



Insights into Pirke Avot

by

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Rosh Yeshivat Ahavat Shalom

Perek Alef, Mishnah Het (Part 2) & Mishnah Tet

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.

Guilty Until Proven

And when the litigants stand before you, they should be wicked in your eyes.

This statement appears to be rather harsh. Two Jews come to a *bet din* to present a disagreement for halachic arbitration. Why must they be viewed as **wicked**?

Let us understand more about what the *Tanna* is telling us. He does not say that we should relate to the litigants as wicked in the sense of Sabbath desecrators and consumers of forbidden foods, G-d forbid, but rather as **wicked** as concerns the case at hand.

When two litigants step before a *dayan* with contradictory claims, he must not presume from the start that one or the other is certain to be the innocent party. He must embark on the case with the understanding that regardless of all appearances, either party could be in the wrong. If for any reason he is unable to picture that a given litigant might be at fault, he is affording preferential treatment to one of the parties, in transgression of the Torah's explicit prohibition against showing favoritism (*Devarim* 16:19). As such, he is disqualified to hear the case.

Both litigants should be viewed as potentially wicked and as potential liars, so much so that the Shach (*Hoshen Mishpat* 17:10, note 13), citing *Sefer Hassidim*



(#1104), writes that a *dayan* is forbidden to look at the faces of the litigants when they state their claims, in keeping with our Sages' teaching that it is forbidden to look at the face of a wicked person (*Megillah* 28a). If they present conflicting stories, one of them is obviously telling an untruth. When the case opens, the *dayan* must assume that they are both capable of lying.

Impartial

Such objectivity may not always be easy to maintain. Perhaps one of these litigants is a distinguished scholar, striking and impressive in his rabbinical frock coat, flowing beard, and generous *peyot*. The opposite party is also observant, of course, but one look shows that he's just not in the same league at all. Let us be realistic: whom is the *dayan* going to believe?

While this attitude may be instinctive and understandable, it is wrong. The anonymous no less than the eminent are deserving of, and entitled to, an impartial hearing. We may not favor one party over another before we know the truth, even if he seems more likely to be trustworthy. Such impressions have no legal weight, because the party who appears to be more learned and pious may be blinded by his own interests, unable to see the facts and their significance for what they truly are. Until it is all over, **they**, respected scholar and humble layman alike, **should both be wicked in your eyes**.

An incident in the life of Rabbi Shabbtai Cohen, known as the *Shach* after his classic work *Sifte Cohen*, a commentary on *Shulhan Aruch Yoreh Deah* and *Hoshen Mishpat*, highlights this principle. On one occasion, he was involved in a monetary dispute. The other party asked that the case be submitted to a *dayan* in another town where the *Shach* was not as well known, and where, he felt, he had a better chance of receiving an unbiased hearing. The *Shach*, certainly an expert in the intricacies of monetary *halachah*, argued his case ably, elaborating on various proofs to bolster his case.

The out-of-town *dayan* ruled in the other party's favor. The *Shach* was surprised, until the *dayan* told him, "My ruling is based on the halachic work *Sifte Cohen*, which discusses exactly this type of case. According to him, you are in the wrong."

In other words, the *Shach* had lost the case based on what he had written in his own book! He acknowledged the *dayan*'s ruling and said, "This proves how biased we are in our own favor. When I wrote about this *halachah*, I had no personal interest in the ruling and the *halachah* was clear to me. Now, though, I saw only my own side of the case, and was blind to that aspect of the *halachah*" (*Kovetz HaPoskim, Hoshen Mishpat* 14).



Room for Suspicion

However, we are still left with a question. The *Tanna* tells us, **when the litigants stand before you, they should be wicked in your eyes**. We know that neither party should receive preferential status, because until all the facts are unquestionably clear, either one could be at fault, and either one could be tampering with the truth. But why must we start off with such a negative attitude, viewing the two litigants as potentially **wicked**? Why not view them as potentially innocent and righteous? Surely it would be more proper to give them equal doses of pious benefit of the doubt, rather than equal doses of skeptical suspicion. Could they not be perceived as both truthful, rather as both liars, until the ruling is issued?

The *mishnah* does not instruct us to take this more positive approach because the very fact that they are there in the *bet din*, ready to battle it out, is evidence of a problem. In other words, we already have a *re'uta*, an unfavorable condition or a cause for suspicion or doubt. If everything were “equally” fine they would not have come before the *dayanim* to begin with, so we cannot assume that they are equally innocent.

Acceptance...

Once the ruling has been announced and **accepted**, it is time for a sharp turnaround on the part of the *dayan*. **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.** A proverbial Reuven and Shimon enter the *bet din* with fire in their eyes, both eager to state their case and both convinced that they alone are in the right. As we said, at that point, the *dayan* must be suspicious of them to the same degree, because either one could be at fault. But as soon as the ruling is issued and the terms accepted with good grace, the *dayan* must change his attitude altogether. Now, **they both should be innocent in your eyes, because they have accepted the judgment.** He may not take a negative view of the guilty party, but rather view them both as innocent, and as good Jews, simply for the fact that they presented their case for halachic judgment and accepted the verdict with good will.

This is surprising. The *bet din* has just concluded that Reuven is right and Shimon is wrong. Does this not mean that while Reuven has been proven upstanding and honest, Shimon has been proven something less? How can we say that Shimon, who lost the case, is **innocent**? At best, we can say that the *bet din* saved him from a serious error. This is in fact the approach of the secular courts: innocent or guilty, right or wrong. Even when the loser has complied with the ruling, he still remains the guilty party. But halachic rulings as rendered in a *bet din* have



great power. From the moment the loser has **accepted the judgment** and agreed to comply with the terms, he has repented and is no longer guilty. Having bowed to the dictates of *daat Torah*, he is granted atonement and forgiveness and is **innocent** before both the earthly and Heavenly courts. This is true even before he actually pays what he owes; if he has **accepted** upon himself to do so he is *already* righteous.

...and True Acceptance

Shimon, the losing party, has **accepted the judgment**. What does this actually mean?

Shimon walked into the *bet din* convinced of the justice of his claims, and at the session's end was informed that according to the Torah, he is at fault. He hears the ruling announced and says, "Fine, I'll pay what I owe." With these few words he is transformed into a *tzaddik*. This does not sound too difficult or complicated, but obviously, it cannot possibly be quite that simple.

Shimon's declaration goes much deeper than willingness to obey the ruling or reluctance to get into trouble for refusing to obey it. It is human nature that "one does not see his own blemishes" (*Sifri, Bamidbar* 12:12). We are inevitably biased in our own favor, and when we argue against another party we are sure that we are right – after all, how could it be otherwise? And yet, when Shimon hears that the Torah says that he *is* wrong, he regrets his error and resolves not to slip up again in the future. With these acts – the regret and the resolution for the future – he has fulfilled two major components of the process of repentance. If he signs a document committing himself to follow the ruling of the *bet din*, he has also, in essence, fulfilled the obligation to confess. As a result of his repentance, which includes making tangible amends, he achieves atonement, the final stage of forgiveness (see Rambam, *Hilchot Teshuvah* 1:1, 2:2).

However, it is important to realize that repentance involves another element as well. What is Shimon's attitude when he hears the verdict? Does he grumble and complain? Does he say, "The *dayanim* today are impossible and if you ask me, I still think I'm right. But there's nothing to be done about it. I'll just have to pay and cut my losses." With this attitude, I very much doubt that his check or credit card has earned him complete forgiveness and atonement.

In order to be granted Divine forgiveness for his unfortunate transgression in the critical arena of financial integrity, our Shimon must accept that the ruling was *daat Torah*, and that through this *daat Torah*, the truth as concerns his court case has come to light. If the *dayanim* ruled against him it means that he was at fault, and that he must repent and make good. If this is his approach, payment of the sum he



owes will indeed bring him forgiveness and atonement. In other words, fulfilling the verdict without complaint constitutes rectification and repentance for the sin.

A halachic verdict rendered in a *bet din*, accepted and carried out wholeheartedly, has great power. More than fulfillment of the requirements of *halachah* in the case at hand, it literally cleanses the guilty party of the blemish caused by his sin. By paying the damages or fines mandated by the Torah and the Sages, thereby accepting the ruling of the *bet din* as the Will of the Al-mighty, the party judged to be in the wrong purifies his soul.

But when they leave they should be innocent in your eyes, if they have accepted the judgment.

The *mishnah* says, *u'ch'sheniftarim milfanecha*, literally “when they depart from you,” rather than the simpler *u'ch'sheyotzim milfanecha*, “when they leave you.” *Niftarim milfanecha* implies that from their standpoint, the case has been settled and the story is over. Their departure is final, so to speak, and they will not be back in court for further discussion. *Yotzim milfanecha*, on the other hand, would indicate that they have only stepped out for now, and will be back for a second round. If the *dayan* notices that the plaintiffs are still grumbling, and plan to submit further evidence in order to appeal the verdict, they most definitely should not **be innocent in his eyes** – they have not **accepted the judgment**.

Early Training

We can learn an important lesson from the Torah's commandments concerning *dayanim*: “Do not pervert judgment, do not show favoritism, and do not take bribes, for bribery blinds the eyes of the wise and twists the words of the righteous” (*Devarim* 16:19).

This verse is a warning: a *dayan* may not pervert justice by intentionally deviating from *halachah*. He may not decide that he likes or dislikes one of two litigants, and bend the rules accordingly. Even if one of them is a friend – or an enemy – the *dayan* may not manipulate *halachah* for or against him.

Lo takir panim, usually explained as “do not show favoritism,” literally means “do not recognize faces.” The *dayan* should relate to the two parties as if he does not know them, and does not even recognize them. The verse goes on to forbid the acceptance of bribery, because a bribe blurs the clear judgment of even the wise and the pious. Once the judge accepts a bribe, he is certain to pervert judgment in favor of the giver.



The order of the wording of the verse raises a question. In keeping with the simple explanation of the verse, the more logical order would have been, “Do not accept bribery, for bribery will cause you to pervert judgment by showing favoritism.” Logically, it would seem that taking the bribe is the reason behind the perversion of justice and the favoritism. Why does the Torah list it last, as if it were a separate, unrelated prohibition?

The sequence of the verse is in fact entirely logical, because the need to exercise caution does not begin when a *dayan* joins the *bet din*. It dates back to his early years as a student learning in *yeshivah*. At that time he is still a beginner, not a great halachic authority, and no one is asking for his halachic opinions; right now, he is not in a position to steer anyone wrong. And yet the Torah tells him, “Do not pervert judgment.” From the very earliest stage, he must take great care not to learn carelessly and superficially, instead working hard to arrive at a true understanding of Torah and *halachah*. Otherwise, he will develop misconceptions – perversions of justice – which will result in erroneous halachic rulings in the years to come. In other words, a Torah student’s first responsibility is to learn accurately and in depth, so that he will not drift off course, G-d forbid.

The verse continues, “Do not show favoritism.” *Yeshivah* years should also be dedicated to the *mussar* study and character building these words imply. A student of Torah should not allow friendships or his own interests to color his judgment, and he should not be impressed by externals such as wealth and power. He should be able to view life and learning objectively, free of personal bias.

Let us say that our young man follows these two directives: he is learning well, so that he can assess halachic questions properly without bending and twisting them out of shape. In other words, he has grown wise. He is also learning *mussar*, refining his character and enhancing his fear of Heaven so that he would never show unfair favoritism; he is also righteous. Even so, despite his hard earned knowledge and good *middot*, he is not invulnerable. He still needs the Torah’s warning, “and do not take bribes, for bribery blinds the eyes of the wise and twists the words of the righteous.” No matter how learned and wise he is, and regardless of how straight and proper and pious, bribery will make him see what he should not see and say what he should not say.

We find this principle in a later *mishnah*: “Rabbi Yehudah says, be careful in study, for an unintentional error in learning is considered intentional” (*Avot* 4:13). From our earliest years we must “be careful in study,” learning in depth to arrive at the truths in Hashem’s Torah. If we are not sufficiently careful and meticulous in our study, we will eventually apply our unfortunate mistakes in inaccurate halachic rulings, causing others to sin. We will be held responsible not only for our own sins



but for theirs as well, “for an unintentional error in learning is considered intentional.” We will not be able to claim that it was all an innocent mistake, because had we expended proper effort, we would not have erred.

Yehudah ben Tabbai teaches us that a *bet din* is holy. When we face the *dayanim* we face the Al-mighty, Who is present as well (*Tehillim* 82:1); this is why we must remain standing before them (*Devarim* 19:17, *Shavuot* 30a). It is well worth remembering that He is also part of the halachic decisions rendered there, and that by fulfilling them, we purify our souls and achieve atonement.

1:9 Shimon ben Shatah says, question the witnesses extensively and be careful with your words, lest they learn from them to lie.

The Need for Questioning

Shimon ben Shatah says, question the witnesses thoroughly.

We understand that all parties to a court case must be carefully questioned in order to arrive at an accurate picture of the truth. However, why does Shimon ben Shatah specifically caution us to cross-examine **the witnesses**? Why does he not also tell us to question the litigants thoroughly, in order to bring the truth to light?

The simple answer is that his colleague, Yehudah ben Tabai, already made this point very clearly in the previous *mishnah*: “And when the litigants stand before you, they should be wicked in your eyes.” If the *dayan* relates to both litigants as potentially dishonest, he will obviously do everything in his power to uncover the truth. Since Yehudah ben Tabai already discussed the litigants, Shimon ben Shatah now goes on to relate to another major element: the handling of the witnesses. His words reinforce and expand upon Yehudah ben Tabai’s teaching.

However, there is something more behind Shimon ben Shatah’s words as well. As we explained earlier (see 1:1), each of the great Sages whose teachings are recorded in *Pirke Avot* obviously taught much more than the precept or precepts cited in these *mishnayot*. The principles in *Avot* represent a central theme in the Sage’s life, his method of learning, and his own personal service of Hashem.

Speaking from painful personal experience, Shimon ben Shatah advises *dayanim* hearing a court case about the critical need to **question the witnesses** carefully and **extensively** to obtain a true and accurate understanding of the facts. He had good



reason to give these instructions. In his day, eighty women in the city of Ashkelon were guilty of practicing witchcraft, explicitly forbidden by the Torah (*Devarim* 18:10). As the *Nasi*, Shimon ben Shatah had them executed. Two men, relatives of these women, took drastic, dreadful revenge on Shimon ben Shatah. They testified that his son had committed a capital offense, and the *Nasi* had no choice but to sentence his own son to death.

As he was led out to be executed, the victim of this cruel plot said, “If I have committed this sin [of which I was falsely accused], may my death not atone for me. And if it is not so, [if I am not guilty,] let my death be an atonement for all my sins, and let the yoke of guilt rest upon the necks of the witnesses. “

When they heard these terrible words, the witnesses sought to retract their testimony, saying that they had testified falsely against Shimon ben Shatah’s son out of vengeful anger over the fate of their relatives. However, once testimony has been accepted by the *bet din*, the Torah forbids its retraction, and Shimon ben Shatah had his son executed (*Sanhedrin* 44b, Rashi; Jerusalem Talmud, *Hagigah* 2:2; *Midrash David* on *Pirke Avot* by the Rambam’s grandson, Rabbi David HaNagid).

We can understand, then, why he warns *dayanim* to **question the witnesses extensively**, verifying beyond any doubt that their testimony is entirely true and free of error. Had he grilled these false witnesses down to the most minute detail of their evil testimony, the truth would have emerged and his son’s life would have been saved. This is true of any court case, but in capital cases the need is even more compelling.

Learning to Lie

Be careful with your words, lest they learn from them to lie.

Shimon ben Shatah offers *dayanim* an additional warning: **be careful with your words, lest they learn from them to lie**. When a *dayan* in a *bet din* cross-examines litigants and witnesses, he must be exceedingly **careful** in choosing his words. His line of questioning may lead a clever listener to deduce that a certain detail is crucial to the case, and he will color his answers accordingly. Questions must be carefully, even cunningly phrased so as not to reveal to others more than they should know. If the *dayan*’s **words** say too much, the litigants or witnesses will **learn from them** – from the very **words** spoken by the *dayanim* – how **to lie** in order to protect themselves.

Rabbi Hayyim of Volozhin provides additional insight into the *Tanna*’s words. In order to get at the truth, a *dayan* may find it necessary to subtly mislead the



witnesses. This tactic requires extreme caution; if the litigants or witnesses realize that the *dayan* is being less than straightforward, they may decide that they can allow themselves the same license. He must **be careful with his words, lest they learn from them** – from their deceptive nature – that it is permitted for them as well **to lie** (*Ruah Hayyim, Avot 1:9*).

The ultimate purpose of a case heard in a *bet din* is to reveal the truth, as expressed in the laws of the Torah. Winning or losing the case is actually secondary to this primary goal. Torah is truth in essence. Shimon ben Shatah teaches us that a *dayan* must cross-examine the witnesses and take care not to lead them into falsehood, so that the Torah's sacred truth will not be twisted or corrupted.

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