

24.1.4

5a (משנה ד') → 6a (הלכה כרבי)

<p>1. וְדָרְשׁוּ הַשְּׂפָטִים הַיָּטִב וְהַחַיִּיב עַד שֶׁיִּשְׁקַר הָעֵד שֶׁקָּרַע עֵנָה בְּאֶחָיו: דְּבָרִים יט, יח</p> <p>2. כִּי יָקוּם עַד חֵמֶס בְּאִישׁ לְעִנּוֹת בּוֹ סָרַח: דְּבָרִים יט, טז</p> <p>3. וְאִם אֶסּוּן יִהְיֶה וְנִתְּתָה נַפְשׁ תַּחַת נַפְשׁ: שְׁמוֹת כ"א, כ"ב</p> <p>4. וְעֲשִׂיתֶם לוֹ כַּאֲשֶׁר זָמַם לַעֲשׂוֹת לְאָחָיו וּבְעֵרְתָּ הָרַע מִקִּרְבֶּךָ: דְּבָרִים יט, יט</p> <p>5. וְאִישׁ אֲשֶׁר יִקַּח אֶת אָחִיתוֹ אוֹ בֵּית אָבִיו אוֹ בֵּית אָמּוֹ וְרָאָה אֶת עֲרוֹתָהּ וְהִיא תִּרְאֶה אֶת עֲרוֹתָהּ... עֲרוֹת אָחִיתוֹ גְּלָה עֹנּוֹ יִשָּׂא: וִיקְרָא כ"ז</p> <p>6. עֲרוֹת אָחוּתְךָ בֵּית אָבִיךָ אוֹ בֵּית אָמֶךָ מוֹלְדֵת בֵּית אוֹ מוֹלְדֵת חוּץ לֹא תִּגְלַח עֲרוֹתֶיךָ: וִיקְרָא יח, ט</p> <p>7. עֲרוֹת בֵּית אִשְׁתְּ אָבִיךָ מוֹלְדֵת אָבִיךָ אָחוּתְךָ הוּא לֹא תִּגְלַח עֲרוֹתָהּ: וִיקְרָא יח, יא</p> <p>8. לֹא יָקוּם עַד אֶחָד בְּאִישׁ לְכָל עוֹן וּלְכָל חֲטָאת בְּכָל חֲטָא אֲשֶׁר חֲטָא עַל פִּי שְׁנֵי עֵדִים אוֹ עַל פִּי שְׁלֹשָׁה עֵדִים יָקוּם דָּבָר: דְּבָרִים יט, טו</p>

I הזמה: mechanism of משנה ד'

a Must be: מוזם by their own testimony

- i Meaning not: if others came and countered their testimony with information which doesn't directly challenge the fact of their testimony, rather its content – e.g. the “dead” man is still alive
- ii Rather meaning: if others came and testified that the witnesses were with these מזימים in another place at the time about which they testified

1 Source:

- (a) v. 1 – only if the fact of the עדות is disproven
- (b) v. 2 – the essential עדות must be “waylaid”

2 Applications (רבא):

- (a) If: 2 testified to a crime on the east side and the מזימים claimed they were with them on the west
 - (i) Then: we judge if the crime could've been seen from that side; else, מוזמים
 - 1. Teaching: that we don't suspect unreal eyesight
- (b) if: 2 testified they saw a crime in A in the morning; מזימים testified that they were in B in afternoon
 - (i) Then: we see if one could reasonably reach B from A in that time; else מוזמים
 - 1. Teaching: that we don't suspect an unreasonably fast transport

3 Tangent (רבא): if 2 testified to murder taking place on 'א' ויום; & 2 were מזימים them but testified to it on 'ב' יום

- (a) And even: if they testified to it having taken place earlier
- (b) Then: the first set are killed
 - (i) Challenge: this is obvious, as they testified about a man who was as yet innocent
 - (ii) Justification: needed for סיפא – if they testified about a גמ"ד – exempt, even if it happened later
 - (iii) Note: same applies to חיוב קנס

iii And: the witnesses may be killed based on this latter testimony

II איסטטית: משנה ה'

a ת"ק: if a second group came to corroborate the first testimony and these מזימים gave the same testimony about them (עמנו הייתם) even 100 – all are killed

b ג' יהודה: these two are suspected of being איסטטית - ready to be מזימים anyone who comes along – only 1st נת' killed

i Question: why kill first group?

- 1 Answer1 (ר' אבהו): if the already killed him (challenge – doesn't teach anything – they're already dead)
- 2 Answer2 (רבא): if there's only, it's killed; if more, all live (challenge – בלבד) – קשיא

ii Story: woman brought עדים who proved to be liars (twice)

- 1 ג'ל: can't bring anymore
- 2 ג'א: may bring more – others aren't חשוד to lie due to her suspicious pattern (follow up story w/ יוחנן/ר')

iii Suggestion: רבנן: ר' א/ר' יוחנן and ר' יהודה: ל' ר' יהודה

- 1 Rejection: ר'ל's point is only because she is going out to “hire” more; in משנה, that's not the case
- 2 And: ר'א/ר'י's point - these may be legit; איסטטית, unlikely that so many were with the מזימים

III משנה ו': dispute w/ צדוקים regarding execution of זוממים after גמ"ד

a צדוקים: based on v. 3, cannot execute them unless accused was executed

b חכמים: based on v. 4, must be before execution

i And: v. 3 limits law to after גמ"ד

c Internal discussion: חכמים quoted ברבי as per הלכה

i Father: suggested ק"י – if they are killed for the attempt, certainly they should be killed for the success!

ii Response: father had taught him that אין עונשין מן הדין (from v. 5 – need for אחותו)

- 1 And: אין מזהירין מן הדין is learned from vv. 6-7

- 2 *Extension*: application to רשע::רשע via חייבי מלקיות
 - 3 *Extension*: to רוצח::רוצח via חייבי גלויות
 - (a) *Story*: יהודה בן טבאי who executed a single עד זומם to prove point to צדוקים
 - (b) *Response*: שמעון בן שטח showed him that he had wrongly executed him – scene at grave
- IV *משנה ז'-ח'*: interpretation of added "שלשה" in v. 8 and its comparison to שנים
- a *ת"ק*: just as 3 can be מזים 2, 2 can be מזים 3; they can even uproot testimony of 100 as per עדים
 - b *ר"ש*: just as both (of 2) must be מזים to kill them, so all 3 must be מזים; even 100 as per עדים
 - c *ר"ע*: the 3rd is there as a stringency – the third can be killed for joining the conspiracy
 - i *Homily*: how much more so for someone who joins a group for good
 - d *And*: just as the פסול of 1 of 2 delegitimizes the כת so too if 1 of 3 is found פסול או קרוב – even 100 as per עדים
 - i *ד' יוסי*: this only applies to ד"נ; in ד"מ, as long as there are still 2 valid witnesses left, sufficient
 - ii *דבני*: applies to both, but the witnesses have to confirm their role
 - 1 *We ask them*: did you come to testify or to watch (the proceedings)?
 - (a) *Final ruling*:
 - (i) *ד' יוסי* as per שמואל
 - (ii) *ד"נ* as per רבי
 - 2 *דש"י, רמב"ם*: by giving התראה to the accused at the scene of the crime
 - 3 *ד"ד, ר' יהונתן* gives them warning before testifying
 - iii *דבא*: all of the above, including all witnesses as part of one כת, only holds if they testify כ"ד בתוך כ"ד of each other
 - iv *ר"ע* Reassessing ר"ע:
 - 1 *Challenge (ד"פ לאבני)*: if so, the victim should invalidate the testimony (note: only valid according to ד' יוסי)
 - (a) *Answer*: if he was attacked from the rear
 - (b) *Challenge*: the predator should disqualify (no answer)
 - (c) *Answer (דבא)*: v. 8 indicates that only the מקיימי דבר (witnesses) are defined as such, not the actors