



Volume 5. Issue 22

## Proper Judgement

Our *Mishna* gives us number of related *halachot*:

1. If a *bechor* was slaughtered under the supervision of someone who was not appointed by *Beit Din* to oversee the slaughtering of a *bechor*, that person must pay for the *bechor* as the owners may not now receive benefit from the carcass.
2. If a person who was not appointed by *Beit Din* to pass judgement on a monetary matter but did so in any case and made a mistake, he must pay the injured party for the mistake
3. If a person who was appointed by *Beit Din* to pass judgement on a monetary matter and made a mistake, he is not obligated pay the injured party for the mistake

The *Mishna* here is seemingly quite difficult to explain. Justice would seem to demand that a person be obligated to pay for their mistakes, irrelevant of who appointed them, for they were not forced to take upon themselves that duty. However, here we see that the process of appointment, seemingly a technicality, is important in the final result. The *Bartenura* explains that the reason for this distinction is because 'If he were an expert appointed by *Beit Din*... he is exempt [from paying] for we may not say to him: "Why did you rule in this matter for you were not knowledgeable in the *halacha*?"' It would appear here that the problem is one of a lack of due process. While the *Bartenura* does seem to emphasise the aspect of a lack of expertise, the *Bartenura* states earlier that this *halacha* applies even in the case of one knowledgeable in the *halachot* in question, and also, the Rambam states in *Hilchot Sanhedrin Perek 6 Halacha 3*:

If the one [who made the judgement] was an expert and he did not receive permission [to make the judgement]... if he took from one and gave to the other, what is done is done and he must pay from his property.

From here it is clear that even were the person who made a mistake to be an expert in the *halacha*, we would still obligate him to pay, so it must be that the reason he is not obligated to do so is what is implied by the simple meaning

of the *Mishna*, that he was not appointed to make this judgement.

However, there remains a question as to why judicial process would be so important that we penalise someone for making a mistake only if the process were not followed. The answer is one of public confidence. A problem which greatly worried *Chazal* was that people might because of rabbinical mistakes come to treat the prohibitions of the Rabbis lightly. This sentiment is strongly expressed in the *Mishna* in *Avot (Perek 1 Mishna 11)*:

Avtalyon said: "Sages, be careful of your words, for you might cause the imposition of an obligation of exile, and you will be exiled to the place of the bad waters, and the students who come after you will drink and die, and it will be that *Hashem's* name will be desecrated."

It is noted by the various commentators there that the bad waters mentioned are an incorrect teaching, and the students drinking them are those who learn the mistake as thought it were correct, and this in turn leads to the desecration of God's name. Also, the *Bartenura* there notes that the sages should "be careful of their words so as to not give any opportunity to the heretics to mistake your meaning." Even more strongly, *Rashi* in his commentary on *Rosh Hashanah 17a* equates one who ridicules the sages to a heretic.

Because of the enormous importance place on the words of the sages, if they are found to act incorrectly, people may come to ridicule them, and this in turn will "destroy the entire structure of *Torah*" (*Ma'amarei HaRa'ayah* page 56). As such the sages insisted on due process when passing judgements, because the process that has been crafted acts to prevent one who would be likely to make mistakes from passing any judgement at all. However, because it is important that Rabbis will feel comfortable making a ruling, and be prepared to do so, it was decided that if they made a mistake however the correct process was observed, they would not be liable, for in this way the risk is minimised without introducing a disincentive to rule on *halachic* matters.

Alex Tsykin

**Revision Questions**

בכורות ד' – ו' – א'

- What is law if a non-profession: (ד' ד')
  - Ruled that a *bechor* had a blemish and it was slaughter 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? (ה' ה')
- Can a judge receive a salary? (ד' ד')
- Can witnesses be receive payment to testify? (ו' ו')
- In what situation would one be obligated to feed a *kohen* “blemish-checker”? (ו' ו')
- What is one not allowed to purchase from:
  - A *kohen* that is suspected of inflicting blemishes on *bechorot*? (ז' ז')
  - A person suspected of planting during the *shmittah* year? (ח' ח')
  - A person suspected of selling *trumah* as if it was *chulin*? (Provide both opinions.) (ט' ט')
- If one is suspected of planting crops during the *shmittah* year is he then also suspected for selling *ma'aser sheni*? (י' י')
- What else is one suspected of transgressing if they are suspected of performing both actions described in the previous question? (י' 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? (יא' יא')
- Can a *kohen* invite a non-*kohen* to partake in a meal involving a *bechor* that had a blemish? (יב' יב')
- Can blood letting be performed on a *bechor*? (יג' יג')
- Explain the debate regarding a *bechor* whose ear was slit by its owner. (יד' יד')
- What two cases occurred where the *Chachamim* ruled that even though a blemish was inflicted deliberately it was *mutar* to the owners, yet later had to change the ruling and why? (טו' טו')
- What is the law if a person inflicted a blemish to a *bechor* in “self-defence”? (טז' טז')
- What are the three opinions regarding the trustworthiness of a shepherd regarding a blemish on a *bechor* that could have been inflicted by a human? (טז' טז')
- Is a *kohen* trust to say that he showed the blemish to an expert checker? (יז' יז')
- Explain the debate regarding the required proficiency of those required to check a *bechor* whose front leg was severed? (יז' יז')
- What is the law if one purchase a slaughter *bechor* (that had a blemish), consumed some, and then it was discovered that the *bechor* was never shown to an expert? (יח' יח')
- What other case is brought that is similar to the previous question and what is the law regarding that case? (יח' יח')
- A wound to which part of the ear of a *bechor* would render it a *ba'al mum*? (יט' יט')
- What are the two opinions of the definition of a “dried ear” that is defined as a *mum*? (יט' יט')

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**Next Week's Mishnayot...**

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
28 <sup>th</sup> September כ"ח אלול	29 <sup>th</sup> September כ"ט אלול	September 30 <sup>th</sup> א' תשרי ראש השנה	1 <sup>st</sup> October ב' תשרי ראש השנה	2 <sup>nd</sup> October ג' תשרי	3 <sup>rd</sup> October ד' תשרי	4 <sup>th</sup> October ה' תשרי
Bechorot 6:2-3	Bechorot 6:4-5	Bechorot 6:6-7	Bechorot 6:8-9	Bechorot 6:10-11	Bechorot 6:12-7:1	Bechorot 7:2-3

