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Judging Monetary Cases

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.

The *Gemara* explains the Scriptural source for this: Rabbi Chanina says: 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. [Therefore, concerning loans, they do not investigate and question; and therefore, they do not require three ordained judges either.]

The *Gemara* asks: If this is so (that the Rabbis allow laymen to serve as judges for monetary matters), if they make a mistake in judgment, they should not be required to pay! [However, we know the *Gemara* later implies they do have to pay!]

The *Gemara* answers: This would certainly slam 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)!

The *Gemara* asks: According to this explanation, the first words of the *Mishnah* should have been split up to read: Monetary (admissions and loans) cases are with three laymen; thefts and injuries with three experts!? Additionally,

why did it say “three” twice regarding these cases, if they are one case?

Rather, Rava answers: They are actually two separate cases, due to Rabbi Chanina’s teaching. [In other words, it is as if it indeed said, “Monetary (admissions and loans) cases are with three laymen; thefts and injuries with three experts!” This is why it said “three” twice, to indicate that these are two different types of “threes.” The first refers to laymen and the second to experts.]

Rav Acha the son of Rav Ikka says: According to Torah law, one person can be the judge (in cases of admissions and loans. This is as the verse states: *You (singular) should judge your friend with righteousness*. The reason three are required is due to those who sit on the street corners (who are ignoramuses, and will judge wrongly).

The *Gemara* asks: Does having three people avoid the problem of people who sit on street corners?

The *Gemara* answers: Out of the three, there will probably be at least one who is educated (in Torah law).

The *Gemara* asks: If so (that they are sanctioned by Torah law to judge), if they make a mistake in judgment they should not have to pay!?

The *Gemara* answers: This will just increase the number of people who will not bother to educate themselves regarding Torah law (and still be qualified to be a judge). [If they learn, they have the added incentive that if they make a mistake, they will not have to pay.]



The *Gemara* asks: What is the difference between the opinions of Rava and Rav Acha the son of Rav Ikka?

The *Gemara* answers: The difference is regarding Shmuel's statement that two people who judge are valid, but are called a brazen court. Rava argues with Shmuel (*and it is not a valid verdict at all*), while Rav Acha would hold that the court is valid. (2b2 – 3a2)

Why Discuss Damages?

The *Mishnah* states: Full damages and half damages etc.

The *Gemara* asks: Aren't injuries and damages the same thing? [*Damages are one of the five things paid when a person is injured. If injuries are stated, why was it necessary to state damages?*]

The *Gemara* answers: Being that the *Mishnah* wanted to discuss half damages, it also stated full damages.

The *Gemara* asks: Isn't half damages also included in injuries?

The *Gemara* answers: The *Mishnah* stated monetary payment (*full damages*), and also monetary fines (*half damages*).

The *Gemara* asks: This is understandable according to the opinion that half damages are considered a penalty. However, according to the opinion that it is a payment (*a form of compensation*), what is the answer?

Rather, the *Gemara* answers: Being that the *Mishnah* wanted to discuss fines such as *keifel* (*double payment*) and four or five times payment (*when stealing plus slaughtering or selling a sheep or ox respectively*), which is more than the principal, it also said half damages which is less than the principal. (3a2 – 3b1)

The Source for Three Judges

The *Gemara* asks: How do we know that three judges are required?

The *Baraisa* states: *And the homeowner will come close to the elohim (referring to the judge)*. This alludes to one judge. *Before the elohim will come the words of both of them*. This alludes to another judge. *That the elohim will convict*. This is a third judge. These are the words of Rabbi Yoshiyah. Rabbi Yonasan says: The first *elohim* stated cannot be included, as we do not derive anything from the first time a word is stated. [*Rashi explains that this is merely teaching us that expert judges are required, as implied by the term "elohim," which implies greatness. We cannot learn more than that.*] Rather, *Before the elohim will come the words of both of them* alludes to one judge. *That the elohim will convict*. This is a second judge. Being that we cannot have an equal amount of judges, we add another judge.

The *Gemara* asks: Let us say that the crux of their argument is whether or not we derive anything from the first time a word is said. Rabbi Yoshiyah says we do, and Rabbi Yonasan says that we do not.

The *Gemara* answers: No. Everyone agrees that generally we do not derive from the first word. Rabbi Yoshiyah will explain that only here, where the verse says, *"And the homeowner will come close to the elohim"* instead of *"to the judge"* is it clear that the verse wants us to derive that this also counts as one judge.

The *Gemara* asks: How does Rabbi Yonasan respond to this?

The *Gemara* answers: *"Elohim"* is a word commonly used word to indicate expert. This is as people say, "If someone has a *din* (*case*), he should go to a *dayan* (*expert judge*)."

The *Gemara* asks: Does Rabbi Yoshiyah not agree that logic dictates that one should not have an even amount of judges? [*Why does he need to derive all three judges from the verse?*] Doesn't the *Baraisa* say: Rabbi Elozar the son of Rabbi Yosi



HaGelili says: What does the verse mean when it says, “To decide, after the majority it should be decided?” This means that the Torah is saying you should make a *Beis Din* that will have a majority (*odd number*).

The *Gemara* answers: He holds like Rabbi Yehudah who says that the Great *Sanhedrin* has seventy judges. This is as the *Mishnah* states: The Great *Sanhedrin* had seventy-one judges. Rabbi Yehudah says: It has seventy judges.

The *Gemara* asks: We only know that Rabbi Yehudah says the Great *Sanhedrin* should have seventy judges because this is implied by the verse. How do we know he agrees that this is also the case regarding other smaller courts? If you will tell me he does not differentiate, the following *Mishnah* indicates otherwise. The *Mishnah* says: *Semichah* of the elders and breaking the heifer’s neck are judged by three; so said Rabbi (*Yosi*) Shimon. But Rabbi Yehudah says - by five. What is Rabbi Yehudah’s reasoning? The verse says: *And they will lean*. This refers to two judges. “*The elders*” also refers to two judges. Being that there cannot be an even court, we add another for a total of five. [*This shows that he holds we cannot have an even court.*]

The *Gemara* answers: Rabbi Yoshiyah is more consistent in his opinion in this matter than Rabbi Yehudah. While Rabbi Yehudah only has an even court regarding the Great *Sanhedrin*, Rabbi Yoshiyah says one can have an even court even in smaller courts.

The *Gemara* asks: How does he understand the verse quoted above “to turn”?

The *Gemara* answers: He understands that is only regarding capital cases.

The *Gemara* asks: Does he indeed argue that in monetary cases one can have an even court? The *Mishnah* says: If two say he is innocent and one says he is guilty, he is innocent. If two say he is guilty and one says he is innocent, he is guilty.

[According to Rabbi Yoshiyah, if majority is not a factor in monetary law, all three should have to agree on the ruling!]

The *Gemara* answers: The *Mishnah* can also be according to Rabbi Yoshiyah. Rabbi Yoshiyah understands that this applies to monetary law using a *kal vachomer* from capital cases. If by serious capital cases the Torah says to rule by majority, certainly this is the case regarding monetary cases! (3b1 – 3b3)

The *Baraisa* states: Monetary law is judged with three people. Rebbe says: It is judged with five, so that the ruling should be with three people.

The *Gemara* asks: The ruling is with three judges!?

The *Gemara* answers: The verdict should be agreed upon by three judges (*the majority*).

The *Gemara* asks: This implies that Rebbe understands that the three judges discussed above are regarding the ruling of the court. Rabbi Avahu scorned this approach: Does this mean that the Great *Sanhedrin* according to Rebbe will need one hundred and forty-one judges, in order to have a majority of seventy-one issue the ruling?! Does this mean that the small *Sanhedrin* according to Rebbe will need forty-five judges, in order to have a majority of twenty-three issue the ruling?! Rather, the verse states: *Gather for me seventy people*. This is referring to the beginning of the case when the judges are gathered. “*And the congregation will judge and the congregation will save*” (*referring to the small Sanhedrin*) also refers to when the judgment starts. Similarly, the verse states, “*And the homeowner will come close to the elohim*” implying that the judges (*of a monetary case*) are counted from when they come close, at the beginning of the judgment.

Rather, Rebbe must hold this is derived as follows. “*Asher yarshiun elohim*” -- “*That elohim will indict*” refers to two (*yarshiun is plural, implying two*). This teaches that “*Before elohim etc*” must therefore also imply two judges. [*He does*



not count the first verse, as we do not derive from the first verse.] One cannot have an even number of judges, and therefore another judge is added totaling five. The *Chachamim* say that “*yarshiun*” is spelled without a “*vav*,” indicating singular (*therefore only one judge is derived from it and the other elohim*). (3b3 – 4a1)

INSIGHTS TO THE DAF

IS IT NATURAL FOR AN OX TO GORE?

The *Gemara* cited a dispute regarding the half damages that one is required to pay if his ox gores for the first time.

The *Gemara* in *Bava Kamma* (15s) explains: Concerning the payment of half damages (*which are paid when a tame ox gores another animal; if the ox did not gore three times, it is regarded as an abnormal act and the animal was not intending to inflict damage; this is called a tam*), Rav Papa says: This is regarded as a compensation payment. Rav Huna the son of Rabbi Yehoshua says: The half damages are considered a fine.

The *Gemara* explains: Rav Papa says that the half damages are regarded as a compensation payment, for an ordinary ox is not considered guarded in respect to these types of ‘abnormal’ damages and the owner should really be liable to pay completely for its damages. The Torah had compassion on him since his ox was not yet warned (*three times*) and ruled that he is only required to pay for half the damage (*hence the half damages that he does pay is considered compensation*). Rav Huna the son of Rabbi Yehoshua says that the half damages are considered a fine, for an ordinary ox is considered guarded in respect to these types of ‘abnormal’ damages and the owner should really be exempt completely from paying for its damages. The Torah penalized him and ruled that he is required to pay half in order that he will watch his ox better in the future (*hence the half damages are considered a fine*).

Reb Dovid Pervarsky writes that this is not a factual dispute if ordinary oxen are accustomed to gore or not. Rather, the

argument can be explained as follows: Rav Papa maintains that it is inherent in the nature of an ox to gore. Sometimes it will not gore because it does not feel the desire to gore at that time. When the animal does gore, it is not considered an abnormality at all. Rav Huna the son of Rabbi Yehoshua holds that it is not natural for an ox to gore at all; when it does gore, it is regarded as an abnormality.

Reb Dovid is not comfortable with this explanation of the argument, for the *Gemara’s* language is that an ordinary ox is not considered guarded; if the animal is not goring (*for whatever reason*), it should be considered “guarded”!?

He therefore concludes that this is the explanation: Rav Huna the son of Rabbi Yehoshua holds that it is not natural for an ox to gore at all; if it does gore, it cannot be labeled as a “damager,” since the ox was considered guarded. Rav Papa, however, maintains that it is in the nature of an ox to gore, and when it gores, it can be labeled a “damager.” This is what obligates the owner to watch his animal even though it is not accustomed to goring.

DAILY MASHAL

An Impertinent *Beis Din*

Our *sugya* explains that a *beis din* of only two *dayanim* is called “impertinent”. An impertinent person doesn’t care what people say about him and he therefore confronts them impudently. His lack of self-respect is regarded as a negative attribute. Furthermore, one who loses his case in a *beis din* of three *dayanim* can never know which of them was for or against him as, after all, it could be that two were against him whereas the third *dayan* tended to acquit him. He can never know who that third *dayan* was as the *beis din* must not reveal that detail (Sanhedrin 29a). If, however, only two *dayanim* comprise the *beis din*, they must have the same opinion to rule a decision and the person who loses his case knows they were against him. The two *dayanim* lack self-respect in that they don’t care what he thinks of them and are therefore called “impertinent” (*Zikaron BaSefer*).