwise by a *beis din* and even so, such a *beis din* should be thereafter discredited.

There is no "custom" regarding a rare occurrence: On the other hand, the *Remo* was a student of the disciples of Rabbi Polak and devotes a brief discussion to *mi'un* at the end of the relevant chapter in *Shulchan 'Aruch* (E.H. 155). In his opinion, *mi'un* may be practiced even now, "as performed by Rabbi Yaakov Polak z"l in his era." Rabbi Shneiur Zalman of Liadi, author of *Tanya*, explains the *Remo's* reason in the responsa at the end of his *Shulchan 'Aruch* (§22, based on Rambam). We cannot, he asserts, speak of an established custom regarding instances which occur only rarely, especially where an attempted regulation commands us to **refrain** from performing a previously accepted procedure (see *ibid*). We cannot claim, then, that there was a "custom" to refrain from *mi'un* (see *Pischei Teshuvah* and *'Aroch HaShulchan*, *ibid*). The *'Aroch HaShulchan* has doubts about the *Remo's* ruling and concludes "when I was young I heard that in the previous generation there had been a *mi'un* and that the leading Torah authorities objected vigorously but I don't know how the matter ended; in our era we have never heard of any *mi'un* at all."

The Original City Limits of Yerushalayim

No additions should be made to Yerushalayim or the courtyards of the Temple unless approved by a *beis din* of seventy-one.

As we all know, *Eretz Yisroel* has a special sanctity and the observation of many commandments depends on one's being there. Yerushalayim was even more sanctified for certain mitzvos decreed by the Torah to be performed in the vicinity of the Temple, such as eating *ma'aser sheni*; and our *Mishnah* explains that only a *beis din* of seventy-one – the Great *Sanhedrin* – can annex and sanctify more territory to the original area of Yerushalayim. The *Mishnah* in *Shevuos* (14a) adds that the *Sanhedrin* also requires the consent of the king, a prophet and the *Urim VeTumim* on the breastplate of the *Kohen Gadol*. According to our known historical sources, the area of the original city of Yerushalayim was enlarged only once and in the opinion of certain researchers, including HaGaon Rav Yechiel Michel Tikotchinski zt"l, this was accomplished during the reign of King Chizkiyahu (*'Ir HaKodesh VeHaMikdash*, II, Ch. 5).

The Tosefta to *Sanhedrin* (3:4) cites Aba Shaul, that "there were two pools in Yerushalayim: the lower and the upper; the lower pool was sanctified with all these requisites but the upper pool was sanctified only with the arrival of the exiles (in Ezra's era) without a king and without the *Urim VeTumim*." (A "pool" obviously means the environs around the pool). Many researchers, Jewish and non-Jewish, have pondered the location of the Lower Pool both from the *halachic* and *-lehavdil-* the historical/archaeological viewpoints. As for the *halachah*, it is vital to know the boundaries of sanctified Yerushalayim as even today there are several halachos that apply only within its limits, such as the following:

- i) *Ma'aser sheni* must not be redeemed – i.e., exchanged for money or other produce – in sanctified Yerushalayim.
- ii) Human bones are not to be moved through sanctified Yerushalayim (Rambam, *Hilchos Beis HaBechirah*, 7:14; based on *Avos deRabbi Nasan*, Ch. 38).
- iii) It is forbidden to bury the dead in Yerushalayim (Rambam, *ibid*, based on *Avos deRabbi Nasan*, *ibid*). Some *poskim* hold that this *halachah* still applies (*'Ir HaKodesh*).



VeHaMikdash, III, Ch. 13 – in disagreement with *Pe'as HaShulchan*, 23 – see his discussion of the graves of the Samburgski family on the southeastern slope of Mount Zion).
iv) Bodies of the deceased must not stay in Yerushalayim overnight (*Bava Kama 82b*) – a *halachah* in practice today (*Pe'as HaShulchan*, Ch. 3, *S.K.* 23; *'Ir HaKodesh VeHaMikdash*, III, Ch. 14 – in disagreement with the *Responsa Radbaz*, II, 633).

DAILY MASHAL

We have no solid information on the original boundaries of Yerushalayim. Most of the present wall was built by the Turks and researchers rely on archaeological digs revealing older walls. The age of those walls is determined according to the artifacts found near them or by the approximate antiquity of their stones. It is only natural, then, that many opinions have been expressed but in our limited framework we shall focus on that of Rav Tikotchinski in his *'Ir HaKodesh VeHaMikdash*.

The “Old City” is not that old: All researchers agree that the area originally sanctified and walled by King David and King Shlomo (*Melachim I*, 9:15; *Divrei HaYamim I*, 11) is not contiguous with the area now called the “Old City.” The latter includes the Temple Mount and territory to the north whereas King David’s city was built to the south. A large area south of the present wall, therefore, bears the original sanctity of Yerushalayim. Between 5654-57 researchers discovered a wall far from the present one, judged to have been built in the era of the First Temple. If this estimate is correct, the pools of Shiloach and El Khamrah and the streets called Maalot Ir David, Wadi Khilwah, Malkitzedek and Ma’aleh HaShalom are within the borders of sanctified Yerushalayim. Another wall was found 16 meters east of the Old City and some therefore believe that the city’s original sanctity extends that far to the east.

Where, though, is the Lower Pool annexed to Yerushalayim by King Chizkiyahu? Rav Tikotchinski maintains that it is

somewhere north of the Temple but south of the present northern wall and, in his opinion, all of the Old City bears the original sanctity of Yerushalayim. Others, however, disagree because of the presence of a few graves in the Old City from the Second Temple era discovered after Rav Tikotchinski’s demise. As it is forbidden to bury the dead in Yerushalayim, the entire Old City cannot be included in the originally sanctified area though there is the possibility that the graves were dug in opposition to the *halachah* (see *Entziklopedia Talmudis*, Vol. 25, Appendix to the article on Yerushalayim, column 707, footnotes 32 and 106). All this pertains to the sanctity of Yerushalayim as decreed by the Torah but according to the *Maharit* (II, *Y.D.* 37), we should extend its sanctity by rabbinical decree to include the Upper Pool, added to Yerushalayim without the *Urim VeTumim*. In his opinion, then, the sanctity of Yerushalayim stretches out to the Third Wall, near the Mandelbaum Gate west of the Old City, to the valley known as Jurat-il-Anab.