

## OVERVIEW of the Daf

### 1) Clarifying the Mishnah (cont.)

The explanation why non-expert judges may adjudicate cases of loans is unsuccessfully challenged.

R' Avahu's earlier explanation of why the Mishnah enumerated the different cases as it did is successfully challenged.

Rava therefore asserts that the Mishnah refers to two categories of monetary cases, thefts and bodily injuries in one category and admissions and loans in a second category.

R' Acha the son of R' Ika offers another explanation why the Mishnah separates the cases into different categories.

This explanation is unsuccessfully challenged.

The Gemara explains the practical difference between Rava's and R' Acha the son of R' Ika's explanation.

### 2) Damages

The Gemara questions why the case of damages is listed separately from the case of bodily injuries.

An explanation is given which is refined a number of times until the matter is fully explained.

### 3) A three-judge Beis Din

A Baraisa is cited that gives the source that a Beis Din requires three judges.

It is suggested that the dispute between R' Yoshiyah and R' Yonason relates to whether we expound an initial description.

This explanation is rejected and another explanation of the dispute is offered together with the exchange between the two Tanaim.

A Mishnah is cited that is at odds with the Gemara's understanding of R' Yoshiyah's explanation.

The Gemara explains how the Mishnah does not refute R' Yoshiyah's position.

Another Baraisa is cited in which Rabbi teaches that a Beis Din must be composed of five judges so that a majority verdict could be reached with three judges.

This explanation is successfully challenged and Rabbi's position is slightly revised.

R' Avahu challenges this explanation forcing the Gemara to revise Rabbi's position a second time. ■

## REVIEW and Remember

1. Why did Chazal decree that one person should not adjudicate monetary matters?

2. Are two judges empowered to adjudicate monetary matters?

3. Explain דורשין תחילת.

4. What is the source for Rabbi's position that a Beis Din is comprised of five judges?

## Distinctive INSIGHT

*In order not to shut the door in the faces of borrowers*

שלא תנעול דלת בפני לווין

Although the Torah requires that only expert judges preside over cases of loans, the sages eased this rule and allowed monetary cases to be adjudicated by non-experts. This is based upon the lesson of R' Chanina who taught that the Torah demands that monetary cases share the same procedures (דרישה וחקירה—cross examination of witnesses and careful analysis) as we find regarding the laws of capital crimes (דיני נפשות) due to the verse (Vayikra 24:22): "There shall be one law for you." However, this would cause great difficulty for those who lend money, and, as a result, they would be discouraged from lending money. The sages therefore relaxed this demand and allowed monetary cases to be conducted without דרישה וחקירה. Similarly, we also dismiss the need to have only expert judges in order to try cases of loans. As a result of dismissing these stringencies, we can avoid shutting doors of the lenders in the faces of the borrowers.

In his first answer, Tosafos (ד"ה שלא) writes that the sages also relaxed the requirement for דרישה וחקירה in cases of theft and damages. The reason is that we want to deter thieves and those who are careless and cause damage to others, as they will now realize that we make it easier for their cases to be tried and that we remove difficulties of bringing them to justice. Nevertheless, we do not ease the requirement to have experts presiding in their cases. There is no need for us to dismiss this detail, because we can rely upon the one who was injured or the one whose property was stolen who will certainly take it upon himself to find and round up experts.

In his second approach, Tosafos says that we do not dismiss the need for דרישה וחקירה in cases of theft and injury, as the dispensation of נעילת דלת does not apply except in cases of loans, where the lender must be accommodated. This is not the case where someone had something stolen from him or where someone was injured. We can, nevertheless, categorize the collections (i.e., of a woman's kesubah, inheritance, gifts and property damage where one cow damages another) all under the category of הודאות והלוואות, which do not need דרישה וחקירה and do not have to have experts presiding, as these are all common and frequent cases which should be treated leniently. ■

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 לע"נ ר' אהרן בן ר' יעקב מאיר ע"ה  
 By his children  
 Mr. and Mrs. David Friedman

# HALACHAH Highlight

## The authority of a panel of two judges

דאמר שמואל שנים שדנו דיניהן דין וכו'

As Shmuel stated: Two people who have adjudicated - their decision is binding etc.

**T**osafos<sup>1</sup> quotes Sefer Halachos Gedolos who rules in accordance with the position of Shmuel that two people who sit in judgment constitute a valid Beis Din even though they are considered brazen. The reason is that in the Gemara below (5a) R' Nachman subscribes to Shmuel's opinion and halacha generally follows the opinion of R' Nachman in monetary matters.

Rambam's position on this matter comes across contradictory<sup>2</sup>. On the one hand he rules that Biblically it is acceptable for a single judge to adjudicate. On the other hand he rules that the judgment of two judges is not binding. The difficulty with this ruling is that it seems evident from the Gemara that one who subscribes to the position that a judge may adjudicate by himself will certainly accept the decision of a Beis Din composed of two members. Why then does Rambam recognize the validity of a single judge and yet reject the rulings issued by a panel of two

judges? Chidushei Haran<sup>3</sup>, whose opinion is echoed in Aruch Hashulchan<sup>4</sup>, suggests that when the Gemara connects the validity of a single judge with two judges it was doing so from a Biblical perspective. Whether or not there is a Rabbinic enactment invalidating a panel of two judges is subject to a debate between R' Acha and Shmuel. According to R' Acha Chazal invalidated a panel of two judges whereas according to Shmuel a panel of two judges is acceptable even Rabbinically and in this matter halacha does not follow Shmuel's position.

Tumim<sup>5</sup> offers a novel explanation why a panel of two is not empowered to adjudicate monetary matters. He notes that nowadays the authority judges who do not possess semicha to adjudicate monetary matters is based on the principle of שליחותיהו – judges act as the agents of previous generations. Consequently, when two judges sit to adjudicate a monetary matter their ruling is not binding since they are not acting as agents of previous generations being that Chazal ruled that two judges should not adjudicate monetary matters. ■

1. תוס' ד"ה לרבא.
2. רמב"ם פ"ב מהלי סנהדרין ה"י.
3. חידושי הר"ן ג. ד"ה ולענין הלכה.
4. ערוה"ש סי' ג' סעי' ט'.
5. תומים שם סק"א. ■

# STORIES Off the Daf

## The benefit of the doubt

”בצדק תשפוט עמיתך...”

**O**nce there was an informer who was a thorn in the side of his community. One day, a peddler ran into him while bearing a load of eggs. The informer hinted that he expected free goods, but the seller made clear his demand for payment. Infuriated, the moser smashed all the eggs and left the seller covered in filth. The peddler went straight to the rav of the town, who sent his reluctant shamash to summon the moser to a din Torah. When the shamash arrived at the informer's house, he was thrown out. The rav forced his shamash to return, this time with a threat that if he did not appear he would be put in cherem. The moser beat the poor shamash and threw him out.

On Shabbos, they called the moser to the Torah as usual, but when he approached the bimah the rav shouted, “Rasha! How dare you refuse to come to a din Torah?” The moser blanched and retreated, muttering threats. Several days later, the rav left to officiate at a bris in the

next town with two students. On the road, the group noticed the moser following them on horseback. All the while, the rav was deep in thought. When the moser finally dismounted, the talmidim were baffled by his behavior.

In a choked and teary voice, he asked the rav, “Rebbi, may I thrash your talmidim?”

“Chalilah,” answered the rav.

“Can't I at least give them a good slap in the face?” begged the moser.

“Don't touch them,” was the rav's reply.

“Won't you at least allow me to spit on them to teach them a lesson?” he pleaded.

“No,” the rav responded immediately.

The moser then broke down, “Rebbi, please forgive me for all the pain I caused you.”

“Pay for the eggs and appease the peddler and I will forgive you,” said the Rav.

The man acquiesced and turned back, and the group continued on their journey. One of the students asked the rav, “What happened here?”

The rav answered, “When I saw he intended us harm, I davened for help. Then I remembered an important princi-

ple: people reflect the feelings that we have toward them. Since I had hated his wickedness, he hated me in return. But when I started looking for his merits, his attitude toward me changed. As he approached I thought, ‘Surely he absorbed evil from a bad environment and lacked for good examples. And perhaps he had really intended to pay for the eggs and was angry that the seller assumed he meant to take them by force. Maybe he was hurt because I summoned him like a criminal instead of setting a date as is proper? And he did not respond when I shamed him publicly; perhaps all his sins were forgiven!’ I am sure that on his end he also began to consider me in a better light. From moment to moment our hearts were drawn closer until he stood before me full of love in place of anger.”

The student asked, “If so, why did he wish to hurt the two of us?”

“Because you were thinking, ‘The wicked moser has come to kill our rav.’ He naturally felt the same hatred toward you. He really wanted to thrash you!”<sup>1</sup> ■

1. סי' עבד המלך על תהלים, מפי רב יוסף חיים וזונפלד זצ"ל ■

