

Korah 5777

Thank You, Hashem! Part 2

The Laws of Birkat HaGomel

By Rav Mordechai Lebhav[1]

Nine or Ten?

As mentioned previously, *Birkat HaGomel* must be recited in the presence of a *Minyan*. There are differing opinions as to whether or not the person reciting it counts as part of the ten or if there need to be at least ten men in addition to the person reciting it. Practically speaking, the one reciting *Birkat HaGomel* may be considered part of the *Minyan* and recite it as long as there are at least nine other men.

At the Sefer Torah

The general custom is to recite *Birkat HaGomel* in the presence of a *Sefer Torah*. The *Nimuke Yosef* (*Berachot* 54) writes that since the verse in *Tehillim* alludes to reciting the blessing before Torah scholars, the Torah is a fitting substitute to them. According to this opinion, one would not need to receive an actual *Aliya* to recite *Birkat HaGomel*.

Ribbi Aharon HaLevi and other *Rishonim* state that another reason is that it is preferable to recite the blessing with an *Aliya* to the Torah is that just as one is performing a *Mitzva* by going up to the Torah, one should follow it up with another *Mitzvah*. It should be noted that, although it is preferable to receive an *Aliya*, or at least to recite the *Beracha* in the presence of the *Sefer Torah*, it is not an obligation. Indeed, the *Bi'ur Halacha* (§134) says that one is not permitted to take an *Aliya* from someone who has a *Yahrtzeit* or a *Bar Mitzvah* so that one could recite *Birkat HaGomel*.

What's the Time Limit?

The *Shulhan Aruch* (*Orah Haim* 219:6) says that one may recite *Birkat HaGomel* at any time after one traveled, left the hospital etc., but that it is proper to

recite it within three days of the event. Some opinions suggest that there is a possibility of reciting a blessing in vain if it is recited after three days, but the *Halacha* follows the *Shulhan Aruch*. This too was the ruling of Hacham Mordechai Eliyahu. One explanation is that *Birkat HaGomel* is analogous to the *Korban Toda*, which does not have a time limit.

Birkat Hagomel for Dangerous Situations

As we mentioned in our previous article, there are four situations which warrant reciting *Birkat HaGomel*: imprisonment, illness, traversing the sea and traversing the desert.

The *Shulhan Aruch* (*ibid.* 9) records a dispute regarding whether or not *Birkat HaGomel* is to be recited after dangerous situations, other than these four. In this context, a dangerous situation involves one where there was a real possibility of loss of life (חיי) or serious injury. For example, one who was hit by a car and survived the crash [being nearly hit by a car, is not considered by the *Poskim* as part of this discussion].

Ribbi David Abudraham (*Hilchot Berachot, Sha'ar Shemini*) says that *Birkat HaGomel* was instituted only for the four specific situations and therefore one would not recite the blessing after other miraculous events. On the other hand, the *Riva"sh* (*Teshuva* 337) says that the *Gemara* explains that the blessing is recited on those four situations because they are understood to be very dangerous, but that it is not an exhaustive list.

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The *Ben Ish Hai* (*Parashat Ekev*) says that these four miracles could easily be mistakenly attributed to nature and thus they were included in the blessing to show that they were from *Hashem*, but not to the exclusion of other situations.

The *Shulhan Aruch* concludes that since it is a matter of dispute, one should recite *Birkat HaGomel* without *Hashem's* Name. Rabbi Avraham Azoulay (grandfather of the *Hid"á*, in his gloss to the *Levush*, §219), the *Hid"á* (*Mahazik Beracha* and *Haim Sha'al*, vol. II, § 15), the *Bet Oved* (pg. 104, § 13) all concur. On the other hand, Ribbi Yehuda Ayash (*Bet Yehuda*, § 6) and Ribbi Shalom Messas (*Shemesh U'Magen*, vol. III, § 63) write that *Birkat Hagomel* with *Hashem's* Name should be recited anytime one came out of a dangerous situation. It should be noted that, generally speaking, the *Ashkenazic* approach is to also recite *Birkat Hagomel* after surviving a dangerous situation. Nevertheless, it appears that the mainstream Sephardic custom is to follow the *Shulhan Aruch's* opinion.

Footnotes:

[1] Adapted by Dr. Emile Amzallag

HIGH BET DIN OF... APPEALS?

Is there a concept of appealing a Bet Din's decision in Halacha?

By Dayan Yitzhak Grossman

Introduction

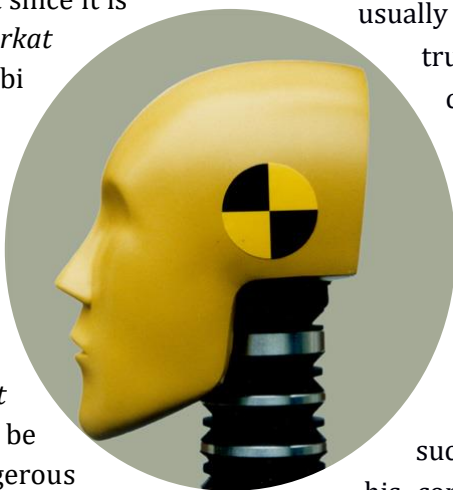
In most modern judicial systems, a litigant who is unhappy with a ruling issued against him by a local or district court may request to have the case reexamined by a higher-level court. The higher court can then uphold, or override, the earlier decision of the lower court, which is known as the "appeals system." Does the option of an appeal exist in the Torah system of judgment as well, i.e., when it comes to the decision of a

Bet Din? May an appeal be made elsewhere by a litigant after a decision was rendered in one *Bet Din*?

At first glance, it would seem that the answer is no, as no explicit mention is made of such an option in the *Gemara* or *Shulhan Aruch*. The decision of *Bet Din* is usually assumed to be final. However, in truth, the issue is somewhat more complex, and there are sources that do seem to indicate that this may be a possibility. In this series, we will explore the various sources on the topic and attempt to discern whether this is indeed possible, and under what circumstances.

The first possible mention of such an option is made by the *Sforno* in his commentary on *Humash*. When Yitro, Moshe's father-in-law, visits the Jewish people, and suggests the idea of appointing multiple judges to ease Moshe's burden in dealing with every single dispute, he refers to creating "*Sare alafim, sare me'ot, sare hamishim v'sare 'asarot*" – "officers of thousands, officers of hundreds, officers of fifties and officers of tens" (*Shemot* 18:21). *Rashi* cites *Hazal* who explain that this refers to a hierarchy of multiple levels of judges. The lowest level judges would each administer to the needs of groups of ten individuals, the next level judges would oversee the legalities of a total of fifty people, and so forth[1].

However, the nature of the relationship between the different level judges is still somewhat unclear: if the *Sare 'Asarot* would advise the people, the other levels of judges should not be necessary! Although the simplest explanation is that the higher-level judges were needed for cases where the lower-level judges were unable to answer the question, the *Sforno* suggests that the cases began at the lowest level, but one who felt the verdict was unfair would go to the next level and "appeal" his case. If after that hearing one of the parties still felt the ruling was not fair, they would bring the case to the next level judge, and so forth. Such a system – parallel to today's appeals system – would ensure that Moshe would only hear the toughest cases. However, this



comment of the *Sforno* cannot necessarily serve as a *Halachic* basis for an appeals system, since the *Sare 'Asarot* system which was employed in the *Midbar* does not directly parallel that of the system of *Bate Din* later developed by *Halacha*.

Does One Bet Din Review the Decisions of Another?

As mentioned, the *Gemara* does not address this issue directly. However, there are one or two passages that may be somewhat relevant to the question. The *Gemara* (*Bava Batra* 138b, *Yevamot* 106a) discusses whether a *Bet Din* must verify the background of a man and woman who apply for a *Halitza*[2]³ (the release of a deceased childless brother's wife). According to *Rava*, they must do so, as another *Bet Din* who hears the case afterward will rely on the previous *Bet Din*'s investigation: "*Bei Dina battar Bei Dina la dayke*" – "a *Bet Din* does not investigate matters that have been dealt with in a another *Bet Din*".

The simple interpretation of the *Gemara* is that in that this rule is simply descriptive of what occurs: a *Bet Din* will not question or review the ruling of another *Bet Din*. It does not seem to imply that a *Bet Din* is prevented from doing so. However, a number of *Rishonim* seem to interpret this statement as saying that a *Bet Din* is not supposed to review the decision of an earlier *Bet Din*.

Interpretations of the Rishonim

The *Rosh* seems to take this approach in a *Teshuva* (*Teshuvot HaRosh* 85:5), where he says he is surprised that his correspondents were asking him a question about the ruling of another *Bet Din*, as once that *Bet Din* has already ruled, it is impossible to issue an opposing *P'sak*, citing this *Gemara* as proof. Although the *Rosh* notes that the earlier *Bet Din* in that case consisted of "*Anashim Gedolim V'Nichbadim*" – great and esteemed individuals, many *Aharonim* claim that this does not affect the rule, and regardless of the stature of the first *Bet Din*, another *Bet Din* may not discuss the case again.

A similar ruling is issued by the *Haze HaTenufa* (which is attributed to the *Rosh*, cited in *Bet Yosef* H.M. 12:16), where he discusses one who won a case in *Bet Din*, whereupon the loser attempted to bring the case to another *Bet Din*. Here too, the author rules that the winner is not required to go a second time, or even respond at all. In addition, he says that the second *Bet Din* is not even permitted to listen to the case, since the first *Bet Din* had already ruled on the matter.

There is also a third *Teshuva* written by the *Rosh*, which is a bit harder to understand. He says that if two parties accepted the authority of a single *Dayan* to rule in their case as opposed to the usual three, may not retract their consent to the *P'sak*, even if they both agree to retract. This seems very difficult to understand: they are surely allowed to reach any compromise they wish to reach before going to a *Bet Din*, why then can't they mutually agree to retract their consent?

The *Bet Yosef* raises this question and cites two possible answers. He prefers the second answer, that retracting their agreement to litigate in one *Bet Din* is a disrespect of its honor. The *Rama* in *Darke Moshe* argues that the issue of disrespect is irrelevant here: If the parties do not agree, then the ruling of the first *Bet Din* remains binding, and if they agree to a different compromise, then they are simply agreeing to a new deal, which is in no way a lack of respect to the *Dayanim*.

Still, the *Bach* and other *Aharonim* agree with the *Bet Yosef*, and rule that out of respect to the original *Dayan*, one may not go to another *Bet Din* or attempt to reach a separate resolution. The *Bach* explains that the *Rosh* means that even if the litigants disregard the prohibition and go to another *Bet Din*, the second *Bet Din* itself is not permitted to listen to the case. According to the *Bach*'s understanding of the *Rosh*, all three of his responsa revolve around the issue of *Kavod Bet Din* – honor of the *Bet Din*.



Thus, the *Bet Yosef* and *Bach* introduce a new dimension to the issue of appeals: We would think that the question of whether appeals are allowed according to the *Halacha* focuses on the rights of the litigant, who feels that he was not properly heard out in the first case, but according to this approach, there is also an additional concern of maintaining the honor of the first *Bet Din* as well!

This dual approach is adopted by the *Hoshen Ha'Efod* (H.M. 42) in addressing the appellate system in his day (see below for more on the background of his ruling). He claims that this idea originates in the responsa of the *Hazeh HaTenufa*, and rules that appeals are not permitted. He explains that this is both because the winning litigant should not need to reargue his case, plus the issue of *Kavod Bet Din* requires that we not disregard the first ruling, and that the *Hazeh Tenufah* accepted both of these ideas as true.

The *Hoshen Ha'Efod* also cites a *Teshuva* of the *Edut B'Yaakov*, who indicates that he is not concerned with the issue of *Kavod Bet Din*, but the *Hoshen Ha'Efod* says the *Halacha* does not follow this minority position. He elaborates that one might argue that the losing party may argue that he holds like the opinion of the *Edut B'Yaakov* to avoid paying (a concept known as "*Kim Li*" – invoking a minority opinion to keep your money). However, the *Hoshen Ha'Efod* refutes this, as no other *Bet*

Din will be willing to take the case anyway, due to the consensus of most of the other *Poskim*. Therefore, the litigant will be forced to accept the first ruling.

Furthermore, argues the *Hoshen Ha'Efod*, the notion of "*Kim Li*" should not apply where it may infringe on the prohibition of disrespecting a *Talmid Hacham*. Therefore, the *Choshen HaEfod* concludes that one may not appeal a decision in *Bet Din*.

Another *Teshuva* cited by the *Hoshen Ha'Efod* and others is authored by the *Ran*, who apologizes to *Dayanim* for apparently issuing a ruling that he then discovered had been ruled upon by them already. He exclaims that had he known, he would have sent the litigant away, since one who argues against the ruling of *Bet Din* is meaningless. Clearly, the *Ran* maintains that this may not be done, and he too seems concerned about *Kavod Bet Din*, since he apologizes to the *Bet Din*, not to the litigants.

Sources:

[1] There are other explanations given for this as well. Ibn Ezra understands that the "thousands" and "hundreds" refer to the servants and helpers, not the people whom they were supposed to judge. Therefore, *Sarei Alafim* refers to prominent individuals who had thousands of servants or other staff, and *Sarei Me'ot* means those who had hundreds of servants.

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