

**A** בס"ד

Intro

Today we will Be"H learn ע"ב of סנהדרין דף עב. Some of the topics we will learn about include:

בן סורר ומורה  
The reason we execute the wayward son.

הנאה להן והנאה לעולם  
The Mishnah lists several situations that are beneficial or detrimental for רשעים or צדיקים.

הבא במחתרת  
A thief who tunnels into a home to rob it may be killed by the homeowner, because it's considered self-defense since it's assumed that the thief is prepared to kill the homeowner if he resists.

The Gemara also discusses  
נטל כלים  
Whether he is liable to return any items he took;

**A**

בן סורר ומורה

הנאה להן והנאה לעולם

הבא במחתרת

נטל כלים

**B** אב על הבן

ובן על האב  
Whether we assume that a father would kill his child, or if a child would his father;

התראה  
Whether he must be warned first; and

קטן הרודף  
If a minor is pursuing someone to kill them, whether it is permitted to kill him first.

**B**

אב על הבן  
ובן על האב

התראה

קטן הרודף

1 So let's review...

Zugt di Mishnah

בן סורר ומורה  
נידון על שם סופו  
ימות זכאי ואל ימות חייב

A בן סורר ומורה is executed based on his future actions, so that he should die innocent rather than guilty.

The Gemara cites a ברייתא that explains;

וכי מפני שאכל זה תרטימר בשר  
ושתה חצי לוג יין האיטלקי  
אמרה תורה יצא לבית דין ליסקל

Surely, the Torah does not have him executed for consuming some meat and wine!

אלא הגיעה תורה  
לסוף דעתו של בן סורר ומורה

The Torah foresees his future:

שסוף מגמר נכסי אביו  
ומבקש למודו ואינו מוצא  
ויוצא לפרשת דרכים  
ומלסטם את הבריות

He will exhaust his father's resources and become a highway robber to secure funds to support his habits, and he will eventually kill people.

1

תלמוד

בן סורר ומורה  
נידון על שם סופו  
ימות זכאי ואל ימות חייב

A בן סורר ומורה is executed based on his future actions, so that he should die innocent rather than guilty.

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ומלסטם את הבריות

He will exhaust his father's resources and become a highway robber to secure funds to support his habits, and he will eventually kill people.

2

The Mishnah continues:

שמייתתן של רשעים  
הנאה להן והנאה לעולם  
לצדיקים

רע להן ורע לעולם

The death of the wicked is beneficial to them and to others, because they commit less sins; while the death of the righteous is detrimental to them and to others, because they cannot perform more Mitzvos.

Similarly,

יין ושינה לרשעים  
הנאה להן והנאה לעולם  
ולצדיקים

רע להן ורע לעולם

Wine and sleep for the wicked is beneficial to them and to others, because they are not spending time on wicked activities, while for the righteous it is detrimental to them and to others.

Similarly,

פיזור לרשעים  
הנאה להן והנאה לעולם  
ולצדיקים

רע להן ורע לעולם

For the wicked to be scattered is beneficial for them and for others, so they cannot consult with each other for evil purposes, while for the righteous it is detrimental to them and to others.

On the other hand,

כנוס לרשעים  
רע להן ורע לעולם  
ולצדיקים

הנאה להן והנאה לעולם

For the wicked to be together is detrimental for them and for others, because they will plan evil activities, while for the righteous it is beneficial to them and to others.

The Mishnah concludes

שקט לרשעים  
רע להן ורע לעולם  
לצדיקים

הנאה להן והנאה לעולם

Calmness for the wicked is detrimental for them and for others, while for the righteous it is beneficial to them and to others.

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2

משנה

שמייתתן של רשעים  
הנאה להן והנאה לעולם  
לצדיקים  
רע להן ורע לעולם

The death of the wicked is beneficial to them and to others, because they commit less sins;

The death of the righteous is detrimental to them and to others, because they cannot perform more Mitzvos.

Similarly,

יין ושינה לרשעים  
הנאה להן והנאה לעולם  
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שקט לרשעים  
רע להן ורע לעולם  
לצדיקים  
הנאה להן והנאה לעולם

Calmness for the wicked is detrimental for them and for others, while for the righteous it is beneficial to them and to others.

3 The next Mishnah teaches another Halachah where the person is  
נידון על שם סופו  
Judged based on his future actions;

Zugt di Mishnah

הבא במחתרת  
נידון על שם סופו

A thief who tunnels into a home to rob it may be killed by the homeowner, based of his future actions. And the Gemara explains:

חזקה

אין אדם מעמיד עצמו על כמונו

We presume that the owner will defend his property;

והאי מימר אמר

אי אזילנא קאי לאפאי ולא שביק לי

ואי קאי לאפאי קטילנא ליה

And so, the thief expects the homeowner to resist and is prepared to kill him. Therefore,

והתורה אמרה

אם בא להורגך השכם להורגו

The owner may pre-emptively kill the thief in self-defense.

3

משנה

הבא במחתרת  
נידון על שם סופו

A thief who tunnels into a home to rob it may be killed by the homeowner, based of his future actions.

And the Gemara explains:

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And so, the thief expects the homeowner to resist and is prepared to kill him.

Therefore,

והתורה אמרה

אם בא להורגך השכם להורגו

The owner may pre-emptively kill the thief in self-defense.

4 The Mishnah continues:

היה בא במחתרת  
ושבר את החבית

If the thief damaged something while robbing the house,  
אם יש לו דמים, חייב

אם אין לו דמים, פטור

In a case, where the owner may not kill the thief because the thief would not kill him - for example, the thief is the homeowner's father, who would not kill his son - the thief is liable for the damage.

However, if the owner may kill him - for example, the thief is the homeowner's son or a stranger, who would not hesitate to kill the homeowner, even if it's his father - the thief is not liable for his damage.

4

משנה

היה בא במחתרת  
ושבר את החבית

If the thief damaged something while robbing the house,

אם אין לו דמים  
פטור

However, if the owner may kill the thief for example, the thief is the homeowner's son or a stranger, who would not hesitate to kill the homeowner, even if it's his father the thief is not liable for his damage.

אם יש לו דמים  
חייב

In a case, where the owner may not kill the thief because the thief would not kill him for example - the thief is the homeowner's father, who would not kill his son the thief is liable for the damage.

5 And the Gemara cites a similar ruling of רב:  
 הבא במחותרת  
 ונטל כלים ויצא  
 פטור  
 The thief is not obligated to return items he took from the house, because  
 בדמים קננהו  
 He has paid for it with his life;  
 Based on the concept of  
 קם ליה בדרבה מיניה  
 One is never liable for both death and for a monetary payment.

רב explains that the Mishnah refers to where the item is not intact – it broke – and the thief is exempt from making compensation;  
 And רב adds that even if the item is intact, the thief is exempt from returning it.  
 And רב explains Rav's reasoning as follows:  
 יש לו דמים ונאנסו חייב  
 אלמא ברשותיה קיימי  
 הכא נמי ברשותיה קיימי  
 In the first case of the Mishnah, where the homeowner may not kill the thief because the thief would not kill him, the thief would be obligated to pay for the items even if they became damaged due to unavoidable circumstances. Clearly, because they are considered his possession because a thief acquires that which he steals.  
 Therefore, so too, both in the second case of the Mishnah and in the case Rav, where the homeowner MAY kill the thief because the thief WOULD kill him, the thief is NOT obligated to pay, or even to return an intact item, because this would not be considered returning the owner's item, but a payment for the item which the thief acquired unlawfully; for which he is exempt based on קם ליה בדרבה מיניה, as explained earlier.

5

**רב**  
**הבא במחותרת**  
**ונטל כלים ויצא**  
**פטור**  
 The thief is not obligated to return items he took from the house, because  
**בדמים קננהו**  
 He has paid for it with his life;  
 Based on the concept of  
**קם ליה בדרבה מיניה**  
 One is never liable for both death and for a monetary payment.

*רב explains*

<p>The Mishnah refers to where the item is not intact – it broke – and the thief is exempt from making compensation;</p>	<p>And רב adds Even if the item is intact, the thief is exempt from returning it.</p>
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*And רב explains Rav's reasoning as follows:*

**יש לו דמים ונאנסו חייב**  
**אלמא ברשותיה קיימי**  
**הכא נמי ברשותיה קיימי**

In the first case of the Mishnah, where the homeowner may not kill the thief because the thief would not kill him, the thief would be obligated to pay for the items even if they became damaged due to unavoidable circumstances.

Clearly, because they are considered his possession because a thief acquires that which he steals.

Therefore, so too,  
 Both in the 2nd case of the Mishnah and in the case Rav, where the homeowner MAY kill the thief because the thief WOULD kill him, the thief is NOT obligated to pay, or even to return an intact item, because this would not be considered returning the owner's item, but a payment for the item which the thief acquired unlawfully; for which he is exempt based on קם ליה בדרבה מיניה.

6 However, **רבא** disagrees and makes the following distinction:  
 מסתברא מילתיה דרב  
 בששיבר דליתנהו  
 אבל נטל לא  
 In the case of the Mishnah where the item is not intact, it is logical to say, as Rav did, that the thief is exempt from making compensation based on **מיניה** קם ליה בדרכה מיניה.  
 However, where he took an item and it's still intact, he must return them, because he did NOT acquire them to that extent; as the Gemara explains;  
 כי אוקמינא רחמנא ברשותיה  
 לענין אונסין  
 אבל לענין מקנא  
 ברשותיה דמרייהו קיימי  
 They are only considered in his possession regarding his liability to repay in all circumstances, but they are not actually his. Therefore, he is not making a payment, but simply returning the item to its owner, which is not included in the exemption of **מיניה** קם ליה בדרכה מיניה.  
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6

*However, **רבא** disagrees*

**מסתברא מילתיה דרב  
 בששיבר דליתנהו  
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*In the case of the Mishnah where the item is not intact, it is logical to say, as Rav did, that the thief is exempt from making compensation based on **מיניה** קם ליה בדרכה מיניה.*

*However, where he took an item and it's still intact, he must return them, because he did NOT acquire them to that extent;*

*as the Gemara explains;*

**כי אוקמינא רחמנא ברשותיה  
 לענין אונסין  
 אבל לענין מקנא  
 ברשותיה דמרייהו קיימי**

*They are only considered in his possession regarding his liability to repay in all circumstances, but they are not actually his.*

*Therefore, he is not making a payment, but simply returning the item to its owner, which is not included in the exemption of **מיניה** קם ליה בדרכה מיניה.*

7 The Gemara now discusses in which cases one may kill the thief, and cites two ברייתות:

The Torah writes two Pesukim next to each other

אין לו דמים  
The thief may be killed;

אם זרחה השמש עליו  
If the sun shines on him, and the ברייתא asks

וכי השמש עליו בלבד זרחה  
Does the sun shine only on him? Therefore,

One Braisa explains;

אם ברור לך הדבר כשמש  
שאין לו שלום עמך  
הרגהו

ואם לאו אל תהרגהו  
If it is absolutely, clear to the owner that the thief would kill him, he may kill him first. Otherwise, he may not.

The second Braisa explains it in the inverse;

אם ברור לך כשמש  
שיש לו שלום עמך  
אל תהרגהו

ואם לאו הרגהו  
If it is absolutely, clear to the owner that the thief would NOT kill him, he may not kill the thief. Otherwise, he may kill him.

The Gemara asks

קשיא סתמא אסתמא  
The inferences of the two ברייתות contradict each other regarding a case where the owner is unsure whether the thief would kill him?

The Gemara answers

כאן באב על הבן  
כאן בבן על האב

If the thief is the owner's father, we assume that he would not kill him, unless he is sure that he would, but if the thief is the owner's son, or a stranger, we assume that he would kill him, unless he is certain that he would not.

7

*When one may kill a thief.*

אם זרחה השמש עליו  
If the sun shines on him

אין לו דמים  
The thief may be killed

וכי השמש עליו בלבד זרחה  
Does the sun shine only on him?

Therefore

One Braisa explains;

אם ברור לך כשמש  
שאין לו שלום עמך  
הרגהו

ואם לאו אל תהרגהו  
If it is absolutely, clear to the owner that the thief would kill him, he may kill him first. Otherwise, he may not.

A second Braisa explains

אם ברור לך כשמש  
שיש לו שלום עמך  
אל תהרגהו

ואם לאו הרגהו  
If it is absolutely, clear to the owner that the thief would NOT kill him, he may not kill the thief. Otherwise, he may kill him.

קשיא  
סתמא אסתמא

כאן באב על הבן  
כאן בבן על האב

If the thief is the owner's father, we assume he would not kill him, unless he is sure that he would,

If the thief is the owner's son, or a stranger, we assume he would kill him, unless he is certain that he would not.

8 The Gemara cites several ברייתות that elaborate on the בא במחותרת במחותרת:

1.  
דמים לו  
בין בחול בין בשבת  
If the thief is his father, he may not kill him, even on Shabbos, and the Gemara explains  
לפקח עליו את הגל  
We even violate Shabbos to save him if the tunnel collapsed.  
Similarly,  
אין לו דמים  
בין בחול בין בשבת  
An ordinary thief may be killed, even on Shabbos, and we do not say  
מידי דהוה אהרוגי בית דין  
That he may not kill him, as we see that בית דין does not execute convicted sinners on Shabbos;  
Because we are killing him to save the owner.

2.  
והוכה  
בכל אדם  
Anyone can kill the thief, because  
רודף הוא  
He is pursuing the homeowner to kill him, and anyone can save the pursued.  
Furthermore,  
ומת  
בכל מיתה שאתה יכול להמיתו  
He can be killed by any means necessary.

8

בא במחותרת ברייתות that elaborate on

1

<p><b>אין לו דמים</b> בין בחול בין בשבת</p> <p>An ordinary thief may be killed, even on Shabbos, and we do not say</p> <p><b>מידי דהוה אהרוגי בית דין</b> <b>דבשבת לא קטלינן</b></p> <p>That he may not kill him, as we see that בית דין does not execute convicted sinners on Shabbos; Because we are killing him to save the owner.</p>	<p><b>דמים לו</b> בין בחול בין בשבת</p> <p>If the thief is his father, he may not kill him, even on Shabbos, and the Gemara explains</p> <p><b>לפקח עליו את הגל</b></p> <p>We even violate Shabbos to save him if the tunnel collapsed.</p>
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2

**והוכה**  
בכל אדם

Anyone can kill the thief, because

**רודף הוא**

He is pursuing the homeowner to kill him, and anyone can save the pursued.

Furthermore,

**ומת**

בכל מיתה שאתה יכול להמיתו

He can be killed by any means necessary.



9

3.

גגו חצירו וקרפיו מנין  
ת"ל ימצא הגנב מ"מ

The extra expression **תמצא תמצא** includes a thief who tries to enter through any entrance, and

מה ת"ל מחתרת

מפני שרוב גנבים מצויין במחתרת

The Torah referred to tunneling because this is the most common scenario.

Alternately,

מחתרתו

זו היא התראתו

When he tunnels in, he may be killed without warning, but if he comes through an ordinary entrance, he must be warned first, because he may not have been ready to kill the owner.

The Gemara cites a related ruling:

אמר רב הונא

קטן הרודף

ניתן להצילו בנפשו

If a minor is pursuing someone to kill them, it is permitted to kill him first, because

רודף אינו צריך התראה

It is permitted to kill a **רודף** without a warning.

The Gemara brings several **ברייתות** to prove or disprove this ruling.

9

3

**גגו חצירו וקרפיו מנין  
ת"ל ימצא הגנב מ"מ**

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