

And discredited witnesses

ועדים זוממין –

OVERVIEW

includes עדים זוממין as one of the נזיקין כ"ד אבות. The rule by which עדים זוממין is, if the accused was not punished (i.e. not put to death) yet [and the (זוממין) עדים were discredited], we punish the עדים זוממין with the same punishment they intended the accused to receive. If however the falsely accused was actually punished (he was put to death), the עדים זוממין are exempt from punishment.¹ It would seem that עדים זוממין are different from all the other נזיקין אבות, for עדים זוממין are liable only when they intended to do damage; but not when they actually damaged. It is therefore questionable why רבי חייא includes עדים זוממין with the other נזיקין אבות.² Our תוספות seems to be addressing this difficulty.

פירש רבינו יצחק בן אשר דאפילו שילם על פי העדים זוממין חייבין³ -

The ריב"א explained that even if the falsely accused paid money on account of the עדים זוממין, the עדים זוממין are liable to repay the falsely accused -

דלא שייך בממון כאשר זמם ולא כאשר עשה⁴ דאפשר בחזרה⁵ -

For by monetary issues, the exclusionary rule of; ‘as he plotted, but not as he did,’ does not apply, since there is the possibility of restoration.

תוספות offers an alternate view:

ורבינו יצחק מפרש דלא צריך להאי טעמא -

And the ר"י explains, this reasoning (of the ריב"א) is not necessary -

דגבי ממון מחייבין להו בקל וחומר דגבי ממון עונשין מן הדין⁶ -

¹ The ‘popular’ explanation is that we derive this from the פסוק (דברים [שופטים] יט,ט) which states ועשיתם לו כאשר זמם and we have the דרשה of כאשר זמם ולא כאשר עשה (see רש"י on the פסוק and later in this תוספות). However, there is no such דרשה (in the גמרא). The משנה in מכות (ה,ב) states that the עדים זוממין are killed only after there was a דין אחר, but before the accused was killed, for the פסוק states לעשות לאחיו זמם כאשר זמם, which indicates that the (the accused) is אחיו! The גמרא challenges; if לא הרגו נהרגין, then הרגו should certainly be נהרגין. The גמרא responds that אין עונשין מן הדין (punishment cannot be meted out based [exclusively] on the logic of a “ק”ו”).

² Alternately (see רש"י), how can ר"ע and the חכמים (shortly) argue whether עדים זוממין are ממונא or קנסא. It is obvious that their payment is a קנס.

³ This explains why ר' חייא mentions עדים זוממין, because in monetary matter עדים זוממין are liable (even) if they caused damage (i.e. the falsely accused paid פיהם). See ‘Thinking it over’ # 4.

⁴ See footnote # 1. This may be an easier way of referring to the rule.

⁵ The rule limiting the liability of עדים זוממין to a case of זמם only, is when the כאשר עשה is irreversible, such as in capital punishment. However, when the עדים זוממין caused a monetary payment, where the monies can be returned to the proper owner, this limitation of כאשר עשה, does not apply.

⁶ See תוספות ב,א ד"ה ולא זו"י.

For by monetary issues we obligate the עדים זוממין to pay utilizing a קל וחומר, for by monetary issues we do administer punishment based on the logic of a ק"ו.

resolves an anticipated difficulty:

והא דאמרין במכות (דף ה,ב) הרגו אין נהרגים היינו משום דהתם אין עונשין מן הדין:
And that which the גמרא states in מסכת מכות, if executed the falsely accused, the עדים זוממין are not executed; the reason for that, is because there (by capital crimes) does not punish based on a ק"ו. It is only by ממון, where we maintain עונשין מן הדין.⁷

SUMMARY

The ריב"א and the ר"י agree that by ממון the עדים זוממין are liable even if the accused paid. The ריב"א explains it because by money there is restitution. The ר"י explains because by ממון we say עונשין מן הדין.

THINKING IT OVER

1. Why do we say דיני נפשות only by ולא כאשר עשה?
2. Why do we say דיני ממנות by עונשין מן הדין, but not by דיני נפשות?
3. What are the differences between the ריב"א and the ר"י?
4. The ריב"א answered that by ממון it is not כאשר עשה, since it is אפשר בחזרה.⁸ Seemingly the question still remains, for the חיוב by ממון is only for the זמם, כאשר זמם, which makes it different from all the other מזיקים, who pay for the actual damage!⁹

⁷ See 'Thinking it over' # 2.

⁸ See footnote # 3.

⁹ See סוכ"ד את סו, בל"י, חידושי ר"נ וכו'.