

OVERVIEW of the Daf

1) Judges (cont.)

The Gemara concludes expositing the verses in Deva-rim (1:16-18).

A discussion of whether Moshe Rabbeinu demonstrated an arrogant attitude is recorded.

This discussion concludes with a note regarding leadership.

2) A zimun

A Baraisa teaches that a zimun requires three.

This is interpreted similar to the teaching of Rava that a summons must be delivered in the name of three judges.

A qualification to this ruling is added.

3) Penalties

R' Nachman bar R' Chisda asks how many judges are required to try cases of penalties.

The inquiry is explained to refer to whether a single expert judge may try cases of penalties.

R' Nachman bar Yitzchok demonstrated that a single expert judge may not try cases of penalties.

4) The dispute between Chachamim and R' Meir

Ulla offers one explanation of the dispute between Chachamim and R' Meir in the Mishnah.

Rava suggests an alternative explanation of the dispute.

Ulla's explanation of the debate is unsuccessfully challenged.

Abaye presents a third understanding of the point of this dispute.

(Continued on page 2)

REVIEW and Remember

1. What does the verse mean when it declares that "judgement is Hashem's"?

2. When is it necessary to deliver a summons in the name of three judges?

3. How did Rava refer to R' Chiya bar Avin?

4. According to R' Pappa, what was the point of dispute between R' Meir and Chachamim?

Distinctive INSIGHT

Three or twenty three for רע מוציא שם רע ?

אמר עולא בחוששין ללעז קמיפליגי. ר' מאיר סבר אין חוששין ללעז, ורבנן סברי חוששין ללעז.

In the Mishnah, we find a dispute regarding the number of judges necessary to judge a case of רע מוציא שם רע, where a man accuses his new wife of infidelity, and he wishes to have her kesubah forfeited. R' Meir is of the opinion that three judges are needed, as in any case of monetary matters. Chachamim contend that twenty three judges are required, because the case of רע מוציא שם רע is one which potentially can involve capital punishment, if the woman is guilty and there are witnesses to her act of indiscretion.

The Gemara immediately challenges the position of Chachamim. We assume that the case here is where there are, in fact, no witnesses, and the nature of the challenge of the husband is limited to the financial obligation of the kesubah. R' Meir seems to be correct, that we should need only three judges to rule in this financial matter. What difference should it make for Chachamim that if there were witnesses the accusation of רע מוציא שם רע could result in capital punishment?

Ulla answers that the dispute between R' Meir and Chachamim is whether we should anticipate that there will be disparaging remarks—חוששין ללעז. Rashi explains that R' Meir does not worry that publicity might develop as a result of the husband's accusations, and witnesses may come forward to testify that the woman did commit adultery. This would then become a capital case, thus requiring twenty three judges.

The Rishonim note that the issue of לעז throughout shas usually indicates a possibility that the court may appear to be incompetent or to have issued a false ruling. Yet, here Rashi explains that the לעז is simply that publicity may be generated and that witnesses may come. This does not seem to be an issue which should be referred to as a חשש, a suspicion. Why should Chachamim still require twenty three even if there is a possibility that we might need more judges later, if now all we need is three?

Tosafos HaRosh explains that the suspicion is that this original three judges who began the case as a monetary issue regarding the kesubah, will now continue by themselves and not bother to gather another twenty to join them as the case advances to be one of a capital nature. ר' explains that they will simply not judge the capital case at all, violating the Torah's dictum to "rid the evil from amongst you." ■

HALACHAH Highlight

(Overview...continued from page 1)

R' Pappa offers a fourth explanation of the point debated by Chachamim and R' Meir. ■

Lying to reach the truth

אמר עולא בחוששין ללעז קמיפלגי

Ulla said that the dispute relates to whether we are concerned for gossip

Pischei Teshuva¹ cites Teshuvot Beis Yaakov who addressed the following question. Shulchan Aruch² rules that if one of the three judges declares that he does not know how to rule in a particular case, two additional judges must be added to the panel. Even if the other two judges of the original panel of three concur so that they would outvote the third judge anyway, nevertheless, when a judge declares that he does not know two new judges are added. If one judge is prepared to vote a defendant guilty and the other two judges are going to vote him innocent, is the judge who is about to be outvoted permitted to declare that he does not know how to rule so that two additional judges could be brought in with the hope that they will see things his way or not? In other words, is it permitted for the judge to lie in order to bring the truth out? Beis Yaakov's conclusion is that it is prohibited and one of his proofs is from Tosafot's interpretation of our Gemara. Ulla suggests that the point of dispute between R' Meir and Chachamim in the Mishnah whether a case of a defamer (מוציא שם רע) requires a panel of

three or twenty-three judges revolves around the question of whether we are concerned for gossip (לעז). Tosafot³ explains that according to Chachamim if a Beis Din of three judges convenes to adjudicate the monetary case of a defamer and then witnesses come forward to testify that she had an adulteress relationship it would be necessary to add an additional twenty judges. Adding judges could lead people to gossip about the first three judges and conclude that additional judges had to be brought in since the original group did not know how to rule. This indicates that adding additional judges when not necessary is improper and should be avoided.

Shvus Yaakov³ was asked a similar question and he ruled that it is permitted for a judge to declare that he does not know how to rule if his intent is for the sake of Heaven in order to assure that the correct ruling will be issued. He contends that it is permitted under the rubric of משנין מפני דרכי שלום – one is permitted to deviate from the truth in order to promote peace. Although the effort here is to arrive at truth rather than peace, nevertheless, he considered the two cases to be the same. ■

1. פתחי תשובה חו"מ סי' י"ח סק"ד.
2. שו"ע שם סעי' א'.
3. תוס' ד"ה מוציא שם רע.
4. מובא דבריו בפת"ש שם. ■

STORIES Off the Daf

"Justice Is Hashem's"

"כי המשפט לאלקים הוא..."

Rav Shalom Shwadron, zt"l, taught, "Imagine someone as righteous as Rav Chaim Brisker, zt"l. He truly sacrifices for Torah and learns every second of the day with the intention of extracting every detail of halachah in every sugya—especially with regards to monetary matters. Now contrast this with some freethinker known to have very loose morals. If Rav Chaim were to take the freethinker to beis din claiming that he owed him money and

the freethinker claims to have paid, who would we believe?

"We all know that Rav Chaim was famous for his great humility and that he gave every penny of his assets to help anyone in need. Anyone in search of a hot meal or a donation of money or firewood knew to go straight to Rav Chaim's home. Everyone understands that Rav Chaim would never lie to receive a few dollars that do not belong to him, since he will not even partake of anything that has the slightest tinge of theft. Does anyone believe this freethinker against him?

"If left to our own devices we may have declared that we have a majority

of opinion in Rav Chaim's favor, and the overwhelming odds are that the maksil still owes the money. Why not just force him to pay it back? But this is not the halachah. The halacha is that Rav Chaim will only win if he is correct according to the halachos relevant to his case. Even though logic clearly favors him, the beis din may not. This is the meaning of the verse, 'כי המשפט לאלוקים הוא'. We do not follow our own understanding, like the non-Jewish courts. We follow Hashem's law and leave Him to work out anything that is unfair. And He always does..."¹ ■

1. הוא היה אומר, ח"א, ע"י 76-77. ■