The opening sentence of Parashat Mishpatim

ואלה המשפטים אשר תשים לפניהם

and these are the statutes that you must place before *them*

is understood by the Rabbis as requiring legal cases to be brought before a specific set of *them*, namely qualified Rabbinic judges who have been ordained in a direct line from Sinai, and consequently excluding two specific sets of *them*, namely Gentiles and unqualified Jews (הדיוטות).

The necessary line of ordination has long since ceased, and Halakhah has found various mechanisms for transferring many of their powers to ordinary Jewish courts. Nonetheless, the halakhic consensus has maintained the prohibition against suing fellow Jews in front of a Gentile court, even when those Gentiles are appointed by a legitimate government[1]. The prohibition does not extend to defending oneself against a suit brought by fellow Jews, and can be waived under a variety of circumstances – perhaps in a future installment we will explore some of those circumstances – and nonhalakhic Jews have generally not resorted to rabbinic courts. The practically effective jurisdiction of rabbinic courts over the Jewish community in America has accordingly been very limited.

This decline in jurisdiction has led inevitably to a decline in available resources, at the same time as the resources necessary to properly judge many cases have increased dramatically. Government courts now resort regularly to hordes of experts aside from lawyers, and large financial cases require forensic accounting and other skills not widespread in the rabbinate; they also require tremendous numbers of hours of work by judges, clerks, court recorders and the like.

The practical effect of this is that most batei din make no effort to handle most genuinely difficult cases, and limit themselves to divorce, conversion, and the equivalent of small claims court. But there are circumstances where this is insufficient.

Suppose, for example, that a woman asks a beit din to assist her by ordering the husband to give her a bill of divorce, as their civil divorce has already been finalized. The husband counterclaims that he is perfectly willing to give the divorce once they settle the financial issues. However, he argues that she has a great deal of money in offshore accounts that was not disclosed to the civil divorce court, that she accordingly owes him significant money, and that he is within his rights to deny her a get while that issue remains outstanding. What is the beit din to do, short of hiring a forensic accountant at exorbitant cost?

Or suppose that a beit din wished its associated kashrut agency to reject food produced by industrial producers with a record of illegally firing workers who seek to unionize. Or that it wishes to investigate a claim by a communal institution that a trustee has commingled funds. The beit din is unlikely to be able to verify the claims on its own. This is fundamentally the case with regard to almost any moral issue of communal importance.

[1] Some future week I hope to trace the development of that consensus.

How is a beit din to handle such matters? My suggestion is that it must rely on the factual determinations of governmental agencies, and specifically of the "secular courts". The basis for this suggestion is Mishnah Gittin 1:5:

כל השטרות העולים בערכאות של גוים, אף על פי שחותמיהם גוים, כשרים, חוץ מגיטי נשים ושחרורי עבדים

All documents that arise in the Gentile courts, even though the witnesses who sign them are Gentiles, are valid, except for writs of divorce and writs of manumission.

But how far does this rule go? Using the frame of the Mishnah, what distinguishes "all documents" from "writs of divorce and writs of manumission"?

Talmud Gittin 10b assumes that "all documents" includes both purchase and gift contracts. Purchase contracts it justifies on the grounds that they are mere evidence, while the transaction itself is effected by the transfer of money, but it has difficulty with gift contracts, where the document itself enacts the transaction. This is resolved in two ways – Shmuel invokes the principle "The law of the land is the law", while a second answer is that gift contracts are excluded as being within the same category as the excluded writs. Ritva there clarifies that the distinction is not with regard to the subject of the documents, but rather their purpose – thus documents that serve as *evidence*-of-gift are certainly valid. Bartenura to the Mishnah records the consensus distinction as follows:

ודוקא בשטרי הלואות ושטרי מקח וממכר שהעדים ראו בנתינת הממון. אבל שטרי הודאות וגיטי נשים, וכל דבר שהוא מעשה ב"ד בערכאות שלהם, הכל פסול:

Specifically documents of loans and purchases and sales, where the witnesses saw the giving of the money, but documents of admission or writs of divorce, and everything that is an act-of-court (performative) in their courts, all these are invalid.

The question not explicitly addressed by these sources is the status of evidentiary documents more broadly, in nontransactional cases. Should a beit din accept as fact court documents that state the total of a person's assets, or that a person x failed to pay their employees minimum wage, or commingled funds, etc.?

To my mind, the dispositive current statement in this regard can be found in Rav Ovadiah Yosef's Responsa Yabia Omer 7:14, which addresses the longstanding question of whether a government death certificate is sufficient to allow the (putative) widow to remarry Jewishly:

והנה המהר"י קולון (שרש קכא) כתב, דערכאות עדיפי מעכו"ם מסיח לפי תומו, ויש להתיר על פיהם אפי' בלא טעם דאשה דייקא ומינסבא, וגם בלא טעם דמשום עיגונא הקילו בה רבנן, משום דחזינן דאף היכא שצריך עדות גמורה כדי להוציא ממון מחזקתו, דבעינן שני עדים, סמכו על חזקה דלא מרעי נפשייהו, כדאשכחן (בגיטין י ב) גבי שטרות העולים בערכאות של גוים בשטרי מכר, דסמכינן עלייהו, אפי' בלא הטעם דדינא דמלכותא דינא. ואף על פי שאילו היה הערכאי משקר לא היה לו אלא מעט זלזול, אעפ"כ כיון שהוא דיין אמרינן שאינו משקר, כדי שלא לפגום כבודו, ואף לענין גט הוה סמכינן על חזקה זו, אי לאו משום דלאו בני כריתות נינהו, דלא שייכי בתורת גיטין וקידושין, כמ"ש רש"י גיטין (ט רע"ב), וכל שכן הכא דאי לאו דקושטא קאמר הוה מרע נפשיה וכו'. ע"ש. ולכאורה יש להעיר לפי מ"ש התוס' גיטין (ט ב) ד"ה אף על פי, שאף שעכו"ם פסול לעדות לכ"ע, וא"כ היה ראוי לפסול מן התורה כל שטרות העולים בערכאות של עכו"ם, כיון דלאו בני עדות נינהו, ואפילו שטרות העומדים לראיה בלבד, מ"מ תקנתא דרבנן היא היכא דקים לן בסהדותייהו שהיא אמת משום דלא מרעי נפשייהו. ע"ש. וא"כ איכא למימר כי עבדי רבנן תקנתא היינו בממונא אבל באיסורא לא עבדי רבנן תקנתא, וכמ"ש בב"מ (כז רע"ב) לגבי סימנים, ואפשר שהרגיש בזה מהריק"ו, ולכן הוצרך להוכיח עוד שאף לענין גט הוה סמכינן על החזקה דלא מרעי נפשייהו אם לא משום דלאו בני כריתות הוא. ולפ"ז גם באיסורין סמכינן על חזקה זו.

Mahari Kolon (#121) writes[2] that

> courts are superior (evidentially) to Gentiles who speak "in their innocence"[3], and one may permit a women to remarry even without the rationale that "a woman investigates before remarrying"[4], and also without the rationale that "the Rabbis were lenient to prevent her from becoming chained (*agunah*)", because we see that even where we (otherwise) require absolutely valid testimony to remove property from its presumptive owner, where we require two valid Jewish witnesses, we rely on the legal presumption that the gentile courts do not damage-themselves (by

[2] Mahari Kolon's case and language deserve separate treatment; the citation here is somewhat condensed

[3] This is a halakhic term-of-art meaning that they speak without knowing the halakhic consequences of their statements. Talmud Yebamot 121b explicitly accepts such testimony regarding a husband's death.

[4] Which Talmud Yebamot 93-94 says is necessary to permit remarriage on the basis on one valid Jewish witness

> endorsing false testimony), as we find regarding "documents that arise in the Gentile courts" regarding contracts of sale, that we rely on them even without the rationale "the law of the land is the law". Even though the court-official would suffer only minor disgrace were he to lie, nonetheless, since he is a judge, we say that he does not lie, because he wishes not to damage his honor. We would rely on this presumption even for writs of divorce, were it not that such writs are invalid because "Gentiles are not capable of effecting divorce", as they are not "included within the sphere of halakhic divorce and marriage", as Rashi writes (Gittin 9b), all the more so here, where if it were not true the judge would be damaging-himself. (End citation).

At first glance one can pose a difficulty regarding this, on the basis of Tosafot, who write that

> even though a Gentile is a formally invalid witness according to all opinions, and therefore it would have been proper to invalidate under deoraita law all documents that arise under Gentile courts, since they are not formally capable of testifying, nonetheless accepting their testimony is a Rabbinic enactment wherever we take-it-as-given that their testimony is truthful since they will not damage-themselves,

so that one might suggest that the rabbis only enacted their acceptance of evidentiary documents arising in Gentile courts with regard to financial matters, but not with regard to ritual matters, as Tosafot write regarding identifying-marks-on-objects, and it is possible that Mahari Kolon himself realized that one might pose this difficulty, and therefore found it necessary to demonstrate that we would rely on such documents even with regard to divorce, on the basis of the presumption that they would not damage-themselves, were it not for the problem that they are not "capable of effecting divorce".
According to this we rely on that presumption even with regard to ritual matters.

Thus it seems that Halakhah accepts all factual determinations by Gentile courts, at least ones that are not presumptively corrupt.

The remaining question[5] is how to deal with issues that are admixtures of fact and law, where the factual determination is not, or is not necessarily, a mere matter of testimony, but also of legal or practical judgment. For example, a declaration of death may rely on a definition of death, or on the determination that a particular witness was credible, or on circumstances such as extended abandonment without notice. Similarly, a declaration that x owes money to y may rest on a legal position as to what constitutes a debt or obligation. How then can Halakhic courts rely on such determinations, especially where Halakhah has its own established evidentiary canons?

I suggest that the answer is that we separate the factual from the legal content, and that we presume the truth of the factual content absent a clear demonstration that it was reached by clearly insufficient means. In other words, we tend to trust their judgment and not only their honesty, and we presume that facts are actual rather than constructed.

This formulation is also important with regard to criminal law. There is a widespread misconception that one may not halakhically report Jewish criminals to the secular authorities unless they could be convicted in a halakhic court on the same evidence. The problem here is that formal Halakhic criminal law is not, as currently constructed, intended to actually order society, so that a practical halakhic court would have to enact what the Derashot HaRan famously calls "the king's justice" on the basis of reasonable but currently anhalakhic standards of evidence. The current halakhic *evidentiary* standard for reporting criminals, or for acting on the basis of a criminal conviction, is therefore reasonableness, with the presumption that the American court system behaves reasonably.

Shabbat shalom

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[5] I thank Rabbi Zalman Krems, Administrator of the KVH, for pushing me to clarify this point.