

The Weekly Daf



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Makkos 2-8

Week of 6-12 Av 5755 / 2-8 August 1995
 Rav Weinbach's insights, explanations and comments for the 7 pages of Talmud studied in the course of the worldwide **Daf Yomi** cycle

Two and Two Equal = ?

	Case 1	Case 2
The Cases:	Two witnesses testify that Reuven committed a murder. Two others challenge them by testifying that on the day they claim the murder took place the alleged murderer or his victim were with them at some other location.	The second pair of witnesses challenges the first by testifying that these witnesses were with them on the day of the alleged murder at some other location.
The Rule:	In Case One we cancel the testimony of both pairs, exonerate the defendant for lack of evidence and dismiss the conflicting witnesses without recourse. In Case Two we accept the testimony of the second pair, absolutely exonerate the defendant and punish the first pair with the fate they wished to bring upon the defendant.	
The Problem:	In both cases it is the word of witnesses against witnesses. Why do we absolutely believe the second pair in Case Two even though the first ones contest their testimony?	
The Resolution:	Although no reason is offered in the Torah or Talmud the Sefer Hachinuch offers what he describes as a "little explanation": Two witnesses who testify that three or more people are murderers are believed by the court although they are outnumbered by their contradictors. This is so because the two are considered <i>witnesses</i> while the accused are <i>defendants</i> who are disqualified to serve as witnesses. In similar fashion the first two witnesses ("eidim zomemim") in Case Two have been challenged not regarding the whereabouts of the defendant as in Case One but in regard to their own whereabouts and they are therefore transformed into defendants whose testimony regarding themselves is invalid.	

Makkos 5a

Double Deterrent

The judges of the Sanhedrin with the power to decide upon capital punishment were so cautious in using this power that if they convicted a man of a capital crime once in seven years they were branded a "vicious court". One of the Sages even extends this to once in seventy years while Rabbi Tarfon and Rabbi Akiva claimed that had they lived in the time when the Sanhedrin had the power of capital punishment no-one would ever have been convicted of a capital crime. (They would have made such strict demands on the testimony of witnesses that conviction would be rendered impossible.) When Rabbi Shimon ben Gamliel heard their claim he chastised them for favoring a position of such extreme caution that punishment would no longer serve as a deterrent and bloodshed would thus be encouraged.

No counter-argument by the two super-cautious Sages is presented in the Talmud but a case is made for them by Rabbi Zvi Hirsh Chayos, the rabbi of Zalkova who wrote a commentary on the Talmud. He cites Rambam (Laws of Murder and Life Preservation 2:4-5) who rules that if the court believes that someone is guilty of murder but cannot convict him because of technical reasons it may still execute him if there is an emergency situation demanding that justice be done. Even if no such emergency exists the court is required to punish the murderer with severe beating, lengthy imprisonment and any other penalty which will serve as a deterrent for other potential murderers. Rabbi Tarfon and Rabbi Akiva would certainly have relied on these deterrents to maintain order.

Makkos 7a

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