



Forming a *Beit Din* of Three

The third *perek* of *Sanhedrin* begins much like the first: monetary laws require a *Beit Din* of three judges. The *Mishnah* continues by explaining the process of how these judges are selected. The litigants first each nominate a judge. There is a debate how the third judge is selected. *R' Meir* explains that the litigants together select a third judge, while the *Chachamim* understand that the elected judges select the third judge on their own. The *Bartenura* explains that the *Chachamim* maintain this position so that the third judge is not swayed by either of the parties.

Why are the judges selected in this manner? The *Gemara* (23a) explains: “since this one selects one judge and that one selects one judge and they both select another, the judgement will come out in truth.” What does this mean and why?

Rashi explains that the *Gemara* means that the litigants will comfortably uphold the ruling. The party that was ruled against will reason that since he selected one of the judges, if there was something in his favour that judge would have raised it. This is indeed the explanation of the *Rivan* as quoted by the *Tosfot*.

According to the simple reading, the *Gemara* was referring to the judgement itself and not the parties' acceptance of it. Yet *Rashi* does not present the simple understanding. The *Bach* (13:8) explains that *Rashi* was compelled by two reasons. Firstly, judges are always obligated to pursue the truth and judge truthfully. How they were nominated should be irrelevant. Also the language of “the judgement will come out in truth” is strange; it should have said,

“They will be able to judge a true judgements”. Consequently *Rashi* understood it was referring to litigants' acceptance of the judgement.

Rashi continues that the judges will be able to endeavour to find favourable positions for each party since both parties selected them. What does this mean?

The *Tur* (13:3) notes that it appears from the language of *Rashi* that each of the *dayanim* must engage in finding positive arguments of the person who selected them. Indeed, he cites the *Ramah* (רמ"ה) who maintains this position.

The *Tur* however continues citing the *Rosh* that people have erred in this understanding of *Rashi*. Consequently, they have selected *dayanim* that are skilled in finding speculative arguments in their favour to sway the judgment. This is however mistaken. In the beginning of his comments when *Rashi* was explaining from the perspective of the litigants, *Rashi* was only explaining from the perspective of the litigants; they would think that their *dayan* would fight for their cause *even in an unjust manner*. In truth however the *dayanim* should not raise positions unless they are convinced of its truth otherwise it would be considered perverting justice. Instead, as explained by the continuation of *Rashi*, it is more that since the *dayan* was selected by one of the parties, he is more understanding of his position and if there is a genuine claim it will not be overlooked. The third *dayan* is then able oversee the deliberation and adjudicate so that correct and true ruling is delivered.¹

Yisrael Yitzchak Bankier

¹ This reading of the *Rosh* is as explained by the *Bach* in his first explanation, based on the version of the *Rosh* as quoted in the *Tur*. The other understanding however is that the *Rosh* explained that *Rashi* is only explaining from the perspective of the litigants. The continuation of the *Rosh* that discusses how the selection process

will ensure that no claim is overlooked, is the *Rosh*'s own explanation that argues with *Rashi*. The advantage being that we are not relying on a position that each party will be thinking that “their” judge will stop at nothing to act in their favour.

Revision Questions

סנהדרין א' ה' ג' ז'

- List seven cases where a *beit din* of seventy-one is required? (א' ה')
- What are the sources for the sizes of a large and small *sanhedrin*? (א' ר')
- How large must a city be in order to have its own small *sanhedrin*? (א' ר')
- Can a *kohen gadol* be called to trial? Can he be a witness? (א' ב')
- What are the two opinions regarding the extent to which a *kohen gadol* can engage in *levayat ha'met*? (א' ב')
- If a *kohen gadol* is a mourner, how do the masses console him? (א' ב')
- With respect to legal issues, in what ways is a king different to a *kohen gadol*? (ב' ב')
- Explain the debate regarding whether a king can leave the palace to bury a relative. (ב' ג')
- How many wives can a king have? How many horses? How much money? (ב' ג')
- What would the king take with him everywhere? (ב' ד')
- What three items belonging to a king is one not allowed to use? (ב' ה')
- In what three situations is one not allowed to see the king? (ב' ה')
- What are the two opinions regarding how the judges are selected for a financial dispute? (א' ג')
- What two rights does *R' Meir* afford to parties of a financial dispute within the trial? (א' ג')
- Can the parties accept to have an invalid judge? What is the debate regarding this issue? (ב' ג')
- What other case brought in the *Mishnah* is debated in a similar manner to the previous question? (ב' ג')
- Which four people are invalid witnesses? (ג' ג')
- What qualifier does *R' Yehuda* place on the answer to previous question? (ג' ג')
- List the relatives that cannot act as witnesses? (ג' ד')
- Regarding the previous question, what is the difference between the opinion of *R' Akiva* and the *Mishnah Rishona*? (ג' ד')
- Are "ex-relatives" able to testify? In which case does *R' Yehuda* disagree? (ג' ד')
- What are the definitions of a close friend and enemy that cannot be witnesses? (ג' ה')
- Does everyone agree with the law brought in the previous question? (ג' ה')
- Describe how the witnesses are examined? (ג' ו')
- What is the verdict if: (ג' ו')
 - Two judges rule guilty and one rules innocent?
 - Two judges rule innocent and one rules guilty?
 - Two judges rule guilty and one does not know?
- Who would supply the verdict? (ג' ז')

Local Shiurim

Melbourne, Australia

Sunday -Thursday

10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat

10 minutes before *Mincha*
Beit Ha'Roeh
Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday

Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendar/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
In US dial: 718 906 6400
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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
14 th June כ"ט תמוז	15 th July א' אב	16 th July ב' אב	17 th July ג' אב	18 th July ד' אב	19 th July ה' אב	20 th July ו' אב
Sanhedrin 1:5-6	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

