



## Edut She'ata Yachol le'Hazima

This week we started *masechet Makkot*. It opens by discussing *eidim zomemin* – false witnesses. We learnt that for witnesses to be found false, other witnesses must testify that it was not possible for the original witnesses to provide testimony, since they were at a different location at the time. In that case the *eidim zomemin* receive the reciprocal punishment – the punishment that they attempted to inflict on the falsely accused.

The first *Mishnah* however teaches that there are a few cases where a truly reciprocal punishment is not possible. In such cases, the *Mishnah* explains that in those cases, the witnesses are punished with lashes instead.

Recall that last week we mentioned the requirement that for witnesses to provide testimony, it must be possible from them to be found as *eidim zomemin* and receive a reciprocal punishment – *edut she'ata yachol le'hazima*. The *Tosfot* therefore ask that in the cases listed, how could we accept any testimony? Since, if found false, they would receive lashes instead of the punishment they attempted to inflict, they would not be receiving the reciprocal punishment. The *Tosfot* provides two answers.

The first answer is that since the *eidim zomemin* would receive a punishment, it is sufficient to be considered *edut she'ata yachol le'hazima*. More specifically, since lashes is the punishment that is delivered to *eidim zomemin* for these cases, the requirement is satisfied.

The *Tosfot* also explains that the requirement of *edut she'ata yachol le'hazima* stems from *ka'asher zamam*. We learnt that in these cases *ka'asher zamam* does not apply (and they are punished with lashes instead). That being the case, the second answer of the *Tosfot* is that the requirement of *edut she'ata yachol le'hazima* simply does not apply in these cases.

The *Minchat Chinnuch* (4:13) brings a practical difference between these two different understandings when discussing the witnesses for *kidush ha'chodesh*. In that case also, it would be impossible to give *eidim zomemin* a reciprocal

punishment – they were attempting to make a different day *rosh chodesh*. The law that lashes are given when the reciprocal punishment cannot be administered, is derived from the *pasuk*, that “we acquit the righteous (falsely accused) and incriminated the wicked...”. Consequently, since this is not a case of a guilty or innocent party, they would not even receive lashes. That being the case, according to the first answer, testimony for *kiddush ha'chodesh* would not be *edut she'ata yachol le'hazima*. How then could we receive any testimony regarding *kiddush ha'chodesh*? Since that is not a possible conclusion, he understands that the *pasuk* is used to teach that lashes apply to *eidim zomemin* in general, including *kidush ha'chodesh*.

Instead, the *Minchat Chinnuch* brings a different practical difference. He explains that according to the first answer, where the punishment of lashes would qualify for *edut she'ata yachol le'hazima*, the witnesses would need full *chakira* prior to testifying. Recall that *chakira* refers to inquiring about the timing and location of the testimony that are necessary to potentially find these witnesses false. According to the second understanding, that when *kasher zamam* does not apply neither does the requirement for *edut she'ata yachol le'hazima*, *chakira* is not necessary.

The *Yalkut Biurim* cites the *Beit HaLevi* (3:6) that argues with the *Nodeh BeYehuda* who makes a similar claim. The *Beit HaLevi* explains that (according to the second answer) while the exact reciprocal punishment is not a requirement for *edut she'ata yachol le'hazima* when *ka'asher zamam* does not apply, the ability to find them false by way of the *chakiroth* is still possible and necessary. In other words, there are two elements at play, finding them false and administering the reciprocal punishment. The novelty of the second answer is only that the second element is not necessary for those cases where *ka'asher zamam* does not apply. Nevertheless, according to both understandings, the ability to find the witnesses false is essential and the *chakiroth* are therefore necessary.

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## Revision Questions

סנהדרין י' ד' – י"א ג'

- What are the requirements for a city to be judged as an *ir ha'nidachat*? (י' ד'-ה')
  - What is the difference between the way the possessions of the righteous and wicked are treated in an *ir ha'nidachat*? (י' ה')
  - What happens to the *hekdesh*, *trumah*, *ma'aser sheni* and *kitvei kodesh* of an *ir ha'nidachat*? (י' ג')
  - What seven crimes are punished with *chenek*? (י"א א')
  - In what two ways is cursing a parent harsher than striking a parent? (י"א א')
  - In which three locations would the *batei dinim* debate with the *zaken mamre*? (י"א ב')
  - After returning from that final location to his home town, at what point would a *zaken mamre* be liable for a capital punishment? (י"א ב')
  - For holding to which specific class of laws does one become a *zaken mamre*? (י"א ג')
  - What are the two opinions regarding when they would execute the *zaken mamre*? (י"א ד')
  - When is a *navi* that lies liable for a capital punishment and when is his punishment "*bidei shamayim*"? (י"א ה')
  - Is one liable for a capital punishment if he presents a prophecy in the name of a form of idol worship, yet the content is consistent with *halacha*? (י"א ו')
  - From what point is a woman considered an *eshet ish*? (י"א ז')
- What is exceptional about *zomemei bat kohen*?

מכות א' א'-ה'

- What are *eidim zomemin*?
- In which two cases do *eidim zomemin* not receive reciprocal punishment and what punishment do they receive? (א' א')
- How are *eidim zomemin* punished if they testified that: (א' א')
  - A man gave his wife her *ketubah*?
  - A person owed \$100 to be paid at the end of the month, when in fact the loan was due in ten years time?
- Explain the debate regarding how *eidim zomemin* are punished if they testified about:
  - A loan. (ב' א')
  - That a person was obligated to be punished with lashes. (ג' א')
- Complete the following phrase and explain: (ג' א')
 

"משלשלין \_\_\_\_\_ ואין משלשלין \_\_\_\_\_"
- How do witnesses become *eidim zomemin*? (ד' א')
- Explain the debate regarding a case where witnesses testify and make a pair *eidim zomemin* and then another pair of witnesses come and testify about the case and are consequently also made *eidim zomemin*. (ה' א')

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## Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
26 January כ"ז טבת	27 January כ"ח טבת	28 January כ"ט טבת	29 January ל' טבת	30 January א' שבט	31 January ב' שבט	1 February ג' שבט
Makkot 1:6-7	Makkot 1:8-9	Makkot 1:10-2:1	Makkot 2:2-3	Makkot 2:4-5	Makkot 2:6-7	Makkot 2:8-3:1

