

NOTES

דין אמת לאמתו – A judgment according to absolute truth – This phrase denotes a verdict that is not falsified or achieved through deceit. It is not called a judgment according to absolute truth if the judge perceives that the testimony may be false or that there are dishonest claims, even if all the evidence is consistent (*Tosafot*).

וכתיב: "והבית אשר בנה המלך שלמה לה' ששים אמה ארבו ועשרים רחבו ושלושים אמה קומתו". ולבסוף כתיב: "כה אמר ה' השמים כסאי והארץ הרים וגלי; איזה בית אשר תבנו לי וגו'.

And it is written: "And the house that King Solomon built for the Lord, its length was sixty cubits, and its breadth twenty cubits, and its height thirty cubits" (1 Kings 6:2). And at the end, when Israel sinned, the whole of the space of the Temple was not expansive enough for the Divine Presence to rest within it, as it is written: "Thus says the Lord: The heaven is My throne, and the earth is My footstool; where is the house that you may build for Me? And where is the place that may be My resting place?" (Isaiah 66:1). In times of discord, the Temple is an insufficient resting place for the Divine Presence.

מאי משמע דהאי "לא תגורו" לישנא דכנושי הוא? אמר רב נחמן, אמר קרא: "ויין לא תשתה ולא תאגר". רב אחא בר יעקב אמר מהכא: "תכין בקיץ לחמה, אגרה בקציר מאכלה". רב אחא בריה דרב איקא אמר מהכא: "אגר בקיץ בן משכיל".

The Gemara returns to analyzing the *Tosefta*. From where may it be inferred that this expression: "You shall not be afraid [*taguru*]" (Deuteronomy 1:17), is a term for gathering in, so that the term may be interpreted to mean that a judge may not keep his ruling to himself? Rav Nahman said: The verse states: "You shalt plant vineyards and dress them, but you shall neither drink of the wine, nor gather [*te'egor*]" (Deuteronomy 28:39). Rav Aha bar Ya'akov says it is derived from here: "She provides her bread in the summer, and gathers [*agra*] her food in the harvest" (Proverbs 6:8). Rav Aha, son of Rav Ika, says it is derived from here: "A wise son gathers [*oger*] in the summer" (Proverbs 10:5).

אמ"ת ממו"ן ירא"ה סימן. אמר רבי שמואל בר נחמני אמר רבי יונתן: כל דין שדן דין אמת לאמתו משרה שכינה בישראל, שנאמר "אלהים נצב בעדת אל בקרב אלהים ישפט". וכל דין שאינו דן דין אמת לאמתו – גורם לשכינה שתסתלק מישראל, שנאמר: "משד עניים מאנקת אביונים עתה אקום יאמר ה' וגו'.

§ The Gemara provides a mnemonic device indicating the following series of statements about judges and their functions: *Emet mamon yireh*. Rabbi Shmuel bar Nahmani says that Rabbi Yonatan says: Any judge who judges a judgment according to absolute truth<sup>n</sup> [*emet*] causes the Divine Presence to rest among Israel, as it is stated: "God stands in the congregation of God; in the midst of the judges He judges" (Psalms 82:1), indicating that the Divine Presence is in the midst of the court. And every judge who does not judge a judgment according to absolute truth causes the Divine Presence to withdraw from Israel, as it is stated: "For the oppression of the poor, for the sighing of the needy, now will I arise, says the Lord" (Psalms 12:6). God will arise and leave the people as a result of oppression.<sup>h</sup>

ואמר רבי שמואל בר נחמני אמר רבי יונתן: כל דין שנוטל מזה ונותן לזה שלא בדין – הקדוש ברוך הוא נוטל ממנו נפשו, שנאמר "אל תגול דל כי דל הוא ואל תדכא עני בשער. כי ה' יריב ריבם, וקבע את קבעיהם נפש".

And Rabbi Shmuel bar Nahmani says that Rabbi Yonatan says: With regard to any judge who takes disputed property or money [*mamon*] from this litigant and gives it to that other litigant unlawfully, the Holy One, Blessed be He, takes his soul from him as punishment for his corruption, as it is stated: "Rob not the weak, because he is weak, neither crush the poor in the gate; for the Lord will plead their cause and despoil of life those who despoil them" (Proverbs 22:22–23). God cautions that He will take the life of one who steals from the poor at the gate, meaning in the courtroom, as the city gate was the traditional site of the community's court.

ואמר רבי שמואל בר נחמני אמר רבי יונתן: לעולם יראה דין עצמו כאילו חרב מונחת לו בין ירכותיו, וגיהנם פתוחה לו מתחתיו,

And Rabbi Shmuel bar Nahmani says that Rabbi Yonatan says: A judge should always view [*yireh*] himself as if a sword is placed between his thighs, so that if he leans to the right or to the left he will be injured, and as if Gehenna is opened up beneath him,

HALAKHA

Judgment before God – דין לפני ה': The judges must be in a state of awe and fear during the judgment, because it is as though they are sitting before the Divine Presence at that time. In addition, a judge who judges wrongly causes the Divine Presence to withdraw from Israel. Similarly, if he seizes money

wrongly, the Holy One, Blessed be He, exacts punishment from the judge by taking his life. If he judges correctly it is as though he has repaired the entire world, and he causes the Divine Presence to rest among Israel (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 23:8–9; *Shulhan Arukh, Hoshen Mishpat* 8:2).

שנאמר: "הנה מטתו של שלמה ששים גברים סביב לה מגברי ישראל. כלם אחוזי חרב מלמדי מלחמה איש חרבו על ירכו מפחד בלילות" – מפחדה של גיהנם שדומה ללילה.

דרש רבי יאשיה ואיתימא רב נחמן בר יצחק: מאי דכתיב: "בית דוד כה אמו ה' דינו לבקר משפט והצילו גוול מיד עושק", וכי בבקר דגין וכל היום אין דגין? אלא: אם ברור לך הדבר בבקר – אמרהו, ואם לאו – אל תאמרהו. רבי חייא בר אבא אמר רבי יונתן מהכא: "אמר לחכמה אחתי את". אם ברור לך הדבר כאחותך שהיא אסורה לך, אמרהו, ואם לאו, אל תאמרהו.

אמר רבי יהושע בן לוי: עשרה שושבין בדנין – קולר תלוי בצואר כולן. פשיטא! לא צריכא אלא לתלמיד היושב לפני רבו.

רב הונא בי הוה אתי דינא לקמיה, מיכניף ומייתי עשרה רבנן מבי רב. אמר: כי היכי דלימטיין שיבא מבשורא. רב אשי, בי הוה אתי טריפתא לקמיה מכניף ומייתי להו לכולהו טבחי דמתא מחסא, אמר: כי היכי דלימטיין שיבא מבשורא.

as it is stated: "Behold, it is the bed of Solomon; sixty mighty men are around it, of the mighty men of Israel. They all handle the sword, and are expert in war; every man has his sword upon his thigh due to dread in the night" (Song of Songs 3:7–8). The words "due to dread in the night" mean due to the dread of Gehenna, which is similar to the night. Rabbi Shmuel bar Nahmani interprets this verse as referring to judges, who are called: Mighty men of Israel, as they preside in the Temple, which is termed: The bed of God. In this verse, God is referred to as: Solomon [*Shlomo*], the King to Whom peace [*shalom*] belongs.

Rabbi Yoshiya, and some say Rav Nahman bar Yitzhak, interpreted a verse homiletically. What is the meaning of that which is written: "House of David, so says the Lord: Execute justice in the morning, and deliver the spoiled out of the hand of the oppressor" (Jeremiah 21:12)? And is it so that a court may judge in the morning, and all the rest of the day a court may not judge? Why does the verse specifically relate to judging in the morning? Rather, the meaning is: If the matter is as clear to you as the morning,<sup>NH</sup> state the verdict; and if not, do not state it. Rabbi Hiyya bar Abba says that Rabbi Yonatan says this principle may be derived from here: "Say to wisdom: You are my sister" (Proverbs 7:4). If the matter is as clear to you as the fact that your sister<sup>N</sup> is forbidden to you, state it, and if not, do not state it.

Rabbi Yehoshua ben Levi says: If ten judges are sitting in judgment, a prisoner's collar [*kolar*],<sup>LB</sup> referring to responsibility for the consequences of an incorrect verdict, hangs around all of their necks. The Gemara asks: Isn't it obvious that all of the judges bear joint responsibility for the verdict? The Gemara answers: It is necessary only in order to include a student who is sitting in front of his teacher in the court, and notices that his teacher erred. Although he is not formally part of the court, he nevertheless bears responsibility if he remains silent.

The Gemara relates concerning Rav Huna that when a case would come before him for judgment, he would gather and bring ten rabbis from Rav's study hall.<sup>H</sup> He would say: I do this so that only a small part of the responsibility, comparable to a splinter from a beam, will reach each of us. The greater the number of judges, the less responsibility each one assumes for the verdict. Similarly, with Rav Ashi, when a person would come before him with meat suspected to be from an animal with a wound that will cause it to die within twelve months [*tereifta*],<sup>B</sup> he would gather and bring together all the butchers of Mata Mehasya and consult with them before ruling on the status of the meat. He would say to them: I do this so that only a small part of the responsibility, comparable to a splinter from a beam,<sup>N</sup> will reach each of us.

BACKGROUND

Prisoner's collar – קולר:



*Tereifta* – טריפתא: Generally speaking, a *tereifta*, or *tereifa*, is an animal suffering from a condition that will cause it to die within twelve months. It is prohibited by the Torah to eat an animal that has been injured or is stricken with a disease of this nature, although the actual source for this prohibition is a matter of dispute. Some authorities cite Exodus 22:30: "You shall not eat any flesh that is torn of beasts in the field," while others suggest Deuteronomy 14:21: "You shall not eat of anything that died of itself." According to the *Minhat Hinnukh* and others, both verses combine to serve as the source for the prohibition.

Relief of Roman slaves connected by neck chains

NOTES

If the matter is as clear to you as the morning – אם ברור לך: Some explain the phrase as follows: The verdict is as clear to him as is the fact that the morning is the first period of the day (Rabbeinu Hananel; Ramah).

If the matter is as clear to you as... your sister – אם ברור לך: Rabbeinu Hananel explains: The verdict is as clear to you as the fact that your sister is actually your sister.

A splinter from a beam – שיבא מבשורא: According to the Rambam, it appears that he would gather others to assist him to clarify the matter as best he could. Once he had taken all possible precautions, his responsibility was greatly reduced (*Imrei Tzvi*).

HALAKHA

If the matter is as clear to you as the morning – אם ברור לך: A judge must be temperate in judgment, meaning that he must not pass a verdict before investigating the matter thoroughly and ensuring that he understands the case as clearly as possible. This is in accordance with the verse as interpreted by the Gemara here (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 20:7; *Shulhan Arukh, Hoshen Mishpat* 10:1).

Bring ten rabbis from Rav's study hall – מייתי עשרה רבנן: Although a court composed of only three judges is a full court, the more scholars one adds to participate in judging the case the better (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 2:13; *Shulhan Arukh, Hoshen Mishpat* 3:4).

LANGUAGE

Collar [*kolar*] – קולר: The origin of this word is the Latin *collare*, whose meaning is a chain upon the neck. Such chains were commonly placed around the necks of animals and prisoners.

**NOTES**

If the judge is like a king – אם דין דומה למלך – A judge must be independent. This is true with regard to his Torah knowledge, as he must be sufficiently proficient that he does not need to consult with others. He must also be financially independent so that he is not dependent upon loans (Ramah; Meiri).

A judge who is not fit – דין... שאינו הגון – Some authorities differentiate between two kinds of unfit judges. One may be a Torah scholar, even one of great scholastic distinction, but he may be unfit due to his bad character. Such a person, like Doeg or Ahithophel, is likened to a tree worshipped as part of idolatrous rites. Although from a certain perspective he may seem to be tall, straight, healthy, and robust, he cannot be taken as a judge lest he willfully corrupt justice. By contrast, a judge who is an ignoramus is compared to the inanimate materials of wood and stone, as he has no qualifications at all (Responsa of Maharik).

**HALAKHA**

Anyone who appoints... a judge who is not fit – כל המעמיד דין... שאינו הגון: If a judge who is unfit or is not a scholar of Torah law is appointed, although he may have many other positive qualities, the one who appoints such a judge violates a prohibition. If this judge is appointed for monetary reasons alone it is prohibited to honor him, and in fact it is a mitzva to belittle him (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 3:8; *Shulhan Arukh, Hoshen Mishpat* 8:1).

**LANGUAGE**

Convoy [*ambuha*] – אמבוהא: The origin of this term is apparently the Middle Persian *ambuh*, meaning crowd.

**BACKGROUND**

Shabbat of the Festival – שבתא דריגלא: Normally, the Sages would lecture only before the students of their academies. Even during the public lectures during the months of Adar and Elul, called the *yarhei kalla*, the lectures were typically attended only by Torah scholars. *Shabbatot* of Festivals were different, as the entire community would gather to hear lectures from the foremost scholars of the academies, or from the Exilarch. Therefore, a great mass of people assembled on these special *Shabbatot*, and as a result the lectures were exceptionally crowded.

כי אתא רב דימי אמר: דרש רב נחמן בר רבה: מאי דכתב: "מלך במשפט יעמיד ארץ ואיש תרומות יהרסנה", אם דין דומה למלך, שאינו צריך לכלום, יעמיד ארץ; ואם דומה לכהן שמתחור בבית הגרנות, יהרסנה.

דבי נשיאה אוקמו דינא דלא הוה גמיר. אמר ליה ליהודה בר נחמני מתורגמניה דריש לקיש: "קום עליה באמורא". קם, גחין עליה, ולא אמר ליה ולא מידי.

פתח ואמר: "הוי אומר לעץ הקיצה עורי לאבן דומם הוא יורה? הנה, הוא תפוש זהב וכסף, וכל רוח אין בקרבו". ועתיד, הקדוש ברוך הוא, ליפרע ממעמדין, שנאמר וזה בהיכל קדשו: הם מפניו כל הארץ."

אמר ריש לקיש: כל המעמיד דין על הציבור שאינו הגון כאילו נטע אשירה בישראל, שנאמר: "שפטים ושטרם תתן לך", וסמך ליה: "לא תטע לך אשירה כל עץ". אמר רב אשי: ובמקום שיש תלמידי חכמים כאילו נטעו אצל מוֹבֵת, שנאמר "אצל מוֹבֵת ה' אלהיך".

כתב: "לא תעשון אתי אלהי כסף ואלהי זהב". אלהי כסף ואלהי זהב הוא דלא עבדי. הא דעץ שרי? אמר רב אשי: אלוה הבא בשביל כסף, ואלוה הבא בשביל זהב.

רב כי הוה אתי לבי דינא אמר הכי: "ברעות נפשיה לקטלא נפיק, וצבי ביתיה לית הוא עביד, וריקן לביתיה עייל, ולואי שתהא ביאה ביציאה".

כי הוי חזי אמבוהא דספרי אבתריה, אמר: "אם יעלה לשמים שיאו" [וגו]; "בגללו לנצח יאבד" וגו. מר זוטרא חסידא, כי הוי מכתפי ליה בשבתא דריגלא, אמר הכי: "כי לא לעולם חסן; ואם נור לדור ודור".

When Rav Dimi came from Eretz Yisrael, he said: Rav Nahman bar Kohen interpreted a verse homiletically: What is the meaning of that which is written: "The king by justice establishes the land; but he who exacts gifts [*terumot*] overthrows it" (Proverbs 29:4)? This teaches that if the judge is like a king<sup>n</sup> in that he does not need anything and is not dependent on anyone, he establishes the land, i.e., he can serve as a judge. But if he is like a priest who seeks out his *terumot* from various granaries, as he is dependent on others, he overthrows the land.

In the house of the *Nasi*, they appointed a judge who was not learned. This judge said to Yehuda bar Nahmani, who was the interpreter of Reish Lakish and whose role was to repeat and explain the Sage's lectures: Stand over me as an interpreter, and I will lecture. Yehuda bar Nahmani arose and bent over him in the conventional manner, to hear the judge's words. And, being ignorant, the judge did not say anything to him.

The interpreter began and said: The verse states: "Woe to him who says to the wood: Awake, to the dumb stone: Arise. Can this teach? Behold, it is overlaid with gold and silver, and there is no breath at all in the midst of it" (Habakkuk 2:19). So is this judge, appointed to teach the public for gold, i.e., for payment, but no more qualified than wood and stone. And in the future, the Holy One, Blessed be He, will punish those who appoint such judges, as it is stated in the next verse: "But the Lord is in His holy Sanctuary; let all the earth be silent before Him" (Habakkuk 2:20). God, Who is above everything, will judge those responsible for such appointments.

Reish Lakish says: With regard to anyone who appoints over the community a judge who is not fit,<sup>nh</sup> it is as though he plants a tree used as part of idolatrous rites [*ashera*] among the Jewish people, as it is stated: "You shall make judges and officers for yourself" (Deuteronomy 16:18), and juxtaposed to it, it is written: "You shall not plant yourself an *ashera* of any kind of tree" (Deuteronomy 16:21). By implication, appointing unfit judges is akin to planting a tree for idolatry. Rav Ashi says: And in a place where there are Torah scholars, it is as though he planted the tree next to the altar, as it is stated: "You shall not plant yourself an *ashera* ... beside the altar of the Lord your God."

It is written: "You shall not make with Me gods of [*elohei*] silver and gods of gold" (Exodus 20:20). The Gemara asks: It is gods of silver and gods of gold that you may not make, but are gods of wood permitted? Rather, Rav Ashi says: This verse discusses a judge, called *elohim*, who comes, i.e., is appointed, due to payment of silver, and a judge who comes due to payment of gold.

The Gemara relates that Rav, when he would come to court to judge a case, would say this about himself: By his own will he goes out to danger of death, as a judge who misjudges a case is liable to receive the punishment of death at the hand of Heaven; and he does not do what is necessary to provide for the needs of his house, and he enters his home empty-handed, because a judge does not receive a salary. He said: If only it should be so that his entry into his home will be the same as his departure, without sin or transgression.

In a similar demonstration of humility, when Rav would see a convoy [*ambuha*]<sup>l</sup> of scribes following after him to honor him, he would say: "Though his excellency mount up to the heavens and his head reach the clouds, yet he shall perish forever like his own dung; they who have seen him shall say: Where is he?" (Job 20:6–7). It is said of Mar Zutra the Pious that when the people would carry him to his lectures on their shoulders during Shabbat of the Festival,<sup>b</sup> he would say this to avoid becoming arrogant: "For power is not forever, and does the crown endure for all generations?" (Proverbs 27:24).

דרש בר קפרא: מנא הא מילתא דאמרו רבנן, "הווי מתוני בדין?" דכתוב: "לא תעלה במעלות", וסמיך ליה: "ואלה המשפטים". אמר רבי אליעזר: מניין לדין שלא יפסע על ראשי עם קודש? שניאמר: "לא תעלה במעלות", וסמיך ליה: "ואלה המשפטים".

"אשר תשים?" "אשר תלמדם" מיבעי ליה! אמר רבי ירמיה ואיתימא רבי חייא בר אבא: אלו כלי הדינין. רב הונא, כי הוה נפק לדינא אמר הכי: אפיקו לי מאני חנותאי: מקל ורצועה, ושופרא וסנדלא.

"ואצוה את שפטיכם בעת ההיא". אמר רבי יוחנן: כנגד מקל ורצועה תהא וריו. "שמע בין אחיכם ושפטתם". אמר רבי חנינא: אוהרה לבית דין שלא ישמע דברי בעל דין קודם שיבא בעל דין חבירו, ואוהרה לבעל דין שלא יטעים דבריו לדין קודם שיבא בעל דין חבירו. קרי ביה נמי: "שמע בין אחיכם".

רב כהנא אמר מהכא: מ"לא תשא" – "לא תשיא".

Bar Kappara taught, based on a homiletical interpretation of a verse: **From where is this matter that the Sages stated derived: Be temperate in judgment (Avot 1:1)? As it is written: "Neither shall you go up by steps onto My altar" (Exodus 20:23), i.e., do not ascend hurriedly, and juxtaposed to it, it is written: "Now these are the ordinances that you shall set before them" (Exodus 21:1).** Rabbi Eliezer says: **From where is it derived that a judge may not step over the heads of the sacred nation,**<sup>BH</sup> walking among those assembled for the lecture, who would sit upon the floor, in such a manner that he has the appearance of stepping on them? It is derived from that which is stated: **"Neither shall you go up by steps,"** and juxtaposed to it is an introduction to civil laws and courtroom regulations: **"Now these are the ordinances."** This indicates that the prohibition against ascending upon steps applies to judges.

The Gemara interprets the second part of the verse cited above: **"Now these are the ordinances that you shall set before them."** The verse should have stated: **That you shall teach them.** What is indicated by the phrase: **"Set before them"?** Rabbi Yirmeya, and some say Rabbi Hiyya bar Abba, says: **These are the judges' tools.** To illustrate this, the Gemara relates that Rav Huna, when he would go out to a judgment, would say this: **Take out for me tools from my shop: A rod and strap,**<sup>N</sup> with which to flog transgressors; **and a shofar,** necessary in the event that someone must be excommunicated; **and a sandal,** necessary in the event of *halitza*, the procedure by which a levirate marriage is rejected.

The Gemara interprets other verses related to the topic of adjudicating cases. **"And I charged your judges at that time, saying: Hear the causes between your brethren, and judge righteously between a man and his brother, and the stranger who is with him" (Deuteronomy 1:16).** Understanding that the word "charged" indicates alacrity, Rabbi Yohanan says: **Moses urged the judges: With regard to the rod and the strap, be vigilant.**<sup>N</sup> With regard to the clause **"Hear the causes between your brethren, and judge,"** Rabbi Hanina says: **This is a warning to a court that it may not hear the statement of one litigant<sup>N</sup> before the other litigant comes,<sup>H</sup> and it is a warning to a litigant that he may not explain his statement to the judge before the other litigant comes.** Read into the phrase in the verse: **"Hear the causes between your brethren,"** that it is also concerning the litigant. Although he is not the judge, he is also required to assure that the case is conducted in the presence of both parties.

Rav Kahana says the litigant's responsibility may be derived from here: **From "you shall not bear [tissa] a false report" (Exodus 23:1).** Although conjugated in this manner the verb would seem to be addressed to the judges, commanding them not to lend credence to a false report, the term may also be read as: **You shall not deliver [tassi] a false report,** conjugated so that it addresses the litigants and the witnesses.

## BACKGROUND

A judge may not step over the heads of the sacred nation – יסע על ראשי עם קודש – The description here may be better understood in light of the way the academies were arranged in the period of the Mishna and the Talmud. The head of the academy, or the scholar delivering the lecture, would sit facing the assembled. Everyone in attendance would sit before him on the floor. The places in these rows were fixed, and the greater the individual, the closer he would sit to the front. Therefore, if one of the more distinguished scholars would arrive at the lecture after most of the attendees were already seated, he would have to step over the heads of the seated in order to reach his own place.

## HALAKHA

**How the judge is to relate to the community – יחס הדין – לציבור:** A judge may not conduct himself with arrogance toward the community, nor may he treat them in a belittling manner (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 25:2; *Shulhan Arukh, Hoshen Mishpat* 8:4).

**A court that it may not hear the statement of one litigant before the other litigant comes – בית דין שלא ישמע – דברי בעל דין קודם שיבא בעל דין חבירו:** A judge may not hear the account of one litigant in the absence of the other litigant. Likewise, it is prohibited for the litigant to tell his account to the judge in the absence of the other litigant. In addition, it is appropriate for the judge to refrain from writing a verdict before he has heard both sides (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 21:7, 10; *Shulhan Arukh, Hoshen Mishpat* 17:5 and in the comment of Rema, 17:8).

## NOTES

A rod and a strap – מקל ורצועה: While the function of the strap is clear, as the court uses it to administer lashes (see tractate *Makkot* 22b–23a), several commentaries discuss what may be the function of the rod. One explanation is that the rod serves merely to threaten obstinate litigants (Rabbi Yehuda al-Madari). Others explain that the strap is used only for Torah-mandated lashes, but lashes for rebelliousness, which are mandated in a variety of circumstances by rabbinic law, are administered with a rod (Meiri; *Nimmukei Yosef*).

כנגד מקל – רצועה תהא וריו: Some understand that the judge must be careful not to intimidate excessively, as exemplified by the rod and the strap (Rosh). According to another explanation, the judge is exhorted to be vigilant not to conduct himself in such a way that he will himself be deserving of lashes (Rabbeinu David Bonfils).

שלא ישמע – דברי בעל דין: In tractate *Shevuot* (31a), alongside many other courtroom protocols, this principle is derived from the verse: "Keep far from a false matter" (Exodus 23:7).

**HALAKHA**

Even between the merits of a house and the upper story – אפילו בין בית לעלייה: Even if the case does not involve an important matter, it is appropriate for the judge to attend to the case as though it involved a large sum of money (Rambam *Sefer Shofetim, Hilkhot Sanhedrin* 20:10; *Shulhan Arukh, Hoshen Mishpat* 10:4).

**LANGUAGE**

Host [*ushpiza*] – אושפיזא: From the Middle Persian *aspinj*, meaning hotel or hospitality. The ending corresponds to the Persian suffix *ag*, signifying agency, or one who carries out an action, here, the action of hospitality. Therefore, the term means host.

וּשְׁפִטְתֶּם צְדָק׃ אָמַר רִישׁ לְקִישׁ׃  
צְדָק אֶת הַדִּין וְאַחַר כֵּן חֲתִיבוּ׃ בֵּין  
אִישׁ וּבֵין אָחִיו וּבֵין גֵּרוֹ׃ אָמַר רַב  
יְהוּדָה׃ אֶפְּלוּ בֵין בַּיִת לְעִלְיָה׃

The Gemara returns to the verse in Deuteronomy cited above: “And I charged your judges at that time, saying: Hear the causes between your brethren, **and judge righteously.**” Reish Lakish says: **Verify the judgment** by meticulously examining the particulars of the case, **and only afterward, implement it.**<sup>N</sup>

The verse continues: “**Between a man and his brother, and the stranger who is with him.**” Rav Yehuda says: The judge must distinguish **even between the merits of a house and the upper story**<sup>HN</sup> when dividing a two-floor property among inheriting brothers.

וּבֵין גֵּרוֹ׃ אָמַר רַב יְהוּדָה׃ אֶפְּלוּ בֵין  
תַּנּוּר לְכִירִים׃

With regard to the clause in the verse: “**And the stranger who is with him** [*gero*],” the word *gero* resembles the word: Dwell [*gur*], and **Rav Yehuda says:** This word teaches that the judge must distinguish **even between the merits of an oven and a stove.** The judge must carefully weigh how to divide even these domestic items in a case of inheritance, to ensure that the distribution of property is absolutely equitable.

לֹא תִבְיֹרוּ פָנִים בְּמִשְׁפָּט׃ רַבִּי יְהוּדָה׃  
אוֹמֵר׃ לֹא תִבְיֹרְהוּ׃ רַבִּי אֶלְעָזָר אוֹמֵר׃  
לֹא תִנְבְּרְהוּ׃

The next verse states: “**You shall not respect** [*takiru*] **people in judgment;** you shall hear the small and the great alike; you shall not be afraid before any man, for the judgment is God’s; and the cause that is too hard for you, you shall bring to me, and I will hear it” (Deuteronomy 1:17). **Rabbi Yehuda says: Do not recognize him** [*takirehu*], i.e., do not acknowledge the litigant as a friend in your role as a judge. **Rabbi Elazar says:** Even if he is your opponent, **do not estrange him** [*tenakerehu*] in such a way as to prejudice him as liable, but treat him as though you do not know him at all.

אוֹשְׁפִיזְכַּנְיָה דְרַב אֶתָּא לְקַמְיָה לְדִינָא׃  
אָמַר לוֹ׃ לָאוּ אוֹשְׁפִיזְכַּנְיָה אַתָּא? אָמַר  
לוֹ׃ אֵינִי׃ אָמַר לִיהִ׃ דִּינָא אֵית לִי׃  
אָמַר לִיהִ׃

Rav’s host [*ushpizekhaneih*],<sup>L</sup> with whom he would stay occasionally, **came before him for a judgment.** Rav said to the host: **Are you not my host?** He said to him: **Yes, I am.** The host then said to him: **I have a dispute with another that needs a judgment.** Rav said to him:

**NOTES**

**צְדָק אֶת – Verify the judgment and afterward implement it** – הַדִּין וְאַחַר כֵּן חֲתִיבוּ: According to the Rambam this means that a judge must review and contemplate a verdict a second time and justify it to his own conscience; only thereafter may he declare his conclusion. Alternatively, it means that the judge must resolve any undecided theoretical halakhic principles or rulings that may be relevant before determining the outcome of the case at hand (Rashash).

By contrast, the Maharsha understands that the word verify [*tzaddek*] in this context refers not to strict justice but to charity [*tzedaka*]. First the judge is enjoined to encourage compromise, which is a form of charity. In the event that this pursuit is unsuccessful, he should implement strict justice.

**בֵּין בַּיִת – Between the merits of a house and the upper story** – לְעִלְיָה: The Maharsha explains that this interpretation pertains to dividing property. A judge must not consider whose family is bigger in determining who should get the larger property within the estate, or other similar ancillary considerations. Rather, the division must be implemented according to the value of the property and the number of inheritors. By contrast, another commentary asserts that the judge must listen to all the claims of each side, even in simple cases of division of property, and not assume that each side’s considerations are self-evident (*Iyyun Yaakov*).

Some explain that this interpretation is not related to dividing property or to inheritance: The judge must learn the *halakhot* that dictate how much the owner of the upper story must pay the owner of the house, as well as know how much one must distance a stove and an oven from a wall (see *Bava Batra* 17a) so as not to cause damage (*Ge'onim*; Rabbeinu Hananel; *Arukh*).

פְּסִילָנָא לְךָ לְדִינָא. אָמַר לִיה רַב לְרַב  
פְּהָנָא: "פּוֹק דִּינִינָה". תּוֹנִיָּה דְהוּה קָא  
גְּאִים בֵּיה, אָמַר לִיה: "אִי צִיִּיתָא, צִיִּיתָא.  
וְאִי לֹא, מִפִּיקָנָא לְךָ רַב מְאוּנְךָ".

"בְּקִטְוִן בְּגִדְלֵי תְשֻׁמְעוֹן". אָמַר רִישׁ לְקִישׁ:  
שְׂוִיָּה חֲבִיב עֲלֵיךְ דִּין שֶׁל פְּרוּטָה, כְּדִין  
שֶׁל מָאָה מְנָה. לְמַאי הִלְכְתָּא? אֵילִימָא  
לְעִינֵי בֵיה וּמִיפְסָקִיה, פְּשִׁיטָא! אֶלְא,  
לְאִקְדוּמִיָּה.

"לֹא תִגְוֹר מִפְּנֵי אִישׁ". אָמַר רַבִּי חֲנָן: אֵל  
תְּכַנְּסִים דְּבִרְיָךְ מִפְּנֵי אִישׁ. כִּי הִמְשַׁפֵּט  
לְאֱלֹהִים הוּא". אָמַר רַבִּי חֲמָא בְּרַבִּי  
חֲנִינָא: אָמַר הַקְּדוֹשׁ בְּרוּךְ הוּא: לֹא דִיִּין  
לְרִשְׁעִים שְׁנוּטְלִין מִזֶּה מִזֶּה וְנוֹתְנִים  
לָהּ שְׂוִיָּה בְּדִין. אֶלְא שְׂמִטְרִיחִין אוֹתֵי  
לְהַחְזִיר מִמּוֹן לְבָעֲלֵיו.

"וְהִדְבֵּר אֲשֶׁר יִקְשֶׁה מִכֶּם". אָמַר רַבִּי  
חֲנִינָא וְאִיתִימָא רַבִּי יֹאשִׁיָּה: עַל דְּבַר  
זֶה נִעְנַשׁ מֹשֶׁה, שְׁנַאֲמַר: "וַיִּקְרַב מֹשֶׁה  
אֶת מִשְׁפָּטָן לִפְנֵי ה'". מִתְקִיף לָהּ רַב  
נַחֲמָן בַּר יִצְחָק: מִי בְתִיב "וְאִשְׁמִיעֶכֶם"?  
וְאִשְׁמִיעֵתִי" בְּתִיב: אִי גְמִירָנָא, גְמִירָנָא.  
וְאִי לֹא, אֲוִלִּינָא וְגְמִירָנָא!

אֶלְא בְּדַתְנָנָא: רְאוּיָה פְּרִשְׁתַּת נְחֻלוֹת  
שְׁתִּיבְתָב עַל יְדֵי מֹשֶׁה רַבִּינָה, אֶלְא  
שְׁזִיבֵי בְנוֹת צֶלְפַּחַד וְנִכְתָּב עַל יְדֵי רְאוּיָה  
הִיתָה פְּרִשְׁתַּת מְקוּשֶׁשׁ שְׁתִּיבְתָב עַל יְדֵי  
מֹשֶׁה רַבִּינָה, אֶלְא שְׁנִתְחַיֵּיב מְקוּשֶׁשׁ  
וְנִכְתָּבָה עַל יְדֵי. לְלַמֵּדךְ שְׁמַגְלִין חוּבָה  
עַל יְדֵי חֲטִיב, וְזִכּוֹת עַל יְדֵי זְכָאִי.

I am disqualified to judge for you,<sup>h</sup> because I may be partial to you due to what you've done for me. Rav said to Rav Kahana: **Go out and judge the case.**<sup>h</sup> Rav Kahana saw that Rav's host was acting haughtily due to his relationship with Rav, as he presumed that Rav Kahana was predisposed to favor him. Rav Kahana said to the host: **If you are prepared to listen, then listen to me and follow my instructions. And if not, I will take Rav out of your ears.**<sup>N</sup> I will treat you harshly, and you will understand that your relationship with Rav will not help you at all.

§ The Gemara continues to interpret clauses from the verse cited above. "You shall hear the small and the great alike" (Deuteronomy 1:17). Reish Lakish says: This teaches that the judgment of one *peruta* should be as dear, i.e., important, to you as the judgment of one hundred *maneh*,<sup>h</sup> i.e., ten thousand dinars. The Gemara asks: With regard to what *halakha* is this said? If we say it is with regard to the need to study it carefully and to decide the case justly, it is obvious that even cases relating to small sums must be judged thoroughly. Rather, Reish Lakish was speaking with regard to giving it precedence: The small claims case may not be deferred in favor of the larger claim merely because the disputed sum is smaller.

The Gemara continues the interpretation of the verse: "You shall not be afraid before any man." Rabbi Hanan says: Do not suppress your statement of opinion due to any person. The verse continues: "For the judgment is God's." Rabbi Hama, son of Rabbi Hanina, says: The Holy One, Blessed be He, says: It is not enough for the wicked judges, that they take money from this person and they give it to that person unlawfully, but they even trouble Me to return the money to its rightful owners. As proper justice is ultimately in the hands of God, He takes responsibility to bring about the rectification of the errors of unfit judges.

The verse continues: "And the cause that is too hard for you, you shall bring to me, and I will hear it." Rabbi Hanina, and some say Rabbi Yoshiya, says: On account of this matter, which displayed a degree of presumptuousness, Moses was punished, as it is stated: "And Moses brought their cause before the Lord" (Numbers 27:5). In this instance, when Zelophehad's daughters presented their case to Moses, he did not know the answer himself and was compelled to ask God. Rav Nahman bar Yitzhak objects to this critique of Moses: Is it written: "And I will tell you," which would indicate that Moses assumed the authority for himself? No, it is written: "And I will hear it," meaning: If I have learned the *halakha*, I have learned it. And if not, I will go and learn it. Consequently, there was no presumptuousness in Moses' statement.

Rather, the unusual manner in which the *halakha* of women's inheritance (see Numbers, chapter 27) was revealed may be understood as it is taught in a *baraita*: It would have been fitting for the Torah portion about inheritances to have been written by attributing it to Moses, our teacher, i.e., to introduce the *halakha* with the standard formulation: And the Lord spoke to Moses, saying. But the daughters of Zelophehad achieved merit as a result of their initiative in pursuing a portion in Eretz Yisrael, and therefore the *halakha* was written by attributing it to them. Similarly, it would have been fitting for the Torah portion concerning the punishment of the wood gatherer (see Numbers 15:32–36) to have been written by attributing it to Moses, our teacher. But the wood gatherer was found guilty, and the *halakha* was written by attributing it to him. This serves to teach you that guilt is engendered by means of the guilty and merit by means of the innocent.

## HALAKHA

I am disqualified to judge for you – פְּסִילָנָא לְךָ לְדִינָא – A person may not act as a judge for someone whom he loves or hates. Rather, the litigants must be equal in the eyes and hearts of the judges. If the judge does not know the litigants or their activities at all, there is no judge as just as he is.

If the plaintiff sends a gift to the judge before summoning the defendant to trial, this does not disqualify the judge. Nevertheless, if the judge notices that he is predisposed to favor one side, he may refrain from judging the case, as an act of piety. This is in accordance with the opinion of *Tosafot* (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 23:6; *Shulhan Arukh*, *Hoshen Mishpat* 7:7, 9:2).

Go out and judge the case – פּוֹק דִּינִינָה – According to the *Terumat HaDeshen* and the *Maharik*, when a court is disqualified to judge a certain case due to concern for bias, that court may still appoint others to judge the case (*Shulhan Arukh*, *Hoshen Mishpat* 7:7, and in the comment of Rema).

The judgment of one *peruta* should be as dear to you as the judgment of one hundred *maneh* – דִּין שֶׁל פְּרוּטָה – כְּדִין שֶׁל מָאָה מְנָה: The judge must give priority to the case that comes before him first, even if it relates to a small monetary sum, over a case that comes later, even if it involves large sums (Rambam *Sefer Shofetim*, *Hilkhot Sanhedrin* 20:10; *Shulhan Arukh*, *Hoshen Mishpat* 15:1).

## NOTES

I will take Rav out of your ears – מִפִּיקָנָא לְךָ רַב מְאוּנְךָ: According to one version of Rashi's commentary, Rashi reads the phrase as: Out of your power, and not: Out of your ears. The message is therefore: I will prevent Rav from helping you (*Bah*). Other sources indicate that the term means that Rav's name will no longer be in the host's ears, as the host will forget him completely, since in any case it will not be of any help to him (*VeHizhir*).

## BACKGROUND

One *peruta* and one hundred *maneh* – פְּרוּטָה וּמָאָה מְנָה: The *peruta* was the coin of the smallest denomination; one dinar was worth the equivalent of one hundred and ninety-two *perutot*. A *maneh* is worth one hundred dinars. Therefore, one hundred *maneh* is the equivalent of almost two million *perutot*.