



## Twice Guilty

The *Mishnah* (9:4) discusses the case where one is liable to two capital punishments and explains that he receives the more severe of the two.

The *Mishnah* then continues with the case where a particular act entails two different prohibition that are each liable to different capital punishments. The first opinion is that, once again, the more severe of the two are administered. *R' Yossi* however argues that it would be the first of the two prohibitions that applied, that would be relevant. The *Bartenura* explains that if a woman was married prior to becoming this person's mother-in-law, then the prohibition of *eshet ish*, which is punishable with *chenek*, applied prior to the second prohibition, which is punishable with *sereifa*. Consequently, *chenek* would be apply in this case, despite being a more lenient form of capital punishment. That is because *R' Yossi* maintains that *ein issur chal al issur*. In other words, once the relationship was prohibited, the additional prohibition has no place to take hold or apply.

Let us however return to the first case in the *Mishnah* where the individual was liable for two separate capital offences. The *Gemara* (81a) explains that one might have thought that once the person has been found guilty of the first prohibition, he is already considered executed, such that he can no longer be tried for the second. Consequently, one might think that the first punishment should be administered even if it is more lenient. The *Mishnah* is therefore needed to teach that that is not the case.

The *Tosfot* however ask how the person could even be tried for the second capital offence. For there to be valid witnesses, the law of *hazama* must be able to be applied to them – *edut sha'ata yachol le'hazima*. To explain, if a set of witness are found to be false, because another set testify that they were in a different location at the time, then they receive the punishment they wished to administer through their testimony – a reciprocal punishment. In our case, the second set of witnesses would not be able to receive a reciprocal

punishment, since the accused was already found guilty of the first offence and scheduled to be executed. Their attempt was equivalent to wanting to kill a dead person. Consequently, their testimony should not have been accepted.

The *Tosfot* first answer, that it is possible that the second offence occurred in front of *beit din* which does not rely on the standard testimony to execute the individual. The *Tosfot* cite a similar case where *Beit Din* saw a *tereifa*, a person with a fatal condition, kill someone. That too would be case where *hazama* would not be possible, since the witnesses would be testifying about a person that is already considered killed. Nonetheless, the *Beit Din* would be able to execute him, having all witnessed the murder, based on “*u'ibarta harah*”.

The *Tosfot* however offer a second answer. They explain that if the first set of witnesses were found to be false, such that the first capital charge would be retracted, then the second testimony would be relevant to executing them. Since that is the case, it is still defined as *edut she'ata yachol le'hazima*. What does this mean?

The *Maharsha* notes that the *Gemara* (*Makkot* 5a) discusses a case where witnesses testified that an individual was found guilty of a capital offence and then found to be false. However those falsifying witnesses also testified that the accused was indeed found guilty prior to that. In that case the false witnesses would not be executed. This is despite the fact that the real witnesses in that case could also potentially be found to be false or invalid. Consequently, he explains that when the *Tosfot* explain that the testimony of the second witnesses are *edut she'ata yachol le'hazima*, it does not mean that they could be executed if found false. The first set are still in place and the accused is still to be executed. It is only that if the something were to happen to invalidate the first set, they could then be liable to the reciprocal capital punishment. That possibility is enough to allow them to testify.

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### Revision Questions

סנהדרין ח' ג' – י' ג'

- Explain the debate regarding how the child must acquire the object to perform the act in order to become a *ben sorer u'moreh*. (ח' ג')
- What are four requirements placed on the parents for the son to be a *ben sorer u'moreh*? (ח' ד')
- How was a child warned prior to becoming a *ben sorer u'moreh*? (ח' ד')
- How many judges are required for a case of *ben sorer u'moreh*? (ח' ד')
- Explain the rationale of punishing a *ben sorer u'moreh*? (ח' ה')
- What other case is treated in a similar manner? (ח' ו')
- For which three crimes can one kill a person trying to perpetrate them? (ח' ו')
- Which three crimes are listed in the *Mishnah*, that one might think share the same law as stated in the previous question, but do not? (ח' ו')
- Aside from a person having a relationship with “*isha u'bitah*” what other crime is punishable with *sreifa*? (ח' ז')
- What falls under the category of “*isha u'bitah*”? (ח' ז')
- Which two crimes are punishable with *hereg*? (ח' ז')
- If someone pushed another into the water and they drowned, when are they not charged with murder? (ח' ז')
- Which murder case is the subject of debate between the *Tana Kama* and *R' Nechemya*? (ח' ז')
- If one strikes another and the person dies, assuming he was warned, what two component are critical to charge the person with murder? (ח' ז')
- Explain the murder case where *R' Yehuda* argues. (ח' ז')
- What is law if one of two people committed murder and one of the people is righteous? (ח' ז')
- In general, what does *beit din* do if people found of guilty capital punishments, each carry different punishments, get mixed together? (ח' ז')
- Regarding the previous question, which specific cases are debated between the *Chachamim* and *R' Shimon*? (ח' ז')
- How is a person punished if *beit din* ruled he must receive two different capital punishments? (ח' ז')
- Regarding the previous question, in what case does *R' Yosi* argue? (ח' ז')
- What does *beit din* do to a repeat offender that has already received lashes? (To which sins is the *Mishnah* referring?) (ח' ז')
- Regarding the previous question, who else is treated in this manner? (ח' ז')
- For which three crimes do “*kana'in pog'in bo*”? (ח' ז')
- For which offence committed by a *kohen* do his “brothers” deal with him? Explain. (ח' ז')
- Explain the debate regarding the punishment for a non-*kohen* that serves in the *Beit Ha'Mikdash*. (ח' ז')
- Complete the phrase: “\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_ להם” (ח' ז')
- For which three offences does one lose their *chelek*? (ח' ז')
- Which offences do *R' Akiva* and *Abba Sha'ul* add? (ח' ז')
- Which three kings and four individuals lost their *chelek*? (ח' ז')
- Which three groups of people lost their *chelek* and which three groups are a subject of debate? (ח' ז')
- Regarding the previous question, with respect to what detail does *R' Nechemya* argue? (ח' ז')

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
19 January י"ט טבת	20 January כ' טבת	21 January כ"א טבת	22 January כ"ב טבת	23 January כ"ג טבת	24 January כ"ד טבת	25 January כ"ה טבת
Sanhedrin 10:4-5	Sanhedrin 10:6-11:1	Sanhedrin 11:2-3	Sanhedrin 11:4-5	Sanhedrin 11:6 - Makkot 1:1	Makkot 1:2-3	Makkot 1:4-5

