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A MOCK *BEIT DIN*: AN INTERACTIVE ASSESSMENT FOR *SUGYOT* IN *NEZIKIN*

I. Introduction

Every educator is confronted with the question of how to effectively test students' comprehension of material taught. While finding a way for students to demonstrate applied knowledge is preferable, we frequently lack a medium in our disciplines to achieve that goal. We cannot build a time-machine to test theories in history nor can we enact legislation to see if our policies might be better than the ones currently in place. Perhaps science teachers have it easier, since they can run experiments; but what of those of us teaching Talmud?

About thirteen years ago, I had an epiphany. I was about to sit down to write a standard three part exam testing the students on their knowledge of *mivneh ha-sugya* (*sugya* structure) could they tell the trees within the forest of the unit; *iyyun ba-rishonim* (analysis of the commentaries studied) and an unseen section that would test their application of the skills learned. Although I have found, and continue to find this an effective way of testing, I was struck with the idea I shall discuss. I was teaching the first *perek* of *Bava Metzia* (*Shenayim Ohazin*) and had studied numerous parallel *sugyot* with the students from later in the *masekhet*, as well as from *Shevuot*, *Bava Kama*, and *Bava Batra*. Testing all of these effectively was weighing on my mind, particularly because of the need to write the test prior to class. And then it hit me: How about a *Mock Beit Din*?

II. The Mock *Beit Din*¹

Schools from high school through law school have been employing a mock-trial or moot-court for years. The understanding of the process that I have acquired from my students is that they are given a specific case in which they prepare, as a team, to assume the different roles in a trial, including judge, witnesses, and attorneys. The students receive ample time to prepare both legally and theatrically for their presentation.

My conception of the Mock *Beit Din* is somewhat different. The Mock *Beit Din* serves as a final exam, capping off a year² of studying numerous cases surrounding the same theme--in my case, the concept of *mamon ha-mutal b'safek*--financial disputes between litigants. While the year begins with one mishnah providing one *din*, it ends with many variations on that theme. The Mock *Beit Din* serves to demonstrate to the students the practical applications of the cases and laws studied, making the material actual and relevant to their lives - rather than dry and impractical.

Toward this end, the Mock *Beit Din* involves five students at a time. Two serve as the *ba'alei din* – litigants, and three serve as the *beit din*. The litigants are given a card with a case written on it and any twists that I want incorporated (illustrated below). They are given a few minutes to go out into the hall to prepare a modern example of the case. Other than these two students, no one in the class is told what case is being tried.

For example, the students could be given a case of *shor she-nagah et ha-parah v'nimtza ub'rah b'tzidah* (*Bava Kama* 46a). An ox gores a cow, which dies as a result, and a dead calf is discovered alongside the mother. In such a case, each litigant claims that the other is responsible. The owner of the cow asserts that the ox is responsible for the death of the calf as well, thus making its owner liable, while the owner of the ox claims that the calf's death is unrelated to the goring of the mother, and that he is therefore not liable for its death. The students might prepare a case in which a parked car's emergency brake gives out and the vehicle rolls down a hill smashing into another car.³ The owner of the other car claims that in addition to the damage to his automobile, the smashed bike next to the car is also the fault of the accident. The owner of the car whose brake didn't function would claim that the bike's damage was not the result of the accident.

The *dayyanim* run the case once the *ba'alei din* reenter the room. They ask for each of the litigants to state his case, examine the facts, check for inconsistencies, and determine what relevant evidence, if any, exists upon which to base a judgment. Once the judges are satisfied that they have gotten all the relevant information, they leave the room to deliberate. While they are doing so, the class discusses its estimation of the case, what the litigants and judges did right or wrong, and what the possible judgment might be. Since there is frequently a *mahloket* involved in any case, there is likely to be more than one law. The *beit din* should, upon returning, deliver the majority opinion, and, if relevant, a dissenting opinion. It should be noted again that the *beit din* was not made aware of the case in advance. Part of their responsibility in asking questions was to determine the nature of the case with which they were presented.

In the case above, the court should deliver the opinion of the *Rabbanan* that *ha-motzi me-haveiro alav ha-re'ayah* – that the burden of proof is on the plaintiff--and, as such, no money should be paid for the loss of the calf. A dissenting opinion should be delivered as that of *Sumkhus* that *mamon ha-mutal be-safek holkin be-lo shevu'ah* – financial disputes lacking evidence should have the money in dispute split between the two parties without requiring an oath. As such, the owner of the calf would receive one-fourth of the value of the calf (since the maximum damages that could be paid in this case would be half the value, and half of that is one quarter).

III. Variations

I always tell the students that the job of the *ba'alei din* is to stump the *beit din*; the job of the *beit din* is not to be stumped. As such, the students creating the case are encouraged to include extraneous and irrelevant details, adding to the complexity and to the entertainment. Over the years, I started including such twists on the card with the case that the students are presenting. These can include one or two witnesses which alters the outcome, or concepts which are irrelevant to the case but which the class has learned, or pieces of evidence, some relevant, some not. If witnesses are to be called, other students in the class are used for this task.

The idea is to be thorough. Students who have spent several months studying what they may perceive to be dry material need

another way to look at it. By creating real, modern, relevant cases and engaging the system in a practical way, the pupils may change their minds about the value of Talmud education. No longer is this an uninteresting exercise in something old and inconsequential, but something fresh and relevant. The more complicated the twists, the more challenging the case becomes to unravel for the court and the more relevant the experience. Many students have approached me after the *Mock Beit Din* and indicated how meaningful and cool it was. For the term "cool" to be used by a high school student regarding Talmud is staggering. More relevant than the semantics is the affect it has on the student. No standard test can achieve this. To be sure, a test can challenge the students and force them to prepare and to think, but not allow them to take ownership of the material in the same way as the *Mock Beit Din*.

IV. Other Cases

1. *Ha-mahalif parah be-hamor (Bava Metzi'a 100a)*

The case as found in the Mishnah is that two people decide to trade livestock, specifically a cow for a donkey. This transaction does not even require that the two parties be in the physical presence of the animals. When they return for their newly acquired merchandise, it appears that the cow has given birth. The new owner of the cow claims that the calf was born after the trade, making it his property. The previous owner claims that the calf was born before the trade, and is therefore his.

Since there are no witnesses to the event, the question is clear: to whom does the calf belong? The inevitable question is why would anyone trade a pregnant cow? I have suggested that basically, the cow's first owner is aware of the pregnancy, and would like nothing better than for the calf to be born before the trade. However, he requires the donkey for labor that the cow cannot perform and which is likely time-sensitive, such as plowing a field for planting, and therefore has no choice but to make the trade.

It is a challenge to translate this case into a modern scenario. Students have suggested stock splits, spin-off technology³ or a change in appreciation/value. If memory serves, the very first time this exercise was done, students traded technologies for making robotic

monsters – “of course I planned to come back for my monster; I even purchased a seat on the plane for my monster.” (As luck would have it, this was the case that my supervisor observed.) One can have a field-day with this by suggesting the presence of witnesses, or one witness, although these might change the outcome of the case.

In the Mishnah, the decision is to split the value of the calf between the litigants. The Gemara suggests that it should be given to the person in whose domain the trade took place, while the other is subject to the burden of proof (*hamotzi me-haveiro alav hare'ayah*). This idea is rejected with the idea that the trade took place in a public area, owned by neither of the litigants. The Gemara then puts forward the idea that it should be established as the property of *mara qama* (the first owner) and places the burden of proof on the second. This is confirmed as law by the Tur, the Shulhan Arukh (*Hoshen Mishpat* 223:1), and, with potential variations, in the Rambam as well.

If the case were without complications, the correct law, according to the Gemara, would be to award the calf to the original owner of the cow unless the other could prove his case. A dissenting opinion could be that of the Mishnah: splitting the value among the litigants. If the transaction were to be in one specific person's property, awarding the calf to that litigant could be a dissenting opinion.

2. Shenayim she-hifkidu eitzel ehad (Bava Metzi'a 37a)

Two people give their money to a third party to hold, one giving him one hundred and the other two hundred. When they come to reclaim their money, each claims to have given two hundred. The *Rabbanan* say that each gets one hundred right away, and the remaining hundred, which is in question, should be held until the doubt is resolved. This suggestion is rejected by R. Yossi because it does not penalize the cheater: *im kein, mah hifsid ha-ramai?!* He therefore asserts that all the money should be set aside until the matter is resolved. This way, the one trying to get the extra hundred is deprived of all his money and may therefore be more “inspired” to tell the truth.

I have pointed out to my students that one does not necessarily have to assume that someone is trying to cheat. There are times when we might be certain of having more money than we do, only to later realize that we had forgotten having spent or set aside part of it.

Perhaps this is what is behind the rabbinic ruling to give each one hundred, and only hold the remaining hundred in question.

Here, students have suggested modern celebrities as their money holders. The case will resonate with anyone who has brought cash to an amusement park and goes on the water ride. Whoever chooses not to get soaked ends up holding everyone else's money. In this case, as the *Rabbanan* are the majority, the ruling should be in accordance with their opinion, with a dissenting opinion reflecting the views and concerns of R. Yossi. However, the Rambam (*Hilkhot She'eilah u-Pikadon* 5:4) indicates (as do the Tur and Shulhan Arukh [*Hoshen Mishpat* 300:1]) that if the litigants come to the money-holder and each claims two hundred, they take an oath (*shevu'ah*) and each gets two hundred. This, of course, means that the money-holder is out one hundred from his own pocket. According to the Rambam, he is being penalized as a *poshe'a*, for being negligent in not writing down who gave him what. However, if they don't make such a claim or if they give him the entire sum jointly, then the opinion of the Rabbis is followed: each gets one hundred, and the remainder is held (perhaps by the *beit din*) until the matter is resolved. Again, there are many variables that can affect a change in the outcome.

3. Henvani al pinkaso (Shevu'ot 45a)

A person's wages are paid by a third party. Although A worked for B, he is paid by C. C collects money from B to cover the wages. When A arrives at C, C checks his ledger and discovers that in it is written that A has already received his salary. Anyone who gets paid by a payroll service is familiar with this drill. A then approaches B and indicates that he doesn't really care what C has written in his ledger; he worked for B and expects to be paid by B. As luck would have it, C comes knocking at B's door to indicate that his ledger shows that A was paid, expecting to be reimbursed by B. He has no interest in A's complaints.

The Mishnah indicates that each side takes an oath and each receives what is owed him from B. Ben Nanas is concerned that this will cause a *shevu'at shav* (false oath) as their claims are mutually exclusive. Here, again, the first opinion represents the decision to be rendered, with Ben Nanas representing a dissenting view.

V. Precautions: Setting the Right Tone

Obviously, it is important to highlight for our students that this is not a real *beit din*, and it is equally important to discuss the differences, which may include rules of evidence, qualifications for being a witness, judge, etc. As some of these require more complicated and lengthier conversations, it may be worthwhile to have this talk in a class before or after the exercise.

In addition, due to the variables introduced by either your imagination, or that of the students, cases may be raised with different halakhic results. One example that comes to mind was when students created a case of damages consisting of one person running down the hall and knocking the purse out of another's hands onto the floor. Because the students' case involved people, the results would be different from the ones we had studied that involved animals. In such situations, the teacher needs to both grade the students based on their demonstrated knowledge of the concepts learned, but also correctly explain the various halakhic outcomes for the cases presented.

Over the years, a consistent complaint from students has been the amount of time given to prepare the case, namely the few minutes from the time they get the incident card. "If we were given the case a day in advance, we could prepare much better, and it would be more interesting for you." Although this may be true, I have consistently resisted that request. There is a much greater likelihood that with advance notice students will ask others for help, or share the case with the judges. I have always wanted to see how the students think and imagine on their feet.

A recurring opportunity I've enjoyed over the years with this exercise is the chance to laugh. Hopefully, your students will be entertaining when creating their cases. When the teacher chuckles appropriately along with everyone else, the experience becomes that much richer for the students. While this may not be the tone one wants in an actual court, I think we can allow it in a classroom. This may very well be what makes students look back at Talmud with a smile.

Students should be allowed to use whatever materials they want, which can include notes, translations, texts, etc. The reality is that the Mock *Beit Din* operates at a fast pace, which makes abuse of these materials unlikely. Many students over the years have discovered that

an open-notes test is rarely easier, because the availability of added resources raises the teacher's expectations. If students feel better with their notes or Gemara, let them use them. Ultimately, we turn to our resources when researching a decision, and as such it is good training for our students. One thing to be careful of is that one student not do the work for the rest of the class. Sometimes, an ambitious student will outline cases and likely legal outcomes. If you're really lucky, the students will also have written out possible scenarios. While this is wonderful for the individual, if shared with the class, it may be no different than someone calling out an answer during an exam. Should you have such an industrious student, either advise him/her to not share the notes, or ask for a copy and vary the cases to maintain the challenge for the class.

Finally, I would like to discuss student match-ups. Because the teacher has control over the exercise, it is his/her discretion that dictates who will be partnered with whom, whether as litigants or as judges, or which litigants will face which judges. As such, modulating the complexity of the cases for the level of each student is not difficult at all. Rarely can we construct fair individualized exams for an entire class, since the parameters and expectations are supposed to be equal for everyone. I have taken great pleasure in seeing struggling students succeed in this exercise, given the right kind of case that challenges them but still lets them emerge victorious. Similarly, pitting the strongest students against each other with the greatest number of twists, and watching them figure it out has been very satisfying.

VI. Conclusion

The Mock *Beit Din* has, for many years, served me and my colleagues well as a year-ending exercise for *sugyot* in *Nezikin*. Although not a perfect assessment tool, it achieves many of the goals that we as educators strive toward for our students: mastery of the material, applied knowledge, cooperative learning and enthusiasm. Students demonstrate creative imagination and good humor while truly working at both presenting and resolving the cases. As a teacher, it is inspiring to behold each time the students correctly interpret new variations. The Mock *Beit Din* has illustrated for many pupils over the years the practical nature of Gemara study, an appreciation frequently

lost on our disciples. When students see the subject they studied as useful and exciting, everyone is a winner.

NOTES

- 1 I am indebted to my dear friend, Rabbi Jeremy Wieder, who reviewed this article and offered suggestions and corrections. Any mistakes in the article are my own.
- 2 This is also a good assessment for the end of unit. How much time your school devotes to Talmud study will dictate when this exercise will be used.
- 3 It is my understanding that “technology”, viewed today as intellectual property, is not regarded as actual property in *Hoshen Mishpat* (except, perhaps, through the principle of *dina de-malkhuta*). This would be the kind of correction the teacher should offer to students after the case has been presented, in order to address a different *halakhic* outcome than presented in the exercise.