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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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**Shiur #11: Forming a *Beit Din* with an Even Number of Judges
(*Beit Din Shakul*)**

Several *gemarot* in *Massekhet Sanherdin* allude to the requirement that a *beit din* contain an odd-number of judges. Although the avoidance of an even-numbered panel (*beit din shakul*) is not explicitly mentioned, it forms the basis of two important *halakhot*.

First, the base number of three *dayanim* may be pivoted upon the need to avoid even-numbered panels. According to R. Yonatan (*Sanhedrin* 3b), the fact that the *pesukim* in *Mishpatim* twice mention the word “*elohim*” (a mundane employment of the term, meaning “judges”) signifies the need for TWO judges. Since a court cannot contain an even-numbered panel, we add a third judge to arrive at the classic package of three *dayanim*. In effect, the avoidance of even-numbered courts is responsible for the generic three personed *beit din*.

A second effect of avoiding even-numbered panels can be detected in the assignment of 23 judges to a *Sanhedrin* *Ketana*. Through various *derashot*, the first *mishna* in *Sanhedrin* establishes that in theory 22 judges do not erase this intermediate body. However, since a court cannot be even-numbered, a 23rd judge is added.

Interestingly, this rule is not derived from any particular *pasuk*, but is presented as intuitive. An even-numbered *beit din shakul* can thwart potential verdicts by leading to deadlocked decisions. Is this the reason that *beit din shakul* is avoided – to technically facilitate verdicts? Or, is an odd number absolutely vital to secure the identity of a *beit din*? It seems likely that the halakha is rooted in the difficulty of verdicts for even-numbered panels. However, once prohibited, it is entirely possible that even-numbered panels are FUNDAMENTALLY flawed and are not halakhically identified as *a beit din*.

The obvious question involves an even-numbered *beit din* that convenes and arrives at a verdict; for example, a two member panel that issues a unanimous verdict. Would this verdict be halakhically binding upon the litigants? If even-numbered panels are technically troublesome since they may stunt a verdict, this verdict, which WAS generated by a two person panel, would be valid. If, however, an even-numbered panel is inherently flawed and is not considered a *beit din*, the verdict would be meaningless. This question is addressed by the Sha'ar Hamelekh and the answer would help determine the type of flaw that a *beit din shakul* constitutes

Of course, this question can also be analyzed by assessing a *beit din* that merely officiates but does not adjudicate. Often, *beit din* HOSTS an event but is not responsible to issue a verdict. Can such a *beit din* be composed of an even-numbered panel? The *mishna* in *Yevamot* (101a) requires three judges for the performance of *chalitza*. Tosafot question this need; presumably, *beit din* is merely hosting an EVENT without arriving at any decision. Tosafot defends the need for odd numbered panels for *chalitza* based on possible Talmudic uncertainties. Although the PARTICULAR case requires no deliberation, the halakhic variables still possess enough uncertainties to require odd-numbered panels to arrive at decisions.

However, Tosafot are puzzled about the need for odd-numbered *batei din* for processing a special "*par*" *korban* offered when *beit din* itself issued an incorrect ruling. This case possesses no halakhic uncertainties and does not require any verdict, and it therefore, should not require an odd-numbered panel. In their first answer, Tosafot rule that this case of sacrificing a “*par*” can also yield uncertainties (such as how to perform *semicha* upon the *par*), and an odd-numbered panel is therefore necessary. Following this approach, Tosafot can only justify the need for an odd number IF a verdict is feasible. In theory, in situations in which absolutely no verdict will unfold, an even-numbered *beit din* would be valid.

In their second answer, Tosafot alter their view of this rule. Even if NO verdict will be necessary, even-numbered courts are invalid INHERENTLY. Hence, a *beit din* for *chalitza* OR for processing a *korban* on behalf of the *Sanhedrin* must be odd-numbered simply to qualify as a halakhic *beit din*.

These two answers in Tosafot in *Yevamot* disagree about the function of odd-numbered panels. In their first answer, Tosafot maintain that they are a mere technical necessity, which can, in theory, be dispensed with, if no verdict is necessary. By contrast, the second approach of Tosafot assumes that odd-numbered panels are a UNIVERSAL requirement for all *batei din*, whether they ADJUDICATE or merely HOST halakhic ceremonies. It represents a basic and structural ingredient of *beit din*.

Similar logic emerges from a Tosafot in *Megilla* (23b) regarding a *beit din* of ten, which determines value of lands that were donated to *hekdesh* and are now being redeemed. Tosafot asserts that a *beit din* of 10 violates the rule against even-numbered *batei din*. To answer Tosafot’s question it seems logical to claim that this *beit din* merely ASSESSES fixed land values and will not adjudicate. Perhaps this *beit din* – which does not generate verdicts – can be even-numbered. In raising this question, Tosafot assume that an odd-numbered panel is a universal requirement governing every possible *beit din*. In fact, the Ritva DOES justify the even-numbered *beit din* for land evaluation based on the absence of real verdicts. Evidently, he did not view the need for odd-numbered *batei din* as an inherent requirement, but rather as a technical need that can be suspended if verdicts aren’t likely.

A second scenario to help analyze our question would involve a situation in which even-numbered panels would BETTER facilitate verdicts. If the odd number requirement were purely logistical, perhaps even-numbered panels that FACILITATE verdicts are preferable. If the requirement is inherent, however, even-numbered panels can never be acceptable. The *gemara* in *Sanhedrin* (17a) cites a situation in which a *Sanhedrin* of 23 deliberating capital punishment becomes deadlocked at 11 vs. 11, with one judge recusing himself because he cannot reach a verdict. In this situation, R. Avahu advocates adding two judges to the panel. (One judge would, in some cases, be insufficient, as capital punishment can only be administered if a majority of two judges incriminate.) Effectively, R. Avahu crafts a *beit din* of 24 to more expeditiously arrive at a verdict. The quickest way to break a stalemate of 11 is to add two and hope that they will rule similarly. Does this policy suggest that R. Avahu (and, by extension, the *gemara*, which adopts his position) believes that odd-numbered panels are NOT INHERENT to *beit din*, but merely logistical? Generally, odd-numbered panels facilitate verdicts. In this example, however, an even-numbered panel can BETTER enable a verdict and is therefore preferable!!

Those who assume that odd-numbered panels are fundamental, would have to understand R. Avahu in two possible fashions. First, he may not view the undecided judge as SUSPENDED from the court. Perhaps he still participates in the judicial process even though he does not offer an opinion that will determine the verdict. Perhaps this *beit din* is actually composed of 25 judges, not 24!

Alternatively, perhaps this *beit din* has already been endowed with a legally valid status as *beit din* since it began as a court of 23 judges, an ODD number. Even though subsequent events compelled the reconstitution of this court into one of 24 judges, perhaps it can still be considered a halakhically valid court based on its INITIAL composition as an odd-numbered panel. This second alternative may be preferable, since the ensuing discussion in the *gemara* implies that the undecided judge is suspended and NOT considered part of the *beit din* (namely, he can no longer offer his opinions). Effectively, the court is comprised of 24 – a classic even-numbered panel. Those who maintain that even-numbered panels are inherently flawed (for example, the second opinion of Tosafot in *Yevamot*) would be forced to justify R. Avahu's suggestion based on the fact that INTIALLY this *beit din* was odd-numbered and was halakhically valid. Once validated as a *beit din*, the group can no longer lose their status.

Without question, however, the “simpler” way to understand this halakha is by assuming that odd-numbered *batei din* are merely logistical preferences. In this specific case, logistics are better served by an even-numbered *beit din*.