



Two or Three Witnesses

“By [the testimony] of two witnesses or three witnesses shall the person be put to death” (*Devarim* 17:6). At least two witnesses are required to provide testimony in *beit din*. The significance of the *Torah* adding “or three witnesses” is discussed in the *Mishnah* (1:7).

The *Mishnah* first teaches that a set of witnesses has the same legal force irrespective of the size of the group. Just as three witnesses can testify to render two as false witnesses, two witnesses can render three witnesses false. *R' Shimon* adds that for a set of witnesses to be considered *edim zomemin* such that they receive the reciprocal punishment, all of the witnesses need to be found false. In other words, other witnesses must testify that these “witnesses” were with them at a different location at the time of the supposed incident. The same is true even for a large set. Every witness in the group needs to be found false in this manner to be considered *edim zomemin* and receive the reciprocal punishment. Note that the additional witness affords the group a leniency in this regard.

R' Akiva however adds that the third witness in the group is really coming to add a stringency, such that he would share the same punishment as the other false witnesses. Exactly what *R' Akiva* means is the subject of debate.

Rashi (5b) explains that none of the opinions in the *Mishnah* are arguing with regards to *halacha*. In other words, while *R' Akiva* agrees with the first two opinions, the *pasuk* was not needed to teach these points since they are self evident. Instead, the novelty is that even though this third witness is not really needed (considering that only two witnesses are required) nonetheless since they are all found false, he would also receive the reciprocal punishment. To be clear, he is not arguing regarding the

law. For the reciprocal punishment to be administered, he agrees that all the witnesses need to be found false.

The *Nemukei Yosef* however cites the *Riva* who explains that *R' Akiva* argues with *R' Shimon*. In other words, if only two of the three were found to be false, those two could indeed be killed (if it were a capital case) with third witness set free. That is also the *Ritva's* first explanation, which he maintains is the simple reading of the *Mishnah*.

The *Ritva* however also suggest that perhaps we can understand debate between *R' Shimon* and *R' Akiva* as being where the third witness came after the other two, and they were all found false. *R' Shimon* would treat the third as being separate and exempt, while *R' Akiva* maintains that he is punished along with the other two.

The *Nemukei Yosef* however, also cites the *Ri ben Geiut* who explains that if only two were found false, then they could all be considered *zomemin* and be punished. Nevertheless, the *Nemukei Yosef* concludes that the *halacha* is like *R' Shimon*.

The *Tumim* (38, s.v. *Amnam*) however asks, according to the *Maharitz Geiut*, what if this third person was telling the truth? He might not have known that the other two were false witnesses. Why should he be punished?

The *Tumim* answers, that it must be that the *Maharitz Geiut* maintains that the witnesses must see each other to be defined as single testifying group. Considering that they presented as witnesses together and two have been found to be false witnesses it is clear that this third person is lying. Granted that he has not be found to be an *eid zomem*, nevertheless this is the stringency of the *pasuk* according to *R' Akiva*, that since he associated himself with them, he bears their punishment.

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Revision Questions

מכות א-י' ג':א'

- When are *eidim zomemin* to a capital case not executed? (א':י')
- What are the three opinions regarding what is learnt from the following *pasuk*: (א':ז) "ועל פי שנים עדים או שלשה עדים יומת המת"
- What else is learnt from the above *pasuk*? (א':ח)
- Regarding the previous question, when does *R' Yosi* maintain this rule applies? (א':ח)
- Regarding the previous question, when does *Rebbi* maintain this rule applies? (א':ח)
- In what case could the accused be executed as well as the *eidim zomemin*? (א':ט)
- What two laws are learnt from: "ועל פי שנים עדים" (א':ט)
- If a person found guilty of a capital offence escaped: (א':י)
 - If he later returned to the original *beit din*, would his case be reopened?
 - When can he be executed in another *beit din*?
- When was a *beit din* described as a *chavlanit*? (Provide both opinions.) (א':י)
- What is the debate between *R' Tarfon*, *R' Akiva* and *Rabban Shimon ben Gamliel*, regarding this issue? (א':י)
- For what offence is one sent to *galut*? (א':ב)
- Provide the general rule relating to how that offence was perpetrated in order that he is sent to *galut*? (א':ב)
- Explain the debate between *Rebbi* and the *Chachamim* regarding one who commits this offence while chopping wood. (א':ב)
- When does *R' Eliezer ben Ya'akov* say that one is not sent to *galut* for throwing a stone into "*reshut ha'rabim*"? (ב':ב)
- In what case is one sent to *galut* for accidentally killing a person on his own property and what is the source of this law? (ב':ב)
- What three exceptions does *Abba Shaul* raise? (ב':ב)
- Does a father go to *galut* on account of his son? (ב':ג)
- What are the three opinions regarding a *sonah* and *galut*? (ב':ג)
- Where would someone go, when sent to "*galut*"? (ב':ד)
- What two things were done to enable a person to reach "*galut*" safely? (ב':ה)
- Who else would run to the *arei miklat*? (ב':ו)
- When could the *rotze'ach* return from the *arei miklat*? What custom arose as a result? (ב':ו)
- In what two cases would the *rotze'ach* never return from the *arei miklat*? (ב':ז)
- When could the *rotzeach* step out of the *arei miklat*? (ב':ז)
- At what point is one considered inside the *arei miklat*? (ב':ז)
- Explain the debate regarding a *go'el ha'dam* that finds the *rotzeach* outside the *arei miklat*. (ב':ז)
- What is the law regarding one that kills accidentally within the *arei miklat*? (ב':ז)
- Would the *rotzeach* need to pay rent in the *ir miklat*? (ב':ח)
- Explain the debate regarding the *rotzeach* once he returns home. (ב':ח)
- For which offences does one receive lashes relating to:
 - Forbidden relationships (12)? For which relationship does one receive two sets of lashes? (ג':א)

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Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
2 February ד' שבט	3 February ה' שבט	4 February ו' שבט	5 February ז' שבט	6 February ח' שבט	7 February ט' שבט	8 February י' שבט
Makkot 3:2-3	Makkot 3:4-5	Makkot 3:6-7	Makkot 3:8-9	Makkot 3:10-11	Makkot 3:12-13	Makkot 3:14-15

