



Volume 4. Issue 21

## The Gambler

In the third *perek* we discussed people that were invalid to act as witnesses or judges. One of these was the dice player – the gambler. More precisely, R' Yehuda explains<sup>1</sup> that this refers to a person whose sole profession is gambling. What exactly is wrong with the gambler? Why does it invalidate him as a witness? What difference does it make if it is his profession?

The first opinion in the *Gemara* (*Sanhedrin* 24b) is *Rami bar Chama* who explains that the gambling agreement is defined as an *asmachta* and an *asmachta* is not binding. This means that each party has laid down their money agreeing to part with it depending on a future event. However since each party does so hoping that the dice will fall in their favour, they are not completely resolved to parting with their money. Therefore when the winner takes the funds it is tantamount to stealing.<sup>2</sup> Accordingly the *Gemara* explains, that anyone that engages in gambling is *pasul*.

*Rav Sheshet* disagrees. He believes that this is not a case of an *asmachta*. *Rashi* explains that a real *asmachta* is when a person obligates himself believing that he will never need to pay. For example see the *Mishnah* we learnt in *Bava Batra* (10:5). Instead *Rav Sheshet* explains that the problem is that he is not involved with *yishuvo shel olam* – benefiting general welfare. Therefore the *Gemara* explains that according to this understanding, as long as he had another profession he would not be invalid as a witness or a judge. What is the problem in not being involved in *yishuvo shel olam*?

The *Bartenura* elaborates, that it is forbidden for one to involve them in activities other than *Torah*, acts of loving kindness or trade or professions that involve *yishuva shel olam*. Consequently, this flaw alone appears to invalidate him.

Alternatively *Rashi* (*Eiruvim* 82a) explains that since he is removed from worldly affairs, he does not recognise or understand the pain and efforts exerted by others to earn a living. Consequently this person would not be greatly bothered at his friend's financial loss.

Finally the *Rambam* (*Edut* 10:4) writes that the gambler's lack of involvement in *yishuv olam* implies that he must be benefiting from the winnings. What does this mean? The *Sema* (*Choshen Mishpat* 34:40) explains that the *Rambam* maintains that even though taking the winnings does not constitute stealing, since the money only really transferred hands by means of "playing about", it constitutes "*avak gezel*" (rabbinically problematic theft).<sup>3</sup> Consequently it only invalidates one from testifying if he actually benefits from the winnings because since he is adorning himself with this tainted money, it is suspect that he would be willing to testify falsely. Unlike *Bartenura* and *Rashi* the lack of being involved in worldly affairs does not present an inherent problem. It is only because it would ensure that he must be benefiting from the "dirty" money that invalidates him as a witness. The *Sema* adds that according to this understanding, if this gambler had a significant wealth from which he is supported, then even if he had no other job, he would not be invalid as a witness.

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<sup>1</sup> Whether he argues against or explains the opinion of the *Chachamim* is subject to debate in the *Gemara*.

<sup>2</sup> Whether it is considered stealing on a biblical or rabbinic level is a debate between *Rashi* and *Ritva* on *Gemara Rosh Hashanah* (21a). This is an involved discussion that goes beyond the scope of this article. Nevertheless the

invalidation to testify appears to rabbinic according to all opinions. See the discussion on the that *Gemara*.

<sup>3</sup> An alternative understanding of the *Rambam* is presented by the *Kesef Mishnah* who maintains that the *Rambam* rules like *Rami bar Chama* that gambling constitutes theft. If so, why is only the professional gambler invalid? See the *Kesef Mishnah* inside for his full explanation.

### Revision Questions

סנהדרין ב' ה' – ד' ה'

- 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? (ה' ה')
- What are the two opinions regarding how the judges are selected for a financial dispute? (א' א')
- 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? (ג' ב')
- What other case brought in the *Mishnah* is debated in a similar manner to the previous question? (ג' ב')
- 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? (ד' ג')
- Regarding the previous question, what is the difference between the opinion of *R' Akiva* and the *Mishna Rishona*? (ד' ג')
- Are “ex-relatives” able to testify? In which case does *R' Yehuda* disagree? (ד' ג')
- What are the definitions of a close friend and enemy that cannot be witnesses? (ה' ג')
- Does everyone agree with the law brought in the previous question? (ה' ג')
- Describe how the witnesses are examined? (ו' ג')
- What is the verdict if: (ו' ג')
  - 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? (ז' ג')
- What is the source that prohibits a judge, after the case, from revealing that he held a dissenting opinion but was overruled? (ז' ג')
- Can one bring evidence after a case is closed? (ח' ג')
- Explain the two cases that are debated relating to the previous question and the case where everyone agrees. (ח' ג')
- What is the source for the requirement of *drisha ve'chakira* in both monetary and capital cases? (ט' ד')
- List eight differences between monetary and capital cases? (א' ד')
- What is different about the way *beit din* answer a question regarding issues of purity and impurity as apposed to ruling in a capital case? (ב' ד')
- Which people are valid as witnesses for monetary cases but not for capital cases? (ב' ד')
- How was the building housing the *Sanhedrin* structured? (ג' ד')
- Other than the judges and parties to the case, who else was present and what were they doing? (ג' ד')
- In a *sanhedrin katana* explain how they would replace a judge. (ד' ד')
- What is the *pasuk* brought from *Bereishit* that is used to demonstrate to the witnesses of a capital case, the seriousness of the case and how it differs from a monetary cases? (ד' ה')
- List three reasons why Man was initially created alone? (ה' ה')
- What two *p'sukim* are brought to encourage the witness to a capital offence to testify? (ה' ה')

### Local Shiurim

#### Sunday -Thursday

Between mincha & ma'ariv  
Mizrachi Shul

#### Friday & Shabbat

10 minutes before mincha  
Mizrachi Shul

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### Next Week's Mishnayot...

| Sunday                               | Monday                               | Tuesday                              | Wednesday                            | Thursday                             | Friday                               | שבת קודש                             |
|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| 14 <sup>th</sup> October<br>ב' חשוון | 15 <sup>th</sup> October<br>ג' חשוון | 16 <sup>th</sup> October<br>ד' חשוון | 17 <sup>th</sup> October<br>ה' חשוון | 18 <sup>th</sup> October<br>ו' חשוון | 19 <sup>th</sup> October<br>ז' חשוון | 20 <sup>th</sup> October<br>ח' חשוון |
| Sanhedrin<br>5:1-2                   | Sanhedrin<br>5:3-4                   | Sanhedrin<br>5:5-6:1                 | Sanhedrin<br>6:2-3                   | Sanhedrin<br>6:4-5                   | Sanhedrin<br>6:6-7:1                 | Sanhedrin<br>7:2-3                   |

