



Volume 11. Issue 22

Getting Paid to Judge

The *Mishnah* (4:6) teaches that if a judge is paid then the judgement is void. Likewise, if witnesses are paid then their testimony is invalid. The *Tifferet Yisrael* explains that if only one of the litigants paid the judge then it would be defined as *shochad* (bribery), even if the party intended that the judge rules truthfully. The *Mishnah* is instead referring to a case where both parties contribute equally in funding the judge. Nevertheless the payment disqualifies the judge.

The *Mishnah* does continue explaining how one can be compensated for costs incurred and lost time (albeit at a reduced rate). Nevertheless a salary appears to be expressly ruled out. The *Bartenura* explains that this is based on the *pasuk* (*Devarim* 4:4) “See I [Moshe] taught you the laws and statutes as *Hashem* commanded me.” The *Gemara* understands that this does not just referring to the content, but to the manner as well. Just as *Hashem* taught *Moshe* for free so too did *Moshe*; and those that follow must teach for free as well.

The *Bartenura* continues citing the actions of a particular Rabbi that would take a fee for writing and overseeing the handing over of the *get*. Likewise the witnesses would also be paid. The *Bartenura* questioned his actions as unbecoming of a Rabbi and comparable to theft and extortion while unfairly taking advantage of his position as the only qualified authority. Similarly he questions the efficacy of the *get* based on our *Mishnah*.

The *Tosfot Yom Tov* cites the *Rama* who argues however that the *Mishnah* is not a proof to counter the Rabbi’s actions. Firstly, the writing of a *get* would not qualify as judgement – it closer to guidance and instruction. Similarly the witness are financial liable if they err and

ruin the *get* which would justify their payment. Furthermore, the witnesses become forbidden from marrying the divorced lady as a result of choosing to become witnesses.¹

The *Tosfot Yom Tov* adds that really there is no difficulty with the witnesses being paid in the case of a *get*. The *Beit Yosef* (Ch.M. 28) cites the *Rashba* who explains that the issue with paying witnesses is only if they have already witnessed an event and are obligated to provide testimony, yet they are resisting unless they are paid. However, someone who is not obligate to testify can take payment to become a witness, like in the case of a *get*.

The *Tosfot Yom Tov* extends this logic to a judge as well. The issue would only be if he were approached to pass a judgment. If however the community wished to elect this person as a full time judge that would be a different matter – there is not *mitzvah* to do so. Consequently he can stipulate a fee at the outset.

The *Tosfot Yom Tov* continues that it has been a long established custom for the sages to receive a salary from the community. He suggests that it reached a point where it was necessary permit it (*et la’asot le’Hashem*) to ensure those that study and teach invest significant time and energy in doing so properly. The *Tifferet Yisrael* adds that it became necessary in order that those permanent positions, essential for the community, would be filled. Nevertheless, he adds that one should not necessarily overburden people too much “for all matters in the fulfilment of *Torah* and *Mitzvah*, which is the purpose of the entire creation.”

Yisrael Bankier

¹ The *Rashash* argues that this answer is only enough to ensure that the *get* is not invalid. Nevertheless it still appears to violate the instruction that “just as I taught for free so too you shall teach for free.” He directs us to see the *Shulchan Aruch* (Y.D. 246:5) and *Rama* (246:21). See inside.

Revision Questions

בכורות ג' ב' ה' א'

- Regarding the previous case, what is the opinion of *R' Shimon ben Gamliel* if the purchased animal was feeding? (ג' ב')
- If a *bechor* has a *mum* can its hair be removed to analyse the *mum*? (ג' ג')
- Explain the debate regarding hair that fell off a *bechor ba'al mum*, and then the animal was slaughtered. (ד' ד')
- According to *R' Yosi*, to what cases was the debate really referring? (ד' ד')
- For how long must a *yisrael* take care of the *bechor* before giving it to the *kohen*? (ד' א')
- In which two cases could one give the *bechor* to the *kohen* immediately? (ד' א')
- How is the first year of the *bechor* calculated and why is it important? (ד' א' ב')
- Explain the debate regarding a *bechor* that had a *mum* and was slaughtered and only then shown to an expert to examine? (ג' ד')
- What is the law if a non-professional: (ד' ד')
 - Ruled that a *bechor* had a blemish and it was slaughtered on his word?
 - Ruled incorrect in a monetary law?
- Regarding the previous question what is the law if he was a professional? (ד' ד')
- Can a professional “blemish-checker” for *bechorot* accept a salary? (ד' ה')
- Can a judge receive a salary? (ד' ו')
- Can witnesses receive payment to testify? (ד' ו')
- In what situation would one be obligated to feed a *kohen* “blemish-checker”? (ד' ו')
- What is one not allowed to purchase from:
 - A *kohen* that is suspected of inflicting blemishes on *bechorot*? (ד' ז')
 - A person suspected of planting during the *shmittah* year? (ד' ח')
 - A person suspected of selling *trumah* as if it was *chulin*? (Provide both opinions.) (ד' ט')
- If one is suspected of planting crops during the *shmittah* year is he then also suspected of selling *ma'aser sheni*? (ד' י')
- What else is one suspected of transgressing if they are suspected of performing both actions described in the previous question? (ד' י')
- What is the difference between the way *kodshim* that had a blemish and was redeemed is sold and how a *bechor* or *ma'aser beheimah* that had a blemish is sold and why? (ה' א')

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/calendars/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
 In US dial: 718 906 6400
 Then select: 1 – 2 – 4

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
22 nd June כ"ד סיון	23 rd June כ"ה סיון	24 th June כ"ו סיון	25 th June כ"ז סיון	26 th June כ"ח סיון	27 th June כ"ט סיון	28 th June ל' סיון
Bechorot 5:2-3	Bechorot 5:4-5	Bechorot 5:6-6:1	Bechorot 6:2-3	Bechorot 6:4-5	Bechorot 6:6-7	Bechorot 6:8-9

