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Order of Deliberations

The *Mishna* said that court deliberations of monetary cases begin from the senior judge stating his opinion, while those of capital cases must begin with the most junior judge’s opinion.

The *Gemora* challenges this from Rav, who said that when he joined Rebbe’s court in deliberating the decree related to real estate extortion, a monetary case, the deliberations began with him, although Rebbe was the senior judge.

The *Gemora* explains that Rebbe was exceedingly humble, and therefore allowed more junior judges to voice their opinion before him. (36a)

Torah and Greatness Together

The *Gemora* states that from the times of Moshe to Rebbe, no other leader uniquely embodied both the height of Torah learning and stature of their time.

The *Gemora* raises numerous challenges to this statement, resolving each one by explaining that only Moshe and Rebbe were peerless in their Torah learning and stature, for their whole lifetime:

Personality	Peer	In what?
Yehoshua	Pinchas	Torah

Pinchas	Sages of Moshe	Torah
Shaul	Shmuel	Torah
Dovid	Ira Hayairi	Torah
Shlomo	Shim’i ben Gaira	Torah
Chizkiyah	Shevna	Torah
Ezra	Nechemiah	Stature

The *Gemora* explains that in the case of Shaul, Dovid, Shlomo, and Chizkiyah, although their peers died before them, leaving them peerless, Moshe and Rebbe were peerless for their whole lifetime.

Rav Ada bar Ahavah says that there was no new such personality after Rebbe until Rav Ashi. Although Huna bar Nassan was also learned and of high stature, he was subservient to Rav Ashi in Torah learning. (36a)

Beg to Differ?

Rav Acha bar Pappa says that the reason capital deliberations do not begin from the senior judge is because the verse says *v’lo sa’ane al riv* – do not respond about the dispute. The word *riv* can also be read *rav* – the senior one, in which case the verse is stating that no one can respond to the words of the senior judge. Thus, if the senior judge voices his opinion first, others will not be able to voice a differing opinion, ending any deliberation.



Rabbah bar bar Chanah quotes Rabbi Yochanan saying that the source is from Dovid's judgment of Naval as a traitor. The verse says that Dovid told his people to prepare for the judgment, and only then did he prepare himself. This incident teaches that the senior judge does not begin the deliberations in a capital case. (36a)

A Teacher and Student

Rav says that in a capital case, one may teach his student his rationales, and still count him as a judge on the court.

The *Gemora* cites a *braisa* to challenge Rav's statement. The *braisa* discusses how to count a father and son, or teacher and student, who deliberate in areas of *halachah*. The *braisa* says that in cases of impurity or purity, where even one person can rule, they count as two, but in cases of judgment, either monetary or capital, where multiple judges are necessary, they only count as one.

The *Gemora* answers that Rav is discussing a student like his students Rav Kahana and Rav Assi, who needed Rav only for primary sources (e.g., *Mishnayos and braisos*), but not for logic. Therefore, when the student hears his teacher's rationales, he will still apply his own logic, and therefore he counts as a separate judge. (36a – 36b)

Capital vs. Monetary Cases

Rabbi Avahu says that although the *Mishna* enumerates ten differences between capital and monetary court cases, the way a case of killing a dangerous ox is like a capital case is only regarding the requirement of twenty-three judges.

Rav Acha bar Pappa explains that all but this requirement are learned from the verse that prohibits judges from swaying the judgment of *enyoncha b'rivo - your poor person in his case*. The explicit specification of *your poor person* excludes an ox, which is not a person.

The *Gemora* notes that the *Mishna* lists only nine differences, since the requirement that the judges be of good lineage and the requirement of twenty-three judges are both a function of the court being an official *Sanhedrin* court.

Rabbi Avahu refers to ten differences, since the *braisa* adds another requirement. The *braisa* says that a *Sanhedrin* may not have a judge who is elderly, sterile, or childless (*since they do not have the pity engendered by childrearing*).

Rabbi Yehudah adds that anyone cruel may not be on a *Sanhedrin*. However, in the case of an inciter, we avoid any mercy on the defendant, so these people may be judges. (36b)

Mamzer vs. Convert

The *Mishna* says that all judges are valid in monetary cases.

Rav Yehudah says that the *Mishna* is including a *mamzer*, one born of a forbidden union.

The *Gemora* says that this seems redundant, since an earlier *Mishna* stated that any judge valid for a capital case is valid for monetary cases, but not vice versa.

Rav Yehudah said that that *Mishna* was referring to a *mamzer*, who is valid for monetary cases, but not capital ones.

The *Gemora* explains that one *Mishna* is referring to a *mamzer*, and one is referring to a convert. The *Mishna* must include both, since each has a unique advantage. A *mamzer* came from a Jewish union, while a convert may marry other Jews. Therefore, if only one was mentioned, we would have excluded the other one.



Rav Yosef explains that a *Sanhedrin* may not include *mamzer* judges, since the verse says that the Jewish nation is fully beautiful, without blemish. Therefore, just as the *Sanhedrin* must have no blemish in their judgments, they must have no blemish in their lineage.

The *Gemora* asks how we know this does not mean a lack of physical blemish.

Rav Acha bar Yaakov says that we learn that the judges must have good lineage from the verse where Hashem told Moshe that the Sages of the *Sanhedrin* that he assembled should stand *imach* – with you. This indicates that these Sages must be similar to Moshe, who had good lineage.

The *Gemora* objects that perhaps that was true only since they were receiving the presence of Hashem, for which they had to have good lineage, but may not be true for judges who only are members of the *Sanhedrin*.

Rav Nachman bar Yitzchak says that we learn this from the verse that says that the judges appointed by Moshe should carry the burden of the nation *itach* – with you, indicating that they be similar to Moshe in lineage, to fulfill their judicial responsibility. (36b)

Sanhedrin Protocol

The *Mishna* describes the workings of the *Sanhedrin*. The judges were seated in a semicircle, in order that all the judges can see each other. Two scribes recorded the deliberations, one on the right, and one on the left.

Rabbi Yehudah says there were three, one who wrote the positions of the judges who argued for innocence, one who wrote the positions of the judges who argued for guilt, and one who wrote down all the positions. Three rows of students sat in front of the court. The rows, and the seats in each row, were in order of seniority. If a new judge was needed, the most senior of the students was added to the

court, and all the rest of the students advanced one position. One person from the general populace was then chosen to fill the last position. (36b – 37a)

INSIGHTS TO THE DAF

Torah and Stature

The *Gemora* lists the leaders who were peerless in their Torah and stature, and explains how all other instances were not peerless. The *Gemora* states that the leaders listed were peerless their whole lives, excluding many other leaders, who were peerless for part of their lives.

Tosfos (36a kulhu) says that the requirement is that from the time that the leader ascended to leadership, he was peerless for the rest of his life. However, if there was another leader before he ascended to leadership, he could still be considered peerless. Based on this, Tosfos explains an alternate text of the *Gemora*, in which the *Gemora* questions why Elozar is not listed, and responds that Pinchas was his peer in Torah. Although Elozar was the peer that precluded Yehoshua from being listed, Yehoshua's leadership did not invalidate Elozar, because Yehoshua was not a leader once Elozar was.

The Ben Yehoyada (Gittin 59) explains why the *Gemora* seemingly repeated the same question and answer with a number of the potential leaders proposed. First, the *Gemora* asked why Shaul was not listed, and replied that Shmuel was his peer in Torah. The *Gemora* noted that Shmuel died before Shaul, leaving him peerless for the remainder of his life. The *Gemora* explained that the list is only of leaders who were peerless their whole life.

The Ben Yehoyada explains that Shaul was king for only eight months after Shmuel's death. Therefore, the *Gemora* continues to ask about Dovid. Although Ira Hayairi was his peer, since he died early in Dovid's leadership, the *Gemora* thought that Dovid might still qualify. The *Gemora* explained

that he still does not qualify. The *Gemora* still asked about Shlomo, since his peer, Shim'i ben Gaira was sentenced to death by Dovid, before Shlomo became king. Therefore, the *Gemora* thought that Shim'i's would not be considered a peer, since he was already considered dead. The *Gemora* explains that he still was a peer. Finally, the *Gemora* asked about Chizkiyah, since his peer, Shevna, was found to be a wicked person. This would indicate that Shevna's Torah greatness was retroactively not valid, and would leave Chizkiyah peerless. The *Gemora* explains that even Shevna was still considered a peer.

Ten Differences

Rabbi Avahu says that there are ten differences in the rules for judging monetary cases vs. capital cases. They are:

Aspect	Monetary	Capital
Number of judges	3	twenty-three
Begin deliberations	With either side	With exonerating arguments
Majority for guilt	Simple majority	Supermajority of 2
Overturn innocent verdict?	Yes	No
Unanimous guilty verdict	Guilty	Innocent
May judges switch position?	Yes	Only from guilt to innocence
Complete at night?	Yes	No
Complete in one day	Yes	No
Who begins deliberations	Senior judge	Not senior judge
(Lineage of judges)	All valid (even mamzer, convert)	Must have good lineage)*

Pity of judges	All valid (even sterile, old, cruel)	Sterile, old, cruel invalid
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* The *Gemora* explains that this is identical to the first requirement, since both derive from the fact that the case must be judged by a formal *Sanhedrin* court.

Lo Sa'aneh al Riv or Rav?

The *Gemora* explains that in capital cases the deliberations may not begin with the senior judge, since this will preclude the other judges from voicing differing opinions. The *Gemora* explains that the verse says that a judge may not respond *al riv* – *on a dispute*. However, the word *riv* can be read *rav* – *the senior [judge]*, rendering the verse a prohibition of responding to the words of the senior judge.

The *Gemora* does not clarify whether this is the correct reading of the verse, nor how this reading is only an issue in capital cases. The Rishonim offer various explanations of this *Gemora* to address these questions:

1. The verse is acknowledging a concern that exists, that the judges will *refrain* from responding to the opinion of the senior judge. We only address this concern in the realm of capital cases, where we are careful not to wrongfully convict the defendant. (Nimukai Yosef, and others)
2. The verse prohibits judges from categorically differing with the senior judge, but allows them to raise questions with his position. This option suffices in monetary cases, but not in capital cases, where we try to seek out innocence. (Tosfos based on Maharshal)
3. The verse allows judges to debate positions, but not to categorically argue with the senior judge. In monetary cases, debate is sufficient to reach a verdict, while in capital cases, each judge must explicitly state his position. (Tosfos haRosh)

4. The verse is actually prohibiting any disagreement with the stated position of the senior judge, but only applies to capital cases, just as the *Gemora* applies the necessity for a supermajority in this verse only to capital cases. (Tosfos haRosh)

The *Gemora* says that due to Rebbe's exceeding humility, even a monetary case's deliberations began with Rav, and not Rebbe. The Yad Ramah explains that Rebbe agrees that in principle monetary deliberations may begin from the senior judge, but *allowed* Rav to begin the deliberations, due to his humility. Rashi (Gittin 59b) says that Rebbe disagrees with the *Mishna*, and holds that even in monetary cases the deliberations may not begin with the senior judge.

A Convert Judge

Rav Yehudah states that the *Mishna* teaches us that although a convert may not judge capital cases, he may judge monetary cases.

The Rishonim differ on the parameters of this statement, in the context of other *Gemoras* that discuss the status of converts.

Rashi says that any convert may judge anyone in monetary cases.

Other Rishonim say that a convert who was born to two non Jews may only judge a fellow convert, but not other Jews. To judge other Jews, the judge must have one Jewish parent, even just his mother (see Tosfos Yevamos 102b Minyan).

The Rif and Rosh therefore say that the *Gemora* here is referring to a judge who has one Jewish parent, and one convert parent, and is a valid judge for any Jew.

Tosfos (36b Chada) says that the *Gemora* here is referring to one who converted, and has no Jewish parents, but is only

validating him to judge a fellow convert. Tosfos notes that the *Gemora* refers to the convert as having come "from an impure source," indicating that his parents were not Jewish.

The Rashba explains that the Rif and Rosh explain that the *Gemora* means that the judge's mother was impregnated from an impure source, which makes him inferior to a *mamzer*. The Tur and Shulchan Aruch (HM 7:1) rule like the Rosh and Rif.

DAILY MASHAL ***Whose Seat?***

The *Mishna* states that when a new judge was needed, the senior student was added to the court, all the students shifted up one position, and a new scholar was chosen, and seated in the most junior position.

The Tzitz Eliezer (5:4) discusses a case of a shul with two rabbis, one of whom sat closer to the Ark than the other. The one closer to the Ark left, and the shul found a replacement for him. The remaining Rabbi felt that since he was already functioning as a Rabbi, he should move up to the seat next to the Ark, with the new Rabbi taking his old seat.

The Tzitz Eliezer says that at first glance our *Mishna* seems to support this position, as this was the method in which the new scholar was added. He rules against this position, however, since the seats in the *Sanhedrin*, and the students section, were allocated by seniority in Torah. Therefore, when a new scholar was added, he was seated according to his more junior position. However, in the case of the Rabbis, the seats are not allocated by any seniority per se, but based on the communal position. Therefore, when the community hired a new Rabbi, they did so as a replacement for the one that left. He therefore takes the position that he was hired for, including the seat assignment.