

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) The judgment of the בן סורר ומורה

A Baraisa elaborates on the principle that the בן סורר ומורה is punished based on what he will become.

The Baraisa concludes with other examples of things that are beneficial for some and detrimental for others.

2) **MISHNAH:** The Mishnah notes that a burglar who tunnels into a house is also judged based on what will happen. Whether the tunneling burglar is financially liable is discussed.

3) Tunneling burglar

Rava explains why the tunneling burglar may be killed.

Rav rules that the tunneling burglar is exempt from monetary liability.

Rava qualifies this ruling but admits that Rav does not agree with his qualification.

Rava explains the logic behind Rav's position and why he disagrees with it.

An unsuccessful attempt to support Rava's position is presented.

An unsuccessful attempt to refute Rava's position is recorded.

An incident is recounted in which Rava defers to Rav's position.

4) Killing the tunneling burglar

A Baraisa expositis a verse to teach that one may kill the tunneling burglar only if he is certain that the burglar would kill him.

A second Baraisa teaches that one may kill the tunneling burglar even if one is suspicious that the burglar would kill him.

The Gemara resolves the contradiction.

Rav gives an example of someone he would not kill if he was tunneling into his home.

A related Baraisa is cited that is clarified by R' Sheishes.

Another Baraisa expositis a verse related to killing the tunneling burglar.

The Gemara explains the rulings in the Baraisa.

Two more Baraisos are cited that elaborate on the laws of the

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Distinctive INSIGHT

"If the sun shines upon him..." - If it is certain that he plans to kill

תנו רבנן אין לו דמים. אם זרחה השמש עליו דמים לו, וכי השמש עליו בלבד זרחה? אלא אם ברור לך הדבר כשמש וכו'

The Gemara discusses the law of an intruder, and the conditions under which a homeowner may defend himself by killing the intruder who is breaking into his home. Although the literal meaning of the verse is that the homeowner is responsible if he kills an intruder if the sun shines upon the intruder, the Gemara understands that the lesson of the Torah is that a person may rise up and kill someone if it is "clear as day" that the offender is coming to kill him. Therefore, if it is obvious that the intruder will use deadly force during a confrontation, the homeowner is not held responsible (אין לו דמים) if he launches a preemptive attack and kills the intruder before he strikes.

Rambam (Hilchos Geneiva 9:7) presents this halacha according to the understanding of the Gemara, and not strictly according to the literal meaning of the verse. He writes, "If an intruder enters a house, whether he comes during the day or at night, the homeowner is innocent if he kills him." Ra'avad, in his response to this halacha, writes, "I will not refrain from writing my opinion in this matter. Although our Sages have explained that the verse which speaks about the sun shining upon the intruder is referring to the situation being one which is 'perfectly clear,' I understand that the verse should be interpreted literally. When an intruder comes during daytime hours, the homeowner may not kill him, because the thief is only coming if he can easily escape if detected, and he expects to steal only small things. He does not wish to confront the homeowner, and he will run away if he feels he is noticed. When a robber comes at night, he knows that the homeowner is probably home. The thief realizes that there may be a confrontation, and he expects to either kill or be killed. The homeowner may therefore preemptively kill the intruder who comes at night."

Sefer Marglיות הים explains that the difference of opinion of Rambam and Ra'avad is consistent with their general approaches to interpreting verses. Rambam understands that the Torah often speaks in parables and allegorical terms, without always intending to be fixed to the literal meaning of its words. Here, too, the phrase "the sun shining upon him" does not refer to the time of day when the intruder breaks into the home, but it rather refers to whether the situation is clear and obvious. Ra'avad prefers to interpret the wording of verses closer to their literal meaning. See Hilchos Melachim (12:1), where Rambam and Ra'avad disagree

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REVIEW and Remember

1. What is the reason we kill a tunneling burglar?

2. What is the point of dispute between Rav and Rava?

3. What is the method of execution used to kill the tunneling burglar?

4. Is it necessary to give התראה before killing a pursuer?

Today's Daf Digest is dedicated
 By the Okner family in memory of their grandfather
 ר' שמשון בן ר' לוי ע"ה

HALACHAH Highlight

Liability for withholding testimony

The burglar returned them to him but he did not accept them

אהדרניהו ניהליה ולא קבלינהו
Shulchan Aruch¹ rules that one who knows information that would be helpful but withholds from sharing that testimony is exempt from liability in an earthly court (פטור מדיני אדם) but obligated in the Heavenly court (חייב בדיני שמים). Teshuvos Shvus Yaakov² addressed the following case. Reuven claimed that his nephew owed fifty gold coins. The nephew admitted that he owed the money but claimed that he is exempt from paying that money because Reuven caused him a loss. There was once an incident in which two of Reuven's nephews had a financial disagreement and they agreed, by making a kinyan, to allow Reuven their uncle to give relevant testimony in this case. Reuven withheld giving testimony and as a result the nephew that owes Reuven fifty gold coins suffered a loss. Although the nephew cannot force his uncle to pay him for his loss he is nevertheless חייב בדיני שמים and as such the nephew has the right to keep Reuven's money that is already in his possession. Reuven's response to his nephew's claim is that although his two nephews accepted him as a witness, he did not want to testify in a case involving relatives since he is not obligated to do so. Therefore, he wants his nephew to pay the fifty gold coins that he admits that he owes.

Regarding the question of whether the nephew can keep Reuven's money that is already in his possession as payment for the money Reuven owes מדיני שמים, Shvus Yaakov cites Maharshah who issues the following ruling. If the person is obligated to pay the money but due to a technicality does not have to pay, the damaged party

tunneling burglar.

5) A minor who pursues

R' Huna teaches that a minor who pursues is killed and the rationale for this ruling is explained.

R' Chisda unsuccessfully challenges this ruling.

An unsuccessful attempt to support this ruling is presented.

Another unsuccessful attempt to refute R' Huna's ruling is recorded. ■

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regarding Messianic times and the verse in Yeshayahu (11:6), "And a wolf will lie with a sheep." Rambam explains it allegorically, while Ra'avad approaches it literally. ■

has the right to keep the damager's money that is already in his possession. For example, in a case of קם ליה בדרבה מיניה the damager is obligated to reimburse the damaged party. Since he is subject to a more severe punishment he does not pay but the obligation exists. Therefore, the damaged party may keep money that is already in his possession. If the damager is exempt altogether, for example, someone who indirectly causes damage, the damaged party may not keep the damager's money that is already in his possession. Ketzos Hachoshen³ cites our Gemara as proof to this principle. Rava refused to accept the rams when the tunneling burglar wanted to return them. Since he could have been killed while in the tunnel it is considered as though he was punished and thus there is no financial obligation whatsoever. Consequently, Rava refused to accept payment even מדיני שמים. ■

1. שו"ע חו"מ סי' כ"ח סעי' א'.
2. שו"ת שבות יעקב ח"א סי' קמ"ו.
3. קצות החושן סי' כ"ח סק"א. ■

STORIES Off the Daf

"For his end"

"על שם סופו..."

In Lublin, there was once a lamdan who came from a chassidic home but he became enamored with wealth and honor so that he began to slip in his observance. Eventually, he fell so far that he became a meshumad. The Chozeh of Lublin, ז"ל, saw this man yielding to his lower nature such that, even before he converted, the Chozeh wanted to have nothing to do with him. The bothered the meshumad very much

The meshumad once was present when one of the gentile noblemen, who was certainly no saint himself, visited the Chozeh. To the meshumad's surprise, the Chozeh treated him with much honor. Although at the time he was unable to protest he still felt

profound jealousy and publicly demanded that the Chozeh explain what seemed to be his double standard the next time he saw him. "The noblman is a goy, yet you treated him royally. It is true that I was on my way to becoming a goy when you began to reject me. Nevertheless, how can you justify treating one who is still a Jew worse than an out-and-out gentile!"

The Chozeh realized that this meshumad was only interested in honor and had no thoughts of teshuvah at all, so he did not hesitate in supplying a suitably sharp response. "We find in Sanhedrin 72 that a בן סורר ומורה is judged based on how he will act in the future. Strangely, the death penalty of a בן סורר ומורה is stoning, which is harsher than strangling, which is the punishment for a murderer. The commentators ask why he is judged more harshly for what he has not yet even done than one who has

actually committed a heinous crime.

"The answer is precisely what you are complaining about. Sometimes we treat a person slipping into oblivion who is uninterested in halting his descent worse than one who has already fallen all the way!"¹

The Imrei Emes, ז"ל, added a point that can help us understand why the Chozeh distanced this meshumad and did not try to draw him close.

"In Sanhedrin 72 our sages teach that a בן סורר ומורה is punished for סופו. Of course this means his end, but it can also refer to the 'end' of his title which is מורה, a teacher or guide. If he was only סורר, slipping himself, we would not treat him so harshly. But when he provides others with a negative example, he cannot be tolerated. It is to protect the innocents that he will surely corrupt that he is executed."² ■

1. גן יוסף, ע"ע
2. במחיצת ר' גדליה, ע"ע רל"ח ■