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BINDING ARBITRATION OR TRIAL: WHICH IS PREFERABLE?

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Whether you know it or not, you may have entered into a relationship which is involved in binding arbitration. That means that, should a dispute arise between the parties, the problem will not be taken to a court with a judge and jury. Rather, an Arbiter who will decide independently will decide it. Theoretically, this is just as fair as a trial. However, if the problem arises between one party who will never see the Arbiter again and another party who will return to this Arbiter again, you can imagine who has greater power in the situation. It is the one who'll be back.

You might think that Judaism would not like such a system. It can turn out to be unfair to one of the parties. For example, if you have purchased a warranty or signed a cell phone contract, you may not have bothered to read the fine print and you signed up for Arbitration. So it's a bit surprising to find out that the Yerushalmi can see it both ways:

It was stated (in Tosefta Sanhedrin 1:2) Rabbi Eliezer ben Rabbi Yose HaGalili says: the person who compromises is sinning and the one who blesses (praises) a compromiser is like a blasphemer before God, as it is said: "He who blesses a compromiser slanders the Eternal (Psalm 10:3)." The law should pierce the mountain, as Moses did (Exodus 18:16). (Moses decided everything himself, alone, and did not invite compromise, arbitration or appeals.) But Aaron promoted peace, as it is said, "in peace and uprightness be with Me (Malachai 2:6)." (Y. Sanhedrin 1:1)

So where does this leave us? The Yerushalmi appears to let us have it both ways.

Discussion Questions:

1. Are you surprised? Did you expect the Yerushalmi to suggest that a three-person Jewish court is the gold standard? (I certainly did.) Which leads us to ...
2. ... this question: in which situations are a single decisor better and in which situations is a three-judge panel better? Why?
3. My father used to say, "The big print giveth and the small print taketh away." Have any of you ever participated in Arbitration? Did you feel it was fair? Is a trial or arbitration more ethically fair to all parties or can a judge be just as unfair as an Arbiter might be?

I look forward to your insights!