

CHAPTER ONE

1. The Supreme *Sanhedrin* in Jerusalem¹ are the essence of the Oral Law.² They are the pillars of instruction from whom statutes and judgments issue forth for the entire Jewish people. Concerning them, the Torah promises³ [Deuteronomy 17:11]: "You shall do according to the laws which they shall instruct you...." This is a positive commandment.⁴

Whoever believes in Moses and in his Torah⁵ is obligated to make all of his religious acts dependent on [this court] and to rely on them.

2. Any person who does not carry out their directives transgresses a negative commandment,⁶ as [*ibid.*] continues: "Do not deviate from any of the statements they relate to you, neither right nor left."⁷

Lashes are not given for the violation of this prohibition, because it also serves as a warning [for a transgression punishable] by execution by the court.⁸ For when a sage rebels against the words of [the court], he should be executed by strangulation, as [the following verse] states: "A person who will act deliberately...."

[We are obligated to heed] their words whether they:

- learned them from the Oral Tradition, i.e., the Oral Law,
- derived them on the basis of their own knowledge through one of the attributes of Biblical exegesis⁹ and it appeared to them that this is [the correct interpretation of] the matter,
- instituted the matter as a safeguard for the Torah, as was necessary at a specific time. These are the decrees,¹⁰ edicts,¹¹ and customs¹² [instituted by the Sages].

It is a positive commandment to heed the court with regard to each of these three matters. A person who transgresses any of these [types of] directives transgresses a negative commandment.¹³ This is [derived from the continuation of the above verse in the following manner]:

- I.e., the court of 71 judges described in *Hilchot Sanhedrin* 1:3. Since this book of the *Mishneh Torah* contains the laws pertaining to the establishment of the Supreme *Sanhedrin*, the Rambam mentions the laws governing a person who rebels against that court in the same book (Radbaz).
- As the Rambam explains in his introduction to the *Mishneh Torah*, from the Written Law alone, it is impossible to know how to observe the mitzvot. Instead, the explanation of their particulars was conveyed by the Oral Tradition from one generation to another. In each generation, the Supreme *Sanhedrin* in Jerusalem was considered the repository of that tradition and given the authority to clarify any and all questions regarding Jewish observance. Moreover, using the accepted principles of Biblical exegesis, they could develop new laws and insights.
- I.e., the Torah promises that there would be a High Court whose authority we are obligated to heed.

- Sefer Hamitzvot* (positive commandment 174) and *Sefer HaChinuch* (mitzvah 495) count this as one of the 613 mitzvot of the Torah.

There are commentaries who maintain that this mitzvah (and the negative commandment in the following halachah) apply only to the High Court which holds

פרק ראשון

בית דין הגדול שבירושלים הם עקר מורה שבעל פה, והם עמודי ההנהגה, ומתם חזק ושפט יוצא לקל ישראל, ועל יתן הבטחה מורה. שצאמר: על פי המורה אשר יורה – מצות עשה. וכל המאמין במשה רבנו ובתורתו – תיב לסמוך מצשה המורה על יתן ולשען יתן.

כל מי שאינו עושה כהנהגתו – עובר בלא תעשה, שצאמר: לא תסור מפל הדבר אשר גזיר לך גמיר ושמאל.

מיתתו בנתק, שצאמר: והאיש אשר בעשה כדודן ונזמר.

וד דברים שלמדו אותו מפי השמועה, והם מורה שבעל פה; חזר דברים שלמדו מפי דעתם באמת מן המורה שהמורה נודשת פתו, ונראה ליתן; שדברים שדבר זה קוד הוא;

חזר דברים שצאמר כיג להורה, ולפי מה שהשעה צריקה, והן הגזרות והפקנות מהנהגות –

אחד ואחד מאלו השלשה דברים מצות עשה לשמע להן, והעובר על כל אחד מהן עובר בלא תעשה.

sessions in the Chamber of Hewn Stone in Jerusalem. If it holds sessions elsewhere, e.g. when sitting with 71 judges, these mitzvot do not apply. There are, however, of authorities who differ and maintain that they apply regardless of where the court has session. The *Sefer HaChinuch*, *loc. cit.*, goes even further and maintains that these mitzvot include even the obligation to heed the directives of courts in the present era.

5. I.e., any believing Jew.

6. *Sefer Hamitzvot* (negative commandment 312) and *Sefer HaChinuch* (mitzvah 4) count this as one of the 613 mitzvot of the Torah.

7. On this verse, the *Sifri* comments: "Follow them even if they tell you that left is right." 8. I.e., in the case of a rebellious elder as stated in Chapter 3. See *Hilchot Sanhedrin* 1:1 which states that when a prohibition involves capital punishment, lashes are never given for its violation.

9. E.g., the thirteen principles of Biblical exegesis stated by Rabbi Yishmael at beginning of the *Sifra* (and quoted in the daily prayers) or other principles of this nature.

10. E.g., the prohibition against eating chicken in milk. See Chapter 2, Halachah 10.

11. E.g., the mitzvah of *eruv*; see *Hilchot Eruvin* 1:2.

12. E.g., the recitation of *Hallel* on Rosh Chodesh (*Hilchot Chanukah* 3:7). More particularly, in his Introduction to his Commentary on the Mishnah, the Rambam defines "decrees" as referring to practices instituted to safeguard the observance of mitzvot, and "edicts" and "customs" as referring to practices instituted on the basis of sages' understanding or because of mutual consent to regulate social norms or to b people to a more complete Torah experience.

13. The Rambam (*Hasagot* to *Sefer Hamitzvot*, General Principle 1) challenges

"According to the laws which they shall instruct you" - this refers to the edicts, decrees, and customs which they instruct people at large [to observe] to strengthen the faith and perfect the world.

"According to the judgment which they relate" - this refers to the matters which they derive through logical analysis employing one of the methods of Biblical exegesis.

"From all things that they will tell you" - This refers to the tradition which they received one person from another.¹⁴

3. There can never be any difference of opinion with regard to matters received through the Oral Tradition.¹⁵ Whenever a difference of opinion arises with regard to any matter, that shows that it was not received in the tradition from Moses our teacher.

[The following principles apply] with regard to matters derived through logical analysis.¹⁶ If the entire body of the Supreme *Sanhedrin* agrees with regard to them, their consent is [binding]. If there is a difference of opinion, we follow the majority and decide the matter according to the majority. Similarly, with regard to the decrees, edicts, and customs, if a portion [of the judges] perceived that it was necessary to issue a decree, institute an edict, or establish a custom for the people, and a portion perceived that it is not appropriate to issue this decree, institute this edict, or establish this custom, the judges should debate the matter back and forth. [Afterwards, a vote is called,] and we follow the majority and execute the matter according to [the decision of] the majority.

4. When the Supreme *Sanhedrin* was in session, there was never any [prolonged] differences of opinion among the Jewish people. Instead, if a doubt arose in a Jew's mind over any law, he would inquire of the court in his city.¹⁷ If not, the questioner and that court - or its agents - ascend to Jerusalem and ask the court which holds sessions on the Temple Mount.¹⁸ If they know, they will reply to him. If they do not know, everyone¹⁹ comes to the court that holds sessions at the entrance to the Temple Courtyard.²⁰ If they know, they

Rambam's ruling, stating that if so, anyone who violated a Rabbinic ordinance would be liable for lashing, for in effect he would be violating a Torah commandment. Similarly, the general principle - When there is doubt regarding to a question of Rabbinic Law, we follow the more lenient position, while when there is doubt with regard to a question of Scriptural Law, we follow the more severe position - would not apply. For all matters would involve Scriptural Law.

The *Kinyan Sefer* resolves the Rambam's ruling explaining that at the outset, the Sages established their ordinances with these leniencies in mind.

In *Yayin Matshu*, the Lubavitcher Rebbe explains the difference between the Scriptural commandments and the obligation to heed the rulings of the Rabbis as follows: Scriptural commandments can involve the *cheftza* (the physical substance of the article itself); the article is forbidden. Rabbinic commandments, by contrast, can involve only the *gavra* (the person observing the commandment); he is forbidden to perform the act (*Tzaphat Paneach*, Responsum 33). Hence since with regard to a Scriptural

הוא אומר: על פי המתנה אשר יורה - אלהי התקנות והצוויות והתקנות, שיהיה
 לרבנים כדי לתקן הדת ולהקטן העולם;

המשפט אשר יאמר - אלו דברים שיקבדו אותן מן הדין באחת מן תפוחות
 התורה גדשת קהן;

לדבר אשר יגידו לך - זו תקבלה שקבלו איש מפי איש.

בדין קבלה - אין קהן מתקנת לעולם. וכל דבר שתמצא בו מתקנה - בדין
 קבלה קבליה ממשנה רבנה. ודברים שלמדו מן הדין, אם תפנו עליהן בית דין
 וזל קבלן - הרי תפנו; ואם תחזקו קהן - הולכין אחר הרב, ומצויין הדין
 הרבים. וכן התורות והתקנות והמתנות, אם ראו מקצתן שראוי לגזר גזרה או
 תפנו או שפירו העם המנהיג הדין, וראו מקצתן שאין ראוי לגזר גזרה זו ולא
 תפנו תקנה זו ולא להנהיג מנהג זה - נושאין ונותנין אלו פתגם אלו, והולכין אחר
 ומצויין תדבר אחר הרבים.

שעה בית דין הגדול קים, לא היתה מתקנת בישראל. אלא כל דין שנוצל בו
 לא יאמר בישראל - שואל לבית דין שבעיר. אם ידעו - אמרו לו; אם לאו -
 הושאל עם אותו בית דין או עם שולחיו עוללי לירושלים ושואליו לבית דין
 הירושלמי. וכל פאין לבית דין שצל פתח העיר.

Commandment, the object itself becomes forbidden, we rule more stringently. This regards to a Rabbinic commandment, by contrast, since the object itself is not involved, there is room for leniency.

14. Extending back to Moses at Sinai.

15. Note the Rambam's Introduction to his Commentary on the Mishnah, where he elaborates on this subject explaining that there was never any difference of opinion among the Jewish people about which species to use on Sukkos. Although the description of some of the four species in the Torah do not give clear indications which species to use, the Jewish people have always employed the same four. Similarly, in all courts through our people's history, "An eye for an eye" (Exodus 21:24), has always been interpreted referring to financial payment, not actually gouging a person's eye out. These and similar matters have always been universally accepted.

16. I.e., points derived through the accepted principles of Biblical exegesis.

17. As stated in *Hilchot Sanhedrin* 1:3-4, a court of 23 judges should be established every city with at least 120 inhabitants. If there are less, a court of three judges established.

18. See *Hilchot Sanhedrin* 1:3 with regard to the description of the courts mentioned, and the following clause.

19. I.e., the questioner, the judges of his local court, and the judges of the court of Temple Mount.

20. I.e., within the Women's Courtyard, before the Nikanor Gates that lead to the Temple Courtyard.

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 a case rationale on which basis, they would revoke [the previous ruling], they may revoke it and rule according to their perception. [This is reflected by

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

הַדְּבָרִים - אֲמִירָה לְהֵן; וְאִם לֹא - הַכֹּל בְּאֵיךְ לְשִׁפּוֹת הַמְּגִידִים לְבֵית דִּין הַגָּדוֹל וְשׂוֹאֲלֵי. הַמְּגִידִים הַדְּבָרִים שְׂעוּלֵל בּוֹ הַטָּפֶק לְפָנָי יִדְוֹעַ אֲעָל בֵּית דִּין הַגָּדוֹל, בֵּין מִפִּי הַמְּקַלֵּה בֵּין מִפִּי הַשְּׂדֵנִי בֵּה - אֲוִמְרִים מִיָּד; לֹא תִהְיֶה הַדְּבָרִים בְּרִירָה אֲעָל בְּרִירָה הַגָּדוֹל - דְּיִנֵּן בּוֹ בְּשִׁעְתָּהּ, וְנִשְׂאֵר וְנִתְנֵן בְּהַדְּבָרִים שֶׁיִּשְׁפָּקִימוּ בָּלוּ, אִו עִמְדוֹ לְמִנְתָּן וְנִלְכְּו אַחַר הַרֵב, וְיִאמְרוּ לְכָל הַשׂוֹאֲלִים: הֵן הַלֵּכָה, בֵּין לְהֵן.

וְנִשְׂאֵר בֵּית דִּין הַגָּדוֹל רִבְתָּה מִחֻלְקָת בְּיִשְׂרָאֵל, זֶה מִטְּעָא וְנִתְנֵן טַעַם לְדְבָרֵי, וְזֶה וְנִתְנֵן טַעַם לְדְבָרֵי; זֶה אוֹסֵר, וְזֶה מְאִיר.

וְהַיִּתְקַמִּים אִו שְׂעֵן בְּתֵי דִינֵי שְׂעוּהֻלְקוּ שְׂלֹא בּוֹמֵן תִּפְתְּוֹדֵי, אִו עַד שְׂלֹא תִּהְיֶה הַדְּבָרִים לְהֵן, בֵּין בּוֹמֵן אַחַד בֵּין בְּזוֹת אַחַר זֶה, אַחַד מְטַהֵר וְאַחַד מְטַמֵּא, אַחַד אוֹסֵר וְאַחַד מְאִיר, אִם אֵינֶךְ יֹדֵעַ לְהִינֵן הַדְּבָרִים נִלְטָה: בְּשִׁל מוֹרָה - הַלֵּךְ אַחַר הַמְּתַקְנֵי, בְּשִׁל סוֹפְרִים - אַחַר הַמְּקַלֵּי.

פֶּרֶק שְׁנִי

וְדִין גָּדוֹל שְׂוֹדָשׁוּ בְּאַחַת מִן הַמְּדוֹת כִּפִּי מֵה שְׂוֹדָאָה בְּעִינֵיהֶם שְׂהִיזֵן בָּהּ, וְדִינוּ עִמְדוּ אַחֲרֵיהֶם בֵּית דִּין אַחַר, וְנִרְאָה לוֹ טַעַם אַחַר לְסַחֵר אוֹתוֹ - תִּרִי זֶה סוֹתֵר, וְדִן מֵה שְׂוֹדָאָה בְּעִינֵי.

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's greater in wisdom and in the number of adherents (see Chapter 2, Halachot 1-2), the greater in wisdom may be followed, as stated by Rabbi Yehoshua ben Korcha in *Azarah 7a* (see *Kessef Mishneh*).

Rav Moshe HaCohen and the *Lechem Mishneh* differ and cite a responsum of Rashba (Vol. 1, 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 leniency if the matter involves a major loss. This view is cited by the Rambam (*Choshen 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 in the number of adherents than the court that made the original ruling (*Radbaz*).