



Volume 10. Issue 26

What They Wanted To Do

The first chapter of *Makkot* deals with law of *eidim zommemin* – false witnesses. The general law is that if the accused is found guilty and the witnesses are then found to be false (1:8), then they received the punishment that they intended for the accused to receive. The *Mishnah* (1:4) teaches that witnesses are defined as *zommemin* if others testify that those witnesses were with them in a different location at the time they claim to have witnessed the event.

The *Mishnah* (1:6) however explains that if the falsely accused was executed, the *eidim zommemin* do not receive the reciprocal punishment. The *Mishnah* explains that this is because the *Torah* teaches: “You shall do to him as he conspired to do to his fellow” and his fellow is still alive. The *Ritva* explains that the *Mishnah* is not learning from the word “fellow” since this term can equally apply for the living and dead. Rather it learns from that fact that it says “*zamam*” (conspired) and not “*asah*” (performed). When it comes to capital cases we do not apply a *kal ve’chomer* which would have allowed us to extrapolate to a case where they not only conspired but succeeded.

There is a discussion whether the reciprocal punishment is delivered after the accused is found guilty and the judgement delivered in monetary cases or cases involving lashes. The *Tosfot Yom Tov* cites a *Mishnah* in *Bava Batra* (3:4) where it implies that in monetary cases, even after the payments have been made, the reciprocal punishment would apply. Furthermore, he cites the *Rambam* that maintains that this would be the law in cases involving lashes as well. Why?

The *Kesef Mishnah* answers first, that according to the *Rambam*, the reason why the above law only applies to capital cases is because the sin of the *eidim zommemin* is too great. We forget, but receiving punishments in this world to achieve atonement is better than receiving it in the next and those *eidim zommemin* in a capital case are not given that opportunity. The *Kesef Mishnah*'s second answer is that had the falsely accused not been liable to death, then *Hashem* would not have allowed the *eidim zommemin* to

have succeed. Consequently they killed a dead man. The *Ramban* on the *Torah* provides a similar answer, although the *Tosfot Yom Tov* notes that *Ramban* may have held that the logic applies equally cased involving lashes or money. While there appears to be a source for applying a late reciprocal punishment in monetary cases, the *Tosfot Yom Tov* is not satisfied that there is no source for a late reciprocal punishment of lashes yet the *Rambam* maintains it applies.

The *Minchat Chinnuch* suggest that the reason that the *eidim zommemin* received lashes in such cases is not because of “*ka’asher zamam*”, but because of “*ve’hitzdiku et ha’tzaddik...*” Recall from the first *Mishnah* that in the event that a reciprocal punishment cannot be delivered, the latter *passuk* is the source that the *eidim zommemin* receive lashes. The *Minchat Chinnuch* admits that this does not appear to be rationale of the *Rambam*. Firstly according to this understanding then the *eidim zommemin* that succeeded in capital cases would nevertheless receive lashes – the *Rambam* does not mention this. Secondly, *eidim zommemin* that succeed in a case of multiple lashes would only receive one set – the *Rambam* however rules that the reciprocal punishment is delivered. Nevertheless, the *Minchat Chinnuch* feels “that [it] is the truth”.

R’ Chaim however explains differently. In monetary case the reciprocal punishment is delivered even if the *eidim zommemin* succeed since money can be returned. Consequently we never get to a point of “what they wanted to do and not what they did”. How can we explain a case involving lashes? There is a special law regarding *Malkut* (lashes) as a punishment. It must be performed in front of *Beit Din* and by *Beit Din*; otherwise it is simply *chavala* (trauma). Once these witnesses are found to be false, we find that the lashes were not *malkut* but an unwarranted beating. Consequently the witnesses did not succeed in having the falsely accused suffer *malkut* – it was not “*ka’asher asah*” – and they may receive reciprocal punishment. (See *R’ Chaim* inside for more detail.)

Yisrael Yitzchak Bankier

Revision Questions

מכות א': ד' ב' ז'

- How do witnesses become *eidim zomemin*? (א': ד')
- Explain the debate regarding a case where witnesses testify and make a pair *eidim zomemin* and then another pair of witnesses come and testify about the case and are consequently also made *eidim zomemin*. (א': ה')
- When are *eidim zomemin* to a capital case not executed? (א': ו')
- What are the three opinions regarding what is learnt from the following *pasuk*: (א': ו')
"על פי שנים עדים או שלשה עדים יומת המת"
- What else is learnt from the above *pasuk*? (א': ח')
- Regarding the previous question, when does *R' Yosi* maintain this rule applies? (א': ח')
- Regarding the previous question, when does *Rebbi* maintain this rule applies? (א': ח')
- In what case could the accused be executed as well as the *eidim zomemin*? (א': ט')
- What two laws are learnt from: "על פי שנים עדים" (א': ט')
- If a person found guilty of a capital offence escaped: (א': י')
- If he later returned to the original *beit din*, would his case be reopened?
- When can he be executed in another *beit din*?
- When was a *beit din* described as a *chavlanit*? (Provide both opinions.) (א': י')
- What is the debate between *R' Tarfon*, *R' Akiva* and *Rabban Shimon ben Gamliel*, regarding this issue? (א': י')
- For what offence is one sent to *galut*? (א': ב')
- Provide the general rule relating to how that offence was perpetrated in order that he is sent to *galut*? (א': ב')
- Explain the debate between *Rebbi* and the *Chachamim* regarding one who commits this offence while chopping wood. (א': ב')
- When does *R' Eliezer ben Ya'akov* say that one is not sent to *galut* for throwing a stone into "*reshut ha'rabim*"? (א': ב')
- In what case is one sent to *galut* for accidentally killing a person on his own property and what is the source of this law? (א': ב')
- What three exceptions does *Abba Shaul* raise? (א': ב')
- Does a father go to *galut* on account of his son? (א': ג')
- What are the three opinions regarding a *sonah* and *galut*? (א': ג')
- Where would someone go, when sent to "*galut*"? (א': ד')
- What two things were done to enable a person to reach "*galut*" safely? (א': ה')
- Who else would run to the *arei miklat*? (א': ו')
- When could the *rotze'ach* return from the *arei miklat*? What custom arose as a result? (א': ו')
- In what two cases would the *rotze'ach* never return from the *arei miklat*? (א': ז')
- When could the *rotzeach* step out of the *arei miklat*? (א': ז')
- At what point is one considered inside the *arei miklat*? (א': ז')
- Explain the debate regarding a *go'el ha'dam* that finds the *rotzeach* outside the *arei miklat*. (א': ז')
- What is the law regarding one that kills accidentally within the *arei miklat*? (א': ז')

Local Shiurim

Melbourne, Australia

Sunday -Thursday
10 minutes before *Mincha*
Mizrachi Shul
Melbourne, Australia

Friday & Shabbat
10 minutes before *Mincha*
Beit Ha'Roeh
Melbourne, Australia

Efrat, Israel

Shiur in English

Sunday -Thursday
Rabbi Mordechai Scharf
9:00am
Kollel Magen Avraham
Reemon Neighbourhood

ONLINE SHIURIM

Rabbi Chaim Brown
www.shemayisrael.com/mishna/

Rav Meir Pogrow
613.org/mishnah.html

Rabbi E. Kornfeld
Rabbi C. Brown
<http://www.dafyomi.co.il/calendars/myomi/myomi-thisweek.htm>

SHIUR ON KOL HALOSHON

Rabbi Moshe Meir Weiss
In US dial: 718 906 6400
Then select: 1 – 2 – 4

Next Week's Mishnayot...

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | שבת קודש |
|------------------------------------|------------------------------------|----------------------------------|------------------------------------|------------------------------------|------------------------------------|-------------------------------------|
| 11 th August ה' אלול | 12 th August ו' אלול | 13 th August ז' אב | 14 th August ח' אלול | 15 th August ט' אלול | 16 th August י' אלול | 17 th August י"א אלול |
| Makkot 2:8 – 3:1 | Makkot 3:2-3 | Makkot 3:4-5 | Makkot 3:6-7 | Makkot 3:8-9 | Makkot 3:10-11 | Makkot 3:12-13 |

