

# Toldot Shimshon

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## Chapter IV – Mishnah 10

הוא הנה אומר, אל תהי דן יחידי, ושאין דן יחידי אלא אחד. ואל תאמר קבלו דעתי, ושהן רשאין ולא אתה.

**[Rabbi Yishmael] used to say: Don't be a solo judge, for there is no solo judge aside from the One [i.e., G-d]. And do not say, "accept my view," for they are free but you are not.**

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**כמה** מיני מטעמים עשו המפרשים על הטעם שנותן "ושאין דן יחידי אלא אחד", ועיין בדבריהם. וגם הסיפא "ואל תאמר קבלו דעתי" אין לה הבנה כלל.

**The commentators<sup>1</sup> gave several reasons for the excuse given by "there is no solo judge aside from the One," and see their words. Also, regarding the end of the Mishnah, "don't say, 'accept my opinion,'" this makes no sense at all.**

ולענין דעתי, דקדק התנא לומר "אל תהי דן יחידי", ולא אמר אל תדון יחידי, משום דהכי משמע, אל תהי דן מרצונך יחידי, אלא בהכרח. דהיינו, כשתוכל לצרף עמך אחרים, אל תהי דן יחידי. אבל כשאין לה אחרים לצרף עמך, אין הכי נמי שתוכל לדון, וכמו שפסק הרמב"ם בפירק ב' מהלכות סנהדרין, שמוותר לאחד לדון מן התורה, שנאמר "בצדק תשפט עמיתך", ואף על פי שמוותר מן התורה, מצנת חכמים היא להושיב אחרים עמו. עכ"ל.

**In my humble opinion, the Tanna was precise to say, "don't be a solo judge," using the noun for "judge." He didn't say, "don't judge on your own," using the verb for "judge," because that means, "don't be a solo judge of your own volition, but only out of necessity." But when you have no others to join with you, then indeed you are able to judge on your own.**

**This is as the Rambam ruled in the Mishneh Torah, in the second chapter of the Laws of the Sanhedrin, halacha 11, that according to Torah law, it's permissible for one to judge on his own, as it is said, "judge your people with righteousness."<sup>2</sup> But even though it's permissible according to the Torah, it is a mitzvah of the sages for him to seat others to judges with him.**

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<sup>1</sup> Rabbi Judah Loew ben Bezalel ("Maharal of Prague") (c.1512–1609), *Derech Chaim* (Prague 1578–88); Rabbi Binyamin HaKohen ("Rabach"), *Avot Olam* (Venice, 1719); Rabbi Shimon ben Tzemach Duran (1361–1444) ("the Rashbatz"), *Magen Avot* (Livorno 1762).

<sup>2</sup> Lev. 19:15.

והטעם שגזרו חכמים שלא לדון לכתחלה ביחידי, הוא משום חשש טעות, לפי שבני אדם מעופפים לפטעות ולשכחה. ובאמת שלפי טעם זה, אף אם יושיב עמו שנים אחרים ויהיה בית דין חשוב, לעולם יש לחוש שמא יטעו, שיהי בני אדם הם. ולכן כשיש אחרים ראויים כמו השנים שהושיב עמו, כדי שיהיה בית דין חשוב, עם כל זה, יומר טוב לקבץ פלם עמו, ויהיה נגמר הדין ביותר משלשה, כדי להנצל במה שאפשר מכל מין טעות ושגגה ושכחה, שיהי אין דן יחידי אלא אחד, שאין לפניו לא שכחה ולא עולה וכו'.

**The reason that sages decreed not to initially decide to judge solo, is because of the fear of error, as humans are prone to error and forgetfulness. It is true that according to this reason, even if two others sit with him and it is a prestigious court, one must always worry lest they err, for they are only human. Therefore, when there are others who are as worthy as the two that he seated with himself, in order to have a prestigious court, nevertheless, it would be better to gather everyone with him, and the judgment will be concluded by more than three, in order to escape, to the extent possible, every kind of error, mistake and forgetfulness. For there is no solo judge aside from the One, i.e., G-d, before Whom there is neither forgetfulness nor iniquity, etc.<sup>3</sup>**

וכן פסק הרמב"ם בפ"ק הל"ל, וזה לשונו, אף על פי שבית דין של שלשה, בית דין שלם הוא, כל זמן שהן רבים, הרי זה משופח. ומוטב שיחמד הדין באחד עשר, יותר מעשרה. עכ"ל. והן הן דברי הפנא "אל תהי דן יחידי" אלא בהצטרפות אחרים כל מה שתוכל, לפי שאין דן יחידי אלא אחד.

**Thus, the Rambam ruled in the aforementioned chapter, and this is his language: "Although a court of three is considered as a complete court, whenever there are many [i.e., more than three], it is praiseworthy. It is better to have the judgment decided by eleven judges, rather than by ten." These, then, are the words of the Tanna, "don't be a solo judge," rather by joining with others to the extent you are able, as "there is no solo judge aside from the One, i.e., G-d."**

עוד כתב הרמב"ם בפ"ק ו' מהלכות הל"ל, הנה הטועה מומחה, ולא נטל רשות, ולא קבלו אותו בעלי דינים עליהם, וטעה, אם אי אפשר להחזיר, ישלם מביתו. עכ"ל. וכתב שם הפוסק משנה, לפי שבעל דין אין לו להפסיד, אם לא על פי הפקר בית דין במומחה דנקיט רשותא, או על פי קבלת עצמו, דהיינו מומחה דלא נקיט רשותא, וקבלוהו עליהם בעלי דיניו.

**Also, the Rambam wrote in the Mishneh Torah, in the sixth chapter from the Laws of the Sanhedrin mentioned above, halacha 3, regarding an expert judge had erred, and he had not received permission to adjudicate cases, and the litigants had not accepted him as an authority. [If such a judge] erred, and if it's impossible to reverse the decision, then he should pay their damages from his own resources. The Kessef Mishneh<sup>4</sup> writes there that a litigant**

<sup>3</sup> Pirkei Avot 4:27.

<sup>4</sup> Rabbi Joseph Karo (1488–1575), author of the Beit Joseph and Shulchan Aruch. The *Kessef Mishneh* (Venice, 1574–75) is a commentary on the Rambam's *Mishneh Torah*.

**should not lose his property, if not adjudicated by a court that had decreed [his property] ownerless by an expert judge who had received permission to adjudicate cases, or because [the litigant] had effectively accepted [the ruling] himself, that is to say it was an expert judge who had not received permission, but the litigants had accepted him by themselves.**

וְנָהוּ "וְאֵל תֹּאמַר קִבְלוּ דַעְתִּי", הַגַּם שְׂאֵתָה מוֹמְקָה, אִין לָהּ רִשׁוּת לְדוֹן וּלְהַפְטִיר, אֶלְאָ אִם עַל פִּי רִשׁוּת הַבַּיִת דִּין, אִם קִבְּלַת הַבְּעָלִי דִינִין, וְאִינָהּ יָכוֹל לְכוּפֵם לְקַבֵּל דַּעְתָּהּ, שְׂאִין הַמְּקַאֲתָהּ גּוֹרָמַת פְּלוּם, אֶלְאָ רְצוֹן הָאֲחֵרִים. "שְׂהֵם רִשְׁאִין", דְּהִינְגוּ הַבַּיִת דִּין, לִיתֵן לָהּ רִשׁוּת, אִם הַבְּעָלִי דִינִין, לְקַבֵּלָהּ עָלֵיהֶם. "וְלֹא אֵתָה", אִם עַל פִּי שְׂאֵתָה מוֹמְקָה.

**This is the meaning of “and do not say, “accept my view.” Even though you are an expert, you do not have permission to judge and to dismiss a case, neither by permission of the court, nor by acceptance of the litigants. You are not able to force them to accept your opinion, for your protest does not cause anything, but only the will of the others would be effective in allowing you to judge the case. “For they are free,” that is the court is free to give you permission to judge, or the litigants are free to accept you upon themselves as a judge. “But you are not,” even though you are an expert.**

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