

”יד העדים”

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I wish everyone a *gutten Chodesh Elul* and would like to dedicate this *shiur l'iluy nishmas* R. Pinchas Lax z"l, a *talmid* of the Yeshiva and a *gutte chaver* who was *niftar* just this week.

The *posuk* in this week's *parsha* reads, (דברים יז, ז) "יד העדים תהיה בו בראשונה להמיתו...". There is a *tzivuy* from the Torah that when *eidim* testify on someone to be *chayiv misa* and *beis din* convicts that person, those *eidim* are the ones who must carry out the *onesh*. The simple reason for this is because *eidim* will be less inclined to testify falsely to condemn someone to death if they themselves will have to carry it out. If someone is indeed guilty of an *aveira* which is *mechayev misa*, the Torah does want the *eidim* to testify in *beis din* and carry out the *misa*.

The *Gemara* says that if the *eidim* in such a case lost their arms and could not carry out the *misa*, then the *nidon* is *patur*. However, the *Gemara* clarifies that the arms must have been there before and then lost in order for the *nidon* to become *patur*. If *eidim* without arms testified in the first place, then the conviction stands. *Rashi* explains that the *yad* ("יד העדים") which was present when they testified must still be present by the *misa*, which does not apply to handicapped *eidim* who don't have arms because their stump is their *yad*. This is also how the *Rambam paskens*.

Many *meforshim* ask a simple question on this *din*. The *Gemara* in *Makkos* says by *eidim zomemim*, we have a *drasha* of "כאשר זמם ולא כאשר עשה". We only give *eidim zomemim* the punishment which they tried to afflict on someone else, but not if it was already carried out. We do not accept *eidus* that they are *zomemim* if the *nidon* was already punished by *beis din* from their testimony. If those *eidim* testified that 'Reuven' was *chayiv misa*, then our *Gemara* above dictates that the *eidim* should have killed him. While we cannot kill the *eidim zomemim* because of "כאשר זמם ולא כאשר עשה", why can't we put them to death because they perpetrated an act of *rechitza* by killing the *nidon*?

The *pashutte teretz* to this *kashya* is that they cannot be convicted as *rotz'chim* because they carried out the directive of *beis din*. *Beis din* sentenced the *nidon* to death and the *eidim* are simply the arm of *beis din*. Carrying out a *gmar din* is carrying out *ratzon haTorah*. *Eidim* are not allowed to back-out of their *eidus* after the *gmar din* and even admitting they lied cannot change a *gmar din* of *beis din*. Of course, in *Shomayim* there is a different *cheshbon*, and *eidei sheker* will certainly be taken care of. However, they cannot be charged as *rotz'chim* for carrying out the *gmar din* of *beis din*.

In fact, there is a well-known *gemara* *ירושלמי*, which *Rashi* brings in : *גמ' סנהדרין דף מד*, about *Shimon ben Shetach's* son. *Shimon ben Shetach* gathered and killed eighty *machashefos* in one day through *hora'as sha'a* because *kishuf* was rampant. The *Yerushalmi* relates that the families of these *machashefos* were upset and two *eidim* came and testified falsely and successfully duped *beis din* into convicting *Shimon ben Shetach's* son of being *chayiv misa*. When he was led out to be executed he said the following. "If I really did this, then my *misa* should not be a *kapara* for it; but if I didn't, then my *misa* should be a *kapara* for all my *aveiros* and they should fall onto the *cheshbon* of the *eidim*." When the *eidim* heard him say that, they recanted their *eidus* and even explained why they lied about it, and yet *beis din* did not free *Shimon ben Shetach's* son. Because when *beis din* gives a *psak misa* it means that it is *ratzon Hashem* for that person to be killed.

Derech agav, there is an interesting *shayluh* discussed by *Acharonim*: If a person was convicted of *chiyuv misa*, and he knows he is truly innocent, if he finds himself in a position to run away and escape is he allowed to do so? Does he have to stay put because the *ratzon haTorah* is for him to get the *misa*, once the *psak* from *beis din* comes down, or can he save himself because he knows the *emes* of his *matziv*? The

Nirenberger Rov, R' Klein, discusses this question in his *sefer* "Nevi'ei Emes," as does the Minchas Elazar in a *teshuva*.

I wanted to *shtell tzu* an interesting *svara* from one of the *gedolei* Acharonim to this question. Tosafos' *shita* in "גמי ב"מ דף י" and "גמי ב"ק דף עא" is that there is a *din* of *יש שלח לדבר עבירה בשוגג*. Since the person was *b'shoge*, we cannot say he should have listened to Hakadosh Boruch Hu over anyone else. (דברי הרב ודברי) Therefore, the *meshalayach* is *chayiv*. The Ketzos asks on this from the *din* of *shaliach beis din*. The Gemara says that if the *shaliach beis din* gave an extra *makka* to someone which caused them to die, the *shaliach* must go to *galus*. The Ketzos asks, if *יש שלח לדבר עבירה בשוגג*, then why don't we send the whole *beis din* to *galus* with him? They told him to give another *makka*, the extra *makka* which killed the person. Many Acharonim explain that "*shaliach beis din*" sometimes actually means he is a *shaliach* of Klal Yisroel. Everyone in Klal Yisroel is responsible to ensure that the *din* is carried out. [This is just like that which the Rambam and Rosh both say concerning a father who does not *mal* his son, the responsibility falls to "*beis din*," which really means anyone and everyone is *chayiv* to facilitate this baby receiving his *bris mila*.] Since this is the case, we cannot then say the *beis din* must also go to *galus* because the *shaliach* is not the classical case of *shaliach lidvar aveira*, because he himself is also *chayiv* to give the *makkos*.

I was wondering if we can connect this to the truly innocent *nidon* sitting on death row with the opportunity to escape. Once he has a *psak misa* from *beis din*, and he is also *chayiv* to carry out *beis din*'s rulings, while he is not *chayiv* to actively kill himself, maybe he is not allowed to run away.

On our initial *kashya* about charging the *eidim zomemim* as *rotz'chim*, the Rosh Yeshiva *zt"l*, the בעל לוי, gave a different reason why we cannot call them *rotz'chim*. When someone has a *psak misa*, if another person kills them then they are not *chayiv misa* because of the principle "גברא קטילא קטילא" - the one with the *psak misa* is already considered dead (like a *tereifa* animal). So too here, the *eidim* are not *rotz'chim* because the *nidon* had a *psak misa* from *beis din* and is therefore a גברא קטילא.

I just want to end with what I think is a genius *cheshbon* from R. Meir Simcha m'Dvinsk on the implications of the *din* of "ייד העדים". There is a *machlokes haposkim* regarding a case of being able to save someone's else at the expense of losing a limb. Is someone *chayiv* to give up a limb to save someone else. (An example would be pulling a child away from a lion's mouth but losing his arm in the process.) How far does "לא ילא" go? In "Or Same'ach" (*Hilchos Rotzei'ach* 7: 8), R. Meir Simcha says that he doesn't think one is *mechuyav* to give up a limb to save someone else's life. He brings *ktzas rayuh* from the story of Shimon ben Shetach's son. The Gemara there says that when the *Chachomim* heard the false *eidim* recant and admit their lies, they said that the *psak misa* cannot be taken back. Even when it was clear that the whole story wasn't true the *psak misa* stood. R. Meir Simcha says that the *Chachomim* should have directed the false *eidim* to cut off the hands in order to save their victim through the *din* of "ייד העדים". If they did so, then Shimon ben Shetach's son would have been freed. From the fact that they didn't suggest that shows that a person is not *chayiv* to sacrifice a limb to save some else's life. Even to the extent that those *eidim* are the ones responsible for Shimon ben Shetach's son to be in a *matziv* of *sakona*. Maybe he only looks at it as a *ktzas rayuh* because those *eidim* are *chayiv* to carry out the *misa* on him so it doesn't *pas* for them to do something which will prevent that from happening. Maybe in a regular case of sacrificing a limb to save a life, one should do so. *Yesh l'falfel b'zeh*.