

## OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah describes the process of choosing judges and whether a litigant may disqualify witnesses brought by the other litigant.

### 2) Clarifying the Mishnah

The Gemara clarifies that a panel of three judges is sufficient and the Mishnah's implication that nine judges is needed is revised.

The implication that a borrower may reject the lender's choice of a Beis Din is questioned.

Two answers to this question are noted.

The earlier assertion that the two litigants choose a Beis Din that is mutually acceptable is successfully challenged and an alternative explanation is given.

The rationale for having each litigant choose a judge and those judges choose the third judge is explained.

The dispute in the Mishnah between R' Meir and Rabanan is explained.

A Baraisa is cited that supports the notion that witnesses should not sign a document unless they know who else is signing the document.

### 3) Rejecting a judge

R' Yochanan explains that a litigant may reject only non-expert judges.

The premise that one may not reject an expert judge is unsuccessfully challenged.

Another unsuccessful challenge to R' Yochanan's ruling is recorded.

A Baraisa is cited that supports R' Yochanan's ruling.

### 4) Rejecting a witness

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## REVIEW and Remember

1. Is one litigant able to disqualify the judge chosen by the other litigant?  
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2. Why did the pure-minded people of Yerushalayim check the guest list before attending a meal?  
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3. Why is necessary to present the dispute between R' Meir and Rabanan in two contexts?  
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4. Explain the principle of צריך לברר.  
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## Distinctive INSIGHT

*Understanding the process of selecting a beis din*

מאי זה בורר לו אחד וזה בורר לו אחד

The Mishnah at the beginning of the perek teaches that when a court is convened to judge monetary matters, it is formed with each litigant choosing "one". Once these "two" are selected, they, in turn, choose a third. The Gemara immediately questions this by noting that only three judges are needed. What is the meaning of the Gemara's question?

Rashi explains that the Gemara thought that the Mishnah was saying that each of the litigants should first choose a group of three judges, which is a total of six judges. These two groups of three judges each should then select an additional group of three. It seems, thought the Gemara, that we would now have nine judges, although all we require to have is three. This is the meaning of the Gemara's question, "Why should we select nine judges using this system, while all we want to have is three?"

The Rishonim present a number of questions against the explanation which Rashi gives. Tosafos (ד"ה מאי זה בורר) notes that the wording of the Gemara does not indicate that the number of judges was the problem, because if this was the case, the Gemara would have directly and clearly noted that the Mishnah contradicts itself by saying that monetary cases are to be judged with three judges, and then it proceeds to say that we need nine judges! Furthermore, Tosafos HaRosh points out that the answer of the Gemara is that each litigant can disqualify the beis din brought by his opponent. Yet, this implies that the question of the Gemara did not yet realize this to be the case. Also, if the Gemara realized at the beginning that each of the contenders is presenting a panel of three judges, and s the only difference between the question and the answer is the ability each has to disqualify the other set, this new realization should have been emphasized clearly. Finally, it is unreasonable that the Gemara would have even entertained the possibility that a beis din would need nine members.

Therefore, Tosafos explains the flow of the Gemara in the following manner. The Gemara knew from the beginning that a beis din has three members. However, when the Mishnah taught that each litigant must choose one judge, and the two selected judges choose a third, the Gemara thought that we do not allow the two parties to cooperate and choose the original two judges together, and that they must work independently and each choose one judge. In his מרומי שדה, the Netzi"v points out that according to Tosafos, the text does not have the words "בתלתא סגי" in the Gemara, because the Gemara knew quite well that three judges preside in these cases, and this was not the issue. The Gemara's question was just why must each person choose a separate judge, rather than allowing them to choose the first two judges jointly. ■

# HALACHAH Highlight

## Do we have “established Batei Din” in our times?

זה בורר לו אחד וזה בורר לו אחד וכו'

*This one chooses for himself [a judge] and this one chooses for himself [a judge] etc.*

The Gemara relates that when there is an established Beis Din (בית דין קבוע) in town litigants may not opt to use זבלי"א (A method of choosing a Beis Din wherein each litigant chooses a judge and those two judges choose a third). Poskim debate whether this halacha has application in our times. Rav Moshe Feinstein<sup>1</sup> wrote that this halacha is limited to communities that have a Beis Din empowered by the entire community or at least a rov of the community empowered to call people to appear before him for a Din Torah. In communities where judges are not chosen by the members of the community and especially when there are different communities within a large city, as exists in most large cities nowadays, the judges do not have jurisdiction to force people to appear before them for a din Torah and consequently if one of the litigants wants to use the זבלי"א method he cannot be forced to appear before a local Beis Din.

Teshuvos Shevet Halevi<sup>2</sup> disagreed with Rav Feinstein's assertion that nowadays we do not have established Batei Din. If a person is part of a community for all matters and this community has a Beis Din, he has no right to refuse a summons to Beis Din and pursue a זבלי"א Beis Din. He proceeds to present the criticism that Poskim have lodged against the זבלי"א method over the years. Although Rema<sup>3</sup> writes that the זבלי"א method is preferred over an established Beis Din, he was referring to a method of זבלי"א where each litigant did not present his case to the judge that would repre-

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Another challenge to R' Yochanan's ruling is presented that leads the Gemara into a discussion about whether one can disqualify the other litigant's witness.

The necessity for R' Meir and Rabanan to disagree about retracting the acceptance of a single witness in two contexts is explained.

R' Elazar offers another explanation of R' Meir's position concerning the rejection of a witness.

This explanation is further explained.

R' Dimi in the name of R' Yochanan suggests an alternative explanation of the dispute.

This explanation is further explained.

It is suggested that the dispute between R' Meir and Rabanan reflects a dispute between Rebbi and R' Shimon ben Gamliel.

This approach is rejected.

Ravin in the name of R' Yochanan suggests another approach to understanding the dispute in the Mishnah. ■

sent him. Nowadays, where it is common practice for each litigant to discuss the case with his judge it is an inferior method to an established Beis Din. Although Aruch Hashulchan<sup>4</sup> writes that common custom allows each litigant to discuss the case with his judge this assumes that each litigant agrees to adjudicate the dispute using this method. One may not force a litigant to follow the “Aruch Hashulchan's זבלי"א” since it is not being conducted in the ideal manner and thus it is preferable for the litigants to adjudicate in a local established Beis Din. ■

1. שו"ת אג"מ חו"מ ח"ב סי' ג'.
2. שו"ת שבט הלוי ח"ח סי' ש"ב.
3. רמ"א חו"מ סי' ג' סעי' א'.
4. ערוה"ש סי' י"ג סעי' ד'. ■

# STORIES Off the Daf

## A proper blessing

"פה קדוש יאמר דבר זה..."

Rav Zundel Hutner, ז"ל, of Eisheshok, a town fairly close to Radin, was shocked when people suddenly began to visit him requesting a brochah. He was even more astounded by their answer when he inquired what had brought them specifically to him. The invariable answer was that the illustrious Chofetz Chaim, ז"ל, had sent them.

At the first opportunity, Rav Zundel visited the Chofetz Chaim, hoping to put a stop to what seemed to him to be a serious mistake. He said to the venerable gaon, “What made you send people to me for a brochah? I have no idea how one goes about giving a brochah. Not only that, I am also not worthy of this august distinction at all.”

But the Chofetz Chaim disagreed. “There is nothing to know, since this is not some kind of skill which only on specially trained can achieve. As for why I send people specifically to you for brochos; that too, is very simple. In Sanhed-

rin 23 Reish Lakish says: ‘The holy mouth of Rav Meir would never say such a thing.’ Even though what Reish Lakish comes to reject is not absolutely foolish, nevertheless, it is an error, and there is a chazakah that the mouth of a holy person would not say such a thing.

“We learn a great lesson from this. If you see a person who is always learning and never speaks a forbidden or wasted word, Hashem guards him so that what he says will be does not come to naught. It follows that all of this person's blessings will be fulfilled!”<sup>1</sup> ■

1. מאיר עיני ישראל, ח"ב, 398 ■