



Tunnel Intruders

Having discussed the various offences for which one can be charged with a capital punishment, the *Mishnah* discusses cases where the (potential) perpetrator of the crime can be killed outside the court system. One case (8:6) is *ha'ba ba'machteret* – a thief who tunnels into another's home. The *Torah* (*Shemot* 22:1) teaches that the home owner is allowed to kill the thief. We shall try to understand why.

Abaye in the *Gemara* (72a) explains that the reason the *Torah* permits killing the thief is because there is a *chazaka* (presumption) that one would not stand by idle if another is trying to take their property. When the thief enters the tunnel, he goes in knowing this and is prepared to attack and kill the home owner if confronted. The *Gemara* explains that this case is therefore like the case of a *rodef*. If one sees one trying to kill another, there is a *mitzvah* to kill that person. Similarly, the thief enters willing to kill the home owner. Consequently the home owner can pre-emptively kill the thief.

The *Ran* notes, that not every thief enters the house with the intention to kill the occupants. If the possessions are released willingly, then in many cases the residents will be left unharmed. The irony in the case, is that the thief is only considered a *rodef* since the homeowner will stand up to the thief. Put simply, the thief is defined as a *rodef* since the home owner will act as a *rodef*. One might then ask, how do we define who is the *rodef* (pursuer) and who is the *nirdaf* (pursued)? The *Ran* explains that this is indeed the novelty of *ha'ba ba'machteret*. Even though they are technically pursuing one another, the *Torah* defines the thief as the *rodef* since he initiated the conflict.

Thus far, *ha'ba ba'machteret* appears to be closely aligned with the case of a *rodef*. There are however differences. The *Gemara* (72b) learns that one can save the *nirdaf* by killing the *rodef* from the case of *na'arah me'orasah* (a betrothed young girl). There the *Torah* teaches that one can save her from being raped by killing the rapist. The *Ran* asks, that the more obvious case from which to derive this permit, is from *ha'ba ba'machteret*; so why is it derived from *na'arah me'orasah*? The *Ran* explains that in the case of a *rodef*, there is a *mitzvah* for a bystander to kill him. The *Rambam* (*Rotzeach* 1:14) adds that by abstaining from doing so, one violates the prohibition of "do not stand on the blood of your

neighbour" (*Vaykira* 19:16) and "...your eye shall not show pity" (*Devarim* 25:12). In the case of a *ha'ba ba'machteret*, permission is given to kill the thief, but one is not obligated to do so. Why is there a difference?

The *Avi Ezri* (*Geneiva* 5:7) notes the *Rambam* (Introduction, *Aseh* 239) teaches that the punishment for a thief is either payment or death – in that if one kills him they cannot be charged – as learnt from *ha'ba ba'machteret*. The *Avi Ezri* notes, that if *ha'ba ba'machteret* was just a specific case that falls under the umbrella of *rodef*, then this is not a punishment that applies to a thief specifically. Instead, the *Rambam* should have taught that a thief is punished financially. Furthermore, he should have taught that in the case of *ha'ba ba'machteret* the thief can be killed, not because he is a *ganav* but because he is a *rodef*.

The *Avi Ezri* adds that if *ha'ba ba'machteret* was simply a *rodef*, then once the *Gemara* (cited above) learnt that there is a *mitzvah* to kill a *rodef* from *na'arah me'orasah*, that rule should have then extended to the case of *ha'ba ba'machteret*. It however does not.

The *Avi Ezri* therefore explains that when the *Torah* teaches the case of *ha'ba ba'machteret* it was not extending the laws of *rodef*. Instead, the *Torah* was teaching the laws that apply to a *ganav*. While it is true that the law of *ha'ba ba'machteret* only applies if the thief is prepared to kill the home owner, which thereby restricts the scope of this law, that is where the similarity to *rodef* ends.

The *Avi Ezri* uses this distinction to explain many other *Gemarot*. For example, the *Gemara* (72b) derives that one can kill the thief by any means from the *pasuk*. It would seem unnecessary if the thief was defined as *rodef* (from which the *Gemara* does not allow derivation). The *Avi Ezri* explains that unlike the *rodef*, when the thief is tunnelling, at that point it is not *pikuach nefesh* – you are not saving the home owner's life. Yet the *Torah* permits taking the life of this thief as a punishment due to him being a thief at that moment. The technical parameters are therefore learnt independently.

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Revision Questions

סנהדרין ז' – ט' :א'

- What are the four principle forms of worship and why is it important? (ז': א')
- Is kissing an idol punishable with stoning? (ז': א')
- Explain the capital offence of "handing a child to *molech*". (ז': א')
- What is a *ba'al ov*? What is a *yid'oni*? (ז': א')
- When is engaging in one of the above, a capital offence? (ז': א')
- What transgression on *Shabbat* is a capital offence? (ח': א')
- When is cursing a parent a capital offence? (ח': א')
- What are the requirements for having a relationship with a *na'arah me'orasah* to be punishable with *skilah*? (ט': א')
- What is a *meisit* and how does it differ from other capital offences? (י': א')
- What is the definition of a *mechashef*? (יא': א')
- At what age can one qualify to be a *ben sorer u'moreh*? (א': ח')
- What is the source for the law in the previous question? (א': ח')
- What must the child do to become a *ben sorer u'moreh*? (ב': ח')
- If the child does so, when is he still not a *ben sorer u'moreh*? (ב': ח')
- Explain the debate regarding how the child must acquire the object to perform the act in order to become a *ben sorer u'moreh*. (ג': ח')
- What are four requirements placed on the parents for the son to be a *ben sorer u'moreh*? (ד': ח')
- How was a child warned prior to becoming a *ben sorer u'moreh*? (ד': ח')
- How many judges are required for a case of *ben sorer u'moreh*? (ד': ח')
- Explain the rationale of punishing a *ben sorer u'moreh*? (ה': ח')
- What other case is treated in a similar manner? (ו': ח')
- For which three crimes can one kill a person trying to perpetrate them? (ז': ח')
- Which three crimes are listed in the *Mishnah*, that one might think share the same law as stated in the previous question, but do not? (ז': ח')
- Aside from a person having a relationship with "*isha u'bitah*" what other crime is punishable with *sreifa*? (ח': ט')
- What falls under the category of "*isha u'bitah*"? (ח': ט')
- Which two crimes are punishable with *hereg*? (ח': ט')
- If someone pushed another into the water and they drowned, when are they not charged with murder? (ח': ט')
- Which murder case is the subject of debate between the *Tana Kama* and *R' Nechemya*? (ח': ט')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
21 April ט"ז ניסן	22 April י"ח ניסן	23 April י"ט ניסן	24 April כ' ניסן	25 April כ"א ניסן	26 April כ"ב ניסן	27 April כ"ג ניסן
Sanhedrin 9:2-3	Sanhedrin 9:4-5	Sanhedrin 9:6-10:1	Sanhedrin 10:2-3	Sanhedrin 10:4-5	Sanhedrin 10:6-11:1	Sanhedrin 11:2-3

