

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah enumerates the cases that require panels of three, twenty-three and seventy-one judges. The sources for the number of judges that sit on each panel are presented.

2) Clarifying the Mishnah

The Gemara questions why the cases of thefts and bodily injuries are listed separately from the general category of monetary matters.

R' Avahu answers that the thefts and bodily injuries define the general term of monetary matters.

The reason thefts and bodily injuries are listed separately from monetary matters is explained.

The reason loans are listed separately is due to the fact that cases of loans do not require expert judges.

The rationale why loan cases do not require expert judges is explained. ■

REVIEW and Remember

1. How many judges are needed for a trial that may carry the punishment of lashes?

2. What kinds of cases require twenty-three judges?

3. Why was it necessary to enumerate cases of thefts and bodily injuries separately from the general category of monetary matters?

4. What is the meaning of the concept of עירוב פרשיות?

Today's Daf Digest is dedicated
 By Mr. and Mrs. Michael Daniels
 In loving memory of their father
 ר' שלמה בן ר' מיכאל דוד ע"ה

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 לע"נ ר' אהרן בן ר' יעקב מאיר ע"ה
 By his children
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Distinctive INSIGHT

The chapters are blended—עירוב פרשיות כתוב כאן
 אי קסבר עירוב פרשיות כתוב כאן ליבעי נמי מומחין, ואי קסבר אין עירוב פרשיות כתוב כאן שלשה למה לי?

The verse in Shemos 22:8 is found in the chapter of an unpaid watchman (שומר חנם). This verse teaches us the rule of מודה במקצת, that when a claim is made against someone, and the claimant admits to owing only part of what is being claimed, he must pay whatever he admits, and he is to take an oath in court that he owes no more.

Rashi explains that according to the view that holds עירוב פרשיות כתוב כאן, this law does not apply at all to an unpaid watchman, but rather to the law of loans, written later in Shemos 22:24. In other words, an unpaid watchman can be required to take an oath even without a partial confession. For example, in a case where he completely denies owing anything to the person who deposited the item with him, he would still have to swear that he is not guilty of misappropriating the item in any way. It is only a borrower whose taking an oath is a function of his admitting part of the money claimed by the lender, and denying the rest.

Many Rishonim (Tosafos, בבא קמא קז; Rashba, Ramban, (שבועות מג; ask many questions against the approach of Rashi, and they prove that according to the opinion that holds that the chapters of the unpaid watchman and that of loans are blended, this still means that the need for a partial admission to a claim applies to loans as well as to the unpaid watchman, before an oath can be administered by the court. Rashba (בבא מציעא ג) also wonders, according to Rashi, why the Torah would record the law of מודה במקצת in the chapter of an unpaid watchman if it is totally not relevant to that topic, if it only applies to a claim of a lender and the partial admission of his borrower.

Rashba (Bava Kamma 107) therefore explains that the concept of עירוב פרשיות means that in the chapter of the unpaid watchman, there are various claims which the watchman might offer when asked to return the object deposited with him. Some of the responses he might make to exempt himself are unique to a watchman (the animal died, it was lost, it died while

HALACHAH Highlight

Are expert judges needed to adjudicate cases of theft and robbery

אלא דלא בעינן מומחין

Rather it is that [in cases of loans] we do not require experts

In explanation of why cases involving admissions and loans are listed separately, the Gemara states that it is due to the fact that these cases do not require expert judges – מומחין. By implication, the cases of theft and robbery that are mentioned in the Mishnah must require a panel of three judges. Since the chain of semicha was broken long ago it would seem that, nowadays, we should not be authorized to adjudicate cases of robbery and yet Shulchan Aruch¹ rules that Beis Din will adjudicate matters of robbery and theft. What is the basis for this practice?

S"ma² suggests that the only restriction is for a judge to adjudicate cases of theft that result from bodily harm but all other cases of theft and robbery may be adjudicated even by a Beis Din that does not comprise judges who have semicha. Shach³ maintains that Beis Din may even adjudicate cases of theft and robbery that result from bodily harm and when the Mishnah implies that cases of robbery and theft require a Beis Din of judges with semicha it was referring to the collection of the fines that are

(Insight...continued from page 1)

working), but there are other claims he might offer which are claims which are common to those which could be said by a borrower who wishes to exempt himself (you never gave it to me, I paid you back already). ■

sometimes imposed on thieves or robbers (כפל ודי' וה').

Nesivos Hamishpat⁴ writes that the correct approach is that of Ran and Ramban that the requirement for experts to adjudicate cases of robbery and theft is limited to where experts are available. In places where experts are not readily available and certainly nowadays when we do not have such experts we adjudicate cases of theft even without experts. The reason we adjudicate without experts is out of concern that not adjudicating cases of theft and robbery will strengthen the hands of thieves since they will not fear retribution for their crime. When expert judges are available this concern is not relevant since the potential thief will fear that his victim will take him to a court of experts but nowadays that experts are not available it is necessary to allow non-experts to adjudicate to serve as a deterrent for thieves and robbers. ■

1. שו"ע חו"מ סי' א' סעי' ג'.

2. סמ"ע שם ס"ק י"ד.

3. ש"ך שם סק"ט.

4. נתיבות המשפט שם סק"ב. ■

STORIES Off the Daf

A question of priorities

"מה הן דיני ממונות..."

Today's daf discusses the halachos of beis din. Many gedolei Yisrael never went to beis din without an absolutely compelling reason. Monetary considerations were usually forgone to avoid taking a fellow Jew to beis din. The Chofetz Chaim, zt"l, was so careful in this regard that he would sometimes give money to the very person who owed him if he claimed to be in dire straights. His son, the

author of Dugmah M'darkei Avi, zt"l, wrote: "My father would never take a person to beis din no matter how ironclad his case. Even if the person was wealthy and admitted that he owed the money, the Chofetz Chaim would not even take him to task for what often amounted to theft. He continued selling his goods on credit even after the debts rose to more than one hundred rubles—a veritable fortune."

Even after the Chofetz Chaim closed his grocery, the same pattern of kindness continued regarding his 'משולחים' — the messengers he sent to sell his many seforim. Eventually

his losses due to the meshulachim rose to thousands of rubles, and although this blatant disregard for what was his rightful property angered him, he never fought with them.

He once explained why he was so courteous to them. "You should know that I forgive them from the bottom of my heart. Let's be honest: the lost money was already spent and they will not repay it anyway. So my only choice is if they will receive heavenly punishment for stealing or not. Why should they be punished on my account? Isn't it better to forgive them wholeheartedly?"¹ ■

1. דוגמא מדרכי אבי, אות ס"ה ■