

will reply to him, if they do not know, everyone comes to the Chamber of Hewn Stone, to the Supreme Sanhedrin, and presents the question. If the matter that was unresolved by all [the others] was known to the Supreme Sanhedrin - either as part of the Oral Tradition or because of its derivation through the principles [of exegesis] - they relate [the decision] immediately. If, however, the decision was unclear to the Supreme Sanhedrin, they deliberate about the matter at that time and debate it back and forth until they reach a uniform decision, or until a vote is taken. [In such a situation,] they follow the majority and then tell all the questioners: "This is the halachah." [The questioners] then all depart.

After the Supreme Sanhedrin was nullified, differences of opinion multiplied among the Jewish people.²¹ One would rule [an article] is impure and support his ruling with a rationale and another would rule that it is pure and support his ruling with a rationale. This one would rule [an article] is forbidden and this would rule that it is permitted.

5. [The following rules apply when] there are two sages or two courts that have differing opinions in an age when there was no [Supreme] Sanhedrin or during the time when [the Supreme Sanhedrin] was still undecided concerning the matter²² - whether in one age or in two different ages²³ - one rules that an article is pure and one rules that it is impure, one forbids [an article's use] and one permits it. If one does not know in which direction the law tends, [should the matter involve a question] of Scriptural Law, follow the more severe opinion. [If it involve a question] of Rabbinic Law, follow the more lenient opinion.

CHAPTER TWO

1. When, using one of the principles of exegesis, the Supreme Sanhedrin derived a law through their perception of the matter and adjudicated a case accordingly,¹ and afterwards, another court arose² and they perceived another rationale on which basis, they would revoke [the previous ruling], they may revoke it and rule according to their perception. [This is reflected by the Mishnah.

21. See Sanhedrin 88b which states: "When the students of the Schools of Shammai and Hillel who had not studied under their masters sufficiently multiplied, differences of opinion increased among the Jewish people and it became as if there were two Torahs." See also the discussion of the matter in the Rambam's Introduction to His Commentary on the Mishnah.

22. I.e., the Supreme Sanhedrin had not reached a decision, and an action had to be taken immediately (see Lechem Mishneh).

Our translation follows the version in the standard printed texts of the Mishneh Torah. According to certain authoritative manuscripts and early printings, the version is "or the

אם ידעו - אמרו להו: ואם לאו - תכל בארין ללשפת תנונית לביית דין תגדול ושוואלין. אמרם תנויה תדבר שוולד לכל ידוע אצל בית דין תגדול, בין מפי תסקבלה בין מפי תמדת שדנו בה - אוקרים מיד; תנויה לא תנה תדבר פרוי אצל בית דין תגדול - דנין בו בשעתו, ונשאין ונתנוין בדבר, אעפ"י שיעסקמו פלו, או יעמדו למנון וילכו אחר ה"ב, ויאמרו לכל תשוואלים: קו תלכה, הולכין להו.

אשכפסל ביה דין תגדול רבקה מהלכות בישרא, זה מטבא ונתן טעם לדרבני, וזה מקטבא ונתן טעם לרבני; זה אוקר, וזה מתרי.

ד שני תבקים או שני בתי דין שגדלו שוולדין שלא בזמן תפנתודין, או עד שלא תנה תדבר תדור לכו, בין בזמן אחר בין בזה אחר זה, אחר מטבא ואחר אוקר ואחר אוקר ואחר אוקר, אם אינה יודע להיכן תדור ויטה: בשל תורה - תלך אחר תפנתודין, בשל סופרים - תלך אחר תפנתודין.

פרק שני

א ביה דין גדול שגדלו שוולדין פרוי מה שפנתודין שיהיו קה, ודנו ויעמד אחריתם ביה דין אחר, ויקראה לו טעם אחר לכתו אותו - תרי זה סותר, וך פרי מה שפנתודין פקיעין.

matter did not reach them," i.e., the decision had to be made before the matter could be taken to the High Court.

23. From the Rambam's wording, one might think that if a later court comes to a decision based on their appreciation of the subject, the principles mentioned below are followed despite the fact that a previous court had ruled differently. Even if the former court was greater in wisdom and in the number of adherents (see Chapter 2, Halachot 1-2), the latter court's decision may be followed, as stated by Rabbi Yehoshua ben Korcha in Avodat Zarah 7a (see Kesef Mishneh).

Rav Moshe HaCohen and the Lechem Mishneh differ and cite a responsum of the Rashba (Vol. I, Responsum 253) which states that the ruling depends on which court is greater in wisdom and in the number of adherents. The Rashba does state there is room for leniency if the matter involves a major loss. This view is cited by the Ramah (Chosh Mishpat 25:2).

1. I.e., not only did they teach the matter in theory, they actually had their concept applied in practice.

2. It would appear that this would apply even if the later court was lesser in wisdom and in the number of adherents than the court that made the original ruling (Radbaz).

Deuteronomy 17:9]: "To the judge who will be in that age."³ [This indicates] that a person is obligated to follow only the court in his own generation.⁴

2. [The following rules apply when] a court issued a decree, instituted an edict, or established a custom⁶ and this practice spread throughout the Jewish people⁷ and another court arose and sought to nullify the original order and eliminate the original edict, decree, or custom. [The later court] does not have [this authority] unless it surpasses the original court in wisdom⁸ and in its number of adherents.⁹ If it surpasses the original court in wisdom, but not in the number of adherents, or in the number of adherents, but not in wisdom, it cannot nullify its rulings. Even if the rationale for which the original court instituted the decree or the edict is nullified, the later court does not have the authority to negate [their rulings] unless they are greater.¹⁰

How is it possible that [the later court] will surpass [the original court] in number? For every [Supreme *Sanhedrin*] consists of 71 judges.¹¹ [The intent is] the number of sages in the generation who consent and accept the matter stated by the Supreme *Sanhedrin* without opposing it.

3. When does the above apply? With regard to matters that were not forbidden to create a safeguard for the words of the Torah, but rather [resemble] other Torah laws. [A different principle applies,] by contrast, with

3. *Rosh Hashanah* 25b states: "Would you think that a person would go to a judge that was not in his age? Instead, the intent is that he should follow the judge in his age.... Yerubaal in his generation is like Moses in his generation. Yiflach in his generation is like Samuel in his generation." Although Yerubaal and Yiflach represented - to make an understatement - less than the epitome of wisdom and righteousness, a person in their generation was enjoined to follow the rulings of their courts.

The concept that a lesser court can challenge the rulings of a previous court of greater stature appears to be supported by the Rambam's statements in his Introduction to the *Mishneh Torah* where he states that after the conclusion of the Talmud, the *Geonim* of one generation can challenge the rulings of the *Geonim* who preceded them. Nevertheless, it appears to be contradicted by his statements there that no later sage can challenge the rulings made by the Sages of the Talmud. Similarly, in the Talmud itself, it appears that the Sages of the Gemorah (the *Amoraim*) would not challenge the rulings of the Sages of the Mishnah. Thus it would seem that there were cut-off points at which the Sages of one generation would not challenge the rulings of the Sages of previous generations.

The *Kesef Mishneh* explains that it is possible to explain that, after the conclusion of the Mishnah, all the Sages accepted the general principle not to challenge the rulings of the Mishnah, and similarly, after the conclusion of the Talmud, not to challenge the rulings of the Talmud. When, however, there are no general principles of this nature in effect, the principle stated by the Rambam in this halachah applies. See also *Hilchot Sanhedrin* 6:1.

4. The *Or Sameach* relates that this principle explains why the Rambam calls the laws derived through the principles of Biblical exegesis, *divrei sofrim*, "the words of the Sages." For their interpretation is dependent upon the Sages of each generation.

בית דין שצדור גזרה או תקנה פקדה ונתנהיגי מנהג, ופשט הדבר בכל ישראל, ונעמד בתוריהם בית דין אחר וקפוש לכתל דברים הראשונים, וליעקר אותה תפקדה ואותה תפודה ואותו המנהג - אינו יכול ער שיעדיה גדול מן הראשונים פהקמה ופמנהג.

יהי גדול פהקמה אכל לא פמנהג, פמנהג אכל לא פהקמה - אינו יכול לכתל את פקדיה. אפלו כטל טעם שפגללו גדור הראשונים או התקנה - איר האחרונים יכולין ככטל ער שיעדיה גדולים מהם.

ויאמר יהיה גדולים מהם פמנהג, הואיל וכל בית דין ובית דין על שבעים ואחד הוא? ומוני תקנה הדור, שהספיקו וקפלו הדבר שאמרו בית דין תפודול ולא תלקו בו.

פכהמה דברים אמורים? בדרברים שלא אסרו אותן פרי לעשות סגן לתורה, אלא פשאר

5. The Supreme *Sanhedrin* as indicated by the following halachah.

6. I.e., instituted a halachic practice on their own authority.

7. See Halachot 5-7.

8. In his Commentary to the Mishnah (*Ediot* 1:5), the Rambam interprets this term meaning that the head of one court will be more renowned for his wisdom than the head of the other court.

9. The Ra'avad takes issue with the Rambam's statements, maintaining that once a decree has gain widespread acceptance within the Jewish community, it may not be nullified even by the prophet Elijah and his court. The Ra'avad's position is based on *Avodah Zara* 36a which makes such a statement with regard to the 18 matters in which the School of Shammai's opinion was accepted over that of the School of Hillel's (see *Shabbat* 17a). Radbaz and the *Kesef Mishneh*, however, explain that these 18 matters represent exception to the rule (see also the notes to Halachah 3). With regard to other matters, Rambam's ruling is accepted.

10. *Beitzah* 5b derives this concept from God's directives to the Jewish people before Giving of the Torah. At first, He forbade sexual relations for three days in preparation for the Giving of the Torah. After the Giving of the Torah, there was a special command for the Jews to resume relations. Otherwise, although the reason for the safeguard had already been nullified - for the Torah had already been given - the original prohibition would remain in effect.

The Ra'avad takes issue with this concept as well, stating that if the rationale for an edict or decree has been nullified, the edict or decree can be nullified even if the rationale which does so is lesser than the court which instituted the decree. The Radbaz and *Kesef Mishneh*, however, support the Rambam's ruling.

11. We have been translating *biminyan*, lit. "in number," as "in the number of adherents" including the Rambam's resolution in the translation of the term from the outset. *O* (the Ra'avad in his commentary to *Ediot* 1:5) interpret "in number," as "in age."

regard to matters which the court sought necessary to issue a decree and create a prohibition as a safeguard.¹² If the prohibition spread throughout the Jewish people, another Supreme Sanhedrin does not have the authority to uproot [the decree] and grant license even if it was of greater stature than the original [court].¹³

4. A court may, however, suspend the application of such decrees temporarily, even if it is of lesser stature than the original [court]. [The rationale is that] these decrees should not be considered as more severe than the words of the Torah itself,¹⁴ and any court has the authority to abrogate the words of the Torah as a temporary measure.

What is implied? If a court sees that it is necessary to strengthen the faith and create a safeguard so that the people will not violate Torah law, they may apply beatings and punishments¹⁵ that are not sanctioned by Torah.¹⁶ They may not, however, establish the matter for posterity and say that this is the halachah.

Similarly, if they saw that temporarily it was necessary to nullify a positive commandment or violate a negative commandment in order to bring people at large back to the Jewish faith or to prevent many Jews from transgressing in other matters, they may do what is necessary at that time.¹⁷ [To explain by analogy:] Just like a doctor may amputate [a person's] hand or foot so that the person as a whole will live;¹⁸ so, too, at times, the court may rule to temporarily violate some of the commandments so that they will [later] keep all of them. In this vein, the Sages of the previous generations said:¹⁹ "Desecrate one Sabbath for [a person's] sake so that he will keep many Sabbaths."

5. When a court sees it necessary to issue a decree, institute an edict, or establish a custom, they must first contemplate the matter and see whether or

12. This ruling depends on the passage from Avodah Zarah 36a cited above. The Rambam maintains that the reason these 18 matters were given such power is because they were instituted as safeguards (Radbaz, *Kesef Mishneh*).

13. See the *Chatham Sofer* (*Yoreh De'ah*, Responsum 13) which states that this ruling applies only when the rationale for which the safeguard was originally instituted still applies. If, however, that rationale was nullified, a court that is of greater stature than the court which instituted the decree may nullify it.

14. I.e., although there are situations where we apply the principle (*Keivbot* 83b): "The words of the Sages are more severe than the words of the Torah," this is not one of them (*Kesef Mishneh*).

15. I.e., even capital punishment as indicated by the following note.

16. In that vein, the Rambam states (*Hilchot Sanhedrin* 24:4, quoting *Sanhedrin* 46a): "An incident occurred where they had a man lashed for engaging in relations with his wife under a tree. And an incident occurred concerning a person who rode on a horse on the Sabbath in the era of the Greeks and they brought him to the court and had him stoned to death."

17. They must, however, clarify that their instructions are given only because of the immediate situation and should not be adopted as a permanent practice. The classic example of this is Elijah's confrontation of the prophets of Baal at Mount Carmel (1

בל דברים שראו בית דין לגזול ולקטוף ולעשות סג, אם פשט אסורן בקל וישאלו -
- בית דין גדול אחר כולו לעקור ולהמירן, אפילו היה גדול מן הירושלמיים.

וריש לבית דין לעקור אף דברים אלה לפי שעה, אף על פי שהוא קטן מן הירושלמיים;
אלא יהו גזרות אלו תמורין מדיברי תורה עצמה, שאפילו דברי תורה יש לכל בית דין
קרוי תוראת שעה.

עצד? בית דין שראו להחזיק הדת ולעשות סג כפי שאלא יעברו העם על דברי תורה -
וענין וענין שאלא פדין; אבל אין קובעין דידורו ואומרים שתקפה פה הוא.
1 אם ראו לפי שעה לקטל מצות עשה או לעבר על מצות לא תעשה, כדי להחזיר
להציל רבים מירשאל מלהפשל פדברים אחרים - עושין לפי מה
השעה.

ומ שתורפת חותך ידו או רגלו של זה, כדי שיהיה פלול; פך ברת דין מורים פומן מן
מנים לעבר על קצת מצות לפי שעה, כדי שיהקטמו [בלם].

רף שאמרו תקמים הירושלמיים: חלל עלי שבת אמת, כדי שישמר שבתות תרפה.
בית דין שוראה להן לגזול גזרה או להחזיק מנהג - צריך להחזיק

Kings, ch. 18). Although there is both a positive and a negative commandment it requires all sacrifices to be offered in the Temple, Elijah offered a sacrifice on Mt. Carr to prove God's supremacy to the people. In *Hilchot Yevodei Torah* 9:3, the Rambam discusses the issue within the context of the license granted a prophet to temporarily violate the Torah's commandments, stating:

If [the people] would have asked Elijah: "How can we violate the Torah command... he would have told them: "...Anyone who offers a sacrifice outside [Temple's premises] is liable for *karer*... [The present instance,] however, [is exception]. I am offering a sacrifice... at God's command to disprove the prophet's Baal."

Just as a prophet is empowered to take such license based on God's command, a court may take such license based on their own perception of the situation.

18. In his gloss to this halachah, the Radbaz writes:
The analogy is not appropriate unless we see the entire Jewish people as one body. Although their bodies separate them, since their souls are hewn out from a sin source, they are like one body, for the soul is of primary importance. Know this: From our master's words, it appears that the analogy applies to the *mitzvo*. They are like one body and the court may nullify some [of the *mitzvo*] so [the people] observe the rest. Both interpretations are correct.

According to the first interpretation, the intent is that we may punish some Jews quoted from *Hilchot Sanhedrin*) so that the observance of the people at large will remain intact. See also *Berachot* 54a which interprets Psalms 119:126: "It is a time to act, God; they have nullified Your Torah," as "They [i.e., the Sages] may 'nullify Your Torah because 'it is a time to act for God.'" The intent is that the sages may violate certain Torah commandments temporarily if they feel that doing so will allow the body of the Torah remain intact.
19. *Yoma* 85b. See the Rambam's statements in *Hilchot Shabbat* 2:1-3.

not the majority of the community can uphold [the practice].²⁰ We never issue a decree on the community unless the majority of the community can uphold the practice.

6. If a court issued a decree, thinking that the majority of the community could uphold it and after the decree was issued, the majority of the community raised contentions and the practice did not spread throughout the majority of the community, [the decree] is nullified.²¹ [The court] cannot compel the people to accept it.²²

7. [The following rule applies when a court] issued a decree and thought that it spread among the entire Jewish people and the situation remained unchanged for many years. If, after a long duration of time, another court arose and checked throughout the Jewish community and saw that [the observance of] this decree had not spread throughout the Jewish community,²³ it has the authority to negate [the decree]²⁴ even if it is of lesser stature than the original court in wisdom and in number of adherents.

8. Whenever a court repeals two [decrees], it should not rush to repeal a third decree.²⁵

9. A court has the authority to issue a decree and forbid something which is permitted and have its decree perpetuated for generations to come.²⁶ Similarly, it has the authority - as a temporary measure - to release the Torah's prohibitions.²⁷ What then is the meaning of the Scriptural prohibitions [Deuteronomy 13:1]: "Do not add to it²⁸ and do not detract from it"²⁹

[The intent is that] they do not have the authority to add to the words of the Torah or to detract from them, establishing a matter forever as part of Scriptural Law. This applies both to the Written Law and the Oral Law.³⁰

20. *Avodah Zarah* 36a derives this concept from the exegesis of a verse. It is, however, logically understood. Regardless of the Sages' positive intent, instituting a practice which people at large cannot uphold will lead to a weakening - and not a strengthening - of Torah observance.

21. I.e., it is not necessary for a subsequent court to undertake a specific action to nullify the decree. If it was not accepted by the community, it is nullified automatically.

One of the classic examples of this concept is Ezra's decree that a person who had a seminal emission is forbidden to recite words of Torah until he immerses himself in a *mikveh*. Most people were unable to observe this custom and therefore it was nullified. See *Hilchot Kriat Shema* 4:8.

22. The Ramah (*Yoreh De'ah* 228:50, based on *Piskei Mahari* 292) rules that individuals also are not obligated to observe such decrees.

23. See the *Kessef Mishneh* who debates whether the intent is that the decree never spread throughout the Jewish community (as is Rashi's view) or that at his time, its observance was not widespread. The latter interpretation would lead to the conclusion that even when originally, the Jewish people had by and large observed a decree, if it is not observed in a

ור ולידיע פתחקהו אם רב הצבור יכולין לעמוד בקו או אם איין יכולין לעמוד. וילעולם איין חזון חזונה על הצבור, אלא אם פון רוב הצבור יכולין לעמוד פנה.

ייע שגזרו בית דין גזרה, ודמוי שרוב הקהל יכולין לעמוד פנה, ואחור שגזרוהו פקדוהו. וזו פנה ולא פשטה פורב הקהל - תרי זו בטילה, ואיין רשאין לכתף את העם לקחת פנה. ודמוי שפשטה פנה ישראל, וקמור הדבר פון שנים רבות, וילאחור ופון קרובה עמור דיין אחר וברך פנה ישראל ורואה שאין אותה חזונה פושטה פנה ישראל - יש לו קבלת וצפילו קנה פחות מפרת דיין הראשון פתקמה ופמנין.

קבל בית דין שהתיר שני דברים - אל פמה להתיר דבר שליש.

וראיל ויש קבית דיין לגזור ולאסור דבר המותר ויעמוד אסורו לזרות, ופון יש להון אסורו אסורי תורה לפי שעה, פמה זה שחזקהוה תתורה: לא חסר עילוי ולא חגברת קבל בית דין שהתיר שני דברים - אל פמה להתיר דבר שליש.

later generation, it can be nullified. The *Kessef Mishneh* does not, however, conclusively accept either interpretation.

24. The Rambam's wording implies that since the original court was under the impression that the decree had spread throughout the Jewish community, the later court must nullify the decree. It is not automatically null and void.

One of the classic examples of this concept is the actions of Rabbi Yehudah Nesiah grandson of Rabbi Yehudah HaNasi, the author of the *Mishnah*. Rabbi Yehudah and court permitted the use of oil made by gentiles although the decree forbidding it had issued by the students of Hillel and Shammai, a court of far greater prestige. Rabbi Yehudah surveyed the Jewish community and saw that the decree had never observed. Therefore, he had the authority to nullify it.

25. *Avodah Zarah* 37a relates that after Rabbi Yehudah Nesiah repealed two prohibitions some of his colleagues pressed him to repeal a third. He refused, saying that this would cause his court to develop a reputation for leniency.

26. As stated in *Halachot* 2 and 3.

27. As stated in *Halachah* 4.

28. *Sefer HaMitzvot* (negative commandment 313) and *Sefer HaChinuch* (mitzvah count the prohibition against adding to the Torah as one of its 613 mitzvot).

29. *Sefer HaMitzvot* (negative commandment 314) and *Sefer HaChinuch* (mitzvah count the prohibition against detracting from the Torah as one of its 613 mitzvot).
30. I.e., the interpretation of the Written Law given to Moses at Sinai - "the mitzvah refer to the term used by the Rambam in his Introduction to the *Mishneh Torah* considered as equivalent to the Written Law itself. Just as it is forbidden to add or detract from a concept explicitly stated in the Torah; so, too, it is forbidden to add or detract the explanation of a practice conveyed by the Oral Law. The Rambam reiterates

