



False Testimony about a True Crime

With the beginning of *masechet Makkot*, we learn about *eidim zomemin* – false or conspiring witnesses. We have discussed in the past that if further witnesses testify that the original witnesses were in a different location at the time of the supposed incident, then they are punished with the punishment they sort to inflict on the falsely accused (see articles 4(25) and 10(24)). The *Mishnah* (1:9) discusses a case where the accused and the *eidim zomemin* could both be executed. We shall discuss that case.

The *Mishnah* teaches that if two sets of witnesses testify about a murder and the pairs did not see one another, their testimonies are treated separately. The *Mishnah* continues that if one set of witnesses was proven to be *eidim zomemin*, then they would be executed – they receive the reciprocal punishment. Since however there remains a valid set of witnesses, the accused murderer could be found guilty and executed.

One might ask, since the murderer was ultimately guilty, why then should the *eidim zomemin* be executed? They were testifying about a person that was going to be executed anyway – they testified about a dead man. Consequently, how would executing them be defined as a reciprocal punishment?

The *Gemara* (5a) address this question with another case. If witnesses testified that one committed a murder on Sunday and other witnesses then testified that the first witnesses were with them on the Sunday, but it was on the next day that the murder was indeed committed, the first pair could be executed. The *Gemara* continues that even if the subsequent witnesses testified that the murder was committed on the previous Friday, the *eidim zomemin* could still be executed. The *Gemara* explains that this is because when the *eidim zomemin* testified, the murderer had not been found guilty nor waiting execution. In other words, through their false testimony they were trying to kill a person, that at that point in time could not be executed.

The *Gemara* continues that if however the *eidim zomemin* had testified that the murderer was found guilty on the Sunday, and the subsequent witnesses testified that he was found guilty on the previous Friday, then in that case the *eidim*

zomemin could not be executed. That is because in that case, they were indeed testifying about a (legally) dead man.

The *Gemara* continues that the law would be the same regarding a case where the punishment was a *kenas* (fine) as opposed to a capital case. The example brought is if witnesses testified about one that stole an animal and sold or slaughtered it on Sunday and subsequently witnesses testified that the first witnesses were *zomemin* but indeed the theft and sale occurred on the previous Friday. While the accused would still need to pay four or five times the value of the sheep or ox, the *eidim zomemin* would also be required to pay the *kenas*.

The *Tosfot* (s.v. *ve'chen*) however notes that with respect to monetary compensation, the *eidim zomemin* would not be punished. Why do we differentiate between monetary and capital cases? The *Tosfot* explains that with monetary cases, it is almost a certainty that the case will develop, and *Beit Din* will be required to pay. Consequently, from the outset, the accused is already defined as a *bar chiyuva* (culpable). With capital cases, given the extent and intensity of the witness examination (*drisha ve'chakira*), guilt is not a certainty so the accused is not defined as a *bar chiyuva* from the time of the murder.

The *Tosfot R' Akiva Eiger* however suggests a different distinction. When it comes to a monetary matter, from the moment that one recognizes he liable to another individual, he must pay, irrespective of the involvement of *Beit Din*. Consequently, the timing in the substance of their testimony is critical. If they testified falsely that he was obligated to pay on the Sunday, and the transaction really occurred on the previous Friday, they were testifying about one that was already obligated to pay and would therefore not be punished. With a capital offence however, even if the individual admits to the crime, the sentence is dependant on the decision of the *Beit Din*. Similarly, the punishment of a *kenas* is completely dependant on the *Beit Din's* ruling (voluntary admission could exempt one from payment). We can therefore understand why, if they testified falsely about a murder that really occurred at a time earlier than they claimed, they could still be executed; the individual was not defined as one liable to capital punishment at the time of their testimony.

Revision Questions

סנהדרין ט' ב' – י"א ד' ו'

- What are the two opinions regarding when they would execute the *zaken mamre*? (י"א: ד')
- When is a *navi* that lies liable for a capital punishment and when is his punishment "*bidei shamayim*"? (י"א: ה')
- Is one liable for a capital punishment if he presents a prophecy in the name of a form of idol worship, yet the content is consistent with *halacha*? (י"א: ו')
- From what point is a woman considered an *eshet ish*? (י"א: ז')
- What is exceptional about *zomemei bat kohen*? (י"א: ח')

מכות א' – ב' א'

- What are *eidim zomemin*?
- In which two cases do *eidim zomemin* not receive reciprocal punishment and what punishment do they receive? (א' :א')
- How are *eidim zomemin* punished if they testified that: (א' :א')
 - A man gave his wife her *ketubah*?
 - A person owed \$100 to be paid at the end of the month, when in fact the loan was due in ten years time?
- Explain the debate regarding how *eidim zomemin* are punished if they testified about:
 - A loan. (ב' :א')
 - That a person was obligated to be punished with lashes. (ג' :א')
- Complete the following phrase and explain: (א' :ג')

"משלשלין _____ ואין משלשלין _____"
- 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' :ז')

"ועל 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: "ועל 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')

Melbourne, Australia

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Mizrachi Shul
Melbourne, Australia

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Rabbi Mordechai Scharf
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Reemon Neighbourhood

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
5 May ל' ניסן	6 May א' אייר	7 May ב' אייר	8 May ג' אייר	9 May ד' אייר	10 May ה' אייר	11 May ו' אייר
Makkot 2:2-3	Makkot 2:4-5	Makkot 2:6-7	Makkot 2:8-3:1	Makkot 3:2-3	Makkot 3:4-5	Makkot 3:6-7

