

Daf Notes

Insights into the Daily Daf
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Daily Daf

How Many Judges?

The *Gemora* discusses a previous statement. Rabbi Avahu says: If two people judged a monetary case, according to everyone their judgment is invalid.

Rabbi Aba asked a question to Rabbi Avahu. The Mishna says: If a judge judged a case, and declared the guilty party to be innocent and the innocent party to be guilty, what he has done is done, and he must pay from his house. [*This implies that even one person's judgment is valid. He just must pay if he made a mistake.*]

The *Gemora* answers: The case is where the parties accepted this person as a judge. [*However, he could not force them to come to him for judgment.*]

The *Gemora* asks: If so, why does he have to pay (*if they accepted him as their judge*)?

The *Gemora* answers: The case is where they asked him to judge them according to Torah law.

Rav Safra said to Rabbi Aba: What kind of mistake did he make? If he made a mistake by not knowing a Mishna, didn't Rav Sheishes say in the name of Rav Asi that if someone makes a mistake by not knowing a Mishna the ruling is invalid?

The *Gemora* answers: It must be that he made a mistake in his judgment. What is a mistake in

judgment? Rav Papa explains: The case is where two Tannaim and two Amoraim argue, and it is not stated that the law is like either one. However, the *Gemora* generally leans towards one opinion. Ruling like the other opinion is a mistake in judgment.

The *Gemora* asks: Let us say this is an argument among Tanaim. Compromise is done with three people. These are the words of Rabbi Meir. The Chachamim say: Compromise is done with an individual. They both must hold that we compare compromise to regular judgment. One holds that judgment is with three, while the other holds judgment can be done with two (*and even one*).

The *Gemora* answers: No. Everyone agrees judgment is with three. One holds we compare compromise to judgment, and the other holds we do not compare compromise to judgment.

The *Gemora* asks: Let us say that there are three Tannaic opinions regarding compromise. One holds three judges are required, one holds two judges are required, and another holds one judge is sufficient.

Rav Acha the son of Rav Ika, and some say Rav Yeimar bar Shalmiya, says: The one who holds two really holds that one judge suffices. He only said two in order there should be witnesses to the judgment.

Rav Ashi says: We see from here that compromise does not require an acquisition (*in order to have the*

compromise take effect). If it did, the opinion that says three would be difficult, as why would three judges be required? Two should suffice along with an act of acquisition! The law, however, is that compromise does require an act of acquisition.

The braisa states: Just as the law is with three people, so too compromise is with three people. Once the verdict is reached, the judges should no longer compromise.

Rabbi Elazar the son of Rabbi Yosi ha'Glili says: It is forbidden (*for the judges*) to compromise (*once litigants have arrived at the Beis Din*). Anyone who compromises is considered a sinner. Whoever blesses one who compromises is considered a scorners. Regarding this the verse states, "And a blesser of one who compromises is scorning Hashem." Rather, let the judgment pierce the mountain. This is as the verse says, "For the judgment is to Elokim." Moshe also said that the judgment should pierce the mountain. However, Aharon was a lover of peace and a pursuer of peace, and made peace amongst man and his friend (*as he was not a judge*). This is as the verse states, "Toras Emes was on his mouth, and there was no crookedness on his lips. With peace and straightness he went with Me, and he turned back many from sin."

Rabbi Eliezer says: If someone stole a sa'ah of wheat, ground it, baked it, and then separated Chalah from it, how can he make a blessing?

This not someone who blesses, but rather someone who scorns. Regarding this person the verse states, "And a blesser of one who compromises is scorning Hashem."

Rabbi Meir says: The word "botzei'a" was only said regarding Yehudah. This is as the verse states, "And Yehudah said: What will "betza" -- "it help" if we will kill our brother?" Whoever blesses Yehudah is considered a scorners. Regarding this person the verse states, "And a blesser of one who compromises is scorning Hashem."

Rabbi Yehoshua ben Karchah says: It is a mitzva to compromise. This is as the verse says, "Truth, judgment, and peace judge in your gateways." In a place where there is judgment there is no peace, and a place where there is peace there is no judgment. How

can they coexist? Rather, what judgment has peace? This is referring to compromise. Similarly, regarding David the verse says, "And David was doing judgment and charity." Where there is judgment there is no charity, and where there charity there is no judgment. What is judgment that has charity? This is compromise.

According to the Tanna Kamma (*meaning Rabbi Elazar the son of Rabbi Yosi ha'Glili who said that it is forbidden to compromise*), the verse above means as follows. David would judge, proclaim the innocent party innocent and the guilty party guilty. If he would see that the guilty party was poor, he would pay the money out of his own pocket. This is judgment and charity, meaning that the judgment is for the victor, and charity is for the poor person found guilty.

Rebbi has difficulty with this explanation. Is it fitting that the verse should say, "(And David was doing judgment and charity) to his entire nation?" It should say, "to the poor!" Rather, it must mean that even though he did not pay for the poor man's loss, it was judgment and charity. It was judgment for the person who got his money back, and charity for the one from whom he removed his stolen possessions.

Rabbi Shimon ben Menasya says: If two people come before you for judgment, before you hear their words, or after you hear their words but before you know what the ruling is going to be, you can tell them to go out and make a compromise. Once you hear their words and you know what the ruling is going to be, you can no longer tell them go out and make a compromise. This is as the verse states, "Letting go of water (*a monetary fight which is like running water*) is (*at*) the beginning of judgment, and before the fight is revealed, leave it." Before the fight (*i.e. dispute*) is revealed, abandon it. After it is revealed, one can no longer abandon it.

Rabbi Yehudah ben Lakish says: If two people come to judgment, one is a soft person and one is a strong person, before you hear their words, or after you hear their words but before you know what the ruling is going to be, you can tell them that you do not want to deal with the case. This is lest the strong person be found guilty, and he will torment the judge. Once you hear their words and you know what the ruling is going to be, you can no longer tell them that you will not

judge the case. This is as the verse states, “Do not fear from anyone.”

Rabbi Yehoshua ben Karchah says: How do I know that if a student is sitting before his teacher, and he sees a merit for a poor person and a detrimental point for a rich person, that he must not keep quiet? The verse says, “Do not fear anyone.” Rabbi Chanin says: This teaches that one should not keep his words inside because of anyone.

The witnesses should know Who (*see Rashi*) they are testifying about, before Whom they are testifying, and Who will collect from them (*if they testify falsely*). This is as the verse says, “And the two people who have the fight should stand before Hashem.”

The judges should know Who (*see Rashi*) they are judging, before Whom they are judging, and Who will collect from them (*if they judge falsely*). This is as the verse says, “Elokim stands in the congregation of Kel (*Hashem*).” Similarly, regarding Yehoshafat the verse says, “And he said to the judges, see what you are doing. You are not judging a person, but rather Hashem.” Perhaps the judge would say, what do I need this pain for? The verse therefore says, “He is with you in the word of judgment.” A judge only has what his eyes see (*as long as he tries to honestly judge to the best of his ability, he will not be punished*).

The *Gemora* asks: What is a case of the end of the judgment?

Rav Yehudah says in the name of Rav: You are liable, and you are innocent.

Rav says: The law follows Rabbi Yehoshua ben Karchah. (6a – 6b)

HALACHAH ON THE DAF

Compromise is Optimal

The *Gemora* discusses the *halachos* of *p'sharah* (*a compromise or a settlement that is reached between the two litigants*). The Shulchan Aruch (Choshen Mishpat 12:2) praises the Batei Dinim that routinely settle disputes rather than judging them. Furthermore Beis Din has an obligation to try as much as possible

to make a *p'sharah* rather than adjudicating a *din torah*. Therefore it is a *mitzvah* for Beis Din to offer the litigants an option of *p'sharah*. If they decide to settle, then Beis Din must be careful to offer a fair compromise, for just as it is forbidden to judge unfairly, so too there is a prohibition against settling a dispute unfairly.

Although *p'sharah* is of paramount importance, nevertheless it may only be allowed before the *g'mar din* (Beis Din's verdict). This is true even after Beis Din already heard all the claims and knows how it will end up ruling, a *p'sharah* may still be accepted. However, there are certain instances where we allow a *p'sharah* to be reached even after *g'mar din*. 1) A different judge, one that was not part of this Beis Din may offer a *p'sharah*. 2) If Beis Din ruled that one of them is obligated to swear, we may offer a *p'sharah* even after *g'mar din*, so that we can absolve him from the punishment of swearing (*ibid*).

A *p'sharah* must be made with a *kinyan*, therefore if no *kinyan* was made the *p'sharah* is not binding and the litigants may retract. However a *p'sharah* that was not made in Beis Din, rather the litigants reached an agreement between themselves, no *kinyan* is required (Be'er Heitiv *ibid* s.k. 10 citing Maharam MiLublin).

There are cases where even though a *p'sharah* was made, it can be retracted. 1) When one of the litigants denied that an item was ever given to him to guard (*koifer b'pikadon*) and they made a *p'sharah*, and later witnesses testified that he was given the item to guard, then the *p'sharah* is voided. 2) Similarly, if one of the litigants agreed to a compromise only due to the fact that he didn't have any proof or document supporting his claim and later he found the proof, then here too the compromise is nullified.