

This month's Daf Digest is dedicated
 לעילוי נשמת צבי בן יחזקאל יוסף גרין, מחסידי דעעש
 From the Grin family, Sao Paulo, Brazil

OVERVIEW of the Daf

1) **MISHNAH (cont.):** The Mishnah continues to present cases where there was a deficiency in the intent of the murderer and whether in such a circumstance the murderer is liable to execution.

2) Clarifying R' Shimon's position

The Gemara identifies with which of the Mishnah's ruling R' Shimon disagrees.

R' Shimon's position is further clarified.

The source for R' Shimon's position is identified.

R' Shimon's position is challenged.

The challenge is resolved by asserting that R' Shimon follows the position of Rebbi.

The Beraisa that records the position of Rebbi is recorded.

Rava presents the position of Dvei Chizkiyah who represents a third position on this issue.

3) **MISHNAH:** The Mishnah presents the guidelines for a circumstance where we lose track of which death penalty a person is supposed to receive.

4) Clarifying the Mishnah

The Gemara wonders who are the "others" into whom the murder becomes intermingled.

R' Avahu in the name of Shmuel offers one explanation.

Reish Lakish gives an alternative explanation. ■

REVIEW and Remember

1. What which of the Mishnah's cases does R' Shimon take?

2. What is derived from the phrase ונתת נפש תחת נפש?

3. What is done with a murderer who becomes intermingled with others?

4. How does R' Avahu in the name of Shmuel explain the first ruling of the Mishnah?

Today's Daf Digest is dedicated
 By Rabbi Eliezer Wolfson & family in memory of
 אליעזר ליפמין בן דוד יוסף
 ואלישבע רבקה בת ר' יחזקאל ז"ל

Distinctive INSIGHT

Clarifying the remarks of R' Shimon

רבי שמעון אומר עד שיאמר לפלוני אני מתכוין

The Mishnah listed several cases where a person is killed in a manner which was unintended by the one who struck the victim. The Mishnah concluded with the words of R' Shimon who says, "Even if the attacker intended for one person, and he killed another, he is exempt." The Gemara probes to understand the opinion of R' Shimon and regarding which one of the many cases of the Tanna Kamma he addressed his words. The Gemara finally concludes that R' Shimon was responding to the opening halacha of the Mishnah. "If someone intended to kill an animal but he accidentally killed a person, or he aimed to kill an idolator and he killed a Jew, he is exempt." The words of Tanna Kamma suggest that the only reason the killer is exempt is that his intentions were to kill something or someone for which his actions would not constitute murder. However, if Reuven aimed to kill Shimon, which would be murder, and he instead killed Levi, this would be considered to be murder. It is this view to which R' Shimon disagrees, and he says, "Even if Reuven aimed to kill Shimon and he killed Levi instead, he is still exempt."

Rashi points out that in the סיפא of the Mishnah we find explicitly that if Reuven intended to kill Shimon (את הגדול), and instead, Reuven killed Levi (את הקטן), he is a murderer. Why did R' Shimon express his contention that such a case is exempt only in reference to an inference from the רישא, when he could have argued and expressed his view in reference to the explicit halacha mentioned in the סיפא?

Rashi answers that if R' Shimon would have expressed his remarks in response to the סיפא and if it simply said, "ר' שמעון פוטר—R' Shimon holds that he is exempt," we might have mistakenly thought that he argues with all cases of the Mishnah. This is not the case, as R' Shimon agrees that if Reuven intended to strike Shimon on his thigh, and he hit him on his heart and killed him, that Reuven is חייב.

Maharsha questions the comment of Rashi, because we still could have had R' Shimon respond to the סיפא, but not express

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 Mr. Max Gerber

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 By the Schwabacher family in memory of their grandmother
 מרת מלכה בת ר' הערש ע"ה

HALACHAH Highlight

Collecting money for a relative killed in a car accident

אלא לאו שמע מינה לאו בר קטלא ולא בר ממונא הוא

Rather one should infer from this that he is not liable to execution and he is not liable to make monetary compensation

The Gemara presents a dispute between Rebbi and Rabanan regarding the consequence of one who intends to kill one person but ends up killing a second person. Rabanan maintain that the murderer is liable to execution whereas Rebbi maintains that he is only obligated to pay the family of the victim money. Dvei Chizkiya adopts a third position and maintains that the murderer is not executed nor is he obligated to pay money. Tosafos¹ explains that there is an exposition that teaches that one is not obligated to pay money when one kills someone who is free. Haghos Ashri² writes that the murderer has a Heavenly obligation (חייב לצאת ידי שמים) to pay the victim's family and therefore if the victim's family wanted to keep the murderer's money that is already in their possession (תפיסה) they would be permitted to keep that money. Ketzos Hachoshen³ explains that, in reality, the murderer is obligated to pay money to the family. The reason payment is not made is due to the principle קם ליה בדרכה מינה – A person is given the more severe of two punishments. This technicality does not exempt the murderer from his Heavenly obligation and as such if the family takes the money they may keep it.

Rav Menachem Mendel Shafran⁴ discusses this matter in the context of someone who is killed in a car accident. In some countries the law obligates the killer to pay the family and that money is distributed amongst family members in accordance with their laws

(Insight...continued from page 1)

his opinion ambiguously. Instead of "ר' שמעון פוטר", it should have said "ר' Shimon says that if Reuven intended to kill Shimon and he instead killed Levi, he is exempt," without the word "ואפילו".

Maharsha explains that if R' Shimon addressed his remarks to the explicit statement of the סיפא, there still would have been room for misunderstanding. Had the Mishnah expressed the opinion of R' Shimon in this manner, we might have thought that the attacker is exempt only because when attempting to kill an adult, he accidentally killed a child. We would have incorrectly thought that this is a special case of leniency based upon the verse which says "איש" which excludes killing of a child. ■

of inheritance. The question is whether this money is subject to the halachos of inheritance or the secular laws of inheritance. Rav Shafran suggested that this question depends upon the dispute mentioned earlier whether there is a Heavenly obligation to make restitution for killing someone. If we assume there is a Heavenly obligation it will emerge that dina d'malchusa obligates the killer to pay the family and the heirs have the right to take that money since there is a Heavenly obligation for him to pay. If there is no Heavenly obligation the money would be distributed in accordance with the secular guidelines. This however, is limited to the amount of money equal to the value of a slave but the amount the killer pays above that value is certainly not subject to the halachos of inheritance and is divided according to the secular laws of inheritance. ■

1. תוסי' ב"ק ל"ה. ד"ה בין.
2. הגהות אשרי ב"ק פ"ד סי' ד'.
3. קצות החושן סי' תי"י סק"ד.
4. הובא דבריו בקובץ מבית לוי ח"ז עמ' קל"ד. ■

STORIES Off the Daf

The value of consistency

"קבוע כמחצה על מחצה דמי..."

The importance of learning a set amount of Torah each day cannot be overstated. It is sufficient to mention that our sages teach that the second question asked at one's heavenly judgment is קבעת עיתים לתורה — Did you set aside fixed times for Torah study? Rav Yechiel of Alexander, zt"l, explains the language of the Mishnah in Avos: עשה תורתך קבע' — Make your Torah fixed.

"This is similar to the halachah regarding kevias seudah. Even if one leaves in the middle of his meal and returns, as long as he did not forget his intention of returning he can continue to eat. So too, one

should have a set time to learn as early in the day as possible. Then when he goes to his business or other concerns, as long as he intends to return to learning the moment he can, it is as if he never left since he is returning to his original kevius."¹

Rav Yisrael Hagar, shlit"a, once explained his father's insistence that every chassid have a set time to learn Torah every day. "People say that prayer achieves half of one's goal, as we find in the midrash that Moshe's prayer achieved half of what he sought."² Rav Meir of Premishlan, zt"l, liked to say that this is why the word for 'half' in Yiddish is nearly the same as the word for 'help.' Prayer, which achieves half of the goal, really helps.

"We can similarly explain the gemara in Sanhedrin 79. There we find that קבועה כמחצה על מחצה דמי — A set reality has equal standing.' This can be explained

to mean that when a person is absolutely committed to learning his daily sedarim, the time may be relatively short in duration but it assumes a status that is 'half.' This means that through doing whatever he can to learn his daily sedarim, he receives Divine assistance. Even if it appears as though he only has time to complete part or half of his seder, Hashem will give him the other half of the time and he will complete his sedarim."³

But the Boyaner Rebbe, zt"l, explained this in a very different way. "The fixed learning that a person does each day often seems nullified by the vast amounts of time he spends on other matters. But if he never misses his commitment it is considered kavuah, which is not nullified."⁴ ■

1. ישמח ישראל, שבועות, תרנ"ד, ע' 18, בשם אביו
2. ויקרא רבה, פרשה י', אות ה'
3. בטאון ויז'ניץ, שבט, תשס"ז, ע' י"ז
4. אמרי קודש, תשרי, תשס"ט, ע' קס"ט ■