



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 *rotze'ach* 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 *rotze'ach* 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
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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

