



## *Insights into Pirke Avot*

by

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### *Perek Alef, Mishnah Het (Part 1)*

1:8 Yehudah ben Tabai and Shimon ben Shetach received from them. Yehudah ben Tabai says, do not conduct yourself like the advisors to the courts. And when the litigants stand before you, they should be wicked in your eyes. But when they leave they should be innocent in your eyes, if they have accepted the judgment.

#### *The Need for Judges*

Yehudah ben Tabai and Shimon ben Shetach were the next of the *Zugot* (Pairs), who received the Oral Tradition from Nitai HaArbeli and Yehoshua ben Perahiah.

The early *mishnayot* in this chapter deal extensively with two related central topics: the student-teacher relationship, and the upholding of justice by means of the rabbinical courts. These two matters were of particular importance in the era of the Sages. Following the return of the Jewish people to the Holy Land after the Babylonian Exile, their spiritual level was at a dangerous low; if not for the intensive efforts of the Men of the Great Assembly, Torah might well have been forgotten entirely, G-d forbid. Raising a new generation of skilled and qualified Torah scholars capable of ruling on questions of Torah law was of the essence. These students would be the basis of the court system necessary for an orderly, moral society based firmly on the foundations of Torah.

For the most part, we are reasonably familiar with everyday *halachot*, such as the laws of Shabbat and the daily prayers, and know enough to fulfill these *mitzvot* properly. Other, more specialized *halachot*, those related to monetary law in particular, are the realm of the expert rabbinical judge.



## *Consultant to the Court*

*Orche hadayanim*, often mistakenly translated as “lawyers,” more correctly means “those who help the judges organize the legal data.” These *orche hadayanim* performed a recognized, legitimate function as advisors to the court.

Rabbi Shlomo Zalman of Neustadt discusses the position of *mazkir bet din* which existed in the time of the Sages (*Bet Avot* on 1:8). Yoah ben Asaf HaMazkir, mentioned several times in the Prophets, was an early instance of a *mazkir bet din* (II *Melachim* 18:18 et al). The *Sema*, citing the Rambam and the *Gemara*, also mentions the concept of a *mazkir bet din* (*Meirat Enayim* on *Hoshen Mishpat* 17:14). Much more than a simple secretary, this *mazkir* was a Torah scholar highly proficient in *halachah*. He was an **advisor to the court** whose job was to organize the claims of the litigants, and advise the *dayanim* about which sources to peruse and how to analyze the information. The *dayanim*, having availed themselves of his knowledge, would then draw conclusions and render their halachic rulings. He served the *bet din* in an official capacity as a consultant, and his suggestions and opinions were a legitimate part of the legal process, unlike those of an outsider or spectator.

One who does not hold an official position of this type should refrain from intervening in the rulings of a *bet din*. Even if he does not engage in distortions of the truth, which is obviously strictly forbidden, it is a higher standard of ethical piety to refrain from conducting oneself **like the advisors to the courts** by volunteering advice to the *dayanim* or the litigants, even if there is no trace of falsehood or dishonesty.

*Bet Avot* cites the instance of Rabbi Yohanan, who advised a relative about how to obligate a widow to pay for her own medical expenses, rather than having them paid out of the orphans’ estate (*Ketubot* 52b). Rabbi Yohanan’s behavior was permissible, particularly as he was helping a family member, fulfilling the verse, “And your own flesh and blood, do not ignore” (*Yeschayahu* 58:7). Even so, he later regretted his actions, saying that he had conducted himself **like the *orche hadayanim***, and because of his standing, others would learn from his example even when their input was inappropriate. While it was technically acceptable for him to offer suggestions to a relative, it would have been more proper for him to go beyond the basic requirements of *halachah* and refrain from interfering in the case altogether.



## ***Getting Involved***

**Do not conduct yourself like the advisors to the courts.**

*Avot D'Rabbi Natan* elaborates on this teaching (10:2): “Do not make yourself like the advisors to the courts. This teaches that if you come to the *bet midrash* and hear a ruling or a *halachah*, do not hurry to answer [with your own opinion]. Instead, stop and ask, for what reason did they say this? And from where do they know this law?”

This describes an instance where a Torah scholar hears a ruling issued by a rabbinical court without having been present when the case was heard. He did not hear the litigants submit their claims, and he is not privy to the reasoning of the *dayanim* in rendering the ruling. Lacking this basic information, he should not rush to offer his own ideas on the case in opposition to the ruling of the *bet din* in question. Very often, the specifics of the plaintiff's claim make an important difference to the final verdict. In addition, it is entirely possible that the *dayanim*, who were familiar with all the details, understood the case in a way which would never occur to one who was ignorant of the pertinent information.

*Halachah* is not always cut and dried; it depends on a combination of factors relevant to every case as it arises. This is why *Avot D'Rabbi Natan* uses what appears to be repetitious language. “For what reason did they say this” refers to hearing the litigants present their claims. “From where do they know this law” refers to understanding the reasoning and analysis of the *dayanim*. One who lacks this knowledge is in no position to object to their ruling.

## ***Truth and Untruth***

**Do not conduct yourself like the advisors to the courts.**

The Bartenura explains what the *mishnah* teaches with these words. He writes that one should not be like those who arrange the claims of the litigants and submit them to the *dayanim* in order to influence their ruling. Even a qualified and competent scholar should not offer an opinion on the ruling of a *bet din* if he has no official connection to the court and the case.

He also writes that it is wrong to instruct one of the parties about how to present his claims so that the judges will rule in his favor. These two practices are not forbidden outright, yet nonetheless, the *mishnah* warns against them.

This is because *Pirke Avot* deals with more than the black-and-white demands of *halachah*. In the words of our Sages, *Avot* is *mile d'hassiduta*, matters related to



piety extending beyond the bare definition of permitted and forbidden (*Baba Kama* 30a). The *Tanna* did not simply say, “Do not be a lawyer.” The contemporary lawyer coaches the plaintiff about which untruths will help him win his case, which is obviously forbidden; this is not what the *Tanna* speaks of. He takes us a step further, beyond basic *halachah*, and calls upon us to refrain even from being **like an advisor to the court**. If we are not attached to the *bet din* in an official capacity, we should not get involved in its dealings by showing a litigant how to state his case to his own advantage, even if there is no element of falsehood in our recommendations.

## *Lawyers*

### **Do not conduct yourself like the *orche hadayanim*.**

As we explained, the *mishnah*’s concept of *orche hadayanim* does not refer to the modern legal profession. The role filled by *orche hadayanim* was halachically permitted, but the modern-day secular lawyer is something else. *Dayanim* and **advisors to the court** certainly may not behave like lawyers, and this says a great deal.

Lawyers are an integral part of the non-Jewish court system, along with judges, witnesses, and defendants. The function of a lawyer, for which he is handsomely reimbursed, is not to discover the truth and see to it that justice prevails; it is to win the case for his client, no matter what it takes. In fact, the client may openly admit to his counsel that he is guilty, and expect him to find a legal loophole to have him acquitted. Through clever manipulation, the lawyer will have him declared innocent. This dubious skill is the basis of the lawyer’s vocation.

An official advisor to the *bet din* is not a lawyer; he represents both sides equally, preparing a formal presentation of their claims for the *dayanim*. His job, together with the *dayanim* who will eventually make the halachic decision, is to seek out the truth as expressed in *halachah*, without favoritism and personal interests. This is one explanation of the *mishnah*’s cautionary words, **do not conduct yourself like the *orche hadayanim***. It applies equally to a *dayan* sitting on a panel of three judges, to one who is the sole judge in a case submitted for arbitration, and to those serving the court as official **advisors**.

There is even more to our Sages’ words. Often, a litigant will approach a rabbinical judge for advice about how to present his case for the best results. It is forbidden for this rabbi – even if he will not be involved in the case – to provide tips, tricks and clever stratagems for winning in court by emphasizing one point and glossing over another. These are lawyers’ tactics which do not belong in a *bet din*.



Ideally, the two sides should come before the *dayanim*, state their case truthfully and honestly, and trust that with Hashem's help, they will render an accurate halachic decision.

*Orche hadayanim* as mentioned in the *mishnah* no longer function in today's *bate din*. Modern times have produced a new phenomenon, that of the *to'en rabbani* (rabbinical advocate). He has some knowledge of the relevant *halachot*, and uses his professional expertise to win his client's case in a *bet din*, much as a lawyer does in a secular courtroom. His methods and language may not be the most refined, but that is all part of his job of obtaining a favorable ruling for his client.

An aggressive *to'en rabbani* who bullies and humiliates the weaker party (or in other words, the one who has not retained his services) transgresses the *mishnah's* explicit instructions. A *bet din* is not a secular court of law, and what passes there for standard legal procedure has no place in a *bet din*.

### ***Both Sides of the Story***

It is strictly forbidden for a *dayan* to hear only one side of a case, in the absence of the other party (*Shavuot* 31a). Our great Torah scholars have always been careful to avoid this pitfall. In many instances, a litigant would attempt to discuss the case with the *dayan* outside of the *bet din*, presenting his claims informally, so to speak. If the litigant continued his recital over the *dayan's* protests, the *dayan* would simply get up and leave... and then declare himself disqualified to rule, having already heard one side of the story without the other.

In order to arrive at the truth in a halachic ruling, it is essential to hear *both* sides of the case; each party is biased in his own favor, and will present his view of the facts accordingly. Even worse, the litigants may often offer a very slanted version of the truth in order to promote their own interests. Hearing one side alone will provide an inaccurate impression, while hearing both sides can change the entire picture.

On one occasion, a distinguished Torah scholar told me that the Ahavat Shalom *bet din* should be closed down, because the *dayanim* serving there are ignorant of explicit *halachah*! When I asked what led him to make such a drastic statement, he told me that a student of his had presented – and lost – a case in the *bet din*. Based on the ruling issued there, it seemed clear to him that the *dayanim* had no idea of what they were talking about and should not be allowed to dispense rulings. I pointed out that he had objected to the ruling of the *dayanim* after hearing only one side of the case – that of his student, who had surely given only his own version of the story. He had not heard the claims of the other plaintiff or any relevant testimony from witnesses, and had not sat in on the deliberations of the *dayanim* in reaching



their verdict. Was the little that he had heard sufficient basis to offer an opinion, let alone close down a *bet din*? It was not even enough to properly understand the individual case in question.

### ***Major and Minor***

We can appreciate the deeper significance of rulings rendered in a *bet din* by studying an interesting teaching of our Sages. They tell us that a case involving a single coin should be judged with the same gravity as one involving a large sum (*Sanhedrin* 8a). What matters is not the amount of money, but rather clarifying the *halachah* in the specific case. In fact, on a profound level, the real reason these halachic questions arise is in order to reveal the new facets of Torah knowledge brought to light by ruling on the case. This is why proceedings involving a negligible sum are no different than those involving large sums; the money is actually secondary to the new halachic insights developed when judging the case.

We find this concept in the Torah's account of Yitro's advice to his son-in-law, Moshe Rabbeinu. When Yitro arrived at the Jewish people's desert encampment, he found Moshe engaged day and night in rendering halachic decisions for the people, the sole authority handling endless cases. Feeling that the burden was too great for any one man to bear, he suggested that his son-in-law appoint a cadre of judges who would assist him in dealing with the people's questions. His idea was simple enough: "All the major matters they will bring to you, and all the minor matters they will judge themselves" (*Shmot* 18:22). Although Moshe implemented Yitro's plan, his own attitude towards the distribution of the various cases was different: "The *difficult* matters they will bring to Moshe, and all the minor matters they will judge themselves" (ibid. 18:26).

Yitro, accustomed to the perceptions of the non-Jewish world, rated litigation by the sums involved: big claims should go to Moshe, the highest authority, while small claims could be delegated to his assistants. Moshe, who realized that the real issues in any case were the Torah truths behind it, gave greater importance to the difficult cases, which were more complicated and required greater halachic expertise (Alshich, *Torat Moshe* on *Shmot* 18:24-27).

### ***In the Midst of the Judges***

The ability to arrive at an accurate ruling in *bet din* is really beyond the limited capacities of man. It can only be the result of *siyata diShemaya* (Divine assistance).



*Bet Avot* cites the verse, “G-d stands in the Divine assembly, in the midst of judges He judges” (*Tehillim* 82:1). At first glance, this verse appears to be repetitious, but it actually describes two aspects of the Al-mighty’s involvement in rulings rendered in a *bet din*. “G-d stands in the Divine assembly” means that He is there with the *dayanim* when they hear a case. “In the midst of judges He judges” means that He grants them the Divine wisdom needed to reach an accurate ruling. The rulings of a *bet din* are the product of Divine assistance. Discussion of the case outside the precincts of the *bet din* has no such Divine assistance. This is why, as *Avot D’Rabbi Natan* teaches, one who hears of a ruling rendered, but was not part of the proceedings, is not in a position to offer a contradicting opinion.

*This essay contains divre Torah. Please treat it with proper respect.*