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Makkos Daf 9

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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

Gair Toshav

The *Mishna* had stated: All are exiled for killing a Jew, and a Jew is exiled for killing anyone, except for a *gair toshav* – non Jew who has renounced idolatry. [Seemingly if a Jew would inadvertently kill a *gair toshav*, he would be not be exiled, and if a *gair toshav* would inadvertently kill a Jew, he would not be exiled, but rather, he would be killed.] This would indicate that a *gair toshav* has a status of an idolater. But let us consider the latter part of the *Mishna*, which states that a *gair toshav* is exiled for killing a *gair toshav*. [This would indicate that they have the status of a Jew, for an idolater would not be sentenced to exile!?!]

Rav Kahana answers: [They do not have the status of a Jew, nor are they regarded as idolaters.] It is not difficult, for here, we are referring to a *gair toshav* who inadvertently killed another *gair toshav* (and it is fitting for him to receive atonement through exile); however, the other case is when a *gair toshav* kills a Jew (in which case, he does not deserve to receive atonement through exile; but a Jew who kills a *gair toshav* will be exiled).

There are those who asked a contradiction between two verses (regarding a *gair toshav*), and Rav Kahana resolved them in the same manner.

[The *Mishna* had stated: A *gair toshav* is exiled for killing a *gair toshav*.] The *Gemora* asks a contradiction from a *braisa*: Therefore, a *gair*, or an idolater, who kills (even inadvertently) is executed. It would seem from the *braisa* that a *gair* is similar to an idolater; just as idolater is executed whether he killed someone of his own kind (another idolater), or whether he killed someone from a different kind (a Jew), so too regarding a *gair toshav*, he is executed whether he killed someone of his own kind (another *gair toshav*), or whether he killed someone from a different kind (a Jew).

Rav Chisda answers: This is not difficult, for our *Mishna* is referring to a case where he was engaged in a downward motion (and that is why he is exiled), but the *braisa* is referring to a case where he was engaged in an upward motion. Since a Jew is exiled when he kills when he was engaged in a downward motion, a *gair toshav* is also exiled. However, with respect of a case where one killed while engaged in an upward motion – a Jew would be exempt, and we are strict regarding a *gair toshav*, and he is executed (for Rav Chisda maintains that killing in such a manner is close to a deliberate action; exile would not be sufficient for a Jew, and a non-Jew is executed).

Rava asked him: Is it not a *kal vachomer* (that a *gair toshav* should not be executed when he killed while

engaged in an upward motion), for if a Jew kills while engaged in a downward motion (*which, Rava holds, it is regarded as an expected mishap*), he is exiled, and it is sufficient for a *gair toshav* as well; so in a case of an upward motion (*which, Rava maintains, is regarded as a completely unexpected mishap*), where a Jew is exempt, certainly a *gair toshav* should not be executed!?

Rather, Rava said: The *gair toshav* is executed in a case where he killed because he thought it was permitted (*where in such a case, a Jew is not executed, for it is close to deliberate, and we are strict regarding a gair toshav, and he is executed*).

Abaye asked Rava: In a case where he thought it was permitted, it should be regarded as an unavoidable mishap (*for he did not know that it was forbidden*)!?

Rava answers: I maintain that it is close to being deliberate (*for his being ignorant is not an excuse*).
(9a)

Thought that it was Permitted

The *Gemora* notes that they each (*Rava and Rav Chisda*) follow their respective opinions stated elsewhere regarding a *gair toshav* who thought that there was an animal before him (*and he killed it*), and it emerged that it was a person, or, he thought it was a Canaanite and it emerged that it was another *gair toshav* (*who he would be liable for*), Rava says that he is liable to be executed, for a case where he thought that it was permitted to kill is regarded as a case that is close to being deliberate (*so also here, he should have been more careful to realize the identity of what*

he is killing). Rav Chisda says that he is not liable, for a case where he thought that it was permitted to kill is regarded as an unavoidable mishap (*and therefore, he cannot be punished for his action*).

Rava challenged Rav Chisda from the verses dealing with Avimelech taking Sarah from Avraham, which seem to indicate that he was liable to die at the hands of a human court. Avimelech thought that she was permitted to him, for Avraham said that she was his sister, when, in truth, she was forbidden to a Noahite, for she was a married woman. Rav Chisda deflects this by saying that the Torah meant that he would be liable under the hands of Heaven.

Abaye attempts to bring proof to Rav Chisda from the verses which seem to say that God agreed with Avimelech that he should be innocent because he thought that Sarah was permitted to him. The *Gemora* deflects this proof, and explains the verses according to Rabbi Shmuel bar Nachmeini's interpretation in the name of Rabbi Yonasan: Since Avraham is a prophet, you should learn from him that when a guest arrives in a city, you should ask him regarding matters of food and drink, not whether the woman he is with is his wife or his sister. (9a – 9b)

Mishna

A blind person (*who inadvertently kills someone*) is not exiled; these are the words of Rabbi Yehudah. Rabbi Meir says: He is exiled.

An enemy is not exiled. Rabbi Yosi says: Someone who hates another person is killed (*even if he claims the death was accidental*), because he is considered to

have already received a warning. Rabbi Shimon says: There is an enemy who is to be exiled and there is an enemy who is not to be exiled. This is the general rule: If it can be said that he killed intentionally, he is not to be exiled; but if he did not kill intentionally, he is to be exiled. (9b)

Blind person

It was taught in a *braisa*: It is written: *without seeing*. This teaches us that a blind person (*who does not have the ability to see*) who killed another person inadvertently will not be liable to go to exile; these are the words of Rabbi Yehudah. Rabbi Meir says: This phrase comes to include a blind person. The *Gemora* elaborates on the manner in which they each explain the Scriptural verses. (9b)

Enemy Killing

The *Mishna* had stated: Rabbi Yosi says: Someone who hates another person is killed (*even if he claims the death was accidental*), because he is considered to have already received a warning.

The *Gemora* notes that this would be in accordance with Rabbi Yosi bar Yehudah's opinion that a scholar does not need warning, as warning is only given to differentiate between one who does a sin accidentally and one who does it willingly.

The *Mishna* had stated: Rabbi Shimon says: There is an enemy who is to be exiled and there is an enemy who is not to be exiled. This is the general rule: If it can be said that he killed intentionally, he is not to be exiled; but if he did not kill intentionally, he is to be

exiled.

The *Gemora* cites a *braisa* which explains the rule: If he was lowering an object and the rope broke, and the barrel fell on someone and killed him, he is exiled (*for it is recognizable that it was done inadvertently*); however, if the barrel slipped out of his hand, and it fell on someone and killed him, he is not exiled (*for it is possible that it was done intentionally*). (9b)

Mishna

To where are they exiled? To the cities of refuge: To the three which are beyond the Jordan and the three which are in the Land of Canaan, as it is written: *You shall designate three cities beyond the Jordan and three cities shall you designate in the land of Canaan* etc. Until the three in *Eretz Yisroel* were chosen (*during the fourteen years that they were conquering and dividing the land*), the three beyond the Jordan did not provide refuge, as it is written: *There shall be for you six cities of refuge* - until all six of them together will provide refuge.

And direct roads were prepared for them from one city to the other, as it is written: *You shall prepare the way for yourself and divide the borders of your land into three parts* etc.

And they would provide them with two scholars, lest he (*the "go'al ha'dam" – redeemer of the blood; the closest relative of the victim is allowed to avenge his blood by killing the murderer; he can only do so if he finds the murderer outside of the city of refuge*) kill him on the way. They would speak to him (and try to



convince him not to kill him). Rabbi Meir says: He also would speak on his own behalf, as it is written: *This is the word of the killer.*

Rabbi Yosi bar Yehudah said: Initially, both the inadvertent killer and the intentional one would go immediately to the cities of refuge, and the court sends and brings him from there. He who was sentenced to death by the court, was executed; and he who was not liable to death, was freed. He who was sentenced to exile, they would return him to his place, as it is written: *And the congregation shall restore him to his city of refuge* etc. (9b)

DAILY MASHAL

More Killers = More Cities of Refuge

The *Gemora* says that in Gilead, murderers were more common, therefore the amount of cities of refuge for the ratio of the population, was greater.

Many commentators raise the question that the city of refuge is for inadvertent killing, and shouldn't be related to the number of cold blooded murderers!?

1. Tosfos answers based on the "*mashal ha'kadmonim*," that the more intentional killers, the more it was necessary for Hashem to arrange for their accidental death, thereby increasing the number of accidental killings. Therefore, the increased number of murderers demands an increase in the numbers of cities of refuge.

2. Maharsha explains based on Rabbi Yosi Bar Yehudah in the *Mishna* - immediately following the

murder, whether intentional or accidental, the murderer would always run to the city of refuge. It was necessary to increase the number of cities for the intentional killers to run right after they killed.

3. Ramban in Chumash (quoted in margin) writes that the more intentional killers there are, the more they make the killing seem as a mere accident. Therefore, as the killers increased, it became necessary to increase the numbers of cities of refuge.

4. Reb Avi Lebowitz suggests another approach, based on the Beis Halevi in Parshas Noach. The more corrupt people become, the more corrupt the world becomes. Laxity in abstaining from transgressions has an influence on society being more liberal and lax with committing sins. Therefore, the more murderers there are who kill intentionally, the less value there is for human life. It would follow that people would be less careful and more negligent with lives of others, leading to more accidental killings.

There seems to be a theological problem with all these approaches. The *mitzvah* to set up cities of refuge was given before the inhabitation of the east side of the Jordan. By their being a *mitzvah* to set up multiple cities of refuge, because there will in the future be more murders, it became a self-fulfilling prophesy and borders on the killings being predestined. But, based on the Rambam's classical approach that a decree on the public doesn't take away from the *bechirah chafshis* (*free choice*) of the individual, all is well.