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שרשרת זהב

Two Wrongs don't make it right

תרתי לריעותא

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שרשרת זהב

These booklets are called **Sharsheres Zahav** (*Golden Chain*), based on the verse describing the golden chains of the Choshen (Shemos 28:13–14). Just as those chains connected the Choshen to its proper place, so too these works are intended to be small links in the golden chain of Torah transmission, connecting the learner to the teachings of Chazal, the Rishonim, the Acharonim, and the great Torah scholars of every generation.

In particular, these booklets seek to connect the reader to the illuminating Torah of the **Ketzos HaChoshen**, whose teachings serve as a central foundation throughout. Everything written here is based on the sacred words of our sages and was prepared through sincere effort to clarify and understand the sugyos in the light of their teachings.

May Hashem grant that these words find favor among those who study Torah, and may these works become worthy additions to the eternal chain of Torah transmission from generation to generation. Amen.

How to Read This Sheet?

Each source appears first in the original Hebrew or Aramaic, with a plain English version directly underneath. A Sugya Note helps explain the source in everyday words. A Term Note defines an important word or idea. A Takeaway sums up the main point in a line or two.

You do not need any background to follow along. Read each source, then the English, then the note. The sheet is built to walk you through the discussion one step at a time.

Do not worry if you do not finish the sheet in one sitting. A good Torah session is not measured only by how much you finish, but by how deeply you learn to think through the discussion.

תרתי לריעותא
Two Wrongs don't make it right

Opening Frame

Reuven says Shimon owes him twelve thousand dollars. Shimon says he doesn't.

Ordinarily, a dispute like this would go to a Beis Din, a Jewish court consisting of three judges. But Reuven and Shimon would rather avoid that. They know an individual whom they both trust. He's not a judge, just someone they both trust. They agree to let him arbitrate the case. He hears them out and rules that Shimon is liable and owes the money.

Now Shimon wants out. No one forced him to agree to this arrangement in the first place. But once he did agree, is he bound by the decision?

To answer that, we first have to determine exactly what Shimon agreed to when he said, "Whatever he decides will stand."

I. Picking Your Own Judge

The Mishnah's case, and what happens when a litigant changes his mind.

Background

In Jewish law, a case is decided by a court, not simply by an individual whom the parties happen to choose. The minimum court consists of three judges.
But those three judges do not have to be ordained, nor do they need any formal appointment. Three scholars sitting together can constitute a valid court.
Keep that point in mind.

Mishnah, Sanhedrin 24a | מתני' בפרק זה בורר (סנהדרין, כ"ד.)

The Mishnah is the written summary of the Oral Law, set down in Eretz Yisrael around the year 200. Masechta Sanhedrin is the tractate that treats courts, judges, and how a case is tried. This chapter of it deals with how the two sides in a case choose the judges who will hear them.

[If one litigant said to the other:] "My father is trusted by me [to judge this case]," or the defendant said, "Your father is trusted by me," or he said, "Three cattle herders are trusted by me."
R' Meir says: he may retract. And the Sages say: he may not retract.

אמר לו "נאמן עלי אבא", "נאמן עלי אביך", "נאמנים עלי שלשה רועי בקר". רבי מאיר אומר יכול לחזור בו, וחכמים אומרים אינו יכול לחזור בו.

Sugya Note

The Mishnah discusses a litigant who agrees to be judged by someone whom Jewish law would normally disqualify from serving as a judge, such as his own father, the other litigant's father, or even three cattle herders who are not qualified to sit as judges.

The question is: once he has agreed to accept them as judges, can he change his mind?

R' Meir says he can. Since these men were never qualified to judge the case in the first place, his agreement to accept them is not strong enough to bind him. He can therefore back out.

The Sages say he cannot. He voluntarily agreed to accept them as judges. Once he accepted their authority, that acceptance is binding, and he cannot later change his mind simply because he no longer wants them deciding his case.

המשנה מיירי באופן שבעל דין קיבל עליו לדון בפני מי שאינו כשר לדון אותו מעיקר הדין, כגון שאמר לחבירו "נאמן עלי אבא" או "נאמן עלי אביך", וכן אם קיבל עליו שלשה רועי בקר, שאינם דיינים הראויים לדון. ונחלקו רבי מאיר וחכמים אם לאחר שקיבל אותם עליו יכול לחזור בו.

- רבי מאיר סובר דיכול לחזור בו, דכיון שמעיקר הדין אין אלו כשרים לדון, עצם קבלתו אינה מחייבת אותו באופן שלא יוכל לחזור בו.
- וחכמים סוברים דאינו יכול לחזור בו, דכיון שקיבל אותם עליו מדעתו, חלה קבלתו, ושוב אינו יכול לבטלה ולומר שאינו רוצה לדון בפניהם.

Term Note

קבלה | *Kabbalah* | **Accepting a Judge**

A litigant's agreement to be judged by a named person he was never obligated to accept.

Term Note

פסול | *Pasul* | **Disqualified**

Barred by law from serving as a judge or as a witness.

Term Note

קרוב | *Karov* | **Relative**

A family member of one of the litigants, who may not judge the case or testify in it.

The Mishnah does not say when he tried to back out. Does the timing change anything?

II. Before the Verdict and After

The Gemara asks how long a litigant may still change his mind.

גמ' (שם, כ"ד:) | Gemara, Sanhedrin 24b

The Gemara is the record of the discussion that grew up around the Mishnah in the academies of Babylonia over the following three centuries, chief among them Sura and Pumbedisa; together, Mishnah and Gemara are the Talmud. Reish Lakish and R' Yochanan, the two leading scholars of Eretz Yisrael, disagree here about where exactly R' Meir and the Sages were arguing. Rava and Rav Nachman bar Yaakov appear later in the passage, the second of them asked for the practical law.

Term Note

גמר דין | *Gemar Din* | **The Verdict**

The moment the judges announce the outcome: this one is innocent, this one is liable.

אמר ריש לקיש מחלוקת לפני גמר דין, אבל לאחר גמר דין דברי הכל אין יכול לחזור בו. ורבי יוחנן אמר לאחר גמר דין מחלוקת. איבעיא להו לאחר גמר דין מחלוקת, אבל לפני גמר דין דברי הכל יכול לחזור בו, או דילמא, בין בזו ובין בזו מחלוקת. תא שמע, דאמר רבא, קיבל עליו קרוב או פסול, לפני גמר דין יכול לחזור בו, לאחר גמר דין אין יכול לחזור בו. אי אמרת בשלמא, לאחר גמר דין מחלוקת, אבל לפני גמר דין דברי הכל יכול לחזור בו, רבא דאמר כרבי יוחנן ואליבא דרבנן. אלא אי אמרת, בין בזו בין בזו מחלוקת, רבא דאמר כמאן. אלא, לאו שמע מינה לאחר גמר דין

Reish Lakish says: Their dispute applies only before the verdict. R' Meir says the litigant may still back out of his acceptance, while the Sages say he may not. But once the verdict has already been issued, everyone agrees that it is too late to back out.

R' Yochanan says: Their dispute applies after the verdict.

The Gemara asks, does R' Yochanan mean that they argue only after the verdict, while before the verdict everyone agrees that the litigant may back out? Or does he mean that they argue both before and after the verdict?

The Gemara proves the first possibility from a ruling of Rava:

If a litigant accepted a relative or another person who is normally disqualified from judging him, before the verdict he may back out; after the verdict he may not.

This fits perfectly if we understand R' Yochanan's view as that R' Meir and the Sages disagree only after the verdict. Rava would then be following the Sages: before the verdict, everyone agrees that the litigant may back out; after the verdict, the Sages say that he may not.

The Gemara therefore concludes that according to R' Yochanan, the dispute is only after the verdict.

Rav Nachman bar Rav Chisda then asked Rav Nachman bar Yaakov for the practical ruling. He answered:

מחלוקת, שמע מינה. שלח ליה רב נחמן בר רב חסדא לרב נחמן בר יעקב, ילמדנו רבינו, לפני גמר דין מחלוקת או לאחר גמר דין מחלוקת, והלכה כדברי מי, שלח ליה, לאחר גמר דין מחלוקת, והלכה כדברי חכמים.

R' Meir and the Sages disagree after the verdict, and the law follows the Sages.
In other words, before the verdict, a person who accepted an otherwise disqualified judge may change his mind. Once the verdict has been issued, however, his acceptance becomes binding, and he can no longer back out.

Sugya Note

נמצא למעשה, שבעל דין שקיבל עליו קרוב או פסול לדיין, יכול לחזור בו כל זמן שלא נגמר הדין, אבל לאחר גמר דין, שוב אינו יכול לחזור בו.
וטעם הדבר, דכיון שקיבל עליו מדעתו את אותו אדם לדון אותו, הרי קיבל על עצמו את דינו וסמכותו, ולאחר שכבר נגמר הדין על פי קבלה זו, שוב נעשית קבלתו מחייבת ואינו יכול לחזור בו.
אמנם עד כאן לא היה שום דבר המחזק את הקבלה ומקנה לה תוקף, מלבד עצם דיבורו וקבלתו של בעל הדין.
ויש לעיין, מה יהא הדין אם עשו בעלי הדין מעשה קנין או פעולה אחרת לחזק ולקיים את קבלתם, האם על ידי זה תיעשה הקבלה מחייבת מיד, ושוב לא יוכלו לחזור בהם אף קודם גמר דין.

So the practical result is as follows: A litigant who accepted a relative or otherwise disqualified person as his judge may change his mind at any point before the verdict. Once the verdict has been issued, however, he can no longer withdraw his acceptance.
The reason is that the litigant voluntarily accepted that person's authority upon himself. Once the case has been decided on that basis, his acceptance becomes binding.
Until now, however, there was nothing formally holding the agreement together other than the litigant's word.
What happens if the parties take an additional formal step to seal the agreement? Would that change the result?

גמ' (שם) | Gemara, Sanhedrin 24b

בסורא מתנו הכי. בפומבדיתא מתנו הכי, אמר רב חנינא בר שלמיה, שלחו ליה מבי רב לשמואל, ילמדנו רבינו, לפני גמר דין וקנו מידו, מאי, שלח להו, אין לאחר קניין כלום.

The academy of Rav asked Shmuel: What happens if the litigant wants to back out before the verdict, but when he originally accepted the disqualified judge, the parties performed a formal act of acquisition to make the agreement binding? Can he still retract?
Shmuel answered: "After an act of acquisition, nothing remains."

Sugya Note

רב חנינא בר שלמיה אמר, ששלחו מבי רב לשאול את שמואל: מה הדין בקיבל עליו קרוב או פסול לדון, וקנו מידו על קבלה זו, אלא שעדיין הוא

Rav Chanina bar Shelemya said that the scholars of Rav's academy sent a question to Shmuel: What is the halacha if a litigant accepted a

relative or otherwise disqualified person as his judge and reinforced that acceptance with a formal act of acquisition, but the verdict has not yet been issued? Can he still withdraw, as he normally could before the verdict, or does the act of acquisition make his acceptance immediately binding?

Shmuel answered: "After an act of acquisition, nothing remains." In other words, once the acceptance has been reinforced by an act of acquisition, there is no longer any right to reconsider or withdraw. Although the verdict has not yet been issued, the act itself makes his acceptance binding.

Thus, without an act of acquisition, he may withdraw until the verdict; once an act of acquisition has been made, he is bound even before the verdict.

קודם גמר דין, האם יכול לחזור בו, כדין קבלת קרוב או פסול שקודם גמר דין יכול לחזור בו, או דילמא כיון שקנו מידו נתחזקה קבלתו ושוב אינו יכול לחזור בו.

ועל זה השיב שמואל: "אין לאחר קנין כלום". כלומר, דכיון שקנו מידו על קבלתו, שוב אין מקום לחזרה. דאף שעדיין לא נגמר הדין, ובלא קנין היה יכול לחזור בו כל זמן שלא נגמר הדין, מכל מקום על ידי הקנין חלה קבלתו ונעשית מחייבת מיד, ושוב אינו יכול לחזור בו.

נמצא, דבלא קנין יכול לחזור בו קודם גמר דין; אבל אם קנו מידו, שוב אינו יכול לחזור בו אפילו קודם גמר דין.

Term Note

קנין | *Kinyan* | **Act of Acquisition**

A physical act, such as handing over a garment, that turns an agreement into a binding commitment.

Takeaway

Without an act of acquisition, a litigant may withdraw his acceptance of a disqualified judge until the verdict. Once an act of acquisition is made, however, his acceptance becomes binding immediately, even before the verdict.

III. The Shulchan Aruch and the Rema

How the codes rule on an acceptance, and on backing out of one.

שו"ע (סי' כ"ב, סעי' א') | Shulchan Aruch, CM 22:1

Rabbi Yosef Karo (1488 to 1575), Spain, Turkey, and Tzfas. His family fled Spain in the Expulsion when he was a small child. After decades of wandering through the Ottoman Empire he settled in Tzfas, where he composed the code that became the central text of practical Jewish law.

One who accepted upon himself a relative or a disqualified man, whether to serve as a judge or as a witness against him, even if he accepted one of those disqualified through transgression to serve as two valid witnesses to testify against

מי שקבל עליו קרוב או פסול בין להיות דיין בין להיות עד עליו, אפי' קבל אחד מהפסולים בעבירה כשני עדים כשרים להעיד עליו או כג' בי"ד

him, or as a court of three expert judges to judge him, and so on: if they performed an act of acquisition with him concerning this, he may not retract; and if they did not perform an act of acquisition with him, he may retract until the verdict is given.

מומחים לדון לו כו', אם קנו מידו על זה אינו יכול לחזור בו, ואם לא קנו מידו יכול יכול לחזור בו עד שיגמר הדין.

Term Note

פסולים בעבירה | *Pesulim Ba'aveirah* | **Disqualified by Transgression**

Men the Mishnah lists as unfit to judge or to testify, among them dice players, those who lend their fellow jews with interest, pigeon racers, and traders in the produce of the sabbatical year.

רמ"א (שם) | Rema, CM 22:1

Rabbi Moshe Isserles (1530 to 1572), Krakow. He was made rabbi of his native city at about twenty and paid for its yeshiva out of his own pocket. Rabbi Yosef Karo called his code the Set Table; the Rema called his own glosses recording Ashkenazi practice the Tablecloth, and they are printed inside the Shulchan Aruch line by line, which is why the two of them appear here in the same paragraph.

Others disagree and hold that this rule applies only when the litigant accepted one relative or disqualified person as a judge or witness. However, if he accepted two disqualified people, there are two deficiencies, and he may withdraw even after the verdict; this is the position of most authorities. If, however, a formal act of acquisition was made, he can no longer withdraw under any circumstances.

ויש חולקין וס"ל דדוקא אם קבל קרוב או פסול בדיין אחד או בעד אחד, אבל אם קבלו בתרי דאיכא תרתי לריעותא אפי' אחר גמ"ד יכול לחזור בו, וכן הסכמת רוב הפוסקים, אבל אם קנו מידו בכל ענין לא יוכל לחזור.

Term Note

תרתי לריעותא | *Tarti L'riusa* | **Two Defects**

Two separate things wrong with an acceptance rather than one; in the Rema's example, the man accepted is disqualified, and he is one man standing in for two.

Sugya Note

The Shulchan Aruch holds that if a litigant accepts a relative or otherwise disqualified person as a witness or judge, his acceptance is valid, even if he accepted them in place of two valid witnesses or three valid judges. If a formal act of acquisition was made, he cannot withdraw; without one, he may withdraw until the verdict is issued.

The Rema disagrees and holds that the acceptance is binding only when there is one deficiency. Where there are two deficiencies, he may

מבואר לדעת השו"ע, מי שקיבל עליו קרוב או פסול, בין לעדות ובין לדיינות, אפילו במקום שני עדים או שלושה דיינים, קבלתו מועילה.

withdraw even after the verdict.
One deficiency: A litigant accepts his brother as one of the three judges. The only problem is that his brother is disqualified because he is a relative.
Two deficiencies: A litigant accepts his brother to judge the case alone, in place of a full panel of three judges. There are two problems: he is a disqualified relative, and he is serving alone instead of three judges.
According to the Rema, in the second case he may withdraw even after the verdict if no formal act of acquisition was made. If an act of acquisition was made, he cannot withdraw.

אם קנו מידו אינו יכול לחזור בו, ואם לא קנו מידו יכול לחזור עד גמר הדין. והרמ"א חולק וסובר שאין הקבלה מועילה אלא בחדא לריעותא, אבל בתרתי לריעותא יכול לחזור בו אפילו לאחר גמר הדין, אולם אם קנו מידו, בכל עניין אינו יכול לחזור בו.

Takeaway

The Shulchan Aruch holds that accepting a disqualified judge is binding after the verdict, even when there are two deficiencies; the Rema holds that with two deficiencies, one may still withdraw. However, if a formal act of acquisition was made, both agree that the acceptance is binding and he cannot withdraw.

IV. One in place of Three

סמ"ע (שם, סק"ו) | Sma, CM 22:6

Rabbi Yehoshua Falk (c. 1555 to 1614), Poland. He learned under the Rema and under the Maharshal and went on to head the yeshiva in Lemberg. His Sefer Meiras Einayim (the Sma) is printed alongside Choshen Mishpat and works through the Shulchan Aruch's rulings phrase by phrase.

It appears that if he accepted upon himself one valid man in place of three judges, and the verdict was given, they may not retract, for this is not called two defects, since it is one category.

נראה דאם קבל עליו כשר אחד במקום ג' דיינים וגמ"ד, דאינן יכולים לחזור בו, דאין זה מקרי תרתי לריעותא דשם חד הוא.

Sugya Note

In other words, if the litigants accept one qualified person in place of three judges, this is not considered two deficiencies. There is only one deficiency: having one judge instead of three.

כלומר, שאם קיבלו יחיד כשר במקום שלושה דיינים, אין זה נחשב תרתי לריעותא, משום שהפסול הוא רק חד.

ש"ך (שם, סק"ב) | Shach, CM 22:2

Rabbi Shabsai ben Meir HaKohen (1621 to 1662), Vilna and Moravia. He sat on the rabbinic court in Vilna and married a great-granddaughter of the Rema. He fled Vilna in the persecutions of 1655 and reached Lublin three months before the rioters did, escaping on to Bohemia and then to Moravia, where he died. His commentary on Yoreh Deah appeared when he was about twenty-five and was accepted at once; the commentary printed beside Choshen Mishpat is his as well.

ואין נ"ל כן וכו', והא דמהני ק ב ל ת פסול דוקא ש ק ב ל ו ב מ ק ו ם אחד דליכא אלא חדא לריעותא.

This does not appear correct to me. Just as accepting a disqualified person is binding only when he is accepted in place of one qualified person, because then there is only one deficiency (so too with the acceptance of a single ordinary judge in place of three. If the single judge is accepted merely with the authority of one judge, the only deficiency is that he is not qualified to judge the case alone unless he is an expert judge. However, if the parties accept this ordinary single judge to serve in place of a full panel of three, there are two deficiencies: first, an ordinary single judge is not qualified to judge a case alone unless he is an expert judge; and second, they have accepted him to serve in place of three judges. This should therefore likewise be considered a case involving two deficiencies).

Sugya Note

דהיינו, שגם זה נחשב תרתי לריעותא, חדא, שיחיד הדיוט אינו ראוי לדון יחידי אלא אם כן הוא מומחה, ושנית, שקיבלוהו כשלושה דיינים.

In other words, this too is considered two deficiencies. First, an ordinary single judge is not qualified to judge a case alone unless he is an expert judge; second, they accepted him to serve in place of three judges.

Term Note

הדיוט | *Hedyot* | **Layman**

An ordinary man holding no judicial appointment, though three such men together form a court.

Term Note

מומחה | *Mumcheh* | **Expert**

A judge recognized as an expert by the public, or authorized by a court, who is permitted to judge a monetary case by himself.

Takeaway

The dispute between the Sma and Shach is how to count the deficiencies. The Sma holds that accepting one ordinary judge in place of three involves only one deficiency, the lack of a full three-judge court. The Shach holds that it involves two deficiencies; an ordinary judge cannot judge alone, and he is being accepted in place of three judges.

V. The Ketzos on the Sma

The Ketzos asks what the litigants were accepting the man to be.

קצוה"ח (סק"א) | Ketzos HaChoshen, CM 22:1

Rabbi Aryeh Leib Heller (1745 to 1812), Galicia. He served as rav of Rozdol and later of Stryi, and lived and wrote in great poverty. The Ketzos HaChoshen is printed alongside Choshen Mishpat and is one of the sharpest analytical works in Jewish monetary law.

ויחיד במקום ג' כתב הסמ"ע דלא הוי תרתי לריעותא דשם פסול חד הוא וכו', וא"כ ע"כ צ"ל דקבלה היה להיות במקום מומחה, א"כ ודאי לא חשיב תרתי לריעותא דהא ליכא אלא פסול חדא, הדיוט יחיד במקום מומחה וכו', כיון דיחיד מומחה דן, רשאי להיות הדיוט כן במקום מומחה אם קבלו עליהם.

Regarding the case of one man accepted in place of three judges, the Sma writes that this is not considered two defects, because there is only one type of disqualification.

If so, the acceptance must be understood as follows: the parties accepted this one man to serve in place of a single expert judge, who would have been permitted to judge the case alone.

Once we understand the case that way, there is certainly only one defect. A single expert is legally capable of judging alone; the only problem is that this particular man is an ordinary, non-expert judge. By accepting him, the parties are agreeing to treat him as they would a single expert.

Thus, there is only one defect: a single ordinary judge in place of a single expert judge. Since an expert may judge alone, the parties can likewise authorize an ordinary person to judge alone by expressly accepting him.

Sugya Note

דהקצות מבאר את שיטת הסמ"ע, דכיון שיחיד מומחה רשאי לדון יחידי, אם כן קבלת הדיוט במקום מומחה אינה אלא חדא לריעותא.

The Ketzos is explaining the Sma. Since a single expert judge is permitted to decide a case on his own, accepting an ordinary layman in place of that expert involves only one defect: the judge lacks the expert's qualification. The Ketzos does not state the next point explicitly, but his explanation seems to depend on it. A court normally requires three judges, yet a single expert may judge alone. That would seem to mean that when the expert sits alone, he is somehow standing in the place of a three-judge court.

VI. What Fewer Than Three Cannot Do

The Nesivos measures a single expert against three ordinary men.

Background

Three ordinary men sitting together constitute a full court. But what is the status of a single expert judge who is permitted to decide a case on his own?

How does the law view him? When a single expert judges alone, is he functioning as a court of three, or is his authority to judge alone an entirely different kind of authority?

נתיה"מ (סק"ג) על הקצות | Nesivos HaMishpat, Biurim, CM 22:3

Rabbi Yaakov Lorberbaum (1760 to 1832), Galicia and Lissa. He went into business after his marriage and took a rabbinic post only when the business failed. He later served as rav of Lissa, and his Nesivos HaMishpat is printed on the same page as the Ketzos; much of its reputation rests on the arguments it presses against it.

The Nesivos writes:

"In my humble opinion, this is incorrect." There is certainly a legal difference between a single expert judge and three ordinary judges. This difference applies to whether an admission made before them has the status of a formal court admission, whether they may receive testimony, and whether a litigant may change the claims he made before them, as explained in Shulchan Aruch (Choshen Mishpat 3:2).

Therefore, when the parties accept a single ordinary person and give him the full authority of three judges with respect to all of these matters, their acceptance contains two defects. Consequently, the acceptance is entirely ineffective.

ולפענ"ד ליתא, דהא ודאי דחילוק דין יחיד מומחה מג' הדיוטות לענין שיהיה ההודאה בפניו הודאה, ולקבל עדות, ושלא להחליף הטענות כמבואר בסי' ג' (סעי' ב'), וכיון שקיבל עליו היחיד שיהיה דינו כג' לכל הנ"ל, הוי תרתי לריעותא, וממילא בטל הקבלה מכל וכל.

Term Note

הודאה | *Hoda'ah* | **Admission**

A litigant's own statement conceding his opponent's claim, which binds him when made before a Beis Din but not when made anywhere else.

Term Note

קבלת עדות | *Kabbalas Eidus* | **Accepting Testimony**

The formal hearing of witnesses by a Beis Din, without which their testimony does not count.

Sugya Note

The Nesivos disagrees with the Ketzos. He explains that there are important differences between a single expert judge and a Beis Din of three ordinary judges. Three judges have the full status of Beis Din for matters such as admissions, accepting testimony, and preventing a litigant from changing his claims, while a single expert judge does not.

Therefore, when the parties accept a single judge "as three," they are giving him the full authority of a three-judge Beis Din, not merely accepting his final ruling. Accordingly, where there are two deficiencies and therefore the acceptance is invalid, the entire acceptance is void.

הנתיבות תמה על דברי הקצות, דס"ל דיש לחלק בין יחיד מומחה לג' הדיוטות רק לענין עצם הדין. דבאמת מבואר בסי' ג' דאיכא כמה נפק"מ ביניהם, דבג' הדיוטות חשיב בי"ד גמור אף לענין הודאה וקבלת עדות והחזקת כפרן, וכן אינו יכול לחזור ולהחליף טענותיו, משא"כ בפני יחיד, דאף שהוא מומחה לרבים, לענינים אלו אין לו דין בי"ד של ג'. ולפי"ז כתב הנתיבות, דכשקיבל עליו יחיד שיהא דינו כג', אין הקבלה רק על עצם פסק הדין, אלא שקיבלו עליו שיהא לו דין ג' לכל מילי, והיינו אף לענין הודאה, קבלת עדות ושאר דיני בי"ד. וממילא, במקום דאיכא תרתי לריעותא, אין לומר דהקבלה קיימת במקצת, אלא כיון דבטלה הקבלה לענין אחד, בטלה הקבלה מכל וכל.

VII. The Ketzos Replies

משובב נתיבות (שם) | Meshovev Nesivos, CM 22

The Ketzos's response to the Nesivos, printed under the title Meshovev Nesivos.

This argument is rejected. According to the Tur, an admission made before a single expert judge is valid, and in these respects an expert judge has the same status as three ordinary judges. Therefore, accepting one ordinary judge in place of an expert involves only one deficiency.

According to the Rambam, on the other hand, even an expert and ordained judge has the status of Beis Din only for rendering a judgment, but not for matters such as admissions and accepting testimony. Moreover, even if the parties expressly accept the expert judge upon themselves, their acceptance cannot give him that additional status. It follows that when they accept a single judge "in place of three," their acceptance is effective only for rendering the judgment, not for admissions or testimony. And as far as rendering the judgment itself is concerned, there is again only one deficiency.

Accordingly, under either opinion, there is no case of "two deficiencies."

ואינו דהא לדעת הטור בסי' ג' הודאה בפני מומחה מהני, וכל הדברים מומחה וג' הדיוטות שוין, א"כ לא הוי תרתי לריעותא כלל לכל ענין דמהני יחיד הידיוט במקום מומחה, ולדעת הרמב"ם (פ"ה מהל' סנהדרין הי"ח) דלא מהני מומחה וסמיך רק לענין דין ולא לענין בי"ד, א"כ קבלה נמי לא מהני, דאפי' קבלו עליהם את המומחה לא מהני לענין הודאה וקבלות עדות וכמ"ש כנה"ג בסי' ג' ז"ל והודאה שמודה בפניהם כמי שמודה חוץ לבי"ד, נראה בעיני ואפי' קבלום עליהם וכו' עכ"ל, א"כ אפי' קיבלו עליהם במקום ג' נמי לא מהני אלא לדין, אבל לא לענין הודאה וקבלת עדות, ולענין דין לחודיא לא הוי תרתי לריעותא וכו', וא"כ בין לדעת הרמב"ם (ושו"ע) ובין לדעת הרא"ש והטור לא הוי תרתי לריעותא, דלרהמב"ם עיקר קבלה לא מהני רק לדין, ולרא"ש כשמקבל יחיד הדיוט במקום מומחה ג"כ מהני להודאה.

Sugya Note

According to the Rosh and Tur, a single expert judge has the same status as three ordinary judges even regarding admissions. Therefore, accepting a single ordinary judge involves only one deficiency. According to the Rambam, however, a single expert judge is qualified only to render a judgment, but does not have the status of a Beis Din for admissions or accepting testimony. Consequently, even if the parties accept a single judge "as three," their acceptance can only authorize him to decide the case; it cannot give him the full status of a three-judge Beis Din.

The Ketzos therefore answers the Nesivos that, according to either view, there is only one deficiency. Even if the acceptance cannot give the single judge full Beis Din status, it can still authorize him to render the judgment. That authority is independent of the other powers of Beis Din, so the invalidity of the acceptance in those areas does not invalidate his authority to decide the case.

מבואר לדעת הרא"ש והטור, יחיד מומחה שווה לשלושה הדיוטות אף לענייני הודאה, וממילא אין כאן אלא חדא לריעותא. ומאידך, לדעת הרמב"ם, יחיד מומחה כשר רק לפסק דין, אך אינו נחשב בית דין לענייני הודאה וקבלת עדות. ולכן גם אם קיבלו יחיד כשלושה, הקבלה מועילה רק לפסק הדין ולא לשאר דיני בי"ד. ואף אליבא דהרמב"ם, שחולק על הרא"ש וסובר שיחיד מומחה אינו נחשב כשלושה הדיוטות, והודאה בפני יחיד מומחה אינה הודאה, מכל מקום אין כאן אלא חדא לריעותא, דכיון שקבלה אינה מועילה לענין הודאה וקבלת עדות, אינה מועילה אלא לענין פסק הדין בלבד. ולפ"ז תירץ הקצות קו' הנתיבות, דאף אם קבלת היחיד אינה מועילה להחשיבו כבי"ד לענייני הודאות ועדות, מכל מקום היא מועילה לפסק הדין, שהוא נובע מכח השררה לדון, דין נפרד שאינו תלוי במעמד בית דין. ממילא, גם אם חלק מן הקבלה בטל, אין הקבלה לפסק הדין בטלה, ושפיר מועילה שם.

Sugya Note

The Ketzos requires explanation. According to the Rambam, a single expert judge is effective only for rendering a judgment, but does not have the status of Beis Din for admissions or accepting testimony. The Ketzos therefore maintains that even when the parties accept a single judge as three, their acceptance is effective only for the judgment and not for the other powers of Beis Din.

However, why should this be so? The parties accepted the single judge generally "as three judges." Why should we interpret their acceptance as applying only to his authority to render a judgment, rather than also granting him the status of Beis Din for admissions and testimony? Furthermore, if their acceptance is ineffective regarding admissions, perhaps the entire acceptance should be invalid. Since they accepted him generally as three judges, without separating these powers, if part of that

ויל"ע בדברי הקצות שכתב, שלדעת הרמב"ם מומחה אינו מועיל אלא לענין פסק דין ולא לענין בי"ד, ולפיכך אף הקבלה אינה מועילה אלא לפסק הדין, דאפילו קיבלו עליהם את המומחה אין הקבלה מועילה לענין הודאה וקבלת עדות. וצ"ב, דכיון שבעלי הדין קיבלו סתם את היחיד כשלושה הדיוטות, מהיכי תיתי לומר שקבלתם מועילה רק מצד כח הפסק דין של יחיד הדיוט, ואינה מועילה מצד שנחשב כבית דין לענין הודאות וקבלת עדות. ועוד, דלכאורה אם הקבלה בטלה לענין ההודאות, יש מקום לומר שאף הקבלה לענין כח הפסק דין בטלה, שהרי בעלי הדין קיבלו את היחיד סתם כשלושה הדיוטות, ואם אין הקבלה מועילה מצד ההודאה, הוא הדין שאין

acceptance fails, perhaps the acceptance of his authority to render judgment should fail as well.

היא מועילה גם מצד פסק הדין, ונמצאת הקבלה בטלה מכל וכל וצ"ע.

VIII. Why Isn't an Expert a Court?

Where the three-judge requirement comes from, and what it was guarding against.

Background

Jewish law contains both Torah requirements and rules added by the Sages. A court normally requires three judges. The question is whether three judges are required by Torah law or only by Rabbinic law. If the requirement is Rabbinic, we must also understand why the Sages required three. This may explain how a single expert judge can issue a binding ruling without having the full status of a three-judge court.

Gemara, Sanhedrin 3a | פרק דיני ממונות (סנהדרין, דף ג.)

Earlier in the same tractate, on why a monetary case needs three judges at all.

רב אחא בריה דרב איקא אמר מדאורייתא חד נמי כשר שנא' בצדק תשפוט עמיתך, אלא משום יושבי קרנות.

Rav Acha the son of Rav Ika said: By Torah law one [judge] is also valid, as it says, "In righteousness shall you judge your fellow" (Vayikra 19:15). Rather, [three are required] on account of those who sit at the street corners.

Rashi, Sanhedrin 3a | רש"י (שם)

Rabbi Shlomo Yitzchaki (1040 to 1105), Troyes in northern France. He made his living from his vineyards and wrote the commentary that has accompanied the Talmud on the page ever since; a learner who can read Rashi can read the Gemara.

מדאורייתא חד נמי כשר בהודאה דכתיב תשפוט לשון יחיד וכו', גזירה משום יושבי קרנות, תרגין שאין בקיאין בטיב דינין ויזכה את החייב ויחייב את הזכאי.

By Torah law, even a single judge may decide a monetary case, as the verse speaks in the singular: "You shall judge."

Why, then, are three judges normally required? The Sages added this requirement to prevent unqualified people, ordinary merchants, and others unfamiliar with the laws of judgment from sitting alone as judges and making serious mistakes.

Thus, the basic Torah law allows one judge. The Sages required three as a safeguard to ensure that cases are decided properly.

Term Note

יושבי קרנות | *Yoshvei Keranos* | **Men at the Street Corners**

The Gemara's name for people with no training in judgment; Rashi identifies them as merchants.

Sugya Note

We see that by Torah law, one judge is sufficient to decide a monetary case, and the Sages required three only because of the concern that unqualified people might serve as judges.

This raises a question: When the single judge is an expert, that concern does not exist. Why, then, should an expert judging alone not have the full status of a Beis Din?

מבואר, דמן התורה די בדיין יחיד לפסיקת הדין, אלא שחכמים הצריכו שלושה משום תקנת יושבי קרנות, וצ"ע, דכיון דמדאורייתא בחד סגי, ואינו צריך שלושה אלא משום תקנת חכמים מפני יושבי קרנות, אם כן בדיין מומחה דליכא חשש יושבי קרנות, אמאי לא אמרינן דמומחה שדן יחידי אית ליה נמי דין ותורת בית דין.

IX. The Siach Arev

Rav Shneur Kotler reads Rav Acha's statement again.

שיח ערב (סנהדרין, סי' ב') | Siach Arev, Sanhedrin siman 2

Rabbi Yosef Chaim Shneur Kotler (1918 to 1982), born in Slutsk and, from 1962, rosh yeshivah of Beth Medrash Govoha in Lakewood, New Jersey, which he built into the largest yeshivah in the world. Siach Arev collects his lectures.

Even according to Rav Acha, who holds that by Torah law one judge is sufficient, this is true only for deciding a monetary case and determining who is liable and who is not. To have the formal status of a Beis Din, however, three judges are required.

The explanation is that there are two separate concepts within Beis Din. One is the authority given to judges to resolve a dispute and issue a binding ruling. For this purpose, the Torah allows even one qualified judge to act. The second is the formal legal status created when three judges sit together as a Beis Din.

This second status is necessary for matters that require a Beis Din even when no judgment is being issued. For example, a Beis Din may accept a litigant's admission or hear testimony, and a different Beis Din can later use that admission or testimony to decide the case. This shows that accepting the admission or testimony is not itself part of issuing the judgment. Rather, it requires the formal status of Beis Din.

Therefore, a single expert judge may have full authority to decide the case, while still lacking the formal status of a three-judge Beis Din required for admissions, testimony, and other matters that specifically require a Beis Din.

דאף לדעת רב אחא דמדאורייתא בחד סגי, היינו רק לענין לדון את הדין ולחייב את החייב ולזכות את הזכאי לחודא, אבל תורת בי"ד איכא רק בשלשה דיינים, והביאור בזה, דבפרשת בי"ד איכא ב' ענינים, האחד הוא כח השררה לדון ריב בין האנשים, והשני הוא מעמד חשוב של אנשים המצורפים יחד את הדין, וב' דינים נפרדים הם, דפסיקת הדין נעשית מכח השררה לדון, אולם כל שאר הדינים הצריכים בי"ד אע"פ שאין בהם פסיקת דין, זהו מצד מתורת חשיבות המעמד דאנשים המצורפים לדון, וכגון הודאה וכפירה המחייבת, וכן קבלת עדות והפרת נדרים וחליצה וקבלת חבירות והפקר לשיטת רשב"י וכדו', דבעו בי"ד לצורך המעמד ולא לצורך הפסק דין, דהא שפיר יכולים לקבל ההודאה והעדות ובי"ד אחר יפסוק הדין ע"פ זה.

Term Note

כח השררה לדון | *Koach HaSerarah Ladun* | **The Authority to Judge**
The office that lets a judge hear a dispute and declare who is liable and who is not.

Term Note

מעמד בית דין | *Ma'amad Beis Din* | **Court Standing**
The status that belongs to three men joined together as a court.

Sugya Note

Rabbi Shneur Kotler explains that there are two separate powers of a court.

The first is the power to decide a case: to determine who wins and who loses. According to Rav Acha, the Torah allows even one judge to do this.

The second is the formal status of a court. That status requires three judges.

Why does the difference matter? Because not everything a court does involves deciding a case. A court also receives testimony and admissions, and performs other formal legal functions. Those things require the status of a court, not merely the power to issue a ruling.

So a single judge can have the power to decide the case without being a full court.

That explains how, according to the Rambam, a single expert can issue a binding ruling on his own, while an admission or testimony before him does not have the same status as one made before a three-judge court.

ביאור מרן הגאון הראש ישיבה הרב יוסף חיים שניאור קוטלר זצוקללה"ה, שדיין יחיד מספיק מן התורה רק לגבי עצם פסיקת הדין, לחייב את החייב ולזכות את הזכאי, אולם מעמד של בית דין קיים רק בשלושה דיינים. וטעם הדבר, משום ששני דינים נפרדים הם, חדא, כח השררה לדון, ושנית, מעמד בית דין, דהיינו חשיבותם של שלושה אנשים המצטרפים יחד לדין. ונפקא מינה בין שני דינים אלו, שפסיקת הדין יכולה להיעשות אף על ידי יחיד (לדעת רב אחא), משום שהיא נובעת מכוח השררה, מה שאין כן פעולות בית דין כגון הודאות, קבלת עדות וכיוצא בהן, שאינן תלויות בפסיקת הדין אלא דורשות את מעמד בית הדין.

Sugya Note

Based on this distinction, we can explain the Ketzos. According to the Rambam, admissions and testimony are not valid before a single expert judge, because his authority applies only to deciding the case, not to giving him the formal status of a Beis Din.

ולפי"ז אפשר לפרש דברי הקצות, דלדעת הרמב"ם הודאות וקבלת עדות אינן מועילות בפני יחיד מומחה, דסמיכותו אינה אלא לענין פסק דין ולא לענין בית דין. ולפיכך, אף אם בעלי הדין קיבלו סתם את היחיד כשלושה הדיוטות, אין הקבלה מועילה אלא מצד פסק

הדין בלבד, הואיל ולמומחה יש כוח השררה לדון יחידי, אבל קבלה מצד שייחשב כבית דין לענין הודאות וקבלת עדות אינה מועילה, דליכא כאן מעמד של בית דין. ונמצא ששני דינים נפרדים הם, כח השררה לדון, ומעמד בית דין של שלושה, ואין האחד תלוי בחברו. דפסיקת הדין נעשית מכח השררה לדון, אף על פי שאינו יכול לקבל עדות, וכן הודאות וקבלת עדות, שצריכות בי"ד מצד המעמד, יכולות להיעשות בפני בית דין אחר, ואחר כך ייפסק הדין על פיהן אף על ידי דיין יחיד. וממילא, אף אם בעלי הדין קיבלו סתם, הקבלה לענין ההודאות בטלה ואינה מועילה, מכל מקום הקבלה לענין כח פסק הדין אינה בטלה, דהיא דין נפרד לגמרי, הנובע מכוח השררה ולא ממעמד בית דין.

Therefore, even if the parties generally accept a single judge "as three," their acceptance can give him authority to issue the ruling, but it cannot turn one person into a formal three-judge Beis Din for accepting admissions and testimony.

These are two independent powers. The authority to decide a case comes from the judge's power to rule, while accepting admissions and testimony requires the formal status of a Beis Din. One does not depend upon the other. In fact, one Beis Din can accept the testimony, and a single judge can later decide the case based upon that testimony.

This answers the earlier question. Even though the parties accepted the judge generally "as three," and that acceptance is ineffective regarding admissions and testimony, it can still remain valid for deciding the case. Since these are two separate legal powers, the failure of one part of the acceptance does not invalidate the other.

Conclusion

The issue is whether accepting one ordinary person to judge in place of three involves one deficiency or two. According to the Rema, if there are two deficiencies, the litigant may retract even after the ruling, while according to the Shulchan Aruch the acceptance remains binding. The Sma and Ketzos understand our case as involving only one deficiency, whereas the Shach and Nesivos consider it two.

The Nesivos points to Choshen Mishpat 3:2, where we find that a single expert judge and three ordinary judges do not always have the same status. Three judges constitute a formal Beis Din for matters such as admissions, accepting testimony, and fixing a litigant's claims. He therefore argues that accepting one person "as three" means accepting him in place of a full Beis Din, creating two deficiencies.

The Ketzos responds that according to either view among the Rishonim, there is only one deficiency. According to the Rosh and Tur, a single expert is equivalent to three ordinary judges even regarding admissions, so accepting an ordinary judge in his place involves only one deficiency. According to the Rambam, a single expert has authority only to decide the case and does not have the full status of Beis Din for admissions and testimony. The acceptance of an ordinary judge can therefore likewise operate with respect to the ruling itself, where there is again only one deficiency.

The difficulty is that the parties accepted the single judge generally "as three," not merely for the final ruling. If that acceptance is ineffective for admissions and testimony, why should it remain effective for the ruling?

Rabbi Shneur Kotler's explanation may resolve this difficulty. According to Rav Acha,

there are two separate concepts in Beis Din: the authority to judge and issue a binding ruling, and the formal status of Beis Din. Torah law allows a single judge to possess the first power, while the second requires three judges.

Accordingly, the Ketzos can maintain that the acceptance is effective in granting the single judge authority to decide the case, even though it cannot give him the formal status of a three-judge Beis Din for admissions and testimony. Since these are two independent legal powers, the failure of one does not invalidate the other. Thus, with respect to the actual ruling, there remains only one deficiency.