

OVERVIEW of the Daf

1) A Beis Din of two judges (cont.)

The Gemara refutes the challenge to Shmuel's position that decisions of a Beis Din of two are binding.

R' Avahu rules that decisions of two judges are not binding.

This ruling is unsuccessfully challenged.

2) The liability of a judge

R' Safra explained that the type of error for which a judge is liable is an error in the weighing of an opinion.

This matter is further explained.

3) A Beis Din of two judges (cont.)

It is suggested that there is a dispute amongst Tannaim whether a Beis Din must be composed of three judges or perhaps even two is sufficient.

This suggestion is rejected.

It is suggested that there are three opinions pertaining to the number of judges needed to arbitrate a case.

This is rejected and there are two opinions, one requires three judges and the other does not have this requirement.

4) Compromise

R' Ashi attempts to demonstrate that compromise requires a kinyan for it to be binding.

The Gemara rules that compromise does not require a kinyan.

A Baraisa teaches that compromise requires three judges and once the verdict is reached the judges may not arbitrate a compromise.

R' Eliezer the son of R' Yosi HaGalili cites a verse to prove

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REVIEW and Remember

1. For what type of error is a judge liable?

2. Does compromise require a kinyan?

3. What expositions are made from the pasuk **ובצע ברך נאץ ה'**?

4. What is considered the **דין**?

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מרת רויזא בת ר' אברהם, ע"ה
 by Rabbi and Mrs. Chayim Knobloch

Distinctive INSIGHT

When is compromise appropriate?

אבל אהרן אוהב שלום ורודף שלום ומשים שלום בין אדם לחבירו

The Gemara discusses the virtues and difficulties of compromise in law. Some Tannaim say that it is prohibited to compromise, while others say that it is a mitzvah to do so.

The Gemara traces these views back to Moshe and Aharon. Moshe was a proponent of strict justice, Aharon, on the other hand, pursued peace and cooperation, attempting to have all sides walk away satisfied. Tosafos explains that even according to the opinion that it is prohibited to compromise, we can understand that Aharon was not acting as a judge is his peacemaking efforts. It was permitted for Aharon to encourage the contending parties to work things out before they went to court and asked for a ruling. However, once the matter arrived before a judge, that opinion holds that the judge must decide the halacha and no longer suggest compromise. Rashi also explains that as soon as Aharon heard that there was a dispute among people, he would pursue them and attempt to have them settle their differences before coming to court.

חמרא וחיי explains that Rashi understood that compromise is permitted outside of court, and even one who serves as a judge may suggest conciliation between the litigants until the time that they enter into his courtroom for judgment. Tosafos, however, holds that Aharon was not a judge, so he had no obligation to apply the halacha strictly. Had he been a judge, he would have been unable to suggest compromise even before the matter arrived in court.

ב"ח (C.M. 12:2) explains that Tosafos also holds that Aharon was a judge, but the reason he was allowed to suggest compromise is that he did so in cases that did not come to him for judgment. It was for the ones he pursued that he was instrumental in their negotiations, but he would not have been able to do the same for those who asked him to serve as judge in their case.

Maharsha explains that there are three levels of peace in compromise. One is "אוהב שלום," which corresponds to peace between man and God. Miscarriage of justice has serious repercussions, and arranging for a peaceful solution avoids errors. "רודף שלום" refers to peace between the judge and the litigant who might have been found guilty. When a compromise is reached, both parties are at peace with the conclusion, and they feel comfortable with the judge. Finally, "משים שלום בין אדם לחבירו" represents the cooperation between one man and his fellow, i.e., between the litigants. Compromise results in both sides' being satisfied, and neither party's bearing animosity for the other for having defeated him in what he may consider to be an unfair manner. ■

HALACHAH Highlight

Reciting a beracha on prohibited food

כיצד מברך אין זה מברך אלא מנאץ

How does he [the thief] recite a beracha? This person is not reciting a beracha, he is blaspheming Him!

Rambam and Ra'avad disagree whether one who will eat a prohibited food is obligated to recite a beracha. Rambam¹ rules that one who is eating a prohibited food does not make a beracha before or after eating since it is considered blasphemy. Ra'avad² disagrees, and writes that he must make a beracha since he is benefitting from the physical world and one is obligated to make a beracha before benefitting from the physical world. Rosh³ infers from R' Eliezer's wording in our Gemara that a beracha is recited on prohibited food. He understands R' Eliezer's question כיצד מברך to be an inquiry regarding the beracha to be recited by a thief on stolen food. Beis Yosef⁴ asserts that R' Eliezer's wording indicates that a beracha is not recited on prohibited food. When R' Eliezer says, כיצד מברך it was a rhetorical question as if to say, how could he make a beracha on the stolen food when it is blasphemous.

Bach⁵ proposes that even if we were to infer from R' Eliezer's words that a thief makes a beracha on the stolen food it would not have bearing on the question of whether one should make a beracha on prohibited food. Stolen bread is not in and of itself prohibited, it is just that the thief violates a prohibition when he eats the food and thus he must recite a beracha. In contrast one does not recite a beracha on food which is prohibited by its very nature since Chazal did not enact the recitation of berachos on foods that are prohibited for consumption. Kesav Sofer⁶ suggests

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that it is forbidden for a judge to arbitrate a compromise.

Two other explanations of the verse are presented.

R' Yehoshua ben Korcha advocates arbitrating a compromise.

The exchange between the two views about the acceptability of arbitrating a compromise is recorded.

R' Shimon ben Menasya presents a third view regarding the acceptability of arbitrating a compromise.

Different laws derived from the verse לא תגורו מפני איש are presented.

The correct perspective for witnesses and judges is offered.

The Gemara defines when judges have reached גמר דין.

Rav rules in accordance with R' Yehoshua ben Korcha who advocates judges' arbitrating a compromise.

This ruling is unsuccessfully challenged. ■

that R' Eliezer's statement is limited to making a beracha on the mitzvah of separating challah. Even though the grain was stolen the thief still fulfills the mitzvah of separating challah and thus a beracha is appropriate even though it contains an element of blasphemy. There is no reason to make a beracha on prohibited food, however, since the point of making a beracha on food is to give praise to Hashem for the food that will be eaten and when someone is about to eat a prohibited food it is not right to give praise to Hashem at that time. ■

1. רמב"ם הלי ברכות פ"א הי"ט.
2. ראב"ד שם.
3. רא"ש ברכות פ"ז סי' ב'.
4. בית יוסף או"ח סי' קצ"ו.
5. בי"ח שו"ת החדשות סי' א'.
6. שו"ת כתב סופר או"ח סי' כ"ב. ■

STORIES Off the Daf

"Loving and pursuing peace"

"אהרן אוהב שלום ורודף שלום..."

Rav Zelig Braverman, zt"l, learned together with a certain man who had very bad eyesight. One day, the chavrusah opened up his heart and told his tale of woe to Rav Braverman. "I have a very difficult time at home. My wife insists that I help her with the housework, but because of my poor eyesight this is impossible. She really needs the help however, and won't take no for an answer. When she sees that I have not done what she requested she insults me terribly—it literally breaks my heart. I don't know how to change the

state of affairs. Please help me!"

A few days later, the chavrusah arrived in a much happier state of mind. "Rav Zelig, you must be davening up a storm. Today, my wife did not insult me at all. On the contrary, it appears as though she no longer has any complaints and my sh'lom bayis has returned."

But the nearsighted man did not understand just how hard Rav Zelig had worked to restore their happiness. Rav Zelig had been observing their movements and had found that when the husband went to daven, the wife went out to shop. The moment he realized this he let himself into their home and got to work. During their absence Rav Zelig washed the dishes and did the floors—the very jobs the wife had demanded her husband do.

When the woman of the house came home, she figured that her husband must have done his chores after all, and the husband thought that she had seen how hard it was for him and had taken care of the tasks herself. Naturally, each admired the other for this sacrifice and peace reigned once again.

When Rav Shalom Shwadron, zt"l, told this story he remarked, "It is astounding to what lengths the gedolim would go to ensure that there would be peace in Jewish households. They were truly students of Aharon Hakohein who was 'אוהב שלום ורודף שלום' — he not only loved peace, he pursued it!"¹ ■

1. הוא היה אומר, ע"י 92-93