

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah contrasts rules and procedures for monetary cases and for capital cases.

2) Inquiry and questions – דרישה וחקירה

The Mishnah's statement that monetary cases require inquiry and questions of the witnesses is challenged.

An issue related to the challenge is questioned and resolved.

Four different Amoraim offer solutions to this question.

A Baraisa offers an alternative resolution to the verse **צדק צדק תרדוף**.

Another Baraisa that discusses the town of Bror Chayil is cited.

A Baraisa elaborates on the issue of choosing a court to adjudicate a dispute.

3) Capital cases begin with acquittal

R' Yehudah explains how we challenge the witnesses to begin capital cases in the direction of acquittal.

Ulla successfully challenges this interpretation and offers his own method of starting with acquittal.

Rabbah challenges this approach and suggests another method.

Three more methods to begin with acquittal are recorded.

A Baraisa is cited that supports the approach of Abaye and Rava. ■

REVIEW and Remember

1. What kind of majority is needed to convict someone in a capital case?

2. What are דרישות and what are חקירות?

3. What principles are to be derived from the verse **צדק צדק תרדוף**?

4. How do Abaye and Rava each explain our Mishnah?

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 Mr. and Mrs. Moshe Appel
 In loving memory of their father
ר' דב בערל בן ר' יצחק, ע"ה

Distinctive INSIGHT

Witnesses for monetary cases who contradict each other
 ומה טעם אמרו דיני ממונות לא בעינן דרישה וחקירה

Rambam writes (Hilchos Eidus 3:3) that witnesses who testify regarding monetary matters need not be subject to cross-examination consisting of **דרישה וחקירה** which pinpoints the time and place of the event. Nevertheless, if any contradiction is detected during this process, the validity of the testimony is nullified. On the other hand, witnesses who testify for monetary matters are not disqualified if they contradict each other in some detail during the **בדיקות**, which are questions which are asked to determine the relevant and non-relevant details of the matter.

רדב"ז explain that the source for the ruling of Rambam is the Gemara earlier (30b), where R' Yehuda said that witnesses that contradict each other during the **בדיקות** are valid for monetary matters. This implies that if a contradiction was detected during the **דרישות**, however, the testimony is invalidated, even though it was not necessary to conduct the **דרישות** in the first place. **יד רמה** also notes that if these witnesses who come to testify in a monetary case respond to the inquiry regarding precisely when and where the event occurred, and other witnesses later come and testify that the first group were conspiring witnesses (**עדים זוממין**), the first witnesses are liable. Although they did not have to provide such detailed information, once they do so their testimony is official, and their statements regarding time and place are recognized. This is also the ruling of Tur and Shulchan Aruch (C.M. 30:2).

ש"ך (ibid., #6) cites the **ראב"ן**, who disagrees and contends that we do not disqualify witnesses who contradict each other when providing information during the **חקירות**, as this information was not necessary to be furnished by them. He proves his view from the statement of R' Yochanan who said, "And what is the reason that we do not need **דרישה וחקירה** in monetary cases?" This suggests that this process has no validity at all for witnesses in such cases. Accordingly, he concludes that we do not rule in accordance with R' Yehuda who says that witnesses for monetary cases remain valid only if they contradict each other during the **בדיקות**, but not if they are inconsistent during the **חקירות**.

ראב"ן (29:4) cites the opinion of **ספר התרומות**, but he adds that even though R' Yehuda only mentioned that a

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HALACHAH Highlight

Prioritizing who receives maftir

תידחה שאינה טעונה מפני טעונה

We push away the one that is not loaded for the one that is loaded

Birkei Yosef¹ addresses the issue of prioritizing two people, one a Torah scholar and the other not, who have yahrtzeit in the upcoming week and wish to receive the maftir aliyah. He explains in the name of Teshuvos Ra'anach that the Torah scholar isn't automatically honored with the maftir aliyah since the principle that we give preference to Torah scholars is limited to matters related to honor but when it comes to performing a mitzvah we do not give preference to Torah scholars. He then cites an opinion that maftir should be given to the one who is not a Torah scholar since the Torah scholar can provide benefit for his father through his Torah study as opposed to the one who is not a Torah scholar.

Teshuvos B'tzeil Hachochmah² questions the rationale of this ruling. All members of the community have equal rights in communal matters. What, then, gives the non-Torah scholar the right to tell the scholar that he should study Torah and forgo his communal right to receive maftir? It is similar to partners who inherited an object that cannot be split into two parts. It would be unreasonable for one partner to argue that the other is wealthy and does not need the inherited object and therefore it should be his. He suggests that this ruling could be explained in light of the

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contradiction between the witnesses during the בדיקות does not invalidate the witnesses, the truth is that R' Yehuda would not invalidate the witnesses even if their contradiction was during the חקירות as well. The reason R' Yehuda mentioned only the בדיקות is that there generally is no חקירות for witnesses in monetary cases. ■

Baraisa cited in our Gemara. The Baraisa teaches that when two boats meet in the river, one transporting merchandise and the other empty, preference is given to the one that is transporting merchandise. The rationale is that although both boats have equal rights to travel on the river, nevertheless, the one that has an easier time waiting is expected to step aside for the one for whom it would be a greater imposition. Similarly, since the scholar and the non-scholar have equal rights to receive maftir and a choice must be made, we expect the one for whom it would be less of an imposition to step aside. Consequently, since the scholar can provide benefit for his parent in an alternative manner whereas the non-scholar cannot, we expect the scholar to forgo his rights since for him it would not be as troubling to not receive maftir. He subsequently rejects this approach since it would mean that poor people would always receive maftir ahead of wealthy people since wealthy people have the option to give tzedaka. His final decision is that they have equal rights and a lottery should be drawn to determine who will receive maftir. ■

1. ברכי יוסף או"ח סי' רפ"ד אות א'.
2. שו"ת בצל החכמה ח"ד סי' ח'.

STORIES Off the Daf

Yielding the right of way

תידחה שאינה טעונה מפני טעונה...

When the government of Israel wished to pass a law requiring all girls to serve in the army, the Chazon Ish, z"l, and the other gedolim were steadfast in their ruling that the girls should literally die rather than allow themselves to be conscripted for any reason. Ben Gurion met the Chazon Ish in an effort to force him to submit to the law, or at least to convince him to withdraw his psak that conscription of girls was an issue of תהרג ואל תעבר.

When Ben Gurion asked the Chazon Ish how the secular and charedi elements of Israeli society could possibly find a way to bridge the gap between them, he replied with a parable from today's daf. "Our sages teach that if there are two wagons on a narrow road, one full and one empty, which wagon must accommodate its counterpart? Surely the empty one must make space for the full wagon to pass first. The wagon of the chareidim has been filled with Torah and mitzvos for thousands of years, ever since the revelation at Mt Sinai. Your wagon is empty since you only began to fill it a comparatively short time ago. You must make space to accommodate the religious communi-

ty."

But because the Chazon Ish did not want to insult Ben Gurion, who was a guest in his home, he added, "You should not misunderstand me when I say our wagon is full and yours is empty. Our wagon is full of the many halachos such as Shabbos and kashrus that we are required to observe. Your wagon is ideologically flexible enough to accommodate us, since you are not required to eat non-kosher and you need not profane Shabbos to be an upstanding member of secular society. You can give in to our approach and lose nothing by it. We cannot."¹ ■

1. במחיצתם של גדולי התורה, ח"א עמ' 73-71.