



Warning

The *Mishnah* (5:1) lists the questions (*derisha* and *chakira*) with which the judges would interrogate the witnesses. One of the questions was whether they warned the accused prior to his committing the offence. We shall try to understand the necessity of a warning – *hatraah*.

The *Gemara* (40b) probes the biblical source of the requirement of *hatraah*. It then brings four different biblical sources. The *Tosfot* (s.v *minayin*) provide two explanations for why the *Gemara* was looking for a biblical source. The first is that the *Gemara* is only asking for the source in the case of *talmid chachamim*. In all other cases, a source is not necessary, but rather self-evident. The role of a warning is to determine whether the person acted deliberately (*mezid*) or inadvertently (*shogeg*). The assumption is a *talmid chacham* would be aware that what he was doing was prohibited, and his violation would be considered *mezid*. The *pasuk* is therefore required to teach that the warning is required even in that case. The second answer the *Tosfot* provide is that the *Torah* source is required to teach the violation of the prohibition must be immediately after the warning – *toch kedei dibbur*.

The first comment of the *Tosfot* is contrast to the opinion of *R' Yossi* (*Makkot* 9b). The *Mishnah* in *Makkot* records a debate regarding if one appears to inadvertently kill his enemy, whether he would go to the *arei miklat*. *R' Yossi* maintains that the individual does not and is executed instead because it assumed that the circumstances were deliberate. The *Gemara* however asks how he could be executed without a warning. The *Gemara* explains that *R' Yossi* is according to *R' Yossi bar Yehuda* who maintains that the reason for a warning is solely to determine whether the act was *shogeg* or *mezid*. For this reason, a *talmid chacham* would not require a warning.

The *Rambam* (*Issurei Biah* 1:2-3) appears to rule like both these opinions, which we explained above argue with one another. On the one hand he rules that even a *talmid chacham* requires *hatraah*. Yet, he explains that the purpose of the warning is to determine whether the act was *shogeg* or *mezid*. This appears to be the basis of *R' Yossi's* position that the *talmid chacham* would not require a *hatraah*.

The *Ketzot* (28:8) explains that while everyone may agree that the function of the *hatraah* is to discern whether the act was *shogeg* or *mezid*, the novelty of the *pasuk* that the *Chachamim* rely upon is that it must clearly be so. Despite the fact one might be dealing with a *talmid chacham* who would surely know that what he was doing was prohibited and the punishment that goes with it, the *Chachamim* understand that the *Torah* demands that it be absolutely clear, even to the extent that there can be no delay between the warning and the offence. Why?

The *Avi Ezri* (*Sanhedrin* 12:2) explains similarly. According to the *Chachamim*, the witnesses do not only need to testify regarding the offence that occurred, but also testify that it was deliberate and that he gave himself over to the punishment that the act entailed. Granted that a *talmid chacham* would likely be aware, nevertheless that fact is an *umdana* – a strong assumption. That *umdana* would qualify as knowledge, but not as testimony. According to *R' Yossi bar Yehuda*, with that knowledge and the act having been witnessed, that is sufficient to punish him. According to the *Chachamim*, an *umdana* alone is not enough to punish the individual. The punishment is only administered based on what they witnessed and not their knowledge, and the deliberate intent must also be part of the testimony.

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Revision Questions

סנהדרין די בי – וי: הי

- What is different about the way *beit din* answer a question regarding issues of purity and impurity as apposed to ruling in a capital case? (די: בי)
- Which people are valid as witnesses for monetary cases but not for capital cases? (די: בי)
- How was the building housing the *Sanhedrin* structured? (די: גי)
- Other than the judges and parties to the case, who else was present and what were they doing? (די: גי)
- In a *sanhedrin katana*, explain how they would replace a judge. (די: ד)
- What is the *pasuk* brought from *Bereshit* that is used to demonstrate to the witnesses of a capital case, the seriousness of the case and how it differs from a monetary cases? (די: ה)
- List three reasons why Man was initially created alone? (די: ה)
- What two *p'sukim* are brought to encourage the witness to a capital offence to testify? (די: ה)
- What are the seven *chakiroi*? (ה: א)
- How many *chakiroi* does *R' Yosi* require and what are they? (ה: א)
- What other questions were asked of the witnesses? (ה: א)
- What other questions were asked of witnesses in a case of idol worship? (ה: א)
- How many *bedikot* were performed? (ה: ב)
- What is the difference between *chakiroi* and *bedikot*? (ה: ב)
- If one witness said the incident occurred on the second of the month and the other witness said it occurred on the third, are they invalid as witnesses? (ה: ג)
- What flexibility is given where the witnesses conflict regarding the time of the incident? (Provide both opinions) (ה: ג)
- What would occur immediately after the witnesses were interrogated? (די: ה)
- Could the witnesses contribute any further to the case? (די: ה)
- Could the "students" contribute to the deliberations? (די: ה)
- What would cause the case to delay and what would the judges do during this time? (ה: ה)
- Explain in detail how the deliberation would proceed if only a majority of one judge ruled guilty in a capital case. (ה: ה)
- When taking a person out for stoning: (א: ו)
 - Where was the location of the site? (ב: ו)
 - What would happen if someone discovered a way to find favour for the guilty party?
 - What would the person leading him announce?
- What would they request from the criminal prior to stoning? (ב: ו)
- What are the two opinions regarding the difference between the stoning of a man and woman? (ג: ו)
- Explain the stoning process. (ד: ו)
- Describe what a "hanging" is and when it is applied. (ד: ו)
- According to *R' Meir*, how does *Hashem* respond to such punishments and what does he learn from it? (ה: ו)
- When does one not transgress "*lo talin*" when delaying the burial? (ה: ו)

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
5 January ה' טבת	6 January ו' טבת	7 January ז' טבת	8 January ח' טבת	9 January ט' טבת	10 January י' טבת	11 January יא טבת
Sanhedrin 6:6-7:1	Sanhedrin 7:2-3	Sanhedrin 7:4-5	Sanhedrin 7:6-7	Sanhedrin 7:8-9	Sanhedrin 7:10-11	Sanhedrin 8:1-2

