



Volume 4. Issue 26

“Accidental Murderer”

The majority of this week’s *Mishnayot* – specifically those in the second chapter of *Masechet Makkot* – deal with the case of accidental murder. I use the term “accidental murder” because that is precisely the term the *Torah* and *Mishnah* use – “*rotze’ach beshogeg*”. It is indeed a peculiar term as we are accustomed to the understanding that murder cannot be accidental, and that though one can be indicted with “involuntary manslaughter”, he cannot be indicted with “involuntary murder in the first degree”. As we will see, this term – in fact – was chosen for its accurateness rather than its lack of clarity.

We find two very singular points in the *Mishnayot* of this week:

1. The *Mishnah* tells us that the mothers of the *kohanim gedolim* used to send food and clothing to the accidental murderers residing in the *arei miklat*, so that they would not pray for the *kohen gadol*’s demise (which would set them free). It is interesting that the mothers accept this as common practice and that those prayers of the accidental murders are not criticised by the *Gemara*.
2. The *Mishnah* tells us that a *kohen gadol* who was anointed before the killer was sentenced – even though he was not the *kohen gadol* at the time of the killing – is also responsible for this killer’s eventual freedom. The reason the *Gemara* brings is that he should have prayed for his acquittal but did not. This, too, seems a bit strange: Why should he have prayed for a murderer’s acquittal?

In order to properly understand the answer to these questions it is important to focus on the *halachot* of an accidental killer and paint a picture of these *halachot*. Being an accidental murderer means the following: If you are a *talmid* your rabbi must go with you; if you are a rabbi your yeshiva commutes with you. If you die before you get there – your bones are taken there to be buried. He who dies there is buried there – nowhere else; anyone who is buried there has his bones removed when the *kohen gadol* dies.

He who is exiled does not come out of his city for anything (without risking the chance of being killed by the *goel*

ha’dam) – not to testify (even in a capital case), not to save other lives, not even to save the whole of Israel.

When taking a bird’s-eye view of these *halachot* – as we just did – I think the picture which is painted is quite clear. The accidental murderer is not just given a punishment – he is being completely transported to another existence. The term “accidental murderer” comes to point out this very issue. It is true that on the one hand we see this as accidental, but on the other hand such a thing could never have happened without some form of carelessness, obtuseness or indifference. When a person engages in an act that could cost other people’s lives he must be ten times as careful as he is doing anything else. What would we call a driver who fell asleep at the wheel and killed someone, for example? I think the most fitting term for such a person would be an “accidental murderer”. It happened by accident, but the liability is very much there. He is still considered a murderer.

This is viewed by the *Torah* as an anomaly; someone who commits such a crime is part of another world, of a different society, and has a different set of values. This is why the *arei miklat* are deemed irrelevant if they are housed primarily by murderers, as the murderers no longer feel their anomalous existence. This is also why they are not criticised for their prayers and the *Gemara* even accepts it as fact – what can you expect from one living in a different world? You cannot criticise such people, only pity them, as the mothers of *kohanim gedolim* do. This is also the reason for the fact that the *kohen gadol* must pray for their acquittal – these are not murderers in the absolute extreme sense of the word – they are men who must be pitied, taken care of and helped. That is why the *Torah* builds them cities in the first place. That is why the *kohen gadol* must pray for them.

It is this separate existence which causes them to be completely disconnected from the rest of *Am Israel* to the extent that they are even exempt from the laws pertaining to *pikuach nefesh*. These murderers have no understanding of *pikuach nefesh* and cannot take part in it in the larger scheme of things. They become one people with the rest of the nation only when G-d signals their release – with the death of the *kohen gadol*, as decreed in the *Torah*.

Rav Yonatan Rosensweig

Revision Questions

מכות א' י' - ג' - ה':

- 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*? (ב': א')
- Provide the general rule relating to how that offence was perpetrated in order that he is sent to *galut*? (ב': א')
- Explain the debate between *Rebbi* and the *Chachamim* regarding one who commits this offence while chopping wood. (ב': א')
- When does *R' Eliezer ben Ya'akov* say that one is not sent to *galut* for throwing a stone into "*reshut ha'rabim*"? (ב': 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? (ב': ב')
- What three exceptions does *Abba Shaul* raise? (ב': ב')
- Does a father go to *galut* on account of his son? (ב': ג')
- What are the three opinions regarding a *soneh* and *galut*? (ב': ג')
- Where would someone go, when sent to "*galut*"? (ב': ד')
- What two things were done to enable a person to reach "*galut*" safely? (ב': ה')
- Who else would run to the *arei miklat*? (ב': ו')
- When could the *rotze'ach* return from the *arei miklat*? What custom arose as a result? (ב': ו')
- In what two cases would the *rotze'ach* never return from the *arei miklat*? (ב': ז')
- When could the *rotze'ach* step out of the *arei miklat*? (ב': ז')
- At what point is one considered inside the *arei miklat*? (ב': ז')
- Explain the debate regarding a *go'el ha'dam* that finds the *rotze'ach* outside the *arei miklat*. (ב': ז')
- What is the law regarding one that kills accidentally within the *arie miklat*? (ב': ז')
- Would the *rotze'ach* need to pay rent in the *ir miklat*? (ב': ח')
- Explain the debate regarding the *rotze'ach* once he returns home. (ב': ח')
- For which offences does one receive lashes relating to:
 - Forbidden relationships (12)? For which relationship does one receive two sets of lashes? (ג': א')
 - The *Beit Ha'Midkash* (8)? (ג': ב'-ג')
 - Fruit of *Eretz Yisrael* (4)? (ג': ב'-ג')
 - One's body (4)? (ג': ה')
- When is one who breaks a bone of a *korban pesach* not liable for lashes? (ג': ג')
- Explain the debate regarding lashes and *shilu'ach ha'ken*. (ג': ד')
- Explain the debate regarding the prohibition of tattooing? (ג': ו')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
18 th November ח' כסלו	19 th November ט' כסלו	20 th November י' כסלו	21 st November יא' כסלו	22 nd November י"ב כסלו	23 rd November י"ג כסלו	24 th November י"ד כסלו
Makkot 3:6-7	Makkot 3:8-9	Makkot 3:10-11	Makkot 3:12-13	Makkot 3:14-15	Makkot 3:16 – Shevuot 1:1	Shevuot 1:2-3

