

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

## **To'ein Rabbani – Shiur 19**

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### **Mareh Makomos for this Shiur**

**Gemara, Sanhedrin 31b**

**Rabbeinu Yerucham (Nesiv 1, Sefer Mesharim, Part 4, Daf 9a)**

**Gemara, Bava Metzia 69a-b**

**Tosafos, Bava Metzia 69b (Kee)**

**Rosh, fifth perek of Bava Metzia, Siman 45**

**Tosafos Sanhedrin 31b (V'eem)**

**Hagaos Maimonides, (Sanhedrin 6:6)**

**Beis Yosef, Responsa “Avkas Rochail” (Siman 17)**

**Ridvaz, Siman 1,007**

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\* If a Litigant Suspects a Dayan  
of Unfairness

\* Starting the Appeal Process



### ***Siman Fourteen Seif Four***

**4 Some say that if a Dayan sees [23] that a litigant suspects him of tilting the verdict against him, he must inform him of his reasoning, even if the litigant did not ask.**

*Rama: All the more [24] so if he says, "Write for me the reason why you ruled against me" (Tur). However, some maintain that this applies only when the litigant was judged against his will. Otherwise, [25] the Dayanim do not write the reason for him. This is the correct view (Mordechai, Nemukei Yosef perek Zeh Borair; Tosafos and the Ran, perek Aizehu Neshech). When they are required to write their reason for him there is no time limit. Rather, whenever he comes and asks they write it for him and give it to him (Mordechai, end of perek Zeh Borair). This is not to say that the local Dayanim must write out the reasons for their ruling and the proofs that were their basis for deciding against him. Rather, [26] they just write the claims of both litigants and the verdict (Nemukei Yosef there). He needs to pay [27] immediately, and if the decision is overturned they return to him what he paid (Mordechai, perek Chezkas Habatim, Hagoas Maimonides, sixth perek of the Laws of Sanhedrin, Maharik Shoresh 1 and the Beis Yosef in the name of the Remah). They don't have to write for him unless he wants to take to the case to a greater Beis Din, but if a great Beis Din itself made the ruling, they need not write their reason for him, for there is no reason to worry that they erred. Otherwise, there would be no end to the matter (Beis Yosef, according to the Rambam).*

## The Gemaras that are the Basis of this Seif

One of the primary sources of the laws of this *Seif* is a ruling of **Rav Safra** (*Sanbedrin* 31b) that:

*“And if he says, ‘Write out for me the reason(s) why you ruled against me,’ they write it and give it to him.”*

The other primary source for the rulings of *Seif* 4 of *Siman* XIV is a *Gemara* passage in the fifth *perek* of *Bava Metz'ia*, on *daf* 69. There, the *Gemara* tells a story about **Rav Poppa**. After **Rav Poppa** made a legal ruling, the litigant that the ruling went against appeared to suspect that **Rav Poppa** had something against him and had slanted the verdict against him.

**Rav Poppa** stated,

*“We must inform him of his reasoning, even if the litigant did not ask.”*

We will bring the latter case in detail shortly.

## A Losing Litigant Can Demand that the Dayanim Supply Him with Written Material for his Appeal

According to **Rabbeinu Yerucham** (*Nesiv* 1, *Sefer Mesharim*, Part 4, *Daf* 9a), cited in the **Beis Yosef** on our *Siman*, the ruling of **Rav Safra** applies no matter how the *Dayanim* who judged the case became involved. Whether they forced themselves on the litigant or both litigants came to them or even chose them, the loser has the same right.

We can well understand that if the *Beis Din* who handled the case did so against the will of the loser, then certainly, after the verdict is in, if he tells them,

“WRITE OUT FOR ME THE REASON(S) WHY YOU RULED AGAINST ME,”

**He is heeded.**

According to **Rabbeinu Yerucham**,

The litigant is heeded even if he helped to choose the *Dayanim* who ruled against him. Even if the *Beis Din* that found him liable was assembled by means of the process of ZB1&ZB1, he is heeded. The *Dayanim* write for him the reason why they ruled as they did, and they give him the document. It does not matter that from the outset, he wanted these *Dayanim* to judge the case.

According to **Rabbeinu Tam**, however, and so rules the **Rama**,

**Rav Safra**'s ruling applies only when the *Dayanim* took the case against the person's will.

## Two “Contradictory” Rulings about Business Partnerships

In *Bava Metz'ia*, the *Gemara* tells of two *Kusim* –

*Kusim* were members of a nation that migrated to Eretz Yisroel during the years of the Babylonian exile. Many *Kusim* converted to Judaism, although the sincerity of their changeover was held in doubt.

Two *Kusim*, says the *Gemara*, entered a business partnership together and pooled their money. Later, one of the *Kusim* decided to dissolve their partnership and withdrew his half of the money.

The other *Kusi* was upset and brought the matter to **Rav Poppa**. **Rav Poppa** ruled that the partner who complained did not have a leg to stand on. Quoting **Rav Nachman**, **Rav Poppa** told him,

“CASH IS BY NATURE CONSIDERED AS ALREADY DIVIDED.”

Cash does not need appraisal (assessment of their value) by experts. Therefore, if one partner removes his share without asking the other partner's permission, he cannot be called to task.

The next year, continues the *Gemara*,

The same two *Kusim* entered a different venture together. They equally invested in wine. According to the plan, when they saw that the time was ripe and the price of wine had risen sufficiently, they would sell the wine and split the profits. Again, just one of them watched over the capital. This time, the *Kusi* who complained the previous year watched over the wine. After a while, without consulting his partner, he liquidated their partnership,

just as his partner the previous year had done. When his partner found out, he was angry and complained to **Rav Poppa**.

**Rav Poppa** said to the partner, who had divided up the wine,

“WHO HELPED YOU TO SPLIT (WITHOUT DAMAGING YOUR PARTNER)?”

The commentators explain that **Rav Poppa** meant that in such a venture, before dividing up the wine, expert appraisal is needed so this case differs from dividing up the cash itself.

The *Gemara* relates that the *Kusi* said to **Rav Poppa**, “I see that you always side with him.” That is, when the issue was cash, *Kusi* A was holding them and he sold them, when *Kusi* B complained **R' Poppa** told him that he had no right to complain. This year, when the investment was wine, and *Kusi* B was holding it and divided it up, **R' Poppa** told him that he had done wrong! *Kusi* B was able to conclude only one thing. He accused **R' Poppa** of favoring *Kusi* A.

**Rav Poppa** said,

*“In such a case, he must be informed.”*

That is, as explained above, with cash there is **no need** for an appraisal by experts.

*“As for wine, everyone knows that some wine has good flavor and some wine has not such good flavor.”*

Unlike cash, **wine cannot be divided up** by one of the partners without the knowledge of the other, for **unless an expert assessment is made** of its value, he might take the superior barrels for himself and leave the inferior ones for his erstwhile partner.

## **“And you shall be clean before HaShem and Yisroel.”**

According to most *Rishonim*,

When the *Kusi* said to **Rav Poppa**, “I see that you always side with him,” and **Rav Poppa** reacted by saying, “In such a case, he must be informed,” **Rav Poppa**’s reaction was a ruling that applies to *Dayanim*.

**Rav Poppa** meant to say,

*“If a Dayan sees that one of the litigants suspects him of tilting the verdict against him, he must inform him of his reasoning, even if the litigant did not ask.”*

According to **Tosafos**,

The obligation exists not only when the losing litigant actually **says** to the *Dayan* that he harbors such suspicions, as the *Kusi* so brazenly said to **Rav Poppa**. Even if a *Dayan* simply **senses** that the litigant suspects him, the *Dayan* must explain why he ruled as he did. Even if at present, the *Dayan* does not sense that the litigant suspects him of wrongdoing, still, if he **recognizes** any reason why his ruling might later cause the litigant to doubt his integrity, he must explain his ruling, to clear himself of the suspicion, should it ever arise.

**Tosafos explains:**

The source for this idea is a verse in the Torah (*Bamidbar 32:22*),

*“And you shall be clean before HaShem and Yisroel.”*

The Torah commands each of us to do his utmost to remain guiltless not only in the eyes of G-d, but also in the eyes of one’s fellows. One should never do or say anything that causes one’s fellow Jew to suspect him of sin. At all times, one must do one’s best to remain beyond reproach.

To remain “clean” and “spotless” before HaShem is not easy, but to remain clean and spotless before people is very, very difficult, for human beings tend to be suspicious of one another and look for reasons to criticize.

**Tosafos** writes,

If a *Dayan* has no reason to think that the loser might suspect him of foul play, he is not obligated to explain why he ruled as he did. **Tosafos** then brings up the ruling of **Rav Safra** in Sanhedrin, for in Sanhedrin (31b), **Rav Safra** rules, “And if he (the loser) says, ‘Write out for me the reason(s) why you ruled against me,’ they write it and give it to him.” From the words of **Rav Safra**, asks **Tosafos**, it seems that the *Dayan* must explain his ruling even when the litigant has no grounds to suspect him of foul play!

Certainly, however, writes the **Rosh**, wherever the losing litigant **asks** the *Dayan* to explain why he ruled against him, the *Dayan* must adhere to the request. If he says to the *Dayanim*,

“Write out for me the reason(s) why you ruled against me,’ they write it and give it

to him.”

In other words, according to the **Rosh**,

It is critically important that **Rav Poppa** was speaking of a *Dayan* having to explain himself for his own sake, while **Rav Safra** was speaking of a *Dayan* having to explain himself for the litigant’s sake. **Rav Poppa** was speaking of where the *Dayan* must give an explanation of his ruling to clear himself of suspicion, even if the litigant **never asks** for an explanation. No request for an explanation is needed.

The *Dayan* has to explain his ruling in any case, to stay “clean” in the eyes of his fellow Jew.

## The Rulings of the Shulchan Aruch

Based on the incident with **Rav Poppa** in **Bava Metzia**, the **Mechaber** rules,

“SOME SAY THAT IF A *DAYAN* SEES THAT A LITIGANT SUSPECTS HIM OF TILTING THE VERDICT AGAINST HIM, HE MUST INFORM HIM OF HIS REASONING, EVEN IF THE LITIGANT DID NOT ASK.”

The **Sma** (*s.k.* 22) elaborates that this only applies when there are truly grounds for the losing litigant to be suspicious of the *Dayan*’s motives. However, otherwise there is no need for a *Dayan* to explain his ruling. In fact, if the sore loser expresses himself disrespectfully towards the *Beis Din* in frustration over losing his case, the **Sma** rules that he may be excommunicated for his scoffing.

The **Pischei Teshuva** (*s.k.* 8) elaborates that while the *Beis Din* is obligated to explain to the skeptical litigant the motive behind their ruling, it is considered disrespectful for him to explicitly challenge their decision. Rather, the *Dayan* should preemptively anticipate where his ruling might appear to be suspicious, and head off the litigant’s complaints by explaining his reasoning in advance.

Nevertheless, the **Pischei Teshuva** continues, the **Rema** rules that even when the litigant has the audacity to challenge the *Beis Din*’s ruling and one might think that due to his *chutzpa* we should ignore him, even when confronted by a rude individual the *Dayanim* should still present him with a written protocol of the case.

The **Rema** adds the ruling of **Rav Safra** in **Sanhedrin** that,

“All the more so if he says, ‘Write out for me the reason(s) why you ruled against me’.”



## What Exactly do we Write him?

According to the **Nemukei Yosef**, when **Rav Safra** speaks of local *Dayanim* judging a case and the loser demands, “Write out for me the reason(s) why you ruled against me,” and **Rav Safra** rules, “They write it and give it to him,” it does not mean as it sounds.

The **Nemukei Yosef** writes, “This is not to say that the local *Dayanim* must write out the reasons for their ruling and the proofs that were their basis for deciding against him. Rather, without details, they send (to the *Beis Din* where the appeal will be heard), ‘So-and-so claimed such-and-such while so-and-so claimed such-and-such (no names are mentioned), and as a result of what we heard it appears to us that so-and-so is in the right.’”

The *Beis Din* in the place where there are *Talmidei Chachamim* will know on its own the reason for the ruling.”

### **The Litigants and Reason for the Verdict is not mentioned**

In other words, one of the “details” that is missing from the communication to the higher *Beis Din* is why the *Dayanim* on the first *Beis Din* ruled as they did. Not only are the names of the litigants not mentioned. Neither is the **reason** for the verdict mentioned.

The **Sma** (*s.k.* 25) maintains that it is not necessary for the local *Beis Din* to explain their reasons. After all, the *Beis Din* that will hear the appeal is a higher and more qualified *Beis Din*, so why must they be told why the local *Dayanim* ruled as they did? Why bother? **If the higher *Beis Din* simply reads the claims, they will know on their own why the local *Dayanim* ruled as they did.**

### **When the *Dayanim* write, they do not supply their reasons:**

The **Rama** clearly accepts both aspects of this ruling of the **Nemukei Yosef**. That is, just as he accepts their view that **Rav Safra’s** ruling applies only when the litigant is judged against his will, he also accepts that the *Dayanim* need not write their reasons. The **Rama** sides with the **Nemukei Yosef** on this point.

## Questions and Answers

1. In the *Gemara*, Rav Safra speaks of the loser in litigation, if he says to the *Dayanim*, “Write out for me the reason why you ruled against me.” Rav Safra rules that the *Dayanim* must write and “give it to him.” Are the *Dayanim* required in every case to heed such a request?

According to **Rabbeinu Tam**, Rav Safra’s ruling applies only when the *Dayanim* judged the litigant against his will. According to **Rabbeinu Yerucham**, the ruling applies even when the litigant was not judged against his will. The **Rema** rules like **Rabbeinu Tam**.

2. According to the *Nemukei Yosef* and the *Rama*, why don’t the *Dayanim* have to write the reason? After all, the litigant who lost explicitly asked for the reason!

The **Sma** writes that the litigant is planning to appeal the decision to the *Dayanim* at the *Beis Din HaGadol*, the local *Beis Din* need write only the nature of the claims and the verdict. The *Beis Din* that will handle the appeal – the *Beis Din HaGadol* (where there are great *talmidei chachamim*) will know on its own the reason for the ruling.

3. If one of the litigants suspect the *Beis Din* of ruling unjustly, what should the *Dayanim* do?

If there is some basis for his suspicion, the *Dayanim* are obligated to explain to him the rationale behind their ruling. He should do this even without being asked to do so explicitly.

4. What if the loser of the litigation audaciously asks for the *Dayanim*’s reasoning in writing in order to appeal their ruling to the *Beis Din HaGadol*?

The **Pischei Teshuva** brings that even when the litigant is *chutzpadik* and explicitly accuses the *Dayan* of bias, the *Dayan* is still required to give him the protocol in writing so that he can submit it to a superior *Beis Din* for review.