

OVERVIEW of the Daf

1) Reversing a decision

A Mishnah is cited that contradicts the Mishnah's ruling that a monetary decision may be reversed.

R' Yosef differentiates between an expert judge and a non-expert judge.

R' Nachman further qualifies R' Yosef's explanation.

R' Sheishes suggests another resolution to the contradiction.

The terms **בדבר משנה** and **שיקול הדעת** are defined.

R' Hamnuna unsuccessfully challenges R' Sheishes's opinion.

The premise of R' Hamnuna's challenge is unsuccessfully questioned.

R' Chisda offers an alternative resolution to the contradiction.

This explanation is unsuccessfully challenged.

2) Reversing a decision in capital cases

A Baraisa elaborates on the halachos of reversing a decision in capital cases.

R' Shimi bar Ashi notes that we would convict an instigator even if he initially emerged innocent.

R' Sheishes in response to R' Zeira's inquiry, ruled that we also cannot reverse an innocent verdict regarding exile or lashes.

A Baraisa is cited that supports the rulings of R' Sheishes.

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REVIEW and Remember

1. What is an example of a mistake in **שיקול הדעת**?
2. Why is a recognized expert exempt from payment if he errs in judgement?
3. When does the principle of double jeopardy not apply?
4. What is the point of dispute between R' Yosi bar R' Yehudah and Rabanan?

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 In loving memory of
 Moshe Yechezkel ben Yehoshua A"H,
 by his children Dr. and Mrs. Aaron Friedman

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 In loving memory of the yahrzeit of our brother
 Moshe Dov ben Shmuel **ע"ה**, Mr. Marvin Brickman o.b.m.
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Distinctive INSIGHT

When do we reverse a judgment made in error?

רב ששת אמר כאן שטעה בדבר משנה

Our Mishnah (32a) taught that if the judges realize that they erred in judgment, if the case is a monetary case, it can be reversed. If the case is a capital case, it can only be reconsidered and reversed if the judges realize that they mistakenly convicted the defendant, but not if they mistakenly acquitted him and now want to convict. The Gemara detects that a Mishnah in Bechoros (28b) reports that if a verdict had been mistaken, the judgment is binding and final, but the judge must pay out of his own pocket to reimburse any payments or losses that were as a result of his mistake. We see, therefore, that the judgment rendered is not reversed, which is the reverse of what our Mishnah ruled.

The first answer of the Gemara is given by R' Yosef and explained by R' Nachman. Our Mishnah is speaking about a case where the original, mistaken ruling was issued by a judge where there was a more competent judge in the area who should have been the one who ruled. By not deferring to the more qualified judge, the lower judge will now have his ruling overturned. The Mishnah in Bechoros is dealing with a case where the ruling was issued by the most qualified judge available. Therefore, the judgment is final.

Rav Sheishes gives a different answer to the two Mishnayos. Our Mishnah, where the judgment is reversed, is dealing with a case where the mistake was regarding a halacha which is found in a Mishnah. Rashi explains that this is a grievous error, and the ruling has no validity. This is why it should be reversed. The Chinuch (Mitzvah 233) says that the ruling is cancelled, and it is as if it was never said. The Mishnah in Bechoros, where the ruling stands, is dealing with a case where the judge erred in a discretionary call regarding the flow of the sugya. His misinterpretation of the conclusion of the discussion in a Gemara is not enough for the ruling to be reversed, but the judge must still pay for his mistake.

Rav Chisda explains that the difference between the Mishnayos is that in the case of Bechoros, the judge not only ruled improperly, but he also personally took the money from the plaintiff and gave it to the defendant. Here, the judge must pay for his improper judgment and inappropriate involvement. In our Mishnah, the judge ruled improperly, but he had no part in the actual payment. Therefore, the money should be returned.

Rav **רמ"ה** writes that Rav Sheishes disagrees with the other answers given in the Gemara, and he holds that the only time we reverse a ruling is when it was an overt error in opposition to a ruling found in a Mishnah. **בעל המאור** and **רא"ש** hold that R' Sheishes agrees with Rav Nachman, while **ר"ן** says that R' Sheishes agrees with Rav Chisda. ■

HALACHAH Highlight

Is one a שוגג if he follows his own erroneous ruling?

טיהר את הטמא שעירבן בין פירותיו

[The case where a judge declared] tahor something that was tamei [refers to] where he mixed it in his other fruit

Magen Avrohom¹ rules that if a person received an erroneous ruling to do a melacha that is prohibited on Shabbos, he is considered a שוגג and may himself benefit, immediately after Shabbos, from the melacha that he performed. A related question is whether a Torah scholar who followed his own erroneous ruling and did a melacha on Shabbos is also considered a שוגג and permitted to benefit from the melacha immediately after Shabbos.

Da'as Torah² suggests that the Torah scholar should not qualify as a שוגג based on a comment of Tosafos to our Gemara. Tosafos³ writes that if a Torah scholar erroneously ruled that tamei fruit was tahor and the owner mixed the questionable fruit with tahor fruit the scholar is liable for the loss he caused. He cannot claim that the damage was a שוגג since we expect a Torah scholar to be more careful when issuing a halachic ruling and the fact that the ruling was wrong indicates that he did not perform due diligence before issuing his ruling and is thus accountable. Accordingly, when the Torah scholar followed his own erroneous ruling he should not be categorized as a שוגג since he should have exercised greater care before issuing his ruling.

(Overview...continued from page 1)

R' Yochanan asserts that if the judges made a mistake in something that is explicit in the Torah their decision is reversed in favor of a conviction.

R' Chiya bar Abba asked whether a decision could be reversed for a conviction in a case of adultery.

R' Yochanan confirms that it is reversed.

A similar statement of R' Yochanan is cited and explained.

3) Advocating for an acquittal in capital cases

The Mishnah that implies that even the witnesses can advocate for acquittal in capital cases seems to follow R' Yosi bar R' Yehudah rather than Rabanan.

R' Pappa suggests that the Mishnah refers to students rather than the witnesses. ■

Upon further consideration he backtracks from this ruling suggesting that there is a difference between the diligence required when one rules for others and the diligence required when one rules for himself. This distinction is based on Tosafos⁴ who writes that one has to exercise greater caution to avoid damaging others than he has to have to prevent himself from becoming damaged. Accordingly, one is expected to be more careful when ruling for others than one would be when ruling for himself and thus an erroneous ruling for others is not considered a שוגג but for himself he is considered a שוגג. ■

1. מג"א או"ח סי' ש"י"ח סק"ג.

2. דעת תורה שם סעי' א'.

3. תוס' ד"ה שעירבן.

4. תוס' ב"ק כ"ג. ד"ה ולחייב. ■

STORIES Off the Daf

"The farmer's lament"

"אטו און קטלי קניא באגמא און..."

Rav Avraham Yehoshua Heschel, zt"l, the Av Beis Din of אהעל and a close student of the Chasam Sofer, zt"l, recounted that it was the wont of his rebbe to apply everything he heard or saw to Torah. He illustrated this statement with a remarkable story.:

Rav Avraham Yehoshua accompanied the Chasam Sofer, zt"l, to a distant town so the latter could have a well deserved summer rest. The two

stayed in a very simple village at the home of a simple villager who worked all day long in the field. One evening their host returned home in a despondent mood. He complained to the Chasam Sofer that he had it worse than all the other field workers who were off during the winter months. "I also know how to cut thin reeds which grow in swamps. Since this job can only be done during the winter months, when the swamps are frozen over, I have no rest; not during the summer or even for the duration of the long winter."

The Chasam Sofer expressed his sympathy and the man left the room.

He then turned to his companion and said, "I learned from that simple man a new explanation in Sanhedrin 33. There we find that Rav Ashi says, 'Are we קטלי קניא באגם און? — Are we people who cut reeds in swamps?' But why did Rav Ashi specifically choose this livelihood to illustrate a person who is not learned? The answer may well be as this simple man just explained: a cutter of reeds in the swamp works during winter and since he is likely to also be preoccupied with his field during the summer months, he never has time to learn. Rav Ashi was saying: since we are not people who cut reeds in swamps, we at least have time to learn during the winter months!"¹