

## And discredited witnesses

## ועדים זוממין -

### Overview

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

פירוש רבינו יצחק בן אשר<sup>3</sup> דאפילו שילם על פי העדים זוממין חייבין –

The ריב"א explained that even if the falsely accused paid money on account of the זוממין, the זוממין are liable to repay the falsely accused<sup>4</sup> -

דלא שייך בממון כאשר זמם ולא כאשר עשה דאפשר בחזרה –

For by monetary issues the exclusionary rule of ‘as he plotted but not as he did’<sup>5</sup> does not apply, since there is the possibility of restoration.<sup>6</sup>

תוספות offers an alternate view:

ורבינו יצחק מפרש דלא צריך להאי טעמא –

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

דגבי ממון מחייבין להו בקל וחומר דגבי ממון עונשין מן הדין<sup>7</sup> –

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

<sup>2</sup> Alternately (see רש"י) how can ר"ע and the חכמים (shortly) argue whether זוממין are ממונא or קנסא. It is obviously a קנס!

<sup>3</sup> See footnote # 7. תוספות ד"ה כראי.

<sup>4</sup> This explains why ר"ח mentions זוממין are liable if they caused damage. See ‘Thinking it over’ # 4.

<sup>5</sup> See footnote # 1.

<sup>6</sup> The rule limiting the liability of זוממין only to a case of כאשר זמם is when the כאשר עשה is irreversible, such as in capital punishment. However when they caused a monetary punishment, where the monies can be restituted to the proper owner, then this limitation of כאשר עשה does not apply.

<sup>7</sup> See תוספות ב,א ד"ה ולא זו"ו.

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

anticipates and resolves a difficulty:

**והא דאמרינן במכות (דף ה, ב) הרגו אין נהרגים היינו משום דהתם אין עונשין מן הדין:**  
**And that which the גמרא states in מסכת מכות בי"ד if executed the falsely accused, then the עדים זוממין are not executed; the reason for that, is because there (by capital crimes) בי"ד does not punish based on a ק"ו;** it is only by ממון that we maintains<sup>8</sup> עונשין מן הדין.

### 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 עשה ולא כאשר עשה only be דיני נפשות and not by דיני ממונות?
2. Why do we say עונשין מן הדין by money and 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. Seemingly the question still remains, for the חיוב by ממון is only for the כאשר זמם; which makes it different from all other מזיקים who pay for the actual damage.<sup>9</sup>

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<sup>8</sup> See 'Thinking it over # 2.

<sup>9</sup> See סוכ"ד אות סו, בל"י, חידושי ר"נ וכו'.