



Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

### **Relatives**

Illa and Toviah were relatives to a cosigner of a loan (*and they were witnesses for that loan*). Rav Pappa thought to validate them, for they were unrelated to the borrower and the lender.

Rav Huna the son of Rav Yehoshua told Rav Pappa: If the borrower does not have money to pay with, will the lender not go to the cosigner? [*He therefore is regarded as a principal in the case, and the witnesses are disqualified.*] (7a)

### **Mishna**

One who was sentenced to death and escaped, and later, he was brought back to the same *Beis Din*, they do not reconsider his verdict (*to see if they could find a merit for him*).

Whenever two witnesses come forward and say, “We testify against So-and-so (*who fled from the first Beis Din*) that he was sentenced to death in such-and-such a *Beis Din*, and So-and-so and So-and-so were the witnesses against him,” such a man is put to death.

The *Sanhedrin* (*of twenty-three*) functions both within and without *Eretz Yisroel* (*to judge capital cases and fines*).

A *Sanhedrin* that executes someone once every seven years is called a destroyer. Rabbi Eliezer ben Azaryah says: Once every seventy years. Rabbi Tarfon and Rabbi Akiva say: If we would have been part of a *Sanhedrin*, no person would ever have been executed (*for we would have inquired of the witnesses questions that they would be unable to answer*). Rabban Shimon ben Gamliel said: They would have caused an increase in murderers in Israel (*for they would not have feared execution*). (7a)

### **Sanhedrin**

Abaye explains the *Mishna* as follows: If one was sentenced to death in a court in *Eretz Yisroel*, and he escapes to another court (*whether in Eretz Yisroel or outside of Eretz Yisroel*), they do not reconsider his case. If, however, he was sentenced to death in a court outside of *Eretz Yisroel*, and he escapes to a court in *Eretz Yisroel*, they do reconsider his case. Abaye cites proof to this from a *braisa*: Rabbi Yehudah ben Dustai said in the name of Rabbi Shimon ben Shetach: If one was sentenced to death in a court in *Eretz Yisroel*, and he escapes to a court outside of *Eretz Yisroel*, they do not reconsider his case. If, however, he was sentenced to death in a court outside of *Eretz Yisroel*, and he escapes to a court in *Eretz Yisroel*, they do reconsider his case, because of



*Eretz Yisroel's merit (they might find something which will exonerate him).*

The *Mishna* had stated: The *Sanhedrin* (of twenty-three) functions both within and without *Eretz Yisroel* (to judge capital cases and fines).

The *Gemora* cites a *braisa* which cites Scriptural sources that *Sanhedrin* functions both within and without *Eretz Yisroel*. Within *Eretz Yisroel*, they were established in every province and every city, but outside *Eretz Yisroel*, they were established in every province, but not in every city.

The *Mishna* had stated: A *Sanhedrin* that executes someone once every seven years is called a destroyer. Rabbi Eliezer ben Azaryah says: Once every seventy years.

The *Gemora* inquires: Did he mean to say that if the *Sanhedrin* executes someone once every seventy years, it is called a destroyer, or perhaps that is regarded as normal (but more than that is a destroyer)? The *Gemora* leaves this question unresolved.

The *Mishna* had stated: Rabbi Tarfon and Rabbi Akiva say: If we would have been part of a *Sanhedrin*, no person would ever have been executed (for we would have inquired of the witnesses questions that they would be unable to answer).

The *Gemora* asks: What was their method? Rabbi Yochanan and Rabbi Elozar both said: The witnesses would be asked: Was the person murdered a *tereifah* (someone that will die within twelve months; if

someone kills such a person, he is not liable to death) or complete? [Did you examine his body after his death to determine if he was perhaps a *tereifah*?] Rav Ashi said: Even if they say that he was examined and determined to be complete, perhaps there already was a hole (that would render him a *tereifah*) in the exact place where the sword entered his body. And when they were testifying that someone cohabited with an *ervah*, Abaye and Rava both say that the witnesses would be asked if they saw the equivalent of an applicator inserted into the tube of eye shadow (and the witnesses would probably answer that they did not see so precisely). The Rabbis, who disagreed with Rabbi Tarfon and Rabbi Akiva, would merely ask the witnesses if the adulterers appeared to act in the manner of adulterers. (7a)

WE SHALL RETURN TO YOU, KEITZAD HA'EIDIM

### ***Mishna***

[One who inadvertently kills his fellow is sentenced to exile in one of the cities of refuge.] The following are those who are exiled: One who inadvertently kills a person. If he was pushing a roller (in order to plaster a roof) which fell on someone and killed him; if he was lowering a barrel (from a roof) which fell on someone and killed him; if he was descending a ladder and he fell upon someone and killed him - he is exiled (for the death was caused by a downward motion, and we derive from a Scriptural verse that one is only exiled if he kills with a downward type of motion). But if he were pulling the roller up and it fell on someone and killed him; if he were raising the barrel up and the string broke, and it fell on someone and killed him; if he was ascending the ladder and he fell upon

someone and killed him - he is not exiled. This is the general rule: For all that is through a downward motion, he is exiled; when not by a downward motion, he is not exiled. (7a - 7b)

### ***Inadvertent and Deliberate***

The *Gemora* cites a verse dealing with the case where one will be sentenced to exile, and derives certain *halachos* from various words.

1. He is only sentenced to exile if the instrument used in the killing falls while the person is occupied with a downward motion.
2. He is not exiled if he kills because he thought it was permitted. This is not regarded as an unavoidable circumstance, but rather, it is close to being deliberate.
3. He is not exiled if he kills intentionally. This, explains Rabbah, is referring to a case where he intended to kill an animal, Cuthean, or non-viable infant, and instead he killed a person, *Yisroel*, or a viable infant.
4. He is not exiled if he kills by turning a corner (*while holding a knife, and he never saw the victim*).
5. The killer is not exiled if he is an enemy of the victim.
6. He is exiled if he kills him inadvertently by pushing him with his body.
7. He is exiled if he kills with a downward motion that is necessary for an upward motion (*i.e., if he lowers his body downward in order to swing an axe upward*).
8. He is not exiled if he was aiming to throw a projectile to one side and it went to the other side.

9. He is not exiled if he meant to throw something two *amos* and he threw it four *amos*.
10. He is only exiled if the killing took place in an area similar to a forest; i.e., both the victim and the murderer had a right to enter that particular place. (7b)

### ***Upwards and Downwards***

Rabbi Avahu inquired of Rabbi Yochanan: If one was ascending a ladder, and a rung slipped out from underneath him and fell and killed a person, what is the *halachah*? Do we regard this as an upward motion (*for he was ascending the ladder*), or as a downward motion (*for he was pressing downward on the rung*)? Rabbi Yochanan replied: You have touched upon a case where one killed with a downward motion that is necessary for an upward motion (*and he is therefore sentenced to exile*).

Rabbi Avahu attempts to refute Rabbi Yochanan from our *Mishna*, but his explanation is rejected by Rabbi Yochanan.

Rabbi Yochanan cites a case where a butcher was chopping meat and inadvertently killed a person with his cleaver. There are four *braisos* that rule upon this case, and Rabbi Yochanan explains each one, so there should not be any contradiction between them:

1. If the butcher kills while moving his arm forward (his initial downswing forward – before he brings the cleaver back towards his shoulder), he is exiled; if he was moving his arm backward (the upswing backwards

- towards his shoulder – in order to increase the force of his chop), he is not exiled.
2. If the butcher kills while moving his arm backward (upswing forward – while he is lowering it behind his back), he is exiled; if he was moving his arm forward (downswing backward – bringing the cleaver up from behind his back to his shoulder), he is not exiled.
  3. Whether the butcher kills while moving his arm forward (his initial downswing forward – before he brings the cleaver back towards his shoulder), or backward (upswing forward – while he is lowering it behind his back), he is exiled.
  4. Whether the butcher kills while moving his arm forward (the upswing backwards towards his shoulder – in order to increase the force of his chop), or backward (downswing backward – bringing the cleaver up from behind his back to his shoulder), he is not exiled. [*Accordingly, this is the manner in which Rabbi Yochanan explains the Mishna – we always look at the direction of the person's motion, and not at the purpose of his motion.*]

The *Gemora* suggests that Rabbi Avahu's inquiry is actually a matter disputed amongst the following *Tannaim*: If one was ascending a ladder, and a rung slipped out from underneath him and fell and killed a person, one *braisa* rules that he is liable, and another *braisa* rules that he is not. Perhaps one *braisa* looks at the rung and that is a downward motion, and the other *braisa* looks at the person and he was engaged in an upward motion.

The *Gemora* deflects this interpretation. In truth everyone holds that we look at the person (*and since he is engaged in an upward motion, he is not exiled*), but there is still no difficulty, for one *braisa* refers to damages and the other *braisa* refers to exile.

Alternatively, both *braisos* are referring to the laws of exile, and there is still no difficulty, for one *braisa* refers to a rung which was eaten by worms (*and it is therefore regarded as a downward motion, for the rung was sagging beforehand*), and the other *braisa* is referring to a case where the rung was not worm-eaten.

Alternatively, both *braisos* are referring to a case where the rung was not worm-eaten, but there is still no difficulty, for one *braisa* refers to a rung which was attached strongly to the side of the ladder (*and since he is engaged in an upward motion, he is not exiled*), and the other *braisa* is referring to a case where the rung was not attached strongly to the side of the ladder (*and it is therefore regarded as a downward motion, for the rung is being pressed downward*). (7b)

### **Mishna**

If the iron blade of the axe slipped off its handle and killed, Rebbe says: he is not exiled; but the Sages say: He is exiled. If he was killed from a woodchip which shot out from the tree that is being chopped, Rebbe says: He is exiled; but the Sages say: He is not exiled. (7b)