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Sanhedrin Daf 86

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***Kidnapping Witnesses***

The *Mishna* had stated: If one kidnaps his son, Rabbi Yishmael, the son of Rabbi Yochanan ben Berokah says that he is liable, while the Sages say he is not.

Abaye explains the source of the Sages. It is written: *and he was found to have been in his hand.* [This would exclude a case of a son who is readily accessible and not “found.”]

Rava says: Therefore, the instructors of (*Scripture to*) children and teachers of (*Talmud to*) students are regarded as having their charges readily accessible, and therefore, they (the instructors or teachers) will not be punished for kidnapping them (the children or students).

The *Mishna* had stated: If one kidnaps someone who is half slave and half free, Rabbi Yehudah says that he is liable, while the Sages say he is not.

It was taught in a *Mishna*: Rabbi Yehudah said: Slaves have no claim for disgrace (*when they are damaged*). [The Sages, however, disagree.] What is Rabbi Yehudah’s reason? It is written: *If men fight together, a man with his brother.* This teaches us that payment for disgrace applies only to one who has brotherhood - thus excluding a slave. But the Sages maintain that

the slave is regarded as his brother with respect to his obligation to fulfill some *mitzvos*.

Now, regarding kidnapping, how is the verse interpreted? Rabbi Yehudah maintains: *from his brethren* excludes slaves; *the children of Israel* excludes one who is a half slave, and a half freeman; *among the children of Israel* likewise excludes one who is a half slave, and a half freeman. Thus, one exclusion follows another, and the rule is that whenever one exclusion follows another, it always indicates an inclusion. But the Sages do not agree that *from his brethren* excludes slaves, since a slave is regarded as his brother with respect to his obligation to fulfill some *mitzvos*. *The children of Israel*, and *among the children of Israel* - one excludes a slave, and the other excludes a half slave, and a half freeman.

The *Gemora* seeks the Scriptural warning against kidnapping. Rabbi Yoshiyah cites the verse which teaches us the prohibition against kidnapping and Rabbi Yonasan teaches us the verse which warns against selling him as a slave.

The *Gemora* demonstrates how we know that the verse you shall not steal is referring to kidnapping, and not to monetary stealing.



The *Gemora* demonstrates how we know that the verse you (plural) shall not steal is referring to monetary stealing, and not to kidnapping.

It was stated: If there was one set of witnesses that testified about the kidnapping and another set of witnesses testified that the kidnapers sold the victim as a slave – and both sets of witnesses were found to be *zomemin* (when witnesses offer testimony and other witnesses refute them claiming that the first set of witnesses could not possibly testify regarding the alleged crime since they were together with them at a different location at the precise time that they claimed to witness the crime somewhere else; the Torah teaches us that we believe the second pair in this instance; the first witnesses are called "eidim zomemim" -- "scheming witnesses," and they receive the exact punishment that they endeavored to have meted out to the one they accused), Chizkiyah says that they are not executed, and Rabbi Yochanan says that they are executed.

The *Gemora* explains their respective reasons: Chizkiyah holds in accordance with Rabbi Akiva, for he said that when the Torah said (regarding witnesses testimony), "a matter," it means that they must testify regarding a complete matter, and not about half a matter. [Since the kidnapper is not executed unless he kidnaps and sells his victim, each testimony is regarded as "half a matter," and is not effective testimony.] Rabbi Yochanan holds like the Sages, who maintain that even "half a matter" is effective testimony.

The *Gemora* notes: Chizkiyah admits in the case of a rebellious son (*ben sorer u'moreh*) that if the second

set of witnesses (until the *ben sorer u'moreh* repeats the offense of stealing money and eating meat and wine, he is not executed) were contradicted through *hazamah*, they are executed, since the first set of witnesses could say, "We merely came to give him lashes," and therefore these last witnesses attest an "entire matter" involving execution on him.

Rav Pappa asked: If so, the witnesses of the sale of the kidnapped person should likewise be executed, since the witnesses on the kidnapping can say, "We merely came to give him lashes." You cannot answer that Chizkiyah is of the opinion that a kidnapper does not receive lashes since it has been stated: If the witnesses of a kidnapping were proved *zomemin*, Rabbi Yochanan, and Chizkiyah differ: One maintains that they receive lashes, and the other holds that they are not. The *Gemora* proves that it was Chizkiyah who ruled that they are lashed, since he said that they are not executed. For according to Rabbi Yochanan who maintains that they are executed, their prohibition (against testifying falsely) is one for which a warning of death at the hands of a court may be given, and for such prohibitions, there are no lashes. And if (according to Chizkiyah) the kidnapper does not incur lashes, how can the false witnesses receive lashes?

Rather, Rav Pappa said: All agree that the witnesses of the sale (who were found to be *zomemin*) are executed; they differ only with respect to the witnesses of the kidnapping (who were found to be *zomemin*): Chizkiyah maintains that they are not executed, because the witnesses to the kidnapping stand separately from the witnesses to the selling (because kidnapping alone carries the punishment of lashes), while Rabbi Yochanan holds that they are



executed, since the testimony regarding the kidnapping is merely the first step towards the testimony of the selling.

Rabbi Yochanan admits, however, that if the first witnesses of a rebellious son are found to be *zomemin*, they are not executed, since they can say, "We came to give him lashes."

Abaya said: All agree regarding (*one case*) the witnesses of a *ben sorer u'moreh* (*that they do not get executed*), and all agree regarding (*a different case*) the witnesses of a *ben sorer u'moreh* (*that they do get executed*), and there is a dispute regarding (*a different case*) the witnesses of a *ben sorer u'moreh* (*if they get executed or not*).

The *Gemora* explains: All agree regarding (*one case*) the witnesses of a *ben sorer u'moreh* (*that they do not get executed*) refers to a case where the first witnesses were found to be *zomemin* that they are not executed, since they can claim, "We came to give him lashes." And all agree regarding (*a different case*) the witnesses of a *ben sorer u'moreh* (*that they do get executed*) refers to a case where the last witnesses were found to be *zomemin* that they are executed, for since the first witnesses can claim, "We came to give him lashes," these last witnesses attest an "entire matter" involving execution on him. And there is a dispute regarding (*a different case*) the witnesses of a *ben sorer u'moreh* (*if they get executed or not*) refers to a case when two witnesses testify that he stole in front of us, and two witnesses testify that he ate (*meat*) before us (*and then they were found to be zomemin*; *this is a case where each set of witnesses is testifying regarding "half a matter"*). (86a – 86b)

### **Mishna**

A rebellious sage against the *Sanhedrin's* decision (*is also strangled*), for it is written: *If there shall be a matter of judgment hidden from you.*

There were three courts in Yerushalayim: One sat at the entrance to the Temple Mount, and one sat at the entrance to the Temple Courtyard, and one sat in the Chamber of Hewn Stone (*Lishkas Hagazis*). They would come to this one which is at the entrance to the Temple Mount, and he would say, "Thus have I expounded and thus my fellows expounded - thus have I taught and thus my fellows taught." If the members of the court had heard something regarding this, they would tell them; and if not, they would come to those at the entrance to the Temple Court, and he would say, "Thus have I expounded and thus my fellows expounded - thus have I taught and thus my fellows taught." If the members of the court had heard something regarding this, they would tell them; and if not, these and these would come to the Great Court which is in the *Lishkas Hagazis*, from which Torah goes forth to all Israel, for it is written: *from that place which Hashem shall choose*. If he returned to his city, and again taught in the previous manner, he is exempt from liability, but if he instructed people to do according to his viewpoint, he is liable to the death penalty, for it is written: *And the man that acts with willfulness* - he is not liable until he rules what is to be done. If a disciple (*who was not granted semichah to rule, for he was not yet forty*) ruled to do, he is exempt; it emerges that his severity (*that he could not receive semichah*) is his leniency. (86b)