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in מסכת סנהדרין

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רבי יהושע בן קרחה אומר: מצוה לבצוע, שנאמר: אמת ומשפט שלום שפטו בשעריכם. והלא במקום שיש משפט - אין שלום, ובמקום שיש שלום - אין משפט. אלא איזהו משפט שיש בו שלום - הוי אומר: זה ביצוע. וכן בדוד הוא אומר: ויהי דוד עושה משפט וצדקה, והלא כל מקום שיש משפט - אין צדקה, וצדקה - אין משפט, אלא איזהו משפט שיש בו צדקה - הוי אומר: זה ביצוע. (סנהדרין דף ו' עמוד ב').

R. Yehoshua b. Korcha says: Settlement by arbitration is a meritorious act, for it is written: "*Execute the judgment of truth and peace in your gates*." (Zech. 8) Surely where there is strict justice there is no peace, and where there is peace, there is no strict justice! But what is that kind of justice with which peace abides? — We must say: Arbitration. So it was in the case of David, as we read: "*And David executed justice and righteousness* [charity] *towards all his people*." (Shmuel II, 8) Surely where there is strict justice there is no charity, and where there is charity, there is no justice! But what is the kind of justice with which abides charity? — We must say: Arbitration.

The first chapter of מסכת סנהדרין is about the structure of Jewish courts, and the requisite number of judges and the qualifications required for different categories of judgement. With such attention given to the minutia over the make-up of the court, our presumption is that the ideal state in jurisprudence is to arrive at strict justice.

And yet this very question is posed by the תלמוד– What is preferable: strict justice or compromise? The תלמוד sides with רבי יהושע בן קרחה that arbitration, in other words – compromise, is preferable to strict justice. In the "battle" between peace and strict justice, peace wins out. The תלמוד makes explicit this underlying value that if left unexamined might be missed. The תלמוד more often than not leaves

its reflections on values implicit. Like much of תלמוד study, the goal is to make what is implicit explicit and understood.

Our Torah Journal does just that. The essays contributed by our students takes the unobvious and gives clear articulation to a particular question from either the 1st, 3rd, or 8th chapters of סנהדרין. כל הכבוד to them and their teachers, Rabbi Asher Nemes and Rabbi Noam Stein, for producing this quality journal of Torah essays.

With Torah Blessings,

Rabbi Scot S. Berman
Head of School

Introduction

We see in the משנה in מסכת מכות דף ז'. (which is really a continuation of מסכת סנהדרין), that courts avoided executing. The משנה states: any court executing once in seven years is labeled a "destructive court." רבי אלעזר בן עזריה extends this to even once in 70 years, and רבי טרפון and רבי עקיבא say that if they were members of the סנהדרין, no one would ever have been executed.

Rabbi Eliyahu Dessler in מכתב מאליהו states that when a person sins, ה' is ultimately the One who punishes; the court merely serves as the intermediary through which the punishment is delivered. בית דין's purpose, as the leaders of the community, is to educate and guide the people toward the proper way of life. By having the תורה with its rules and their consequences, which theoretically can be applied, the תורה, taught under their guidance, is trying to teach us to stay away from sin. That should be enough to keep a person from sinning without actually receiving the punishment. This idea comes to fruition in the case of a בן סורר ומורה, the rebellious child, about whom the גמרא סנהדרין דף ע"א says never actually existed; the whole purpose of the case is "וקבל שכר דרוש," learn and you will receive reward. According to Rav Dessler, this can be interpreted to mean that by learning the details of the scenario, a person will receive reward since now he will know how to act and not need to receive that punishment.

The notion that the objective of the תורה's judicial system is not to punish becomes even more evident in the opening words of the רמב"ם in הלכות ממרים:

בית דין הגדול שבירושלים הם עיקר תורה שבעל פה, והם עמוד ההוראה, ומהם חוק ומשפט יוצא לכל ישראל, ועליהם הבטיחה תורה שנאמר "על פי התורה אשר יורוך, ועל המשפט אשר יאמרו לך תעשה", זו מצות עשה...

While the lower courts of 3 and 23 judges, even if they avoided punishing, may have focused on law and order in the community, the objective of the סנהדרין הגדולה is to maintain, uphold, and pass down תורה שבעל פה to כלל ישראל. They did not provide legal guidance but provided for the continuity of our מסורה.

As we learned מסכת סנהדרין this year, we focused on the various court structures, their proceedings, and eligibility requirement to be part of a בית דין. Students learned through these סוגיות on an intense level, going through the גמרא, analyzing how various ראשונים and אחרונים understand the סוגיה, and in many situations, seeing how these principles apply to contemporary life. They gained an appreciation for the vast responsibility that בתי דין played and continue to play in the Jewish community. This journal, our second volume of "מסורת עקיבא," contains articles written by students in the Beit Midrash Program on topics within מסכת סנהדרין. By having our students become the next link in the מסורה, they are, in a sense, continuing the role of the בית דין הגדול by toiling in the תורה שבעל פה and preserving it so that they can pass it down to the next generation. How fitting that the title "מסורת עקיבא" pertains to topics relevant to סנהדרין, whose goal was to maintain the מסורה of the Jewish Nation. בעזרת ה', may they continue in their dedication to serious תורה learning as they become the next generation of leaders in the Jewish community.

We would like to thank several key individuals who were instrumental in this publication:

Mrs. Malkie Rosenbloom, Director of Marketing and Communications, for formatting and editing the journal, as well as taking care of all the logistics needed to bring this journal to print.

Ms. Judy Greenwald, our High School Secretary, for her assistance in proofreading and editing this work. Avi Cohen, who worked with

several students in preparing their סוגיות by learning sources, comparing opinions and the approaches that arise from them, and developing ideas together.

Most importantly, we want to thank our dear תלמידים ותלמידות, the authors themselves, for their insightful questions and answers during our learning, and for their commitment to writing and revising to bring this work to fruition. May they continue to grow in their commitment to learning תורה and עבודת ה', and may they be a source of pride for their families, their teachers, and the community.

Rabbi Asher Nemes
Rabbi Noam Stein

<u>סמיכת דיינים</u>

The Function of Ordaining Judges (דף ג')

Yossi Nadel (11th Grade)

כתוב בפרק החולץ (יבמות מ"ו:) ש"גר צריך ג', משפט כתיב ביה." המילה "משפט" מרמזת לצורך לשלושה מוסמכין כדי לגייר מישהו והצורך הזה מביא לנו בעיה גדולה. השלשלת של סמיכה נשברה לפני מאות שנים אז איך אנחנו יכולים לגייר מישהו היום? השאלה הזאת מופיע בפרשנות של תוספות והרשב"א והתשובות שלהם ממש שונות. התוספות באותו דף (ד"ה משפט כתיב ביה) מביא את המושג של "שליחותייהו." לדעת תוספות, הבתי דינים היום מקבלים רשות לגייר מהבתי דינים של לפני מאות שנים, בתי דין שהיו בתפוקה שהדיינים עדיין היו מוסמכים איש מפי איש עד משה רבינו. בניגוד לזה, לדעת הרשב"א ביבמות שם, רק משתמשים ב"שליחותייהו" בדיני ממונות וקידושין כי זה לא מושג בעצמו אז השאלה עדיין עומדת לרשב"א. איך מגיירים אנשים בזמן הזה? האם הוא מסכים עם הצורך לסמוכין בגירות? אחרי שמסבירים את המתרה של סמיכה, נבין את התשובה של הרשב"א לשאלה הזאת.

כדי להבין תמצית המחלוקת בין תוספות והרשב"א, צריכים לעיין בעיקר על התפקיד של סמיכה בדין. כדי להיות מוסמך, האדם לא רק צריך להיות חכם אבל צריך להיות מקושר לשלשלת של לימוד תורה שהתחיל עם משה בהר סיני. יש שני סברות איזה פסוק הוא המקור של חיוב סמיכה בדין. רש"י סובר שזה בא מהמילה "אלוהים" שמופיעה שלוש פעמים בפרשת משפטים בקשר לדיני גניבה. מצד שני, הגמרא במסכת גיטין בפרק המגרש לומדת את זה מפסוק אחר בפרשת משפטים, "ואלה המשפטים אשר תשים לפניהם." הגמרא מפרשת "לפניהם (סמוכים) ולא לפני הדיוטות" (גיטין פ"ח:). עוד פעם מוצאים את המילה "משפטים" בקשר לסמוכים. אז פה יש לנו סתירה גדולה: איזו פסוק הוא מקור של חיוב סמיכה בדין?

הרב סולובייציק זצ"ל העלה תיאוריה מדהימה שמסדר את שתי המחלוקות שלנו. הוא מניח שמחלוקת תוספות ורשב"א היא מחלוקת בגדר הדין של סמיכה. לדעת תוספות, סמיכה היא הלכה בחלות שם בית דין, שאי אפשר לבית משפט לקבל "שם בית דין" אם השופטים לא מוסמכים. בניגוד לזה, לדעת הרשב"א, סמיכה איננה הלכה בבית דין אלא בהוראה, שכדי להיות "הוראה" או לתת פסק, הפוסק צריך להיות מוסמך (ספר ארץ הצבי עמ' רכ"ו).

אנחנו יכולים לחבר את שני הסברות האלו לשני מקורות של חיוב סמיכה בדין. הטעם של התוספות יוצא מהפסוק "לפניהם." הפסוק הזה אומר שצריכים שה"משפט" יהיה בפני בית דין, אז תוספות חושב שעיקר החיוב של סמיכה בדין הוא להיות להם שם בית דין. הרשב"א לומד את הסיבה שלו מהפסוק "אלוהים." המילה זאת מרמזת למישהו שיש דברים למעלה מן הטבע בחכמה ובינה שלו ולרשב"א זה מי שיש לו סמיכה. עכשיו גם יכולים להגן על שיטת הרשב"א בקשר לשאלה בגירות. הגמרא אמרה שלומדים חיוב סמוכים מהמילה "משפט" שמרמזת לסמיכה. אבל הנמקה הזאת רק עובדת עם שיטת התוספות שלומדת חיוב סמיכה מהפסוק של "ואלה משפטים." לשיטת הרשב"א, אין קשר בין סמיכה למילה "משפט" אז לא צריכים סמיכה בדיני גירות אם הדיינים לא נותנים שום פסק או הוראה אלא רק משגיחים על הגירות.

יכולים למצוא את המחלוקת הזאת בכל מיני מקומות. לדוגמה, במשנה הראשונה של סנהדרין בדף ב'., אומרים שצריכים ג' דיניים בשביל "סמיכת זקנים." רש"י, שהסכים עם התוספות בדיון לפני כן, אומר שזה מדבר על סמיכת זקנים על פר העלם דבר של צבור, שצריכים בית דין של שלשה לזה. אבל, הרמב"ם מפרש שסמיכת זקנים היא כשסומכים אדם להיות מומחה וראוי לדון ולתת פסקי הלכה. במקרה של הרמב"ם, הבית דין לא פוסקים שום דבר חדש, הם לא מורים שום דבר. הם רק מגלים את מה שכבר ידוע. זה יסתדר עם שיטת הרשב"א שרק צריכים סמיכה אם רוצים לתת הוראה, אבל לא כאשר הבית דין צריכים לעשות משהו או להשגיח על משהו. לדעת הרמב"ם, במקרה הזה שסומכים אחד לדיינות, עדיין צריכים שלאחד מהדיינים יש סמיכה. אף על פי שהבית דין לא מגלים שום דבר, צריכים שאחד מהם הוא סמוך בכדי להמשיך את השלשלת מהר סיני. בשביל זה, מספיק שאחד מהדיינים שבבית דין הוא בעצמו סמוך להמשיך את הקשר לדיין החדש.

רוב בדיני ממונות

Do We Follow the Majority in Monetary Cases? (דף ג')

Estee Brown (11th Grade)

There is a major principle in the Torah אַחֲרֵי רַבִּים לְהַטֹּת that in order to make a decision, you should follow the majority. This applies in cases such as determining guilt or innocence in trial and whether something is kosher or not kosher. However, as we will see, there is a מחלוקת whether we follow the majority in דיני ממונות, monetary cases. On the other hand, it is clear that we follow the majority in court even for monetary cases but we need to examine why.

The original source for following a majority comes from שמות כ"ג: לֹא תִהְיֶה אַחֲרֵי רַבִּים לְרָעֹת וְלֹא תַעֲנֶה עַל רִב לִנְטֹת אַחֲרֵי רַבִּים לְהַטֹּת. Even though the גמרא interprets this פסוק as talking about דיני נפשות, capital cases, the גמרא דף ג' applies this פסוק to דיני ממונות as well because of a קל וחומר. If we can follow the majority in such severe cases like in דיני נפשות then of course we can apply it to דיני ממונות where the cases are less severe. However, this conclusion is unclear, because there are two גמרות in בבא קמא that say that we do not follow רוב in דיני ממונות.

The גמרא בבא קמא דף כ"ז עמוד א' discusses a situation in which a person comes to a store that sells two different vessels that look similar. The smaller of the two vessels is normally called a כד, and the larger a חבית. The buyer comes into the store and asks for a חבית but the seller gives him a smaller vessel which most people would call a כד. Most people in that area would only call a larger vessel a חבית, but the seller goes according to the minority who call the smaller vessel a חבית. The גמרא concludes that the buyer is not able to demand a refund because אין הולכין בממון אחר הרוב we do not follow the majority in monetary cases.

The second גמרא in בבא קמא דף מ"ו עמוד א' gives another scenario. A buyer asks a seller for an ox he wants to use to work in the field but the seller gives him an ox that is too wild to do work. The buyer wants a refund, but the seller says that since the minority do want oxen for meat (and this wild ox can be used for meat) he does not owe him a refund. The גמרא concludes that the buyer cannot demand a refund because אין הולכין בממון אחר הרוב.

After seeing both גמרות in בבא קמא, we see there is a clear contradiction. The גמרא in סנהדרין seems to hold that we do follow majority for דיני ממונות because of the קל וחומר from דיני נפשות. However, the two גמרות in בבא קמא seem to say the opposite that we do not follow רוב in דיני ממונות.

תוספות in סנהדרין says that the general rule follows the קל וחומר and we do follow רוב for דיני ממונות. The two cases in בבא קמא are exceptions to the general rule, because לא חשיב כי הנך רובא הלכך לא סמכינן אהך רובא בדיני ממונות, these majorities are not significant, and, therefore, we do not rely on them for דיני ממונות. In the cases of the vessels and the ox, it would seem the reason these majorities are less significant is because they are not facts about human nature or the way the world works, but they are just ways that people in a particular time and place use certain words. This makes these majorities less objectively true.

תוספות בבא קמא דף כ"ז resolves the contradiction in a drastically different way. This תוספות says the general rule is we cannot follow רוב in דיני ממונות because המוציא מחבירו עליו הראיה, meaning the person who is trying to take away the money has to have 100% proof that it is his money. In a case of דיני נפשות we are just trying to prove whether something happened or not. In such a case we can follow the majority. However, in דיני ממונות, one person is holding the money and another is trying to take it away. The person holding the money has a right to that money and is presumed to be the owner.

We are not allowed to take away that person's right without 100% proof, and, therefore, we cannot follow the majority.

According to תוספות בבא קמא, following רוב specifically in בית דין is a whole different story. Even though in general we do not follow the רוב in דיני ממונות, in בית דין we do. The reason for this is because even though the judges vote and the decision follows a majority, at the end of the day, the court has to make one decision as a whole unit. So, when it is time to come to a decision, all three judges agree to one ruling even if some judges have different opinions. Therefore, following רוב in בית דין is allowed because it is considered to be one court that agrees to one ruling. "הא ב"ד מפקי מיניה" tells us it is the בית דין as a whole that is taking the money away, not a majority that is taking it away from the person holding it.

גמר דין בפשרה

What is a Final Verdict before Arbitration?

(דף ו')

Raffi Klausner (10th Grade)

The גמרא in סנהדרין דף ו' עמוד ב' says that if the judges have come to a גמר דין, a final verdict, the litigants can no longer make a פשרה, an arbitration. The גמרא says this גמר דין is when the judges say "איש פלוני אתה חייב, איש פלוני אתה זכאי," they declare who is liable and who is innocent. There is a מחלוקת between רש"י and תוספות on how to understand this point and precisely define the גמר דין in this case. רש"י understands this גמרא at face value. According to רש"י, it is when the judges announce who is חייב and who is פטור. The בעלי תוספות hold that it is when the judges decide their verdict, but before they declare their decision to the litigants. תוספות explains the גמרא's reason to be because it would be wrong for the judges to convince a litigant to compromise if the litigant knew that the בית דין will rule in his favor. Had he known he would be פטור, the litigant would have never agreed to make the פשרה.

The בעלי תוספות admit that the גמרא's language fits better with רש"י's approach, but there is an ideological issue against רש"י's opinion. The ר"ן explains the issue this way: no one would ever agree to make a פשרה after he has been declared innocent, and to try convincing them to make one would be stealing. So, according to רש"י's approach, no one would even think about making a פשרה after the גמר דין. Therefore it would be unnecessary for the גמרא to mention this הלכה. This is how the ר"ן explains תוספות.

There seems to be a very different approach of what is a גמר דין in the גמרא in בבא קמא דף ס"ח:-ס"ט. This גמרא discusses a case where a man stole an animal from someone and they went to בית דין. If the בית דין told the thief "חייב אתה ליתן לו", that he is obligated to give back the animal, and then he slaughters it or sells it, he has to pay

four or five times the value of the animal. (This is the normal penalty for stealing an animal and then slaughtering or selling it.) On the other hand, if they told the thief "צא תן לא", to give the animal back to its owner and he slaughters it or sells it, he only has to pay the simple value of the animal. This is because they already had a גמר דין and the animal is considered to have already been returned. The thief is considered to have done a separate action of גזילה, robbery, for which one cannot be obligated four or five times for stealing; the penalty of four or five times the value of a stolen animal is only in a case of גניבה, theft. In this גמרא, it is being suggested that it is not considered a גמר דין until the judges tell the guilty party what to do. On the other hand, in מסכת סנהדרין, the בעלי תוספות have an opinion which seems to contradict the גמרא in בבא קמא.

The יד רמ"ה asks how can we reconcile these גמראות, since they apply two different uses of a גמר דין. He then explains that in the case of פשרה in מסכת סנהדרין, we are looking at things from the judges' point of view. For the judges, the case is over when they've made up their minds, even if they have not shared their decision with the litigants. Therefore, our גמרא says the judges cannot offer the litigants a פשרה. However, in the case of דין in מסכת בבא קמא, we are viewing a גמר דין from the perspective of the litigants. For them, the case cannot be over until they are not only told who is חייב and who is פטור, but are also told their פסק.

משחק בקוביא

Is Gambling Allowed According to Jewish Law? (דף כ"ד)

Jason Jubas (12th Grade)

It is often debated whether gambling is allowed according to Jewish law. What constitutes gambling? Certainly one would say betting in a casino constitutes gambling, but what about buying lottery tickets or playing bingo? What about the stock market or an auction for צדקה? What are the rules and laws for gambling?

The משנה on דף כ"ד: in מסכת סנהדרין states that if one plays with dice, i.e. gambling, he is not allowed to be a judge or a witness. The גמרא on דף כ"ד: argues on why someone who plays with dice is not allowed to be a judge or witness. רמי בר חמא considers gambling to be an אסמכתא. An אסמכתא is taking money from someone who does not want to give it up. The שולחן ערוך says that someone who places a bet believes he is going to win and therefore is not מפקיר, does not give up the money. Therefore, if he loses, the winner מדרבנן is stealing the money from the loser. רש"י says (ד"ה כל כי האי גוונא לאו אסמכתא היא) that when you are betting on yourself and you lose, you do not have to pay. רש"י brings a case where a farmer says he will gather a certain amount of crops and if he does not, he will pay a certain sum of money. In this case the farmer does not farm enough, yet he does not have to pay the set amount of money because he is betting on himself. On the other hand, רב ששת in the גמרא considers gambling to be an issue of "אינו עוסק ביישובו של עולם" which means the gambler is not contributing positively to society. Essentially, as pointed out by the גמרא, the main difference between the opinions of רמי בר חמא and רב ששת is if someone is gambling for entertainment and not as a profession, since he is involved in another positive and productive occupation, רמי בר חמא would still invalidate him as a witness but רב ששת would not.

Moreover, the gambler is contributing negatively to society, bringing down the overall portrayal of those living in that society. For instance, building or having a casino in one's city often leads to strong negative effects such as drugs, drunks, and addicts. This is on par with the words of the דיין עזרא בצרי, the head of the בית דין בירושלים, who even takes it a step further and says the gambling leads to addiction, causing a waste of money and time, and ultimately leads to hopelessness and suicide. Therefore, he states it is better to not even gamble one time for fun or to try it since he may become addicted to gambling.

But why are lottery tickets and bingo any different than gambling? The reason is there is a 100% chance whoever made the lottery tickets or bingo will not lose money because when the lottery tickets or bingo games are made, there is a certain percentage of money to be given back to the players, obviously under 100%. One is essentially winning a portion of a certain amount of money set aside and are therefore not stealing from anyone.

Now what about the stock market? The גמרא in בבא מציעא on דף מ"ב. says that a person should split his money into thirds to diversify and invest in secure ventures such as real estate, inventory, and the stock market. In the long run, investing is very different than gambling. The stock market is only gambling if someone "invests" in penny stocks or on a very short-term basis where there is a lot of uncertainty. In the case of the stock market, the majority of people invest in large cap stocks for the long run and those companies are typically successful and non-volatile. Thus, it is crucial to distinguish between investing, which has a lower risk and outcomes are more certain, than gambling where outcomes are very unpredictable.

Why is buying auction tickets at a shul auction allowed? The reason why it is allowed is simply because you are giving the money to צדקה and not actually expecting to win anything. If you do happen

to win something, congratulations; the prizes do not disappear and someone is guaranteed to come out ahead. Even more so, there is a very popular notion at these auctions that if someone wins, he or she will simply take the winnings and donate the prize back because his or her intention was not to win, but rather it was to give צדקה. This is very similar to the case of the lottery tickets and bingo, where there is a set amount of money set aside to win.

It is exhibited that gambling based on luck is not allowed, while betting based on certain factors is allowed. Betting based on luck would be betting with dice, where there is an equal chance of the die landing on every number, which is not allowed. On the other hand, betting on the stock market is dealing with many other various factors that play a role and is therefore allowed. The גמרא in סנהדרין on דף כ"ה concludes that if a person became invalid, there is a way to become a witness again. If a person completely destroys the dice and removes himself from playing with dice, going so far as to not even play with them for free, that person will be allowed to testify in court again.

מומר אוכל נבילות לתיאבון

Witnesses Disqualified for Eating Non-Kosher Meat (דף כ"ז)

Becky Benezra (11th Grade)

According to הלכה not everyone is able to testify in בית דין. The גמרא on דף כ"ז עמוד ב' teaches us that "קרובין" (family members) are not allowed to testify in court. They are פסול because they may be unknowingly biased, not because we believe they will lie. The תורה teaches us about another type of person who is not allowed to testify. This person is a רשע, someone who has committed a certain sin. However, there is a מחלוקת about exactly which sins make someone a רשע and why they are פסול to testify in בית דין.

There are two types of רשעים about whom we learn in the גמרא. The first is a רשע דחמס, someone who is an obvious monetary sinner, like a thief. The other רשע is a regular רשע, someone who commits any type of sin. In the גמרא we learn about two specific regular רשעים. One is a מומר אוכל נבילות לתיאבון, which is someone who eats meat that has not been properly slaughtered because of his appetite for this meat. The other regular רשע is a מומר אוכל נבילות להכעיס, someone who eats non-kosher food in spite of G-d.

In the גמרא דף כ"ז עמוד א', both אביי and רבא agree that a מומר אוכל נבילות לתיאבון is פסול because, despite not having performed an obvious monetary sin, the person is considered to be a רשע דחמס. But, there is a מחלוקת between them about whether a מומר אוכל נבילות להכעיס is פסול. Upon first glance, the opinions of אביי and רבא in the גמרא on דף כ"ז might seem confusing. Why is someone who eats non-kosher for appetite a רשע דחמס? He does not seem as bad or extreme as the person who eats non-kosher in spite of G-d. Certainly someone who is violating sins which are clearly monetary should be excluded, but this case doesn't seem to deal with money.

There are different opinions that attempt to explain why אביי and רבא classify a מומר אוכל נבילות לתיאבון as a רשע דחמס. רש"י seems to define a מומר אוכל נבילות לתיאבון as someone who eats non-kosher meat because it is cheaper, not as someone who eats non-kosher meat for the taste. He says "דכיון דמשום ממון קעביד דהא שכיחא בזול טפי מדהיתירא הוה ליה כרשע דחמס ופסול לעדות," that the meat tastes the same but one is slaughtered in a kosher way and one is not and is, therefore, cheaper. רש"י explains since this person is trying to save money by purchasing cheaper, non-kosher meat, he may be willing to go out of his way to save money. Therefore, according to רש"י, the reason he is a רשע דחמס is because of his willingness to sin for money and, therefore, we also suspect that in court he may accept a bribe if offered one.

The ריי"ף explains אביי and רבא differently. The ריי"ף says "מומר אוכל נבלות לתיאבון דברי הכל פסול כפין ואכיל נבלה כפין נמי ושקיל ארבעה זוזי ומסהיד." He says a מומר אוכל נבילות לתיאבון is פסול because he has shown himself incapable of resisting his desires. Therefore the ריי"ף says he didn't buy the meat specifically for monetary gain; rather it's because he can't resist his negative inclinations and may be susceptible to bribes. We understand from this that the ריי"ף believes the מומר אוכל נבילות לתיאבון is considered a רשע דחמס because he cannot resist following his urges in general, not specifically related to money and will, therefore, also be unable to contain his urge for monetary gain and accepting bribes.

The presentation of these הלכות made by the רמב"ם gives us additional insight into the מומר אוכל נבילות לתיאבון. He says that if a person commits a sin for which there is no punishment of מלקות, then he is not considered a מומר אוכל נבילות להכעיס because the sin is not great enough. Such a person can testify in court. But if the person's sin was monetary, even if it is a lesser sin which does not warrant מלקות, he is still פסול because of the sin's monetary nature. Later, the רמב"ם goes on to list people who are considered פסול. He says, "כֵּן הַמַּלְוֶה בְּרִבִּית אֶחָד הַמַּלְוֶה וְאֶחָד הַלּוֹוֶה שְׁנֵיהֶם פְּסוּלִין לְעֵדוּת." He includes

someone who loans with interest and the person who borrows from them with interest. I understand why someone who loans with interest would be פסול, because he is sinfully taking money from others, but why would the borrower be פסול? It does not seem that the borrower is doing such a great sin, because there are no מלקות. This sin can be rectified by returning the money, and any sin which can be rectified does not warrant מלקות.

Additionally, the borrower is not taking money in a prohibited way, he is giving away his money in a prohibited way. So what makes him רשע דחמס which usually means someone who is taking money? It seems that the person who borrows with interest is פסול, not because his sin is so great, but because he has an appetite for money. He needed money at that moment and was willing to borrow with interest to get it, even though that is prohibited. So, the person who lends with interest is פסול because he has a craving for money and is willing to sin for money. This הלכה is a clear indication that the real cause of a רשע דחמס being פסול is not that he has committed a certain type of sin, but rather that he has displayed a certain character trait which makes him invalid as a witness.

הגיל של בן סורר ומורה

The Age of the Rebellious Son (דף ס"ח-ס"ט)

Yoni Katz (12th Grade)

The issue of בן סורר ומורה, the rebellious son, is one of the most complex and interesting issues in the גמרא, so much so that it is disputed whether or not there ever was a case of בן סורר ומורה. There are many aspects of בן סורר ומורה that are widely disputed in the גמרא. Two age-related aspects that are a particular source of major discussion are whether or not a minor can be tried and how to determine the age parameters of a בן סורר ומורה.

In its discussion, the גמרא brings up the question of trying a קטן, a child under בר מצוה, as a בן סורר ומורה. The first mention of בן סורר ומורה pertaining to being a minor is pretty straightforward: a minor is obviously exempt because he is not obligated to fulfill מצוות. With this answer, the גמרא brings forth two questions. First, doesn't the משנה already say he is not obligated? Second, shouldn't we find a source to say he is liable rather than look for a source to find him exempt? There is a monumental answer to these questions: a minor is not able to be tried as a בן סורר ומורה because he is judged by his end, not current, action. This concept is called נידון על שם סופו, and is first discussed in the משנה דף ע"א עמוד א' and the גמרא elaborates on this on דף ע"א עמוד א'. The גמרא states that if a child is involved in stealing from his parents to satisfy an addiction, he will eventually become a bandit and a murderer. רמב"ם seems to extrapolate on this saying, "לא ענש הכתוב קטן שלא בא לכלל הלכות ממרים פרק ז' הלכה ה' המצוות." By using the word ענש, punish, the רמב"ם could be implying that he views killing a בן סורר ומורה as a punishment, as opposed to preventing further sinning, and a minor under בר מצוה can't be punished.

Additionally, the issue of how to calculate age requirements for a בן סורר ומורה comes up many times. The גמרא states that the age

requirement for a בן סורר ומורה is not based on age, but is based on the time between having two full hairs until his beard becomes full. The גמרא in סנהדרין דף ס"ח עמוד ב' expands on this to explain that we are not referring to his actual beard but his pubic region. Two hairs signify he is no longer a קטן in Jewish law, so we begin at that stage to hold him liable for his actions. The age requirements are then extrapolated in סנהדרין ס"ט עמוד א'. There, the גמרא gives a calendric timeframe and says that a youth can become a בן סורר ומורה once his beard fills out OR he is three months into adulthood.

This rule of three months comes from whether or not we can follow the רוב, the majority, when determining the age limit at which he can be tried in court. The פסוק says: "כי יהיה לאיש בן סורר ומורה," from which the גמרא teaches that a person can only be labeled a בן סורר ומורה if he is called a בן, a son, and not yet able to be called an אב. Theoretically, a person could be called an אב once his wife is visibly pregnant. At that point, we would no longer call him a בן, so he can't be classified as a בן סורר ומורה. The גמרא establishes a principle that a woman is noticeably pregnant after a third of her pregnancy has passed. In the times of חז"ל, there were two categories of full- term pregnancies, i.e. nine-month pregnancies, which most women experience, and seven-month pregnancies, which were the minority. If we follow the רוב, we would say that if he got married on the day he turned thirteen, in theory, his wife would be noticeably pregnant when he turns thirteen and three months. If we don't follow the majority, she would be noticeably pregnant when he turns thirteen and two months and ten days. The גמרא concludes that even though we typically do not follow the majority when it comes to capital cases, in this case, we do follow the majority. Since most women have nine-month pregnancies, we will classify someone as a בן סורר ומורה until thirteen and three months.

חיוב מיתה לבן סורר ומורה

Why Kill the Rebellious Son (דף ע"א)

Dena Stein (10th Grade)

The גמרא סנהדרין ע״א talks about a בן סורר ומורה, a boy who is close to the age of בר מצוה who steals food and money from his parents. If his parents bring him to the בית דין and he is found guilty, he is sentenced to death by stoning. Why does he get such a harsh punishment for stealing just a little bit of food from his parents? Does he really deserve to be killed? There are four options for the reason he will be killed. The four options are: as a punishment for future sins, to save himself from his future sins, to save others from his future self, or למען ישמעו ויראו, when people hear about the בן סורר ומורה they will be scared and not do anything bad themselves.

The first option is that the בן סורר ומורה is punished for what he will do. It says this in the משנה סנהדרין ע"א where it says נידון על שם סופו, that he is judged for the sin he will do in the future not what he is doing at that moment. רבי יוסי הגלילי elaborates on which future sin we are punishing him for. He says "אלא הגיעה תורה לסוף דעתו של בן סורר ומורה שסוף מגמר נכסי אביו ומבקש למודו ואינו מוצא ויוצא לפרשת דרכים ומלסטם את הבריות," it is because he will start with just stealing money from his parents, but when he runs out of his parents' money he will become a bandit on the streets and start killing people for their money.

One reason some people argue that it is not a punishment for future murder is because the בן סורר ומורה gets סקילה (stoning), but a murderer gets הרג (cutting off the neck). It does not make sense that he is getting the punishment for future murder when he does not get the punishment for murder. The יד רמ"ה explains how it is possible that this punishment really is for his future sins by saying "אלא כיון דאיכא למיחש ליה נמי לחילול שבת דיינינן ליה בסקילה." This means that the

בן סורר ומורה deserves the death penalty because he will end up killing in the future; however, he gets the punishment for breaking שבת because we suspect that along the way of being a bandit, he will also break שבת. The fact that he will violate שבת in the future is not certain enough to create a death penalty requirement, but it is a sufficient enough concern that it determines, once we already know he is deserving of the death penalty, which type of death he should get.

The second way of understanding why he is killed is that we are killing him to save him from future sins he will do. This way of understanding seems to be evident from the words of the משנה and the elaboration in the ברייתא. The משנה says, "ימות זכאי ואל ימות חייב," we want him to die innocent and not guilty. We are killing him based on the future sin, but here it seems not as punishment for this future sin, but rather to prevent him from facing punishment even after he dies by killing him before he sins.

The third option focuses not on the בן סורר ומורה himself, but rather on the impact we are worried he will have on others. Since we assume he will kill in the future, we kill him to save others from becoming his victims. The language of the משנה might make us think this is not the case. The word "נדון" in the phrase נידון על שם סופו in the משנה makes it seem like killing the בן סורר ומורה is a punishment. However, just because the phrase נידון על שם סופו is used does not necessarily mean it is to judge him and to punish him for future sins. Another example where it says נידון על שם סופו is by בא במחתרת, a person who tunnels into a person's house and burgles. There it teaches us if you suspect the burglar will kill you, then you can kill him. Certainly we are not, despite the phrase נידון על שם סופו, only killing the burglar as punishment. A בא במחתרת is clearly a type רודף, an assailant who is attempting to kill another, who is killed in order to save the victim. One clear indication of this is the ברייתא on סנהדרין ע"ב עמוד ב' that says that although we do not execute people

on שבת, we do kill a בן סורר ומורה on שבת. The clear reason why is because you are not killing him as a punishment but to save yourself.

רב חיים מבריסק in his חידושים על הרמב"ם הל' גירושין provides another proof that the executing of the בן סורר ומורה is not a punishment. The גמרא in ב' עמוד ב' סנהדרין learns from a פסוק, that "קטן פטור שלא בא לכלל מצות," that you cannot kill a בן סורר ומורה who is a young child because he has not yet reached the responsibility for מצוות. רב חיים claims that the fact the גמרא needs to learn this from a פסוק and does not consider it obvious since no criminal is ever punished before bar mitzvah, demonstrates that we are not killing the בן סורר ומורה as a punishment.

The fourth option is not about the בן סורר ומורה but about the community. Rabbi Jonathan Sacks notes that according to רבי שמעון, there never was and never will be an actual בן סורר ומורה. According to רבי שמעון, there does not need to be as firm a justification for the killing of the בן סורר ומורה, because he does not believe that killing the בן סורר ומרה is in reality just, and, hence, this punishment is never carried out. However, there is another view that, in fact, there were instances in which a בן סורר ומורה was killed. What type of justice does such a killing suggest? Rabbi Sacks believes that רבי יוסי הגלילי's view opens the door to the understanding that we kill the בן סורר ומורה to deter crime from happening in the future. First, we prevent his crimes in the future. But killing the בן סורר ומורה does more than prevent the future crimes of this young man. The פסוק concludes the description of the plight of the בן סורר ומורה with the admonition "וכל ישראל ישמעו ויראו," when people see how seriously crime is taken, they will be afraid, and society will become safer and crime-free.

מקור וטעם לבא במחתרת

The Source and Reason for Killing an Intruder (דף ע"ב)

Daniel Selesny (11th Grade)

In this גמרא we discuss some of the rules of what we do when a person enters someone's house through a discrete place or somewhere that is clearly not a proper entrance. In this case, we need to figure out what the homeowner is able to do when a thief attempts to enter his home in order to steal. The גמרא in סנהדרין דף ע"ב discusses the guidelines governing someone known as "בא במחתרת," a robber who enters someone's home. We learn in the גמרא that if a thief is entering your home through tunneling in, he is not planning on just stealing the objects or leaving. The assumption the גמרא makes is אין אדם מעמיד עצמו על ממונו, a person will not stand by while his money is being taken. The homeowner will try to stop the thief, who will not retreat peacefully and would be ready to kill the homeowner if he gets caught. If we assume that he is going to kill the owner, we can consider the thief a רודף based on the principle of הבא להרגך השכם להרגו, if someone is coming to kill you, you can get up and kill him first. A רודף is a person who is chasing another with the sole purpose of killing that person. We say in the גמרא that we can kill a רודף if that is the only way to save the person the רודף is chasing. From this, we can now consider the thief a רודף and we are now allowed to kill him.

רש"י and the רמב"ם bring forth one reason for why the בא במחתרת can be killed. They say that the owner will not innocently stand by and watch a thief take all of his possessions when he could have stopped him. Since the thief has put forth so much effort into entering the house and stealing, he will kill the owner to get past him and steal. Therefore, the homeowner may kill the intruder in self-defense. רש"י and the רמב"ם are also saying that since the owner is now prepared to protect his property, which leads the thief to be ready to kill, we

view the thief as "אין לו דמים", someone not alive, and therefore can be killed. Another commentary with a different explanation as to why we can kill the בא במחתרת is the יד רמ"ה. He says that the homeowner will go so far as to kill the thief to prevent him from stealing, so the thief is ready to kill the homeowner in self-defense because he assumes the homeowner will be ready to kill him. Since the thief will come armed and ready to kill, the owner can kill the thief if he is entering his home.

Each of these sources bring up questions regarding their view. On רש"י, we need to ask the question: why do we not just force the homeowner to not protect his property? There are several possible approaches in answering this question. First, since it is not forbidden to protect one's things, the תורה will not forbid it, even though in the end, it may cause him to kill the בא במחתרת. The second answer is that even if we did force homeowners to stand down, many people would still protect their property. The thief will not know which kind of person the homeowner is, one who will not protect his property or one that will protect his property, so he will still come into the house ready to kill the homeowner.
A question to ask on the יד רמ"ה is why don't we label the homeowner as a רודף, and not the thief himself, since according to the יד רמ"ה the homeowner is the first one trying to kill someone in order to protect his property? The answer is since the thief is starting the entire episode by stealing, he's the רודף. If he didn't enter the house, the homeowner would never want to kill him, so we label the thief, not the homeowner, as the רודף.

קים ליה בדרבה מיניה

Give Him the Greater of Two Punishments

(דף ע"ב)

Uri Lorkis (12th Grade)

In the following article, I would like to discuss the סברא of קים ליה בדרבה מיניה, which loosely translates to, "give him the stricter of the two punishments." There are two פסוקים that discuss this concept. The first one is "כדי רשעתו במספר" which discusses מלקות. If a person owes money for an עבירה and also is deserving of lashes, the תורה states that he is given the lashes based on the word "רשעתו." His one עבירה is deserving of one punishment.

The second פסוק discusses a case where there is an אסון, which means death. If two men are fighting and punch a pregnant woman, they are חייב מיתה, but they are not obligated to pay the value of the baby. If there is an incident involving a death then it is only punishable by death and there will not be a monetary payment. This פסוק is also used to tell us that even if you think there might have been a monetary payment, the person is not required to pay it because he is punished for the stricter עבירה by being killed.

The question here is why do we need two פסוקים to discuss this idea? This is the same case and the same דין. It makes no sense to say it twice.

The שיטה מקובצת in the third chapter of מסכת כתובות explains why in depth. The הלכות of death, and the הלכות of מלקות are fundamentally different. If the תורה were to only say one of them, then you might think you would be able to come up with some reasoning explaining why it may or may not apply to the other one. The תורה clearly states it in two places to teach that is an objective concept, and not something to be toyed with. It is strictly applicable to these two cases and that is how it will be treated.

Now that we have mostly resolved this issue, the רא"ש asks the following question: The פסוק of אסון is only referring to death by strangulation, which is the least harsh of all death-related punishments. How would we know that you also don't have to pay by stoning and burning? This would be rationalizing the thought that maybe you wouldn't need to pay when also sentenced a lighter death sentence because the crime you committed is not as bad, as opposed to the other punishments in which you would think since you committed such a horrible crime, you have to suffer in all ways possible. Because of all of this, we see that using one פסוק might not be enough to explain this concept of קים ליה.

The שיטה מקובצת explains as follows: If we only had the פסוק of כדי רשעתו, we would only learn מלקות and monetary payments because it is discussing lighter cases, and more lenient punishments. Since we also have a second פסוק dealing with more stringent cases, we see that the תורה only imposes one punishment on a person who is convicted of multiple crimes. You can also use the same reasoning the other way around. If you only had the פסוק that dealt with stricter cases, you might think they are different than the less harsh cases with which the תורה deals. This is why we need two פסוקים to clearly understand all aspects of the concept of singular punishment.

All of this aforementioned information is exactly why the תורה needs to be extremely clear on this issue. It is unusual for a concept to be learned in more than one פסוק. However, in this case we make an exception due to the many complications. No matter how you present the case, if you only learn it from one פסוק, you can always think of reasons why it doesn't apply to other scenarios. We now know that no matter the situation, a person will always be prosecuted and punished with one punishment, and that punishment will be for the stricter of his sins.

We learned in גמרא class the case of a thief who breaks into a person's house through a tunnel. This case is specifically talking about a tunnel and not a classic case to show the determination of the thief to get into the house. In this case, the thief breaks in and we have an assumption that "No man will stand idle and watch his possessions get taken." The man will fight, and the thief might kill him. Because of this, the thief becomes a רודף, a man chasing another man to kill him, and the homeowner is allowed to kill him. During this period that the thief is facing imminent death, he is considered punished as if there is no blood to him and he is not obligated to pay for what he steals or breaks if he gets away. This is a classic example of קים ליה בדרבה מיניה. The man coming through the tunnel committed two obvious crimes. However, he is only punishable for one at a time. If he were to steal the item, he would have to return it and it is an obligation and not a punishment. If he actually breaks the item in the heat of the fight since he was facing the punishment of death he is completely exempt from paying anything.

הפלת עובר וקטן הרודף

Abortion in Halacha (דף ע"ב)
Orly Jerusalem (11th Grade)

Throughout the world there is a dispute of whether one is allowed to have an abortion or not. Beyond the argument as to whether abortion should be allowed lies the question of whether or not it is considered murder. If abortion is, in fact, considered murder, it would seem it should even be prohibited for someone to kill a fetus that is risking the mother's life.

The משנה אוהלות deals with this problem of whether an abortion is considered murder. The משנה says "האשה שהיא מקשה לילד, מחתכין את הולד במעיה ומוציאין אותו אברים אברים מפני שחייה קודמין לחייו. יצא רובו אין נוגעין בו שאין דוחין נפש מפני נפש."

This means once the baby starts to come out of the birth canal, one is no longer allowed to kill the baby since one is not allowed to choose one life over another. If one were to kill the baby, this would be choosing the mother's life over the baby's. On the other hand, before birth has begun, one is allowed to kill the fetus, since the mother's life is considered to be more valuable.

The גמרא סנהדרין ע"ב: states that one is allowed to kill a minor who is a רודף, an assailant who is attempting to kill another, since we do not need a רודף to have full intention in order to be allowed to kill him or her. The גמרא challenges this conclusion based on the משנה אוהלות quoted above. If one is allowed to kill a רודף who is still a minor, why does the משנה forbid killing a baby who is endangering his or her mother's life? The גמרא responds that since the baby is not doing any action, the danger is not being caused by the baby; rather, שמים is the source of the danger, while the baby is passively causing the danger just by its presence.

From reading just the משנה and גמרא one would conclude that killing a fetus is not considered murder; therefore, when the life of the fetus threatens the life of the mother one is allowed to kill the fetus even though the fetus is doing nothing to cause the danger to the mother. On the other hand, killing a baby once it has begun to emerge is murder and one can only murder a person if that person is a רודף, which this baby is not since it is not doing anything to cause the danger to the mother.

The רמב"ם seems to present these הלכות differently than the גמרא. He says מקשה לילד מותר לחתוך העובר במעיה בין בסם בין ביד מפני שהוא כרודף אחריה להורגה, the reason a fetus can be killed is because it is considered a רודף. There are two problems with the רמב"ם's presentation. First, why does he say that we kill the fetus because it's a רודף? We should be able to kill the fetus anyway because the mother's life is more valuable than the fetus's. Second, how can רמב"ם say that the fetus is a רודף if in the next line he says the reason we cannot kill the emerging baby is because זהו טבעו של עולם, this is the nature of the world? This phrase is a clear reference to the גמרא which says that a baby cannot be considered a רודף since the baby is not doing anything to cause the danger.

רב משה פיינשטיין answers these questions and, in doing so, suggests a completely different understanding of the value of the life of a fetus. He says דודאי גם העובר נחשב חי כדחזינן דיש גם עליו איסור לא תרצח כמו לנולד אך שם מותר מטעם שחייה קודמין לחייו דהרי יש בה עדיפות לעניו החיות שהיא נפש גמור שלכן נחשבת יותר חי מהעובר ועל יתרון זה הוי רק העובר רודף ולא האשה ולכן מותר לחותכו.

This means that it is prohibited to kill even a fetus, and a fetus is considered a life, but a lesser form of a life than the mother's. Furthermore, it is murder to kill a fetus, but one does not get the death penalty for this killing. Since a fetus is considered a life, the only justification for killing a fetus is if a fetus is considered a רודף. When a fetus presents a danger to its mother, the fetus is considered

a רודף and can be killed. However, despite being considered a רודף, this is not a full-fledged רודף because this רודף is not doing anything to cause the danger to the other person. It is simply its passive presence which presents a danger. Being this lower-level type of רודף is sufficient cause to allow killing a lesser form of life like a fetus. However, being a lesser type of רודף is not sufficient cause to kill a full-fledged life like a baby that has begun to emerge.

Therefore, according to רב משה, the רמב"ם makes perfect sense. We are not able to kill the fetus without the justification of רודף even though the רודף is, in fact, a lesser life. It makes sense that the רמב"ם considers the fetus a רודף even though the fetus is doing nothing, but he does not consider a baby doing the exact same non-action a רודף, because it is not enough of a רודף to warrant the murder of a full-fledged life.

רודף

Killing a Pursuer (דף ע"ג)

Alex Fischer (12th Grade)

The משנה lists three cases in which one is allowed to kill to save: a case where someone is pursuing another with the intent to kill, a case where a man is pursuing another man with the intent to commit a homosexual act, and a case where a man is pursuing an engaged woman with the intent to rape her. The משנה then continues by listing three cases where one does not kill to save: when someone is pursuing an animal with the intent to commit an act of bestiality, a case where someone is violating שבת, and a case where one is going to do עבודה זרה.

The גמרא asks the question: from where do we learn that you can kill someone who is trying to kill another? The first thing that the גמרא suggests is that we learn from a פסוק (ויקרא י"ט:ט"ז) "לא תעמוד על דם רעך." This would mean since one cannot stand idly by while one's friend is in danger, one must save a friend in any of the cases above. But the גמרא rejects this because this פסוק is used to learn that you save a friend from drowning, being gored by animals, or being attacked by bandits.

The second reason the גמרא suggests is the use of a קל וחומר. In the case of an engaged woman being raped, it is the הלכה that you are permitted to kill the person pursuing her. The גמרא says that if you can kill to stop a rape, how much more so would you be able to kill to stop a murder? But this reasoning is rejected because the גמרא says we cannot apply a קל וחומר to punishing someone. רש"י offers one reason why we can't punish someone based on a קל וחומר. He says that since a person can derive his own קל וחומר without a tradition from his teacher, it is not considered as explicit in the text, and in theory, someone else can come up with a countering קל וחומר that would imply we learn the opposite.

The final reason the גמרא gives, and the one we end up accepting, is that there is a הקיש, a textual connection between the cases of the girl being raped and the man being pursued to be killed. The פסוק regarding a girl being raped states: "ולנערה לא תעשה דבר, אין לנערה חטא מות, כי כאשר יקום איש על רעהו, ורצחו נפש כן, הדבר הזה. כי בשדה, מצאה; צעקה, הנערה המארשה, ואין מושיע, לה (דברים כ"ב:כ"ו-כ"ז)". These פסוקים are saying we don't do anything to the raped girl since she called out but there was no one to save her, which implies if there is someone to save her, we save her however we can, even by killing the rapist. The first פסוק connects murder to this case of rape to show that we can also kill the person trying to kill someone.

Now that we know where this concept comes from, let's take a step back. What does "kill to save" even mean? Is it to punish the person committing the sin? Is it to save him from committing that sin? Or is it simply to save the victim from being hurt? רש"י comments that the concept means you are saving the person from the sin he is about to commit by killing him. תוספות says that grammatically it makes sense to say that you are saving the victim from the evil that is about to be done to him, but that it wouldn't make sense in the case of bestiality because we are not discussing saving or not saving the animal. So, in the end he concludes like רש"י, saying that you are saving him from his own sin.

רבינו יונה suggests that the concept means to "save (her) at (his) expense" meaning that you are saving the woman being raped at the expense of her rapist's soul, therefore stating that we are not saving him from his sin. In response to the question of תוספות that his language does not fit with the second part of the רבינו יונה, משנה explains that the משנה used that language in the end to be consistent with the beginning, even though there, clearly only the sinner is the focus. The ר"ן gives two possible answers. He first suggests that we could be saving the victim. He uses the same language as רבינו יונה "save (her) at (his) expense". The second answer he gives is that we are saving him from his sin. His reasoning for this is that in the cases

of violating שבת or worshiping idols there is no רודף. He reconciles his two points by saying that the language of the first was applied to the second, similar to רבינו יונה.

יכול להציל באחד מאבריו

Saving a Person by Injuring his Pursuer

(דף ע"ד)

Asher Stein (12th Grade)

Life is the most precious gift afforded to mankind. We know that the value of life is an inherent value of Judaism as well. (תהילים ל':ו') states that life is the will of ה'. We know that almost nothing supersedes the value of life, not even the מצוות. The תוספתא שבת ט"ז: י"ד explains the following concept:

"לא ניתנו מצות לישראל אלא לחיות בהן שנאמר (ויקרא יח) 'אשר יעשה אותם האדם וחי בהן' וחי בהן ולא שימות בהן."

The מצוות were given to בני ישראל in order to live with them. We learn this from a פסוק in ויקרא which states that a person should perform and "live" by the מצוות. From this the תוספתא learns that a person's life is of exceeding importance, even superseding the מצוות. Furthermore, we know that even the life of someone else is of extreme significance, as you can violate almost any איסור, prohibition, in order to save a life. For example, if a person's life were in danger on שבת, you could violate שבת in order to drive them to the hospital. It is possible that the life of another is of even greater value than the life of oneself. This assumption can be drawn from one of the three מצוות one may not transgress even if it means losing one's own life. One of these three מצוות is שפיכות דמים, murder, which you may not commit even at the risk of your own life. For instance, if someone were to hold a gun to your head and demand you kill your neighbor, under no circumstances would you be permitted to do so. This is learned from a סברא in גמרא סנהדרין דף ע"ד עמוד א' which asks:

"מי יימר דדמא דידך סומק טפי דילמא דמא דהוא גברא סומק טפי"

"Who says that your blood is redder? Perhaps his blood is redder."

This is a logical explanation as to why you cannot kill someone else to save your own life. How could you possibly know whose blood is redder — which life is more valuable? There are essentially no cases where taking a life is permitted halachically. Clearly, the תורה has established a great value to life and the loss of it.

In סנהדרין דף ע"ג עמוד א׳, a fascinating משנה is brought forward. The משנה lists types of people who fit into the category of those whom you may kill in order to save someone.

״אלו הן שמצילין אותן בנפשן: הרודף אחר חבירו להרגו…״
"And these are the ones whom we save [at the expense] of their lives: one who chases after his friend to kill him…"

According to רבא, quoted on סנהדרין דף ע"ב עמוד א', the idea that you may kill a רודף, a pursuer, comes from the תורה principle: "הבא להרגך השכם להרגו," "If he comes to kill you, rise up and kill him." From this principle, we learn that you may kill someone attempting to murder you or another.

Based on the immense value which the תורה attributes to life, a simple question can be asked regarding the case of a pursuer. Rather than killing the pursuer, should a person simply injure the pursuer to prevent the murder? This suggestion is stated outright in the גמרא in סנהדרין ע"ד עמוד א' which says that if one is able to save the pursued by simply injuring the pursuer and one instead kills the pursuer he is executed. This seems to be a very extreme statement. On the previous דף, the גמרא had just categorized a pursuer as one of the few cases in which you can kill a person in order to save a life. What are the implications of this idea regarding injuring the pursuer? Who does it apply to and under what circumstances?

רמב"ם הלכות רוצח א':י"ג says that anybody who is able to prevent a murder by injuring the pursuer's limbs but instead kills the pursuer

is liable for death. רמב"ם does not deviate much from the simple understanding of the גמרא. However, he does add that a violator of this case should not be executed by the court. How is it possible that he should not be executed by the court? The גמרא seemed to clearly imply that one who kills a pursuer when they could have injured them is executed. The כסף משנה explains that it is not possible that the בית דין could kill a violator of this case. We know that for the בית דין to execute someone, the court must have been warned against their actions prior to the transgression. In this case, however, the transgressor clearly believes he is doing his utmost to save someone. Therefore, he could not have received a proper warning and can only be liable for the death penalty in heaven. Additionally, in the following הלכות, the רמב"ם emphasizes how grave a sin it is to not prevent a murder, possibly to highlight the fact that a person should go to the utmost lengths in order to save the pursued.

Does this הלכה apply in the same fashion to the pursued, or is it only a הלכה for a bystander who intends to save the pursued? According to the (רב יצחק זאב הלוי סולובייציק) גרי"ז, the pursued can kill the pursuer without hesitation due to the aforementioned principle "הבא להרגך השכם להרגו." Someone who is being chased does not need to consider injuring their pursuer because we know the תורה permits you to kill someone who is coming to kill you. Only a bystander must attempt to maim the pursuer before killing, and only kill if he has no other options. However, רש"י on the גמרא דף ע"ד עמוד א', which first brings up this idea, seems to disagree with the רמב"ם and says that this הלכה applies to the pursued as well. The רמב"ם in הלכות רוצח א':ז' details the exact manner one must go about injuring the pursuer. He says the pursuer must be warned, and if after being warned the pursuer does not stop he should be killed. The רמב"ם suggests that if one can blind, maim, or use any other means to stop the pursuer, he should. However, if there is no way to injure the pursuer without killing him, the רמב"ם suggests one should kill the pursuer. The משנה למלך distinguishes between a bystander and the pursued in these parameters. According to the משנה למלך, the pursued does not have

to take the same precaution as the bystander and may kill his pursuer without attempting to warn him.

A possible נפקא מינה which we can learn from this case is whether the pursuer must pay for damages he may have caused while trying to murder his target. There is a principle called "קים ליה בדרבה מיניה" which means a person is only liable for the greater of two punishments. Therefore, a person cannot be liable for death and compensation for damages which result from the same action. The חושן משפט ש"פ:ג' in שולחן ערוך says that a pursuer is not liable for damages caused during his pursuit, in accordance with the principle of קים ליה. This implies that the pursued does not have to resort to injuring his pursuer. If the pursued was obligated to try and injure his pursuer, the pursuer would not have the assumed status of liability for death and would be obligated to pay for incurred damages. Therefore, we see that the pursued is different than a bystander and may kill his pursuer without hesitation.

יהרג ואל יעבור: שפיכות דמים

Martyr Instead of Murder (דף ע"ד)

Yara Hyman (11th Grade)

In general, one is not required to allow him- or herself to be killed in order to avoid violating a prohibition. However, שפיכות דמים is יהרג ואל יעבור and one is required to be killed rather than kill someone else. It is important to understand why murder is an exception to the rule.

In order to explain this exception, the גמרא סנהדרין ע"ד עמוד ב' cites an incident in which someone (a mobster) asked a man to kill someone else or he (the mobster) would kill him. The man asked רבה what he should do, and רבה responded, "מי יימר דדמא דידך סומק טפי דילמא דמא דהוא גברא סומק טפי," which translates to "who says that your blood is redder than his? Maybe his blood is redder than yours." What he is trying to say is that you have no right to decide whether your life is more valuable than the other person's. So the result was he had to choose to die instead of killing the other person.

However, there is another case in the גמרא בבא מציעא ס"ב עמוד א' that talks about two friends who are stranded in a desert and there is only enough water for one of them to survive, so the question is who deserves to drink the water? בן פטורא says "מוטב שישתו שניהם וימותו ואל יראה אחד מהם במיתתו של חבירו" - this means they should both drink the water at the same time so one of them doesn't have to see the other one die. רבי עקיבא disagrees and says: "וחי אחיך עמך - חייך קודמים לחיי חבירך." The פסוק says your brother should live with you, which רבי עקיבא understands to mean you should live ***together with*** your brother. One's obligation to another's life only requires a person to save another if he, too, can live. But if only one can live, your life comes before the life of another. So according to רבי עקיבא, the person with the water should keep the water.

It seems these two גמרות contradict one another. In גמרא סנהדרין it clearly says that you cannot decide whether your life is more valuable than someone else's life, so you would have to die instead of killing someone. On the other hand, רבי עקיבא says that one should keep the water and not give it to his friend, because חייך קודמין, which certainly sounds like deciding that your life is more valuable. Why does he get the water? Doesn't the same logic (that you can't choose your life over others) apply? Or, to ask the opposite, if your life comes before the life of another, why can you not kill someone else to save your life?

We can better understand the reasoning behind רבי עקיבא's opinion from a תוספות in סנהדרין דף ע"ד עמוד ב' which talks about a case where someone tells a person that he or she has to kill a baby or they will kill be killed. In this case, the person should submit to being killed, because you cannot judge whose life is more valuable. However, if someone throws a person on top of a baby, which will end up killing the baby, the person does not need to ask to be killed rather than kill the baby. תוספות explains this saying "כיון דלא עביד מעשה" which means "since he didn't directly do the action" of murder, therefore, he is not required to ask to be killed. This helps us understand רבי עקיבא because it explains that even though you were involved in the death of the baby, since you did not directly kill the baby you are not responsible for the death. Similarly, in the case of the water, by keeping the water, one is not directly killing his friend, and, therefore, he is allowed to choose his own life.

Why is it the case when one does not actively kill the other person he or she can choose his or her own life? Because, when not active, one is not really choosing. Really in both cases the הלכה is the same: do nothing. So, what we are really saying in both cases is you cannot choose one life over another. In the case of murder, you cannot do something (kill) to choose your life over another's. In the water case, you cannot do something (give away the water) to choose someone else's life over yours. Even if you save the other person at the

expense of your life, you are choosing one life - his or hers over yours. So, you must choose inaction, make no choice, in either case.

An indication that the real issue is that you must pick inaction is the opinion of the רמ"ך quoted in the שיטה מקובצת. He says if your friend had the water, and you follow רבי עקיבא and think you should take the water to choose your own life, you would be wrong because if you were to take the water away from your friend, you would be actively killing your friend by taking the water away from him. So when רבי עקיבא says, your life comes first, it really means you are not required to do something (like give away the water) to pick his life over yours, but you also cannot do anything to pick your life (like take the water away).

יהרג ואל יעבור: עבודה זרה

Self-Sacrifice Instead of Idolatrous Sacrifice

(דף ע"ד)

Eliana Tieke (11th Grade)

God commands us to devote our entire lives to fulfilling G-d's מצוות as it says in ויקרא: וּשְׁמַרְתֶּם אֶת חֻקֹּתַי וְאֶת מִשְׁפָּטַי אֲשֶׁר יַעֲשֶׂה אֹתָם הָאָדָם וָחַי בָּהֶם. In addition to the plain meaning of this פסוק that we must live our lives through the fulfillment of G-d's commands, חז"ל interpret the phrase וחי בהם to mean ולא שימות בהם which seems to suggest that one should indeed violate the מצות rather than יעבור ואל ייהרג, killing him- or herself. However, there are three exceptions to this ruling: עבודת כוכבים וגילוי עריות ושפיכות דמים- worshiping idols, violating sexual prohibitions, and murdering.

The source from which we derive the requirement to give up our lives rather than worship idols is וְאָהַבְתָּ אֵת ה' אֱלֹקֶיךָ בְּכָל לְבָבְךָ וּבְכָל נַפְשְׁךָ. In a ברייתא in סנהדרין ע"ד, we are told by רבי אליעזר that the requirement of בכל נפשך means that we must even give up our נפש to demonstrate our אהבת השם. It seems that the ultimate expression of אהבת השם is refraining from עבודה זרה. This, however, can be seen as peculiar. Why does אהבת השם only require us to refrain from עבודה זרה? Why shouldn't the requirement to love G-d with all your soul demand of us that we sacrifice for any מצוה to show אהבת השם?

The first answer can be found in the משך חכמה of רבי מאיר שמחה מדווינסק who says it is not because of the severity of the sin of עבודה זרה that one must give up his or her life to avoid violating it. Rather it is because of the special connection the idea of worshipping one G-d has with the Jewish soul. Once בני ישראל heard the first two commandments directly from G-d, these commandments became the fundamental aspect of the nature of a Jew's soul, "עצם נפש הישראלי."

To demonstrate the fact that these commandments have penetrated deeply into the soul of the Jewish people, the משך חכמה notes that many people who are less learned still ended up sacrificing their lives in order to proclaim that G-d is one and to avoid committing עבודה זרה. Therefore, it is for this מצוה, which a Jew easily hangs on to despite threats to his or her life, that we are commanded to sacrifice our lives.

A second possible reason why עבודה זרה is considered the epitome of giving up on אהבת השם is that עבודה זרה is throughout the נביאים equated with adultery against G-d. Both sins are forms of unfaithfulness, distrust, and both defile the intended love relationship. In הושע פרק א פסוק ב, we find the starkest example of this comparison to adultery when G-d tells הושע to go find a prostitute for himself as a wife as a metaphor to show how בני ישראל has gone off with another G-d, ultimately committing עבודה זרה. The פסוק reads: וַיֹּאמֶר ה' אֶל הוֹשֵׁעַ לֵךְ קַח לְךָ אֵשֶׁת זְנוּנִים וְיַלְדֵי זְנוּנִים כִּי זָנֹה תִּזְנֶה הָאָרֶץ מֵאַחֲרֵי ה'. The מצודת דוד explains that G-d intended הושע's marriage to a prostitute to be a sign for the Jewish people that they have followed other gods like a prostitute follows adulterers. Clearly this graphic imagery demonstrates how עבודה זרה is an abandonment of the love we should have for G-d.

יהרג ואל יעבור

Giving One's Life and Not Transgressing

(דף ע"ד)

Elijah Wolfe (11th Grade)

In Jewish law there is a concept to stand and live by the commandments G-d gave to us. However, we are also met with certain situations where one must lie down and die for G-d's commandments - three times to be precise. The גמרא in סנהדרין ע"ד. tells us that a person must die rather than transgress one of the three unforgivable sins: improper relationships, murder, or idolatry. The גמרא specifies that this is in a life-or-death scenario and there is no possible way to escape the sin other than death. However, the גמרא specifies that if one is being forced to merely transgress a simple commandment, he can transgress rather than die. However, if there were ten Jews in his presence, then no matter the sin, the Jew should die rather than commit the sin in order to sanctify and not desecrate G-d's name. The רמב"ם stresses the point that if one is in the midst of ten other Jews he should choose to die rather than transgress to show respect to G-d. The question arises though: what are the consequences if someone chooses to live and transgress G-d's commandment rather than die?

Rav Moshe Taragin responds to the perplexing question of if a person decides to transgress the sin rather than die by analyzing the argument between the בעל המאור and the רמב״ן. The בעל המאור states that if the person forcing the Jew to sin is doing it due to personal reasons and benefiting from it, the Jew should choose to sin rather than die. If the coercer's motives were on a more ideological basis, trying to force the Jew to sin to make the statement against the תורה, then the Jew must sacrifice his life for the sanctification of G-d's name. The בעל המאור sees the concept of dying rather than committing the sin to be based on sanctifying G-d's name, specifying that in a situation where it is not an ideological

challenge, it is permissible to transgress the sin. Against this notion, the רמב״ן states in מלחמות ה׳ that regarding the three sins, despite the circumstances, a person must sacrifice his life. רמב״ן then elaborates and says that the intentions of the coercer are only of concern for the other commandments in the תורה at a time of גזירה, a decree. Since the rest of the commandments are based on the idea of making a קידוש השם, the instances where one must sacrifice his life are based on ideological circumstances which are in place to prevent the disgrace of G-d's name. However, when dealing with the three cardinal sins, the motivations of the coercer are of no consequence; the idea of יהרג ואל יעבר is based on the asperity of those three מצוות and not the motivation.

If one chooses to be killed rather than commit the sin, the רמב"ם in the seventh chapter of הלכות יסודי התורה says that he or she is responsible for his or her own life. We see through the stories of people such as the ten martyrs, דניאל, חנניה, מישאל, ועזריה, that those who choose death over transgressing, especially in public, are sanctifying G-d's name and performing the ultimate service in this world to G-d. תוספות disagrees in מסכת עבודה זרה כ״ז: ד״ה יכול: one can die for any commandment in the תורה if he or she chooses to. They support this clause with the story of רבי אבא בר זימרא in the תלמוד ירושלמי, who was faced with the situation of either eating a dead body or dying. It is assumed he was in private and even though there is no obligation for him to give up his life, he was willing to in order to sanctify G-d's name.

Practically, according to the רמב"ם, one who violates a sin instead of giving up his life commits two sins: a מצות עשה and a מצות לא תעשה, a positive commandment for not sanctifying G-d's name, and a negative commandment for disgracing G-d's name, and thus must be punished. Yet we cannot punish the individual, at least in this world, even for committing any of the three sins in this situation. Since he or she was forced to transgress, even if that meant taking another life, we cannot punish him or her, not even with lashes. The

previous assertion is supported by the שולחן ערוך יורה דעה סימן קנ"ז סעיף א'. However, if it is determined that there was any other way for the perpetrator to escape the situation, he is labeled to be like a dog returning to eat his own vomit and will surely be killed and banished to גיהנום.

Ultimately, we conclude that although a person should have most definitely given up his life in order to sanctify G-d's name, in this world, it is impossible to punish him for his actions because at the end of the day, he was forced to commit the sin. It is clear that the ultimate judge, G-d, in עולם הבא, will determine each person's actions and decide their ultimate fate.

יעבור ואל יהרג ונהרג

Choosing Martyrdom When Not Required

(דף ע"ד)

Chana Fischer (10th Grade)

In סנהדרין ע"ד, the גמרא talks about when a Jew must give up his or her life. There are two types of cases when one must die: when a Jew is asked to violate any prohibition in public and when he or she is asked to either commit adultery, worship idols, or murder someone.

Despite these exceptions, in the majority of cases, one is not required to give up his or her life in order to avoid violating a mitzvah. In such a case, may he or she give up their life voluntarily?

רמב"ם says "כל מי שנאמר בו יעבור ואל יהרג ונהרג ולא עבר הרי זה מתחייב בנפשו" which means one should not give up his or her life when he or she is not required to. He explains that if one decides to sacrifice his or her life when not required to, then that person is responsible for his or her death, meaning the only reason that he or she died is because of something he or she did and not because of something Hashem made him or her do, and the person did not give up his or her life for Hashem. For example, if a non-Jew came to a Jew on Shabbat and said to him that if he doesn't cook food for him, then he will kill him. If the Jew chooses not to cook him a meal and the non-Jew kills him, according to רמב"ם the Jew is responsible for his own death.

On the other hand, תוספות עבודה זרה כ"ז עמוד ב' says "ואם רצה להחמיר על עצמו אפילו בשאר מצות רשאי." If one wants to be stricter than required and give up his or her life as a sacrifice to ה', it is allowed.

רב ישראל תא שמע explains this מחלוקת. He says that, according to רמב"ם, the reason a person would sacrifice his or her life for a מצוה when not required to would be to attempt to fulfill the מצוה of קידוש ה', sacrificing one's life to fulfill a מצוה. According to the רמב"ם, despite one's attempt to be מקדש ה', one cannot be מקדש ה' voluntarily, because we learn from the תורה that "אשר יעשה אותם האדם וחי בהם." The גמרא explains this פסוק in several places to mean that we should live in the מצות and when there is danger ולא שימות בהם there is no מצוה because our lives are more important than most מצות. According to רמב"ם, the requirement of all מצוות is limited by וחי בהם; if you would have to die, there is no מצוה.Therefore, once וחי בהם removes the מצוה, it cannot be קידוש ה' to sacrifice oneself, because the sacrifice is not for a מצוה. According to the רמב"ם, there is no other requirement which would lead one to sacrifice him- or herself, because the requirement of ובכל נפשך - to do מצוות with all of one's soul - only applies to עבודה זרה.

For example, if a man came up to you on שבת and told you to drive his car or die, then there would be no point in letting yourself die because there is no מצוה that stops you from driving on שבת because of וחי בהם. Therefore, it would be impossible to fulfill the מצוה of קידוש ה' by sacrificing your life because there is no מצוה to sacrifice for.

Next רב תא שמע explains the opinion of תוספות. According to תוספות, for all מצוות other than עבודה זרה, there is a required parameter of the מצוה which is וחי בהם; you are only required to do the מצוה up to the point that it endangers your life. But there is another, optional parameter of each מצוה which is ובכל נפשך; you can do the מצוה up to the point of sacrificing your life. As תוספות עבודה זרה נ"ד עמוד א' quotes from the שר מקוצי, everyone agrees דאיכא עשה דבכל נפשך שיש למסור עצמו אפילו בכל אונסא. For example, if you were on a deserted island on שבת and you needed to light a fire to survive, according to תוספות, you are not required to die, but if you did die instead of lighting the fire it would be considered בכל נפשך. Since there is a

fulfillment when one dies for a מצוה, it is considered קידוש ה' when one makes this choice.

Although we see that this is a מחלוקת ראשונים, people throughout Jewish history, from Masada to the time of the Crusades, have given up their lives even when not required. During the Crusades, the אשכנז community would sometimes kill themselves before the crusaders arrived so they wouldn't be forced into idolatry. In this case, the people were following the opinion of תוספות, that is, we may die for any מצוה because of the idea of בכל נפשך, doing a מצוה with all of one's soul.

יהרג ואל יעבור בפרהסיא

Giving your Life in Public (דף ע"ד)

Tal Ershler (12th Grade)

There is a famous דרשה the גמרא infers from the פסוק: "ושמרתם את חוקותי ואת משפטי, אשר יעשה אותם האדם וחי בהם, אני ה' (ויקרא י"ח:ה')." The גמרא in מסכת יומא explains that to mean "וחי בהם- ולא שימות בהם". This implies that the objective of the מצוות is to live and at the risk of life, a person must transgress the sin and not die. However, the exception to this rule is the famous "big three." As Jews, we are commanded to die before committing גילוי עריות, שפיכות דמים, ועבודה זרה. The גמרא in סנהדרין דף ע"ד explains that there are two situations in which we need to die and not violate any מצוה: a governmental decree and violating a מצוהin public.

The גמרא gets into the discussion that if there is a גזרת מלכות, a ruling made by a government to commit an עבירה, we are supposed to die before committing it. The גמרא on דף ע"ד then says we are supposed to die for any עברה that the government makes us commit, even if it is a מצוה קלה, an easy מצוה. The גמרא asks, "What is a מצוה קלה?" and answers it is any מצוה, or even a Jewish custom, such as tying shoelaces like the non-Jews. This means that if the Jewish people live in a place where the Jews tie their shoes with one type of shoelaces and the non-Jews tie their shoes in a different way, the Jews are supposed to die before tying their shoes like the non-Jews because the government is making the Jews do something to alter their Jewish identity.

What does it mean to violate a מצוה in public? What is the definition of בפרהסיא? The way that בפרהסיא is defined by the גמרא סנהדרין is ten Jews. The גמרא also discusses what a חילול ה' is. It defines חילול ה' not as what we usually think of when those words come up. Every time we go on a field trip or on a שבתון, the leader of the trip will usually say something like "Make a קידוש ה' … Please do not make

a חילול ה'." The רמב"ם defines a קידוש or חילול ה' differently than this. The רמב"ם explains that a קידוש ה' would be sanctifying ה's name in public, and a חילול ה' is disgracing ה's name in public. He just defines public differently than we usually do. When we think of a public area, we tend to think of the street, or the park, not our school hallways or the בית מדרש. Those areas feel more like a home than a public area. While that might be true, according to the גמרא, "public" is in the presence of ten Jews.

The נימוקי יוסף explains that it does not matter if we are forced to commit one of the "big three" in public or private, and we still have to die before committing them because the severity of those sins demands that we die before transgressing them. He then explains that for all other מצוות, the issue is really committing them in public so as not to cause other Jews to think less of ה' and His commandments, but rather to sanctify His name.

The מנחת חינוך questions if ten Jews need to actually be there, or if they just need to know about the sin being committed. The case of אסתר marrying אחשורוש would seem to support the side of saying ten Jews merely need to know about it, since the Jews of שושן knew אסתר was having relations with אחשורוש, but no ten Jews actually saw them together.

Another follow-up question he poses is do the ten Jews need to be men, or can women be included to reach ten Jews. When we speak about a מנין, we know we need ten men together. If we say that ten Jews need to know about it, perhaps women can be included here; if the people aren't actually together at one time and witnessing the sin, it's not a מנין of people, but the Jewish public knowing about it, of which women are a part.

אסתר קרקע עולם היתה

Esther Was Passive (דף ע"ד)

Shlomo Benezra (12th Grade)

On the surface, the story of אסתר is commonly viewed in a way that portrays her as a heroine; however, was the way she facilitated the saving of the Jewish people justified and permitted? In the גמרא of (סנהדרין ע"ד:) יהרג ואל יעבור, there are 3 מצוות that one has to die for whether in public or private: killing, adultery, and idolatry. The גמרא then moves on to situations in which one has to die in the face of violating מצוות קלות, light מצוות. One must die for מצוות קלות if it will take place in public or there is a governmental decree to transgress the sins. The גמרא brings in many sources to try to both commend and condemn her actions.

The גמרא starts by stating the big three מצוות that are forbidden regardless of the circumstance. Based on this, the גמרא asks wasn't אסתר having relations with אחשורוש in public since all the Jews of שושן knew about it and therefore would be required to give her life.

"והא אסתר פרהסיא הויא".

This means wasn't אסתר technically in public when she committed the act of adultery with the king because everyone knew about it, and were therefore required to give her life? אביי answers by saying "קרקע עולם היתה," she was passive, and therefore it was not considered as if she partook in the sin and she was not required to give her life. רבא offers another answer rooted in the idea of undermining Judaism in terms of the actual sexual act. רבא says that since אחשורוש was only trying to please himself in the act and not trying to undermine Judaism, אסתר did not have to die for it. The גר"א replies to this by explaining that this only applies when the government decree is directed exclusively at Jews, but since אחשורוש's decree to summon all girls was directed toward all girls,

it was not trying to undermine Judaism and, as a result, she was justified.

תוספות challenges the entire גמרא by asking why it mattered that she was in public. Since she committed גילוי עריות, one of the big three sins, she should be required to give her life in either situation, whether public or private. רבינו תם answers by saying that relations with a non-Jew is comparable to relations with an animal and is therefore not considered adultery. If אסתר was not committing גילוי עריות, it would fall into the category of all other מצוות, i.e. מצוות קלות, which is why the גמרא asked, "Wasn't she in public" and answered that she didn't need to give her life since she was passive or since אחשורוש did it for his own personal benefit.

The ריב"ם, another of the בעלי תוספות, disagrees with רבינו תם because he says that relations with a non-Jew is considered relations. The גמרא didn't ask, "but isn't אסתר required to give her life for גילוי עריות," because the גמרא knew that if a woman is passive, she is not required to give her life.

This concept is further supported by a dynamic of רוצח. The ריב"ם proves his point by saying if someone is going to make you passively kill another person, then you don't have to give your life. We see this in the case of a man saying he is either going to kill you or throw you on a baby in which case you will passively kill the baby. According to תוספות, one is allowed to passively kill the baby. The justification for this argument is that the rationale for not saving your life by killing someone else is "who says your blood is redder than his." Here, when you are not actively killing, the opposite logic could apply: who says his blood is redder than yours. אסתר's life was at risk for גילוי עריות, but the threat required her to be passive. תוספות argues that in such a situation, it would not classify the threat as גילוי עריות. The גמרא asks: even though it is not גילוי עריות because she was passive, maybe the חילול ה' in the act, due to it being in public, should have required אסתר to give her life, to which אביי answers that

even in this situation, the concept of קרקע עולם applies; thus, she was not required to give her life.

The story of אסתר has many circumstances where one might think she wasn't justified. The arguments of her being in public, it being a governmental decree, and her committing one of the big three eventually results in the solutions offered by various rabbis. Ultimately, all the details of the story truly do reveal that אסתר is a heroine.