



Volume 4. Issue 23

Ben Sorer U'Moreh

The *Mishnah* (*Sanhedrin* 8:5) states:

A *ben sorer u'moreh* (wayward and rebellious son) is judged based on his end – he should die innocent rather than dieing with guilt.

A *ben sorer u'moreh* is punished in the present in order to prevent him from becoming guilty in the future. How is it possible to punish someone based on what he will do in the future?

The *Gemara* (68b) also challenges this logic asking that if we judge him based on the future, a *katan* (minor), who is too young to be a *ben sorer u'moreh*, should also qualify. How could the *Gemara* even ask this question? We learn at the beginning of the *perek* that a *katan* (minor) is not held liable for his actions.

A similar difficulty is found by *ir hanidachat*¹, as the *Rambam* writes (*Hilchot Avodat Kochavim* 4:6) that one must destroy all that live in the city, including women and children by the sword. Here too we see that even though a *katan* is not of the age to be held liable for punishment – he is in any event punished along with the rest of the city.

One may differentiate between the case of the *ir hanidachat* and a *ben sorer u'moreh*. The *Rambam* describes the act of going to kill the inhabitants of such a city as engaging in “*milchama*” (war) against the city. The difference may be, that when there are a majority of people committing the sin (as with *Ir Hanidachat*) a minor is able to be punished along with that majority. However, when that minor is an individual (*ben sorer u'moreh*) we should still be unable to give a punishment due to the concept of a minor not being liable for punishment!

Another difficulty arises in *Parshat Korach*. The *pasuk* (*Bamidbar* 16:27) describes that even the wives, children and infants were all part of *Korach's eida*. *Rashi* states:

Come and see how severe dispute is, for see now, an earthly court does not punish unless (the one found guilty) had reached maturity (13 years), and the heavenly court does not punish until 20 years, but here even infants were destroyed.

We see from here that there is indeed a concept of holding minors liable for a sin. *Birchas Avraham* explains that we are punishing the minors because of their end – due to the fact that we are worried that they will grow up to be *ba'alei machlokes* – so just like *ben sorer u'moreh*, it is better that they are killed while they are innocent rather than growing up and becoming guilty. This still is problematic because at the time they sinned they were minors and should not be liable for their actions!

The *Birchas Avraham* therefore differentiates whether the *din* of the *ben sorer u'moreh* is a punishment for his sin, or whether we are saving the child from dying when he is found guilty (later on in life).² This element of saving a person from sinning is also demonstrated in the concept that one may kill someone who is *rodef* to do an *aveira* before he does it. This concept can be applied to *ben sorer u'moreh* as we already know he has done terrible and wicked acts³ and has a *chazaka* that he is a *rasha* – therefore we are in fact saving him from being found guilty (albeit at a later stage).

This novel idea is now able to answer how the *Gemara* could ask that a minor be held liable as a *ben sorer u'moreh*. If one was to view *ben sorer u'moreh* as a punishment then there would be a problem, because one can only be liable for punishment when one reaches *gadlut*. However, if we are able to view it as saving the minor from being guilty later on in life then it makes no difference whether the person is a *gadol* or not.

Additionally, this view of a *ben sorer u'moreh's* death sentence also makes more sense in light of the wording of the *Mishnah* – “is judged based on his end”. If we see the judgment as a punishment for his actions then looking forward to this minor's end is irrelevant. It is only if we see the death sentence as *hatzalah*, of saving the youth, that the *Mishnah's* wording seems logical.⁴

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¹ A city overrun by idol worshippers (whose *din* is to be destroyed)

² We find this concept in *Sanhedrin* (73a) where the *Gemara* states that we ‘save’ people's lives. *Rashi* states here that we are talking about saving these people from sin

³ See the beginning of *Sanhedrin perek* 8

⁴ However, see *Gemara Sanhedrin perek* 8, *Rambam (Mamrim* 7:5), *Chinuch* (248) which seem to indicate that the *din* of a *ben sorer u'moreh* is indeed a punishment

Revision Questions

סנהדרין ז' ד' - ח' ר'

- List the sixteen offences that are punishable with *skilah*? (ז' ד')
- Explain the debate regarding one who has a relationship with their mother? (ז' ד')
- For which offence does an animal also receive *skilah* and why? (ז' ד')
- What is the definition of a *megadef* that is punishable with *skilah*? (ז' ה')
- What is the complexity involved with trying a *megadef* and how was it dealt with? (ז' ה')
- What are the four principle forms of worship and why is it important? (ז' ר')
- Is kissing an idol punishable with stoning? (ז' ר')
- 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? (ז' ח')
- When is cursing a parent a capital offence? (ז' ח')
- What are the requirements for having a relationship with a *na'arah me'orasah* to be punishable with *skilah*? (ז' ט')
- What is a *meisit* and how does it differ from other capital offences? (ז' י')
- What is the definition of a *mechashef*? (ז' י"א')
- At what age can one qualify to be a *ben sorer u'moreh*? (ז' א')
- What is the source for the law in the previous question? (ז' א')
- What must the child do to become a *ben sorer u'moreh*? (ז' ב')
- If the child does so, when is he still not a *ben sorer u'moreh*? (ז' ב')
- Explain the debate requirement regarding how the child must acquire the object to perform the act in order to become a *ben sorer u'moreh*? (ז' ג')
- What are four requirements placed on the parents for the son to be a *ben sorer u'moreh*? (ז' ד')
- How was a child warned prior to becoming a *ben sorer u'moreh*? (ז' ד')
- How many judges are required for a case of *ben sorer u'moreh*? (ז' ד')
- Explain the rationale of *ben sorer u'moreh*? (ז' ה')
- What other case is treated in a similar manner? (ז' ר')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
28 th October ט"ז חשוון	29 th October י"ז חשוון	30 th October י"ח חשוון	31 st October י"ט חשוון	1 st November כ' חשוון	2 nd November כ"א חשוון	3 rd November כ"ב חשוון
Sanhedrin 8:7-9:1	Sanhedrin 9:2-3	Sanhedrin 9:4-5	Sanhedrin 9:6-10:1	Sanhedrin 10:2-3	Sanhedrin 10:4-5	Sanhedrin 10:6-7

