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Judging

Rav says: The law follows Rabbi Yehoshua ben Karchah (*that it is a mitzvah for a judge to sort out a compromise*).

The *Gemara* asks: Did Rav in fact say this? But Rav Huna, who is a disciple of Rav, when litigants would come before him, he would say to them the following: “Do you want justice or a compromise?” [Evidently, he did not think that it was a requirement to offer a compromise!]

The *Gemara* answers: When Rabbi Yehoshua ben Karchah said that it is a “mitzvah” to compromise, he meant that the judge should ask the litigants if they want justice or a compromise.

The *Gemara* asks: If so, what is his dispute with the *Tanna Kamma* (who said that they cannot compromise after the verdict has been announced; seemingly, beforehand, it would be permitted to compromise)?

The *Gemara* answers: Rabbi Yehoshua ben Karchah holds that it is a “mitzvah” to compromise, whereas the *Tanna Kamma* maintains that it is permitted (*but not a mitzvah*) to compromise.

The *Gemara* asks: If so, the *Tanna Kamma* is of the same opinion as Rabbi Shimon ben Menasya!?

The *Gemara* answers: The difference would be regarding the following: Once they hear their statements and they know where the ruling is leaning to, they can no longer tell them to go out and make a compromise (*and the Tanna Kamma would hold that even then it is permitted*). (6b3 – 7a1)

The *Gemara* notes: The *Tanna* (mentioned above) disagrees with Rabbi Tanchum bar Chanilai (*in the explanation of the verse: u’botze’a beireich ni’eitz Hashem*), for Rabbi Tanchum bar Chanilai said that the verse refers only to the incident of the golden calf, as it is written: *And Aaron saw it, and he built an altar before it*. What did he see? Rabbi Binyamin bar Yefes said in the name of Rabbi Elazar: He saw Chur (*the son of Miriam*) lying dead before him and he said to himself, “If I do not listen to them now, they will do to me as they did to Chur, and through me the following verse will be fulfilled: *Shall the Priest and the Prophet be slain in the Sanctuary of Hashem? And (if that happens) they will never be forgiven*. It is preferable that I let them worship the golden calf, for it is possible that they may yet find forgiveness for this through repentance.”

The other *Tannaim* (who maintain that the judge can still offer a compromise even after knowing that the law favors one of the litigants) uses the verse, “*Releasing water is the beginning of strife*” as Rav Hamnuna expounds it, for Rav Hamnuna said: The first matter for which a man must give account in the World to Come is regarding the study of the Torah, as it is written: *Releasing water (the Torah) is the beginning of judgment*.

Rav Huna said: Discord is compared to an opening made by a rush of water that continues to widen as the water rushes through it.

Abaye the Elder said: Discord is like the planks of a new wooden bridge; the longer they lie, the firmer they become.



[A mnemonic: *Hear, And Two, Seven, Songs, Another*] There was a man who used to say, "Fortunate is one who hears abuse of himself and ignores it; for a hundred misfortunes will pass him by. Shmuel said to Rav Yehudah: This is alluded to in the verse: *Releasing water is the beginning of strife*; that means that discord is the beginning of a hundred strifes (*the numerical value of the word "madon" is one hundred*).

There was a man who used to say, "Do not be surprised if a thief does not get killed for two or three thefts (*he will be punished in the end*). Shmuel said to Rav Yehudah: This is alluded to in a verse.

A man used to walk along saying: Seven pits may be dug for a man of peace (*but he will be safe from all of them*); one pit will be dug for the evildoer (*and he will fall into it*). Shmuel said to Rav Yehudah: This is alluded to in a verse.

A man used to walk along saying: One who leaves a court that has taken from him his cloak (*they ruled against him and took his cloak as payment*) should sing his song and go on his way (*for they have taken away from him stolen property*). Shmuel said to Rav Yehudah: This is alluded to in a verse.

A man used to walk along saying: When a woman slumbers (*when she is lazy*), the basket drops off her head (*her work suffers*). Shmuel said to Rav Yehudah: This is alluded to in a verse.

A man used to walk along saying: The man on whom I trusted shook his fist against me. Shmuel said to Rav Yehudah: This is alluded to in a verse.

A man used to walk along saying: When our love (*my wife and I*) was strong, we could have made our bed on the width of a sword-blade; now that our love has weakened, a bed of sixty *amos* is not large enough for us. Rav Huna said: This is alluded to in the following verses: Originally (*by the Mishkan, when the love between Hashem and the Jews were strong*), it is written: *And I will meet with you (Moshe) and speak with you from above the covering of the Ark*; and it is taught in a *braisa*:

The Holy Ark was nine *tefachim* tall, and the thickness of the *kapores*, the Ark-cover, was one *tefach*. This totals ten *tefachim*. [*The Divine Presence rested above the Ark, ten tefachim from the ground.*] Again it is written (*by the Beis Hamikdash*): *And the House which King Solomon built for Hashem, the length was sixty amos, the width was twenty, and the height was thirty amos.* But at the end (*when the Jewish people sinned*) it is written: *So says Hashem, "The Heaven is my throne and the earth is my footstool, what house can you build for me?"* [*Even a structure so high and so long was not able to contain the Divine Presence.*] (7a1 – 7a3)

What evidence is there that the verb *taguru* [translated 'be afraid'] can also be rendered 'gather in'? Rav Nachman answered by quoting the verse: You shall neither drink of the wine nor gather [*te'egor*] the grapes. Rav Acha bar Yaakov says that it can be proved from the following verse: Provide her bread in the summer and gather [*agerah*] her food in the harvest. Rav Acha the son of Rav Ikka says it can be derived from the following verse: A wise son gathers [*oger*] in summer. (7a3)

[A mnemonic: *Truth, Money, And Fear*] Rabbi Shmuel bar Nachmeini said in the name of Rabbi Yonasan: Any judge who delivers a judgment that is perfectly true causes the *Shechinah* to dwell in Israel, for it is written: *G-d stands in the divine assembly; in the midst of the judges He judges.* And anyone who does not deliver judgments that are not perfectly true causes the *Shechinah* to depart from the midst of Israel, for it is written: *Because of the oppression of the poor, because of the sighing of the needy, now I will arise, says Hashem.*

And Rabbi Shmuel bar Nachmeini said in the name of Rabbi Yonasan: Any judge who unjustly takes money from one and gives them to another, the Holy One, blessed be He, takes from him his life, for it is written: *Do not rob not the poor because he is poor; neither oppress the afflicted in the gate, for Hashem will fight their battle, and will rob the life of those that rob them.*



And Rabbi Shmuel bar Nachmeini said in the name of Rabbi Yonasan: A judge should always imagine himself as if he had a sword lying between his thighs, and *Gehinom* was open beneath him; as it is written [Shir Hashirim 3: 7-8]: *Behold, it is the couch of Shlomo; sixty mighty men are about it, of the mighty men of Israel etc. Because of the dread in the night is referring to the dread of Gehinom which is like the night.*

Rabbi Yoshiyah, or, according to others, Rav Nachman bar Yitzchak, gave the following exposition: What is the meaning of the verse: *O house of David, so says Hashem, "Execute justice in the morning and deliver he that has been robbed out of the hand of the oppressor!"* Is it only in the morning that one judges and not during the whole day? Rather, it means that if the verdict you are about to give is clear to you as the morning, give it; but if not, do not give it.

Rabbi Chiya bar Abba said in the name of Rabbi Yonasan: That is derived this from the following verse: *Say to wisdom, "You are my sister."* If the verdict is as clear to you as is the prohibition of your sister is to you (*in intimate relations*), give it; but if not, do not give it.

Rabbi Yehoshua ben Levi said: Even if there are ten judges judging a case, the chain (*of judging incorrectly*) hangs on the neck of all of them.

The *Gemara* asks: Is not this obvious (*they are all equally responsible*)?

The *Gemara* answers: It needed to be stated regarding the case of a disciple who sits in the presence of his teacher (*and remains silent when he issues an erroneous decision; he is also responsible*).

When a case was submitted to Rav Huna he used to gather ten scholars from the *Beis Medrash*. He said, "Now, each of them might carry a chip from the beam (*we will all share in the punishment if we issued an erroneous judgment*)."

When a *tereifah* (*an animal with a physical defect that will cause its death; it is forbidden to be eaten even if it would be slaughtered properly*) was submitted before Rav Ashi for inspection, he would gather all the butchers of Masa Mechasya. He said, "Now, each of them might carry a chip from the beam (*we will all share in the punishment if we issued an erroneous judgment*)."

When Rav Dimi arrived (*from Eretz Yisroel to Bavel*) he said that Rav Nachman bar Kohen said: What does the verse mean when it says: *A king with judgment supports the world and a man of gifts will destroy it?* It means that if a judge is like a king who does not need anything, he has the ability to uphold the world. However, if he is like a *Kohen* who depends on the *terumah* which he gathers by frequenting people's silos (*this judge constantly needs assistance from his teachers*), he will cause the world to be destroyed. (7a3 – 7b1)

The *Gemara* relates an incident: The members of the *Nasi's* household once appointed an incompetent judge. The *Nasi* said to Yehudah ben Nachmeini, the spokesman of Rish Lakish, "Go and stand at his side as a spokesman." Standing by him, he bent down to hear him, but the judge did not say anything at all. Thereupon, Yehudah began his discourse, saying: *Woe to him who says to wood, "Awake!" — to the dumb stone, "Arise!" Can this teach? Behold, it is overlaid with gold and silver, and there is no breath at all in it.* And the Holy One, blessed be He, will eventually punish those who set them up, as it is written: *But Hashem is in His holy Temple; let all the earth be silent before Him.*

Rish Lakish said: He who appoints an incompetent judge over the community is as if he had planted an *asheirah* (*a tree that was worshipped as avodah zarah*) in Israel, for it is written: *Judges and officers shall you appoint for yourself*, and soon after that it is written: *You shall not plant for yourself any kind of asheirah.*

Rav Ashi said: And if such an appointment was made in a place where there are scholars, it is as if the *asheirah* was planted

beside the Altar, for the verse concludes with the words: *next to the altar of Hashem your G-d.*

It is written: *You shall not make with Me gods of silver or gods of gold.* The *Gemara* asks: Is it only gods of silver and gold that may not be made, while those of wood are permitted? Rav Ashi explains: The verse refers to judges appointed through bribes of silver or bribes of gold.

Whenever Rav went to sit in court he used to say the following: Of his own free will the judge goes to meet death (*if he judges incorrectly*). He makes no provision for the needs of his household, and he returns home empty-handed (*for he does not receive a salary*). Would it only be that my return should be as I left (*without sinning*)!

When Rav saw a crowd escorting him, he said the following verse (*so he should not feel haughty*): *Though his stature rises up to the heavens, yet he shall perish for ever like his own waste.*

When Mar Zutra the Pious was carried on the shoulders (*of his students*) on the *Shabbos* of the Festival discourse (*when he taught the Festival laws thirty days before the Festival*), he would say the following verse: *For riches are not forever, and does the crown endure for all generations?*

Bar Kappara expounded: From where do we derive the dictum of our Rabbis: Be deliberate in judgment? It is from the following verse: *Do not go up by steps upon My altar...* and next to that, it is written: *And these are the judgments ... (one goes up steps faster than a ramp; this indicates that one should deliberate carefully before issuing a judgment).*

Rabbi Elazar said: From where do we derive that a judge should not walk over the heads of the people (*when they are sitting on the ground during the discourse*)? It is from the following verse: *Do not go up by steps upon My altar...* and

next to that, it is written: *And these are the judgments ... (even judges should show respect to the seated scholars).*

The same verse continues: which you shall set before them. It should have stated: which you shall teach them. Rabbi Yirmiyah, or according to some, Rabbi Chiya bar Abba, said: This refers to the tools of the judges [which they have to set before the public].

Rav Huna, before entering the Court, used to say: Bring forth the tools of my office: the rod;¹ the lash;² the horn;³ and the sandal.⁴

Again, it is written: And I commanded your judges at that time. Rabbi Yochanan said: This is a warning to them to use the rod and lash with caution.

It is written: *Hear between your brothers and judge them.* Rabbi Chanina said: This is a warning to the court not to listen to the claims of a litigant before his opponent arrives. It is also a warning to the litigant not to explain his case to the judge before his opponent arrives. Shamoah [hear], in the verse, can also be read, shammea – make heard between your brothers.

Rav Kahana, however, says: We can derive this rule from the verse: You shall not take up [tissa] a false report [referring to the judge], which may be read, tasi.

It is written: *And judge them with righteousness.* Rish Lakish said: Consider carefully all the aspects of the case before giving the decision. (7b3)

As for the words: Between a man and his brother . . . Rav Yehudah says that this refers to disputes between brothers about trifles such as, for instance, who should occupy the lower and who the upper part of a house.

¹ For beating, according to the court's discretion.

² For the thirty-nine lashes.

³ Blown for excommunication.

⁴ For chalitzah.



And the stranger that is with him . . . This, says Rav Yehudah, refers even to so insignificant a dispute as one concerning a stove and an oven.

You shall not respect persons [lo sakkiru] in judgment. Rav Yehudah says this means: You shall not favor [lit. recognize] any one [even if he is your friend]; and Rabbi Elazar takes it to mean: You shall not estrange anyone [even if he is your enemy]. (7b3 – 7b4)

DAILY MASHAL

The First Question

A person's judgment starts only with asking him about his learning Torah.

Our *sugya* cites Rav Hamnuna that a person's final judgment in the *beis din* of the World to Come starts with asking him about his learning Torah. However, Tosfos (s.v. Ela) compare this statement to the *Gemara* in Shabbos (31a), which asserts that a person is first asked if he did business faithfully and only then asked if he set aside fixed times for Torah study.

The Gerer Rebbe, author of *Imrei Emes* zt"l, answers this question in the spirit of our sages' interpretation of the verse "And you shall love Hashem" – "that you should cause His name to be loved: One should learn the Torah, serve Torah scholars, do business faithfully and speak softly with people. What do people say about him? "Happy is his father who taught him Torah! Happy is his teacher who taught him Torah! How pitiful are those people who have not learnt Torah. That person who has learnt Torah – see how he exhibits such fine behavior." But he who learns Torah and serves Torah scholars but fails to do business faithfully or speak nicely with people – what do people say about him? "How pitiful is that person who has learnt Torah!" (Yoma 86a). Hence, even though a person is first judged about the Torah he has learnt, he must first be examined if his Torah caused a sanctification of the Name by practicing business faithfully (Imrei Emes, Likutim).

HALACHAH ON THE DAF

Being a Dayan

The *Gemara* discusses the responsibilities of a *dayan* (judge). The Shulchan Aruch (Choshen Mishpat 10:1) exhorts a *dayan* to be patient when judging what the *halachah* is, and not to answer flippantly. A *dayan* should make 100 percent sure in his mind that this is indeed the *halachah* before *paskening*, and a *dayan* that doesn't do so is labeled a *shoteh*, *rasha* and a haughty person.

Similarly if a *dayan* compares the question that he is asked to another case, and doesn't ask a Torah scholar who is greater than him for his opinion, he too is categorized as a *rasha* that is a haughty person.

The Torah does not look favorably on a Torah scholar who is not on the level of being a *dayan*, and yet judges cases. Nor does it appreciate a scholar of high caliber who abstains from becoming a *dayan*. However, if he abstains due to the fact that there is another *dayan* in town, then he is to be commended.

A *dayan* should always try to make a compromise rather than to judge the case, even if he is one hundred percent sure of the *halachah*.

A *dayan* has an obligation to treat each case brought before him, even if it involves a negligible amount of money, with his full attention and seriousness.