



## The Dayan that Does Not Know

The *Mishnah* teaches that a *beit din* of twenty-three judges is required to try capital cases. The *Mishnah* (1:6) derives this from the two *pesukim* that discuss capital cases. One teaches that an *eidah* judges and the other teaches that an *eidah* saves the accused. The *Mishnah* understands that the term *eidah* refers to ten individuals since the ten spies that brought a bad report about *eretz yisrael* were referred to as a “bad *eidah*”. At this stage, the total required would be twenty. The *Mishnah* however understands that when the *Torah* teaches that one cannot incriminate based on a majority, it means a majority of one, but one can do so with a majority of two. To acquit with a majority of one however is sufficient. Consequently, after we have an *eidah* that wishes to acquit, in order to incriminate we would need a total twenty-two. However since we cannot have an even number of *dayanim* on a *beit din*, the final number is increased to twenty-three.

The *Gemara* (17a) points out that once we ensure that the *Beit Din* has an odd number of judges, we will never have a majority of two (to incriminate). The *Gemara* answers that one case would be if eleven judges rule he was guilty, eleven ruled he was innocent and one did not know. In that case we add two extra judge and discount the judge that did not know. The *Gemara* notes that in this case we are allowed to end up with an even number of judges. Consequently, we now do have an even *Beit Din* and if those two judges rule that he is guilty, we now have a majority of two.

What does it mean that the judge who could not commit is discounted? The *Gemara* explains that if presents some logic, we do not listen to him. *Rashi* explains that if he presents reason to sway the judgement either way, on which basis he cannot commit, we do not listen to him. It would seem that the individual maintains his doubt.

The *Yad Rama* however maintains that once the individual submitted that he was unsure, he is no longer considered a *dayan*. Consequently, even if he changes his mind once, the

other *dayanim* were added his opinion would not be counted. That said, he would be no different to the *talmidim* that could express a reason to acquit the individual and it would be heard providing it had substance.

The *Yad Rama* however notes that some maintain this simple understanding of the *Gemara* that this *dayan* is not heard at all. The *Yad Rama* finds this position difficult and is unsure why the *dayan*'s position is worse than that of the *talmidim*.

The *Tosfot* (33b) suggest that when the *Gemara* states that that *dayan* is not heard it means if he wants to supply reasons to incriminate. In other words, he is limited exactly like the *talmidim* and no worse. Indeed, the *Rambam* (*Sanhedrin* 9:2) rules that, he is considered absent since he can no longer submit reasons to incriminate.

One might still ask, when we need to add additional judges, we do we add two? Particularly in this case where the result is an even *beit din*. The *Mishnat Yaavetz* (CM 4) cites the *Yad Rama* who explains that sufficient judges are added to ensure that the case can be closed. One additional judge would only be sufficient if he was going to acquit, consequently two are added. He continues that one might think that when additional judges need to be added for a monetary case, then only one would be added considering that a majority of one would be sufficient. However, he cites that *Rambam* (*Sanhedrin* 8:2) that maintains that two judges are also added in monetary laws. Why?

The *Aruch HaShulchan* (CM 18:1) explains that in monetary law, the judge who initially said he does not know, can in fact change his mind after more judges are added and would be counted amongst the *dayanim*. Consequently, since it is possible that the third judge will be relevant again, adding one witness is not sufficient, since it runs the risk that there will be a total of four judges – an even *beit din*.

### Revision Questions

בבא בתרא י' א'-ח'

- What is the difference between a *get pashut* and a *get mekushar* regarding:
  - The location of the signatures? (א': י')
  - The number of witnesses? (ב': י')
- What is the law if two different sums of money were written in a loan document? (Include two different cases.) (ב': י')
- Can a *get* be written in the absence of the wife? (ג': י')
- What other two cases share a similar law to the previous question? (ג': י')
- Regarding a share-cropping agreement, who finances the writing of the contract? (ד': י')
- What does *Rabban Shimon ben Gamliel* argue regarding settlement documents produced by *beit din*? (ד': י')
- What is the case in the *Mishnah* that involves a debate regarding an *asmachta*? (ה': י')
- If a loan document was badly damaged, what must a person do in order for *beit din* to draw up a replacement document and how is such a document termed? (ו': י')
- What are the two opinions about what should be done if a person partially pays off a loan? (ו': י')
- What is the limitation placed on an inherited olive press and when does this limitation apply? (ז': י')
- What is the law regarding documents where the name of the borrower is shared by a number of people in that town? (ז': י')
- What is a solution offered to the case in the previous question? (ז': י')
- What is the law regarding a case where, on his death bed, the father tells his son that one of the loan documents in his collection has already been paid? (ח': י')
- Regarding the previous case, what if there were two documents in the collection applying to a single borrower? (ח': י')
- At the foreclosure of a loan, when can the debt be collected from the guarantor? (ח': י')
- What case is brought that is similar to the previous case and what is the law regarding that case? (ח': י')
- In which three cases is a debt collected from *nechasim bnei chorin*? (ט': י')
- Which area of *Torah* should one learn if he wishes to "acquire wisdom"? (ט': י')

סנהדרין א' א'-י'

- Provide three areas in law where everyone agrees that a *beit din* of three judges is required. (א': א')
- Explain the debate between *R' Meir* and the *Chachamim* regarding the number of judges required for a case of *motzi shem ra*. (א': א')
- How many judges does *R' Yishmael* require for a case involving lashes? (ב': א')
- What are the two opinions regarding the number of judges required for *ibur shannah*? (ב': א')
- What are the two opinions regarding the number of judges required for *arifat eglah*? (ג': א')
- What is special about the judges that *R' Yehuda* requires for the redemption of *erachin*? How many judges does he require? (ג': א')
- How many judges are required for capital cases? (ד': א')
- Do capital cases also apply to animals? Who disagrees and when? (ד': א')
- List seven cases where a *beit din* of seventy-one is required? (ה': א')
- What are the sources for the sizes of a large and small *sanhedrin*? (ו': א')
- How large must a city be in order to have its own small *sanhedrin*? (ו': א')

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
22 December כ"א כסלו	23 December כ"ב כסלו	24 December כ"ג כסלו	25 December כ"ד כסלו	26 December כ"ה כסלו	27 December כ"ו כסלו	28 December כ"ז כסלו
Sanhedrin 2:1-2	Sanhedrin 2:3-4	Sanhedrin 2:5-3:1	Sanhedrin 3:2-3	Sanhedrin 3:4-5	Sanhedrin 3:6-7	Sanhedrin 3:8-4:1

