

Introduction to מכות

מסכת מכות was evidently the last three chapters of the original סנהדרין, as evidenced by the גמרא's explanation for the beginning משנה which picks up where the end of פ"א (in the משניות) leaves off – identifying עדים זוממים as being a special class of felons. As we continue (from the 7th chapter of סנהדרין) to assay, in descending order of severity, those who are punished by ב"ד, we examine עדים זוממים – who could potentially be executed, which allows us to investigate a few nuances of the laws of עדות which were not covered in the 4th and 5th chapters of סנהדרין. Afterwards, the next punishment which is a “stand-in” for execution – exile to the cities of refuge – is analyzed (2nd chapter) and, finally, corporal punishment (מכות) is presented; both as a list of those violations which incur מכות and the method of administration.

We begin, as noted, with several משניות about עדים זוממים; the basic presentation of עדים זוממים – i.e. what qualifies them as such – will be presented in ז-ו משניות.

24.1.1

2a (משנה א) → 3a (איהו נמי לא מחייב קמ"ל)

1. (טו) לא יקום עד אחד באיש לכל עון ולכל חטאת בכל חטא אשר יחטא על פי שני עדים או על פי שלשה עדים יקום דבר: (טז) כי יקום עד חמש באיש לענות בו סרה: (יז) ועמדו שני האנשים אשר להם הריב לפני ה' לפני הפהנים והשפטים אשר יהיו בימים ההם: (יח) ודרשו השפטים היטב והנה עד שקר העד שקר ענה באחיו: (יט) וישיתם לו כאשר זמם לעשות לאחיו ובערת הרע מקרבך: (כ) והנשארם ישמעו ויראו ולא יספו לעשות עוד כדבר הרע הזה בקרבך: דברים יט

2. ואשר יבא את רעהו ביער לחטב עצים ונדחה ידו בגרזן לכתר העץ ונשל הברזל מן העץ ומצא את רעהו ומת הוא ינוס אל אחת הערים האלה וחי: דברים יט, ה

3. כי יהיה ריב בין אנשים ונגשו אל המשפט ושפטו והצדיקו את הצדיק והרשיעו את הרשע: והיה אם בן הכות הרשע... דברים כה, א-ב

4. לא תרצח ס לא תנאף ס לא תגנב ס לא תענה ברעך עד שקר: שמות כ, יב

5. אם כפר יושב עליו ונתן פדיו נפשו ככל אשר יושב עליו: שמות כא, ל

6. אם זרחה השמש עליו דמים לו שלם ישלם אם אין לו ונמכר בגנותו: שמות כב, ב

- I מכות which do **not** get “punishment in kind”, rather they get מכות זוממים משנה א
 - a As per: עולא's interpretation of v. 3 (after we clarify his question)
 - i Question: why not infer it from v. 4?
 - 1 Answer: that is a שאב"מ → no מכות
 - b If: they testify that א' mother was a גרושה when he was conceived → he is א חלל
 - i Source:
 - 1 v. 1 – only affect him, not his children
 - (a) Challenge: make them each א גרושה, don't apply to his children
 - (b) Answer: require זמם; this wouldn't fit their conspiracy (to affect the defendant and his progeny)
 - 2 – if א who generates חילול (by impregnating א גרושה) isn't מתחלל, then these עדים, who only attempted to generate חילול but weren't successful, certainly shouldn't be rendered חללים
 - (a) Rejection: this line of thinking would uproot all of עדים זוממים (and play into hands of יצודקים)
 - c If: they testify that someone killed inadvertently → is liable for exile to מקלט
 - i Source:
 - 1 v. 2 – excludes זוממים
 - 2 – if א murderer, who acted intentionally, isn't exiled; then they, whose intent wasn't an act – don't exile
 - (a) rejection: perhaps a murderer isn't exiled to prevent him gaining כפרה; perhaps their “lesser” act warrants כפרה
- II Analysis: difficulties with the wording of the משנה (based on assumption that מכות is a stand-alone text)
 - a משנה states “כיצד העדים נעשים זוממין” – but here, they are not punished in class זוממים fashion - they get מכות
 - b Implication of משנה ד' is that every case until there is not a case of ע"ז
 - i Answer: assumption is incorrect and מכות is a continuation from יא סנהדרין
 - 1 get א זוממי בת כהן a different mode of execution than she would have; and there are other ע"ז who don't get מכות at all, rather הזמה...
- III listing 4/5 exceptions which apply to ע"ז (including our two)
 - a #3: don't pay כופר – since it is א כפרה (as per ר' ישמעאל בנו של ריב"ב on v. 5)
 - i Tangent: clarification of dispute ר"ה"ק if it is דמי ניזק or דמי מזיק – all agree it's כפרה; whose נפש used to measure value?

ahead משנה ו¹

- b #4: not sold as ע"ע (if stole and can't pay back)
- i *המנונא*'s supposition: only if the accused had money; since he wouldn't have been sold, neither are they
 - 1 *However*: if he has no funds; even if they do, since he would have been sold, so are they
 - 2 *Challenge*: they could counter that had he the funds he wouldn't have been sold → they shouldn't be sold
 - ii *Rather*: המנונא supposed – if either of them has funds, not sold; but if neither has funds, they are sold
 - 1 *Challenge* (*רבא*): v. 6 excludes ע"ז from מכירה
- c #5 (*ר"ע*): they don't pay on their own admission
- i *Reason*: he sees ע"ז as a קנס and מודה בקנס פטור
 - 1 *Support* (*רבה*): they did nothing, yet pay
 - 2 *Additional support* (*ר' נחמן*): the money hasn't left the owner (i.e. no theft took place) yet they're חייב
- IV Additional ruling of רב עד זומם: רב עד זומם pays "per his role"
- a *Meaning*:
 - i *Possibility1*: pays per his percentage of the כת
 - 1 *Block*: that's already taught in a ברייתא
 - ii *possibility2*: if he alone is מוזם, he pays per his percentage of the כת
 - 1 *Challenge*: ruling that ע"ז aren't culpable unless the entire כת is מוזם
 - iii *possibility3* (*רבא*): if he testifies that he lied
 - 1 *challenge*: once he's testified, he can't recant
 - iv *possibility4*: if he admits that he was part of a כת that was מוזם in a particular ב"ד
 - 1 *challenge*: that counters ר"ע, who would exempt them if they admitted (מודה בקנס פטור)
 - v *answer*: if he claims that he was part of a כת that was מוזם and there was a גמ"ד as a result of which they owe money
 - 1 *justification*: סד"א since he can't obligate his co-witness, it may not be valid for him – קמ"ל