

VOLUME I: NUMBER 38: RABBINIC ATTORNEYS

by Rabbi Aron Tendler

There is a Mishna in Pirkei Avos (Chapters of Our Fathers) 1:8 that states - Yehuda Ben Tabai says, "Do not make yourself a lawyer of the Dayanim (Rabbinic Judges)". Does this preclude a person from advising a friend who is to appear before a Bais Din how to present his case? Is it permitted for a person to represent his friend in Bais Din and state a claim or defense on his behalf?

Answer:

1. A. It is Halachically permissible for a person to offer his friend advice on how to state his case before a Bais Din. This is only if he is not advising him to be deceptive in any way. He is similarly permitted to represent him in front of Bais Din.
 2. B. It is preferable for a Yarei Shamayim (G-d fearing person) to avoid offering such advice if possible, because of Midas Chassidus (pious conduct). This is true even he is concerned that his friend's opponent is going to try to use illegal tactics to win the case. It is similarly preferable that he not represent his friend in front of the Bais Din.
 3. C. If the person seeking advice is a relative, he is obligated to assist him in how to present an honest claim and defense before the Bais Din. However, if the adviser is well known and respected in his community as a Torah scholar, e.g. he is a Rabbi or Rosh HaYeshiva, it is preferable that he refrain from offering advice even to a relative, if it is possible that others may find out that he is the source of the advice.
 4. D. In any case, a person is never permitted to present a case in a fraudulent or deceptive manner, whether for himself or his friend. This is true even if he is absolutely certain that he is correct, and that his opponent is being deceptive. This does not give a person license to say anything but the truth in front of Bais Din.
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Sources:

The RA"V (Rav Ovadia MiBartenura) comments on the above Mishna that this prohibition applies even if you are convinced that the party seeking your advice is in the right, and you wish to save him from the tactics employed by his opponent. It seems that the reason for this is, since the Bais Din will offer a verdict only after both sides have had the opportunity to present their cases, it should be assumed that the Bais Din will do their job properly and reach the correct conclusion.

Rashi and the Rambam there explain the above Mishna just as the RA"V did. They even seem to be of the opinion that the prohibition is not only to offer legal strategies, but even just to show sources in Halacha that could be used to back up his claims (see the Tosafas Yom Tov there). However, the Ritva in Kesubos 52b argues and states that there is no prohibition at all in showing Halachic sources.

This Mishna is not quoted in the Rambam or the Shulchan Oruch as the Halacha. This is because, as is stated in Bava Kamma 30a, most of the Halachos in Pirkei Avos are to be considered Mili D'Chassidus (advice to the pious), and are not Halachically binding. This is the explanation given by the Tiferes Yisroel (33).

However, the Gemara in Kesubos there states that in a situation where your relative is seeking advice, you are obligated to provide it based on the Possuk of "MiBesarcha Lo Tisalem" - Do not refrain from helping your kin (Yeshaya 58:8). However, if he is a Talmid Chochom, and people may try to emulate his actions, he should refrain from doing so, because people may not be aware that the only reason that he is assisting is because it is his relative, and may conclude that it is permitted and preferred to assist under all circumstances. See the explanation of Rashi there.

The Gemara in Shavuos 31a, and the Shach in Choshen Mishpat (75:1) state that it is forbidden for a litigant, or his representative, to present the facts to the Dayanim in a fraudulent manner, even if by doing so he will be correcting an injustice perpetrated by his opponent, and will ultimately be receiving money that he is certain is due to him anyway.

Feedback is appreciated! It can be sent to atendler@torah.org.

This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bais Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His Column originally appears in Hebrew in Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

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Please Note: The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!