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Sanhedrin Daf 78

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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

Lateral and Vertical Motion

Rav Papa says that if one threw a stone up, and it fell sideways and killed somebody, he is liable. Rav Papa clarified to Mar bar Rav Ashi that the force used to throw it is composed of two components – a vertical and horizontal component. When the stone falls, the vertical component of the force is spent. However, if it moved horizontally, the horizontal component is still active, and the one throwing it is liable if it killed someone.

Group Murder

The *Gemora* cites a *braisa*, which discusses a group murder. The *braisa* says that if ten people beat someone to death, they are not liable, whether they beat him simultaneously or in succession. Rabbi Yehudah ben Beseirah says that if they beat him successively, the one who delivered the final blow is liable. The *Gemora* explains both the textual and conceptual aspects of this dispute:

1. The verse specifies that a murderer who strikes *kol nefesh adam* – all soul of a person is executed. The Sages understand this phrase to mean he killed the *whole* soul. Therefore, if it was done in a group, each member did not kill the whole soul and is not executed. Rabbi Yehudah ben Beseirah understands this phrase to mean he killed *any part* of a soul, including the one who delivered the final blow, and killed whatever bit was left alive. (Rabbi Yochanan)
2. All agree that if one kills a *tereifah*, whose physiology will not support life, he is not executed. All agree that if one kills one who is near a natural death that he is executed. The dispute is one who is near death from inflicted wounds (i.e., after the first 9 people beat him). The Sages equate him with a *tereifah*, and explain that he is not like one who is near a natural death, since his situation was caused by human intervention. Rabbi Yehudah ben Beseirah equates this with one who is near a natural death, and explains that he is not like a *tereifah*, since

he does not have a fundamental issue with his anatomy, like the *tereifah* does. (Rava)

Someone recited a *braisa* in front of Rav Sheishes, which stated that if one struck someone a nonfatal blow, and then another struck him a fatal blow, the second one is liable. The *Gemora* says that this case is obvious, and therefore modifies the text to be a case where both blows were potentially fatal, but the second blow was while the victim was still alive. The *braisa* is following the opinion of Rabbi Yehudah ben Beseirah.

Tereifah – dead or alive?

Rava explained that a *tereifah* is considered to be tantamount to dead, due the fundamental issue with his anatomy. Therefore, one who murders a *tereifah* is not executed. Similarly, witnesses who falsely conspire (*zomemim*) to convict a *tereifah* of a capital crime are not executed if they are disproven. Testimony is only valid if it is possible for the witnesses to be punished if found to be false. Rava states a number of ramifications from these principles:

1. If a *tereifah* murdered, he may not be prosecuted based on testimony, since the witnesses cannot be prosecuted as *zomemim*. However, if he did this in front of the court, they may convict him, to fulfill the directive of the verse to destroy evil from our midst.
2. If someone sodomized a *tereifah*, he is liable. If a *tereifah* sodomized someone, he may not be prosecuted based on testimony, but may be prosecuted if the court saw the crime. This follows from the case of a *tereifah* murderer. Rava added this case to teach the liability one who sodomized a *tereifah*. This follows from the first case. Although one who has relations with a corpse is not liable, this is only due to a lack of pleasure. Since a *tereifah* is

actually live, the sodomizer enjoys the act, and is therefore liable.

3. If witnesses testified that a *tereifah* committed a capital crime, and were found to be *zomemim*, they are not liable. However, if *tereifah* witnesses testified that someone committed a capital crime, and were found to be *zomemim*, they are liable. Rav Ashi says they are not, since the witnesses who disprove them will not be liable if they are disproven, since they were only committing a *tereifah* to death.
4. A *tereifah* ox that killed a person is executed, but an ox of a *tereifah* is not, since the verse states that an ox that kills should be killed, and also his owners should be killed. The *Gemora* earlier (2a) learned that the owner is not killed, but this verse teaches us that the process of executing the ox follows the theoretical process of executing its owner. Since the owner may not be executed, the ox also may not be executed. Rav Ashi says that even a *tereifah* ox may not be executed, since if its owner would be in its situation, he would not be executed.

A snake's Venom

The *Mishna* cited a dispute about one who dug a snake's teeth into someone, poisoning him. Rabbi Yehudah considers him liable for murder, while the Sages exempt him. Rav Acha bar Yaakov explains that Rabbi Yehudah says that a snake's venom resides in its teeth, while the Sages say the venom is internal, and is expelled by the snake. Therefore, Rabbi Yehudah considers the one digging the teeth to be actively poisoning the victim, making him liable, and the snake exempt. The Sages say the snake is the one injecting the venom, so the snake is killed, but the person is exempt.

Cause and Effect

The *Mishna* discusses one who strikes someone, who ultimately dies. If he was first estimated to die from the blow, then his condition improved, and then he died, the Sages say that he is liable, while Rabbi Nechemia says he is exempt, because there are grounds to doubt whether the blow caused the death.

The *braisa* explains the textual source for the dispute. The verse says that if one struck someone, *v'lo yamus* – and he did not die. The verse continues to say that if the victim got up and walked outside healthy, the one striking is exonerated, except for his liability for lost work and medical bills. Rabbi Nechemia says that if we read the verse literally, it is unnecessary to teach us that the one striking is exonerated: we would obviously not execute someone whose "victim" is alive and well. Therefore, the verse is referring to a victim who was first estimated to die, and then temporarily improved, and ultimately died, and states that the attacker is exonerated. The Sages respond that the verse is the simple case, but the statement of exoneration teaches that until then he is incarcerated, lest the victim die.

The *Gemora* explains that Rabbi Nechemia says we learn such incarceration from the case of the *mekoshaish*, who profaned Shabbos, and was incarcerated until Moshe learned what method of execution to employ. The Sages say that the case of the *mekoshaish* is not a valid source for the case of a potential murder, since the *mekoshaish* was definitely guilty of a capital crime, and only the execution was unknown. Rabbi Nechemia says that from the case of the blasphemer who was incarcerated until Moshe learned whether he was to be executed teaches incarceration in the case of a potential murder. The Sages say that the case of the blasphemer was an exception from which we cannot learn, since there was no reason to assume that he was subject to any capital punishment.

The *Gemora* states that there are two verses indicating that the attacker is not liable if the victim does not die:

1. *Vlo yamus* – and he does not die
2. *Im yakum* – if he gets up and walks healthy

Rabbi Nechemia says that both are cases where the victim was estimated to die. One is a case of the victim living, and one is a case where his condition improved, but he then died. However, the Sages say that one is a case of the victim estimated to live, but then dying. Rabbi Nechemia says that a

verse is not necessary for such a case, since once he is exonerated by the first estimation, we do not reopen his case.

The *Gemora* cites another *braisa* about the *Mishna's* case. The *braisa* says that if one struck someone, and the victim was estimated to die, but lived, the attacker is not liable. If they estimated the victim to die, but he then improved, and the court estimated monetary damages, Rabbi Nechemia says that we follow the second estimation, even if the victim later dies. The Sages say that the second estimation cannot reverse the initial estimation, and the attacker is therefore liable if the victim died.

The *Gemora* cites another *braisa*, which follows Rabbi Nechemia's opinion. The *braisa* says that if a victim was estimated to die, he can still be estimated to live, if his condition improves, but if he was estimated to live, the case is closed. If he was estimated to die, and then his condition improved, he is reestimated for monetary damages. Even if he later dies, the attacker pays the monetary damages to the estate of the victim. The *braisa* clarifies that the monetary damages are estimated comparing his current status to his status before the attack, not before his condition improved.

Action and Intent

The *Mishna* says that one is only liable for murder if he intentionally dealt his victim a blow that is generally fatal. If one intended to kill someone whose murder is not a capital offense, he is not liable, even if he killed someone whose murder is a capital offense. The *Mishna* gives the following instances of this rule:

Intent	Act
Animal	Person
Non-Jew	Jew
Nonviable baby	Viable person

If one intended to deal a nonfatal blow, but dealt a fatal blow, he is not liable. If one intended to deal a fatal blow, but dealt a blow which is generally not fatal, he is not liable, even if the victim died. The *Mishna* lists the following instances of this rule:

Intended	Actual
Waist, where blow is not fatal	Heart, where blow is fatal
Heart, where blow is fatal	Waist, where blow is not fatal
Adult, for whom blow is not fatal	Child, for whom blow is fatal
Child, for whom blow is fatal	Adult, for whom blow is not fatal

However, if the intent was a fatal blow, and the actual blow was in a fatal circumstance, he is liable, even if he did not actually accomplish his intent. For example:

Intended	Actual
Waist, where blow is fatal	Heart, where blow is fatal
Adult, for whom blow is fatal	Child, for whom blow is fatal

Rabbi Shimon disputes the last case, since he says that one is only liable if he killed his intended victim. Therefore, if he intended for an adult, but struck a child, even if the intended and actual blow were fatal, he is not liable.

INSIGHTS TO THE DAF

Murder by Multitude

Rabbi Yosi the son of Rabbi Yehudah and the Sages dispute whether one of many who dealt the last fatal blow is liable for murder. Both agree that if they all dealt fatal blows simultaneously that no one is liable. Rashi says that this is due to the verse, which mandates execution in a case of *ish ki yakeh – when a man kills*. This implies only one man killing, and not multiple killers.

The Yad Ramah says that it is due to the verse, which states that the court will punish *nefesh tachas nefesh – a soul for a soul [killed]*, but not more than one soul for one soul.

The Aruch Lenair says that although one of them may have been the last to strike, when it is done together, it is

impossible to determine which one was the last, and they are therefore all not liable.

The *Gemora* offers both a textual and conceptual explanation for the dispute between Rabbi Yossi the son of Rabbi Yehudah and the Sages regarding a group of people who murdered.

Tosfos (78a Mar) says that the two explanations are not mutually exclusive, since the dispute is on both planes.

The Yad Ramah suggests that the conceptual dispute leads to the differing readings of the text. The Yad Ramah also suggests that the two approaches are at odds – Rabbi Yochanan says that it is a purely textual dispute, while Rava says it is a purely conceptual dispute.

Second hand smoke

The responsa Maaseh Choshev (3:10) discusses one who smokes in a public place. Since it has been established that second hand smoke can harm others, this may cause health problems to the people around him. Although his current smoking is not sufficient to singlehandedly kill someone, it is still prohibited. Even according to the Sages, who do not consider the one who deals the last fatal blow liable, such a blow is prohibited. Furthermore, Tosfos (BK 10b kulan) says that if the earlier blows were not fatal, then all agree that the final fatal blow is a capital offense. Thus, if earlier second hand smoke was not sufficient to kill the bystander, but this one is (since the bystander is now sicker), it would even be a capital offense.

Tereifah

The *Gemora* discusses instances where we apply the rule that a *tereifah* is considered tantamount to dead. The Minchas Chinuch (34) says that we consider him dead not because he will die soon, since all people are destined to die, and the amount of time that one has left to live is only a difference of degree. Rather, a *tereifah* is considered dead because his physiology has no signs of viable life.

The Rambam (Rotzeach 2:9) mandates that capital testimony be possible to be disproven by *hazamah*. The Lechem Mishne (Eidus 20:7) says that this implies that this requirement is only

for capital testimony, but not for monetary testimony, but questions why this should be true, since the *Gemora* categorically states that any testimony that cannot be disproven by *hazamah* is not testimony. He notes that the Ran (Kesuvos 12b in Rif) applies this requirement to all testimony.

Judges vs. Witnesses

Rava states that if a *tereifah* commits a capital offense in the presence of the court, they may execute him. Although testimony may not be given against him, since the witnesses can never become *zomemim*, the court itself can execute him, to fulfill the directive to destroy evil from our midst. Tosfos (78a Bifnai) explains that the court may only do this when they are only acting in a judicial capacity, but not if they are acting in the capacity of witnesses. Since judgment can only begin in the daytime, this limits this statement to a case where the crime was committed in daytime, since only then can the court act in its judicial capacity.

Tereifah Ox vs. Person

The *Gemora* discusses if the court can execute a *tereifah* ox which killed a person. Rava says that they can. Tosfos explains that although we generally rule that an ox can only be killed inasmuch as its owner would be killed if under the same circumstances, this case is different. The only reason a *tereifah* murderer cannot be convicted is due to the witnesses not being able to become *zomemim*, since they were conspiring to kill a dead person. However, witnesses who are discovered to have conspired to kill a *tereifah* ox are liable for the monetary loss they were going to cause to its owner. Since a *tereifah* ox has a market value, they are still liable, and are valid witnesses.