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**Intention to Kill**

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.

The *Gemora* explains that Rabbi Shimon is discussing the ruling of the first case. If one intended to kill someone whose murder is not a capital offense, such as an animal, a non-Jew, or a non-viable baby, but instead he killed someone whose murder is a capital offense, such as a person, Jew, or viable person, he is exempt from liability. It may be inferred from here that if he intended to kill one person, and instead killed another, he would be liable. Rabbi Shimon rules that even in this case, he is exempt from liability.

The *Gemora* notes that the case of the dispute is where Reuven and Shimon are standing next to each



other, and a fellow says that he intends to kill Reuven and not to kill Shimon, and then he kills Shimon.

The *Gemora* proves that Rabbi Shimon would exempt the murderer from liability even if he says that he wants to kill one of them, or even if he thought that it was Reuven and it was subsequently found out that it was Shimon that he killed.

The *Gemora* cites a Scriptural verse as a source for Rabbi Shimon that he is only liable if he intends to kill a specific person.

The *Gemora* notes that the Sages derive the following *halachah* from that verse: If one threw a stone into the midst of a group where there were nine Jews and one Cuthean - since the Cuthean, although in a minority, is "in place" there (*and not coming from it*), and every case of uncertainty related to something that is "in place" is considered to have the probability of fifty-fifty. [*The verse teaches us that the murderer in this case is not liable. This is the source of the principle that a minority which is "in place" is regarded as equal to the majority.*]

The *Gemora* asks: According to the Sages, who hold that one is liable for killing a person even if he intended to kill another, it is understandable that which we learned: It is written [Shmos 21:22]: *And if men shall fight and they hurt a pregnant woman, so that she miscarries*. Rabbi Elozar said: The Torah is discussing a case where one of the combatants was striving with intent to kill the other, for it is written: *But if there shall be a fatality, then you shall give a life for life*. [*According to the Sages, the murderer is killed in this case.*] However, according to Rabbi Shimon

(who holds that one is not liable for murder when he intended to kill a different person), what does he use the verse of "*you shall give a life for life*" for?

The *Gemora* answers: He understands the verse like Rebbe, who says that the punishment is not life, but rather monetary compensation.

Rava said: the *braisa* that was taught in the Academy of Chizkiyah conflicts with both Rebbe and the Sages. For it was taught in the Academy of Chizkiyah: there is an analogy between a person who kills another person (*where he gets killed, but is not required to pay*) and a person who hits an animal (*that he is obligated to pay*). There is no difference if when the person hit the animal, he did so inadvertently or deliberately, with intention or without intention, whether his blow was downwards or upwards. In all cases, he is obligated to pay (*for a person is always liable for his actions*). Similarly (*regarding a person killing a person, where the Torah says that the penalty is death and not payment*), there is no difference if the person hits his fellow inadvertently or deliberately, with intention or without intention, whether his blow was downwards or upwards. In all cases, he is not required to pay. Now, the case where he killed someone without intention must be where he intended to kill one person and inadvertently killed another. Evidently, this *braisa* is ruling that there is no punishment of death in this case (*unlike the Sages*) and there is no monetary compensation either (*unlike Rebbe*). (78b – 79b)

### ***Intermingled***

If a murderer became intermingled among others, they all are exempt. Rabbi Yehudah says: They are assembled into a call (*where they are fed barley until their stomachs burst*).

Those liable to the death penalty, who became intermingled with one another are executed by the most lenient type. If those, who were to be put to death by stoning, became intermingled with those who were to be put to death by burning, Rabbi Shimon says: They are executed by stoning, for burning is more severe. The *Chachamim* say: They are executed by burning, for stoning is more severe. Rabbi Shimon said to them: If burning were not more severe, it would not be prescribed for a *Kohen's* daughter who committed adultery. The *Chachamim* responded to him: If stoning were not more severe, it would not be prescribed for the blasphemer and the idolater. If those, who were to be put to death by beheading, became intermingled with those who were to be put to death by strangulation, Rabbi Shimon says: They are executed by the sword, but the *Chachamim* say that they are executed by strangulation.

Rabbi Avahu in the name of Shmuel explains the *Mishna* as follows: A murderer whose verdict was not yet finalized became intermingled with murderers whose verdict was already finalized. The *Chachamim* hold that a verdict cannot be finalized unless the murderer is present (*and recognized*), so therefore, they are all exempt. Rabbi Yehudah, however, maintains that they cannot be set free since they are

murderers, and therefore they are all placed in a cell to die.

Rish Lakish explains the *Mishna* as follows: If a murderer's verdict was not yet finalized, and he became intermingled with other murderers, they all must be set free. The *Mishna* is referring to a case where an ox, whose verdict was not yet finalized, became intermingled with other oxen whose verdict was already finalized. The *Chachamim* hold that the death of an ox is similar to the death of a person, and we cannot finalize a verdict of an ox unless it is present, so therefore, they are all exempt. Rabbi Yehudah, however, maintains that they are all placed in a cell to die. (79b)