## Introduction to פרק שני – אלו הן הגולין

After concluding our discussion about the various capital crimes and executions, this next chapter – one of the real "stand-alone" chapters of משנה – addresses a punishment which is akin to execution – exile for inadvertent killing. As can be seen from the collection of citations below, the ערי מקלט are presented in several places in מומת (שמות כא) and one merely as a reference (שמות כא)

## 24.2.1

7a (משנה א') א 8a (מאנה א')

- 1. אוֹ בְּכַל אֶבֶן אֱשֶׁר יָמוּת בָּה בָּלֹא רָאוֹת **וַיְּפֵל** עַלְיו וַיַּמֹת וְהוֹא לֹא אוֹיֶב לוֹ וְלֹא מְבַקְשׁ רְעַתוֹ: *במדבר לה, כג* 
  - 2. וְהָקָרִיתֵם לָכֵם עָרִים עָרִי מִקּלֶט תִּהְיֵינָה לָכֵם וְנָס שָׁמָה רֹצֵחַ מַכֵּה נֵפֵשׁ **בִּשְׁנֵגָה**: במדבר לה, יא
- יט, ד רָרְצֵחַ אֲשֶׁר יָנוּס שָׁמָּה וָחִי אֲשֶׁר יַבֶּה אֶת רֵעֵהוּ **בְּבְלי דַעַת** וְהוּא לֹא שׁנֵא לוֹ מִתְּמֹל שִׁלְשׁם:־*דברים יט, ד* 🗈 וְזֶה דְבַר הָרֹצֵחַ אֲשֶׁר יָנוּס שָׁמָה וָחִי אֲשֶׁר יַבֶּה אֶת רֵעֵהוּ **בְּבְלי דַעַת** וְהוּא לֹא שׁנֵא לוֹ מִתְּמֹל שִׁלְשׁם:
  - 4. וְאָם בְּפֶתַע בְּלֹא אֵיבָה הָדָפוֹ אוֹ הִשְׁלִיךְ עָלָיוֹ כָּל כְּלִי בְּלֹא צְדְיָה: במדבר לה, כב
- . **וַאָּשֶׁר לֹא צֶדֶה** וְהָאֱלֹהִים אָנָה לְיָדוֹ וְשַׂמְתִּי לְדְּ מָקוֹם אֲשֶׁר ֹנָנּוּס שָׁמָה: *שמות כא, יג* 6. וַאָּשֶׁר יָבֹא אֶת רֵעֵהוּ **בִּיצֶר** לַחְטֹב עֵצִים וְנִדְּחָה יָדוֹ בַּגַּרְזָן לְכָרֹת הָעֵץ **וְנָשֵׁל הַבַּרְזֶל מָן הָעֵץ** וּמָצָא אֶת רֵעֵהוּ וָמֵת הוּא יָנוּס אֶל אַחַת הָעָרִים הָאֵלֵה וָחָי:ד*ברים יט, ה*
- I משנה או: general rule of accident that does or doesn't lead to חיוב גלות
  - a if: he was on his way down, חייב; if: on way up no exile (generally, too close to ויפל as per v. 1 ויפל
    - i examples: rolling a pitch-roller, lowering a pail, going down a ladder חייב
    - ii but: pulling pitch-roller, raising a pail, going up a ladder פטור
  - b ברייתא exegesis of key פסוקים
    - i אומר (v2): excludes מזיד (meaning אומר מותר, as per רבא's definition)
    - ii בר פטורא (v3): excludes מתכוין, meaning he intended to harm a בר פטורא (e.g. animal) and killed a person
  - c ברייתא: further exegesis
    - i v4): excludes coming around a corner with a drawn weapon or tool
    - ii בלא איבה (ibid): excludes someone who had enmity towards the victim
    - iii הדפו (ibid): includes hitting with his body (e.g. if he fell of the ladder on to the victim)
    - iv או השליך עליו: includes a death that occurred while the killer was descending for purposes of ascent
    - v בלא צדיה (ibid): excludes a case where he intended to throw something to one side and it went to the other
    - vi אשר לא צדה (v5): excludes a case it went further than his intent (and killed)
    - vii עניער (v6: a forest is an area where both killer and victim have rights to enter that is the model
      - 1 Question ("מ"א בהו לר"י): if he was going up a ladder and the rung came out and it killed דרך ירידה או עליה
      - 2 Answer: this is subsumed under ירידה צורך עלייה
        - (a) Challenge: isn't this excluded in the extra "כלל" of the משנה משנה אינו גולה משנה?
        - (b) Defense: the other rule כל שבדרן ירידתו גולה is also extra → both are there for the case of the cleaver:
          - (i) 4 "opinions": חייב in front of him, in back of him, both or neither
          - (ii) Resolution: whichever is on the upward arc is פטור, on downward arc is חייב
      - 3 Suggestion: the issue of the fallen rung is a מחלוקת תנאים: one states חייב, the other states פטור
        - (a) Rejection: they all agree that for דרך ירידה it is דרך ירידה no exile; it is נזקין in re נזקין
        - (b) Or: both for גלות; liable if the wood was wormy (it sagged first ירידה)
        - (c) *Or*: both are not wormy; liable if the rung wasn't tightly fixed in (ירידה)
- II משנה disputes רבי/חכמים about meaning of אין in v. 6: רבי the wood he was chopping; חכמים the haft of the axe
  - a If: the axe flew out of the handle and killed רבי exempt; חכמים exiled
  - b But: if the wood he was chopping shot out and killed; רבי exiled; חכמים exempt from גלות
    - i מן העץ argument: it doesn't state מריה, rather מן העץ (relying on סרורה, that it could be read ונישל)
    - ii *Moreover*: the earlier *γγ* in the verse refers to the wood he's cutting, not the haft
      - 1 Challenge: יש אם למקרא is among those reckoned (פ"ק דסנהדרין) who holds יש אם למקרא
      - 2 *Answer*: that's why he adds his "moreover" reason
    - iii *Application (פ"פ*): if someone threw a clod of dirt at a tree, shook the branches and a fruit fell and killed the ruling is dependent on רבי/חכמים
      - 1 *Challenge*: this is obvious
      - 2 Answer: we might have thought that it was secondary ב and even רבי wouldn't find liable קמ"ל
      - 3 Question: what does כח כחו (and therefore exempts)?
      - 4 Answer; a Rube Goldberg machine