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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

**Mishna**

The *Mishna* describes the workings of the *Sanhedrin*. The judges were seated in a semicircle, in order that all the judges can see each other. Two scribes recorded the deliberations, one on the right, and one on the left.

Rabbi Yehudah says there were three, one who wrote the positions of the judges who argued for innocence, one who wrote the positions of the judges who argued for guilt, and one who wrote down all the positions. Three rows of students sat in front of the court. The rows, and the seats in each row, were in order of seniority. If a new judge was needed, the most senior of the students was added to the court, and all the rest of the students advanced one position. One person from the general populace was then chosen to fill the last position. (36b – 37a)

**Sanhedrin**

Rabbi Acha bar Chanina cites the Scriptural source which proves that the *Sanhedrin* sits in a semicircle. It is written: *Your navel is like a moon-shaped basin; you should not let the strength of the wine diminish.* *Sanhedrin* is referred to as a “navel,” for they sit in the center of the world. They are like a “basin,” for they protect the entire world. They sit in a semicircle, which is “moon-shaped.” It is derived from the phrase, “*you should not let the strength of the wine diminish*” that if one of them needed to leave (*for his own purposes*), it should be observed if twenty-three, corresponding to the number of the minor *Sanhedrin*, were left, in which case he may leave; if not, he must not leave.

The continuation of the verse: *Your stomach is like a heap of wheat.* Just as everyone benefits from a heap of wheat, so do they benefit from the reasoning of the *Sanhedrin*.

The conclusion of the verse: *hedged with roses.* They will not make a breach even through a hedge of roses (*a light barrier – even after there is no Sanhedrin, they still will not sin*).

In this connection there is an incident where a heretic said to Rav Kahana: You maintain that a *niddah* (*menstruant woman*) is permitted to be secluded with her husband; can a fire be near fiber-chips without charring them? He replied: The Torah testifies about us: *hedged with roses*; they will not make a breach even through a hedge of roses.

Rish Lakish deduced the same from the following verse: *Your temples are like a section of pomegranate.* Even the emptiest among you are as full of *mitzvos* as a pomegranate is full of seeds. Rabbi Zeira deduced it from the following verse: *And he smelled the smell of his clothes.* Do not read it as *begadav* (*his clothes*) but *bogedav* (*his renegades - even those who are betrayers to the Torah disperse the fragrance of good deeds*).

In Rabbi Zeira’s neighborhood, there lived some gangsters. He nevertheless showed them friendship in order to inspire them to repent; but the Rabbis were upset at his relationship with them. When Rabbi Zeira died, they said, “Until now we had the short man with the dwarfed legs to implore Divine mercy on our behalf; who will do so now?”



Thereupon they felt remorse in their hearts and repented.  
(37a)

### **Mishna**

How do they admonish witnesses testifying in capital cases? They would bring them in and admonish them as follows: Perhaps you are speaking from conjecture, or from hearsay, or from the mouth of another witness, and even if it was from the mouth of a trustworthy person. Perhaps you do not know that afterwards we will investigate your words through inquiry and examination. You should know that capital cases are not as monetary cases: By monetary cases, a person may give back the money and receive atonement; but by capital cases, his blood and the blood of his offspring (*that would have been born*) will be his responsibility until eternity. For so we find that it is written concerning Cain who killed his brother: *the bloods of your brother cry out*. It does not say: *the blood of your brother*, but rather: *bloods* - his blood and the blood of his offspring.

Another interpretation of this verse is that his blood was scattered on the trees and on the stones.

We continue admonishing the witnesses: Therefore man was created singly, to teach you that whoever destroys a single soul of Israel, Scripture considers it as if he had destroyed an entire world; and whoever saves one life of Israel, Scripture considers it as if he had saved a full world.

An alternative explanation: And for the sake of peace among men - that one person should not say to his fellow, "My father is greater than yours." And that the heretics should not say, "There are many powers in Heaven." And also, it teaches us the greatness of the Holy One, blessed be He, for a person mints many coins with one mold, and they are all alike, but the King of kings, the Holy One, blessed be He, molded each man with the form of Adam, and not one of them is like his fellow. Therefore each and

every one is obligated to say, "It is for my sake that the world was created."

We continue admonishing the witnesses: And perhaps you will say, "Why do we need to have this trouble? (*we won't testify!*)" Has it not already been written: And he is a witness who has seen or known, if he does not attest etc. (*they will carry the burden of their sin if they refuse to testify*). And should you say, "Why should we be responsible for the blood of this one?" Surely it is written: *And when the wicked perish, there is joy*. (37a – 37b)

### **Conjecture**

The *Gemora* cites a *braisa*: What is a case of conjecture? The judge says to them: Perhaps you saw him running after his fellow into a ruin, and you ran after him, and you found him with a sword in his hand with the blood of the victim dripping from it, while the murdered man was twitching on the ground. If this is what you saw, you have seen nothing (*since you did not observe the murder taking place*).

The *Gemora* cites a *braisa*: Rabbi Shimon ben Shetach said: May I never see comfort (a *type of oath* – *in other words: he saw the following*), if I did not see a man running after his fellow into a ruin, and when I ran after him and saw him with a sword in his hand with the blood of the victim dripping from it, while the murdered man was twitching on the ground, I exclaimed to him: Wicked man! Who killed this man? It is either you or I! But what can I do, since your blood does not rest in my hands, for it is written in the Torah: *At the mouth of two witnesses etc., shall he that deserves to die be put to death (and I did not observe the actual murder)*! May He who knows one's thoughts take restitution from the one who killed this fellow! It is related that before they moved from that place a serpent came and bit the murderer, and he died.

The *Gemora* asks: Did he deserve to die by a serpent? But Rav Yosef and other say Rabbi Chiya said: Since the day of



the destruction of the Beis Hamikdosh, although the *Sanhedrin* ceased (*and they no longer could administer capital punishments*), the judgment of the four forms of capital punishment have not ceased. The *braisa* explains: One, who would have been sentenced to stoning, would either fall off a roof or a wild beast will throw him down (*similar to stoning, which would involve being pushed off a cliff and then stones were thrown at him*). One, who would have been sentenced to burning, would either fall into a fire or a snake would bite him (*and the snake venom would burn his insides*). One, who would have been sentenced to beheading, would either be delivered to the government or bandits would attack him (*in which case, he will be killed by a sword*). One, who would have been sentenced to strangulation, would either drown in the river or die from suffocation.

The *Gemora* answers: The murderer had committed another sin (*of which he deserved to die via burning*) as well, for it was stated: Whoever is liable to two capital punishments, he is subjected to the one which is more severe.

The *Mishna* had stated: We admonish the witnesses by saying: Perhaps you are speaking from conjecture.

This, the *Gemora* infers, is the *halachah* with regard to capital punishment; however, it will be valid testimony by monetary cases.

Whose opinion is this following? It is like Rabbi Acha, for it was taught in a *braisa*: Rabbi Acha said: Regarding a case of a camel mating among other camels, and a killed camel was found at its side, it is obvious that the (*mating*) one killed the other (*for this is a normal occurrence by a mating camel; evidently, Rabbi Acha holds that conjecture is accepted by monetary cases*).

The *Gemora* disagrees with the inference (*that the Mishna is only referring to capital cases*): According to your line of

reasoning, would you accept the testimony of one witness from the mouth of another by monetary cases? [*Of course not!*] For we learned in a *Mishna*: If the witness says that the litigant or someone else told him that he owes the other litigant money, his testimony carries no weight. He must testify that the litigant explicitly admitted to the other litigant, in the presence of the witnesses, that he owes him money. We see that this *halachah* applies by monetary cases as well, and nevertheless, the *Mishna* states it explicitly by capital cases. So here also (*regarding conjecture*), the *Mishna* states its disqualification by capital cases even though it is disqualified by monetary cases as well.

The *Mishna* had stated: For so we find that it is written concerning Cain who killed his brother: *the bloods of your brother cry out*. It does not say: *the blood of your brother*, but rather: *bloods* - his blood and the blood of his offspring.

Rav Yehudah the son of Rabbi Chiya said: This teaches us that Cain inflicted upon his brother Abel many bruises and wounds (*until he killed him*), because he did not know from where the soul departs, until he reached his neck.

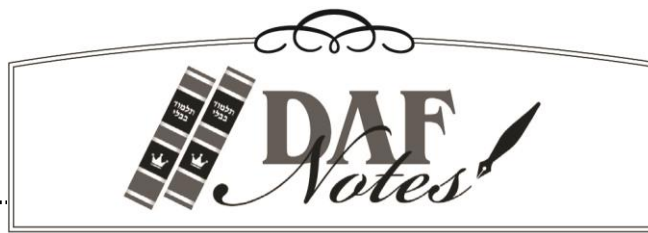
Rav Yehudah the son of Rabbi Chiya also said: Since the day the earth opened its mouth to receive the blood of Abel, it has never opened it again.

Chizkiyah his brother objected from the following verse: *And the earth opened her mouth (and swallowed Korach and his men)!?*

He answered: It opened if for evil, but not for good.

Rav Yehudah the son of Rabbi Chiya also said: Exile atones for a sin (*of murder*) by half.

Rav Yehudah said: Exile atones for three things (*three sins that would be punishable by three types of death*), for it is written: He that resides in this city shall die by the sword,



or by famine, or by pestilence; but he that goes out and falls away to the Casdim who besiege you, he shall live and his life shall be to him for a prize. [*He that remained at home was subject to these three types of death; but by surrendering and accepting to live in exile, one will save himself from those deaths.*]

Rabbi Yochanan said: Exile atones for everything. (37b)

### INSIGHTS TO THE DAF

#### ***The Judgment of the Four Death Punishments has not been Abrogated***

Our *Gemora* says that though there is no longer a *Sanhedrin*, the four death punishments still exist: A person who commits a transgression punishable by death gets killed by Hashem Himself. According to our *sugya*, some believe that preference should be given for saying *kaddish* to the son of someone killed over the son of someone who died a natural death (see *Misgeres HaZahav* on *Kitzur Shulchan 'Aruch*, 26, and *Mateh Efrayim, Dinei Kaddish* in the footnotes to *Halachah* 5). A person who died unnaturally apparently needs atonement and therefore his son should be given preference in saying *kaddish* for him. Still, all the *halachic* authorities reject this opinion, just as the Chasam Sofer opposed the wish of the *chevra kadisha* to bury those dying of unnatural causes separately, claiming they should be regarded as having been killed by the *Sanhedrin* (Responsa, Y.D. 333). He explained that though anyone committing a transgression punishable by the death penalty is eventually killed by Hashem Himself, we cannot say that anyone dying from an unnatural cause was a sinner (in accordance with the opinion of the *Perishah*, Y.D. 345, and *Sedei Chemed, Ma'areches Aveilus*, 169).

**Reinterring a sinner:** A Jew married a gentile and transgressed many other prohibitions. He was killed in a plane crash in South Africa and buried in a gentile

cemetery. His relatives referred to HaGaon Rav Yitzchak Weiss zt"l as to if they were allowed to move his body to a Jewish cemetery and in his Responsa *Minchas Yitzchak* (VI, 137) he asserted that they may reinter him since, as the Chasam Sofer declared, he is not regarded as having been killed by the *Sanhedrin*. Still, no one is obligated to take such action since reinterring the dead to a more honorable place is done to honor the deceased and "as he did not care about his own honor while alive, others are not responsible for his honor in his death."

### DAILY MASHAL

**The boy who killed but was hanged for theft:** HaGaon Rav Yair Bachrach, author of *Chavos Yair*, was required to judge a similar instance from another viewpoint. About 300 years ago a quarrel between boys became violent and one of them killed another with a knife. Shortly after, he became the leader of a gang of thieves and when caught by the Russian police, was condemned to death for theft. Rabbi Bachrach was asked if efforts should be made to save him, but meanwhile he was hanged. Nonetheless, he addressed the topic, stressing that his statements should not be construed as *halachah*. In his long responsum (§146) he relates to our *sugya*, that Hashem visits the death penalty on intentional sinners. Therefore, he asserts, if a **forewarned** murderer is in danger of his life, we should make no effort to save him. This boy, however, killed another in a fit of anger, without being warned, and is not in the same category. Had he been condemned for the murder, a doubt could arise if we should try to free him as it would be more apparent that he is being punished for such but in our case he was condemned for theft and should be rescued as we cannot determine if the punishment is regarded as an actual death penalty as judged by the *Sanhedrin*.